

Part C – Decision Under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”) dated July 13, 2023, in which the Ministry found that the Appellant was not entitled to backdated Disability Assistance (“**DA**”) for the period between October 14, 2022 to March 31, 2023.

Part D – Relevant Legislation

- *Employment and Assistance for Persons with Disabilities Act* (the “**Act**”) – section 5
- *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”) – sections 23 and 71

Note: The full text is available after the decision.

Part E – Summary of Facts**(a) Summary of Key Facts and Dates:**

- The Appellant is designated as a “Persons With Disabilities” (“**PWD**”).
- On October 14, 2022, the Appellant applied for DA.
- On November 10, 2022, the Ministry determined that the Appellant was ineligible for DA due to “*income in excess*”. The Ministry advised the Appellant that it denied her request for DA using the Appellant’s My Self Serve (“**MySS**”) account. Further, the Ministry advised the Appellant of her right to request a reconsideration of its decision. The Appellant replied to the Ministry’s message and requested a reconsideration of the denial of DA.
- On November 15, 2022, the Ministry sent the Appellant a formal message using the Appellant’s MySS account wherein it explained the reasons for its denial of the requested DA. The body of the Ministry’s message advised that the Appellant had the right to request a reconsideration of the Ministry’s decision provided she completed and submitted a Request for Reconsideration form using her MySS account or by delivering a copy to the Ministry within 20 business days from the date she received the decision.
- On November 16, 2022, a supervisor with the Ministry phoned the Appellant to verbally advise her of her option to proceed with reconsideration.
- On December 7, 2022, the Appellant called the Ministry to enquire about obtaining a reconsideration for each time she had been denied DA. The Ministry advised the Appellant that she (then) had an open Request for Reconsideration for her November 10th denial of DA.
- On January 16, 2023, the Appellant called the Ministry regarding her Request for Reconsideration. The Ministry explained that the Appellant’s Request for Reconsideration had been closed and classified as abandoned as the Ministry had not received the Appellant’s completed Request for Reconsideration form by the submission deadline. The Appellant advised that she had not received any information regarding her Request for Reconsideration and that she did not know of the related deadline.
- On April 27, 2023, the Appellant was found eligible for DA, effective April 1, 2023.
- On May 8, 2023, the Appellant contacted the Ministry about her application for DA submitted in October 2022. She requested retroactive payment of DA, as she felt her income was treated incorrectly which resulted in her missing months of DA. The Ministry set up a service request to review her eligibility for the retroactive payment of DA backdated to October 2022.
- On May 11, 2023, a Policy and Ministry Procedure Implementation Manager reviewed the Appellant’s request and determined that she was not eligible for retroactive DA

backdated to October 2022, as this issue was required to be addressed through the reconsideration process as offered to her on November 10, 2022. The Ministry contacted the Appellant and advised her of its decision and offered her the right to request a reconsideration of its decision denying her an ability to request retroactive DA backdated to October 2022.

- On June 12, 2023, the Appellant submitted a Request for Reconsideration form. In addition, she requested additional time to secure documentation in support of her request.
- On July 5, 2023, the Appellant submitted a letter in support of her Request for Reconsideration. The Appellant discussed the various hardships she faced since she was the victim of an assault in 2015. With regards to her application for DA in October 2022, she explained the following:
 - She experienced repeated issues with her MySS account since Summer 2019. The issues included receiving MySS messages before she had access to her account, applications timing out without warning, and two (2) separate accounts being created, which prevented her from receiving messages.
 - Following the denial of DA in November 2022, she received a Reconsideration Package via her MySS account on November 15, 2022; however, she was unable to access the Reconsideration Package due to technical issues with her MySS account that were beyond her control.
- On July 13, 2023, the Ministry issued its Reconsideration Decision wherein it denied the Appellant's request for backdated DA as follows:

"Please note, in your Request for Reconsideration you indicated that you are requesting a full investigation into your case history and retroactive payment of disability assistance dating back as far as June 2019. However, this reconsideration regards only the ministry decision (rendered on May 11, 2023) to deny you disability assistance benefits back dated to the date of your application submitted on October 14, 2022. The ministry does not have discretion within the scope of this decision to assess eligibility for retroactive benefits back dated to the dates of applications before the one you submitted on October 14, 2022.

A review of your file confirms that the ministry notified you of the decision to deny your application for disability assistance (submitted on October 14, 2022) via a formal denial message sent on November 15, 2022. Therefore, the ministry determines that the deadline by which you were required to submit your Request for Reconsideration was December 13, 2022, in accordance with Section 71(2) of the EAPWD Regulation. In the letter you

submitted on July 5, 2023, you explained that you were unable to click the "request reconsideration" button in this message, and to this day when you view this Service Request in MySS and click "View Form," a banner pops up saying "undefined." You advised that you did not receive any information regarding this reconsideration or the deadline for submission.

However, a review of your file indicates the following:

- The body of the MySS message sent to you on November 15, 2022 (see attached screenshot) explains the reasons for your denial, advises you of your right to request reconsideration of the ministry's decision, and notifies you that you must submit a completed Request for Reconsideration via MySS or to a ministry or government agent's office within 20 business days from the date you received the decision. This message further advises you to either refer to the attached reconsideration brochure or contact the ministry at 1-866-866-0800 for further details.*
- This MySS message sent on November 15, 2022 was received and read by you the same day, as acknowledged by you in the letter you submitted on July 5, 2023.*
- A ministry supervisor called you on November 16, 2022 to verbally advise you of your right to reconsideration.*
- There is no record to indicate that you advised the ministry you were having difficulty submitting your reconsideration request via MySS at any time during the 20 business day period after you were notified of the denial. Furthermore, at no point during this period did you ask to have your Request for Reconsideration form provided to you by other means (by mail or in office).*

As such, while the ministry acknowledges that you experienced technical problems with MySS that prevented you from opening the form attached to the denial message sent to you on November 15, 2022, the ministry is satisfied that you received information regarding the reasons for your denial, your right to reconsideration and the deadline by which you had to submit your request for reconsideration. Therefore, the ministry is satisfied that the ministry acted in accordance with the principles of administrative fairness, as per ministry policy.

A review of your file confirms that you were found eligible to receive disability assistance effective April 1, 2023. The ministry provided you with disability assistance for April 2023 once your eligibility was established in accordance

with Section 23 (1.2) of the EAPWD Regulation. The ministry does not have discretion to provide disability assistance for a period prior to the effective date of eligibility for the family unit established in accordance with Section 23 of the EAPWD Regulation. Therefore, the ministry has denied your request for retroactive disability assistance (support and shelter) for the period of October 14, 2022 to March 31, 2023."

(b) The Appeal

On July 27, 2023, the Appellant filed a Notice of Appeal (the "**Appeal Notice**"). In the Appeal Notice, the Appellant wrote, *"First of all, I was requesting reconsideration for retroactive disability assistance back to the summer 2019. I was making that request for reconsideration as a person with disabilities and self-employed and seasonal worker. I have experienced technical issues and communication issues that are the fault of the ministry that have impeded the success of an application. In addition to technology and communication issues, the interpretation of legislation for a seasonally employed person with disabilities created a hamster wheel where if I'm not successful on application within a window of low income, I'll continue to be denied. And that was my reason for what I was requesting. The decision says denied. They denied that for reasons that I'm trying to fight against...."*

The Appellant's written Appeal hearing was held on February 1, 2024. As neither party provided any additional submissions or submitted any additional evidence in advance of the written hearing, the Panel was not required to make any determinations pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue in this Appeal is whether the Ministry's decision to deny the Appellant backdated DA for the period between October 14, 2022 to March 31, 2023 is reasonably supported by the evidence or is a reasonable application of the legislation.

Appellant's Position

The Appellant argues that she was unable to submit a completed Request for Reconsideration form due to circumstances beyond her control, namely technical issues with her MySS account which she argues is solely the fault of the Ministry.

Ministry's Position

The Ministry maintains that it cannot reconsider its decision to deny the Appellant backdated DA given that she did not submit her completed Request for Reconsideration form within the timelines established by the applicable legislation.

Panel Decision

Section 5 of the *Act* provides that the Minister may provide DA to or for a family unit that is eligible for it.

Section 23(1.2)(c) of the *Regulation* provides that an applicant for DA who has been designated as a PWD becomes eligible for DA on the DA application date.

Section 71 of the *Regulation* sets out that a person who seeks a reconsideration must deliver a completed Request for Reconsideration form to the Ministry within 20 business days after that person is notified of the Ministry's decision.

On October 14, 2022, the Appellant submitted her request for DA. On November 10, 2023, the Ministry advised the Appellant of its decision to deny her request for DA by sending the Appellant a message using her MySS account. On November 15, 2023, the Ministry, again, sent the Appellant a formal letter using her MySS account notifying her of its decision to deny her request for DA and advising her of her right to request a reconsideration of the Ministry's decision. Further, the Ministry phoned the Appellant on November 16, 2023 and verbally advised of her ability to proceed with a reconsideration. On December 7, 2023, the Appellant called the Ministry to enquire about obtaining a reconsideration for each time she had been denied DA. At the time, the Ministry advised the Appellant that she had an open request for reconsideration of her (then) most recent denial of DA. Importantly, the Appellant did not advise the Ministry of the technical issues she was facing, nor did she request additional time to submit her Request for Reconsideration Form.

The Panel finds that there is no evidence before it to suggest that the Appellant ever advised the Ministry of the technical issues she states to have encountered in using her MySS account as it related to the submission of her Request for Reconsideration form. Had the

Appellant advised the Ministry of these issues, the Ministry could have worked to address them or, in the alternative, extended the Appellant's deadline to request reconsideration or, in the further alternative, used other methods to provide the Appellant with the information she required so that she could submit her Request for Reconsideration form in compliance with the applicable legislation.

As a result, the Panel finds that the Appellant did not meet the requirements of the legislation that required her to submit a Request for Reconsideration form within 20 business days after being notified of the Ministry's decision to denying her DA. While the Appellant argues that she was unable to file a completed Request for Reconsideration form due to factors beyond her control, the Panel finds that section 71 of the *Regulation* does not excuse the Appellant from her filing deadline obligations. Put differently, the legislation does not allow for exceptions from the filing timelines. While the Ministry could have granted the Appellant a filing deadline extension, the Appellant did not advise the Ministry of her (then) circumstances impeding her ability to file a completed Request for Reconsideration form. While the Panel is empathetic to the Appellant's circumstances, it finds that she did not file a completed Request for Reconsideration form within 20 business days after she was notified of the Ministry's decision to deny her request for DA.

As it relates the Ministry's ability to grant backdated DA, the Panel finds that section 23.1 of the *Regulation* limits the Ministry' ability to provide backdated DA to the first day of the calendar month in which an application for DA is made which, in this case, was April 1, 2023. As the Appellant did not submit a Request for Reconsideration form in the legislated timeline, the Panel finds that the Ministry's ability to grant backdated DA was limited to April 1, 2023.

In sum, the Panel finds the Ministry reasonably determined that it could not reconsider its decision denying retroactive DA for the period between October 14, 2022 to March 31, 2023 and, further, that its ability to grant backdated DA was limited to April 1, 2023.

Conclusion

The Panel finds the Ministry's decision, in which it denied the Appellant backdated DA for the period between October 14, 2022 to March 31, 2023 and which limited backdated DA to April 1, 2023, is a reasonable application of the legislation in the Appellant's circumstances. The Panel confirms the Ministry's decision.

The Appellant is not successful on appeal.

Legislation***Employment and Assistance for Persons with Disabilities Act, SBC 2002, c 41*****Disability assistance and supplements**

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance for Persons with Disabilities Regulation, BC Reg 265/2002**Effective date of eligibility**

23 (1) Except as provided in subsections (1.1), (3.11) and (3.2), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance

(a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and

(b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.

(1.1) The family unit of an applicant who applies for disability assistance while the applicant is 17 years of age and who the minister has determined will be designated as a person with disabilities on the applicant's 18th birthday

(a) is eligible for disability assistance on that 18th birthday, and

(b) on that date, is eligible under section 4 and 5 of Schedule A for that portion of the month's shelter costs that remains unpaid on that date.

(1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for

(a) a support allowance under sections 2 and 3 of Schedule A on the disability assistance application date,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the disability assistance application date, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c)for disability assistance under sections 6, 7 and 8 (2) (b) of Schedule A on the disability assistance application date.

(2)Subject to subsections (3.01) and (3.1), a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.

...

How a request to reconsider a decision is made

71 (1)A person who wishes the minister to reconsider a decision referred to in section 16 (1) [*reconsideration and appeal rights*] of the Act must deliver a request for reconsideration in the form specified by the minister to the ministry office where the person is applying for or receiving assistance.

(2)A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 16 (1) of the Act and may be delivered by

- (a)leaving it with an employee in the ministry office, or
- (b)being received through the mail at that office.

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Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred
back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2024/02/13

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2024/02/13

Print Name

Julie Iuvancigh

Signature of Member

Date (Year/Month/Day)

2024/02/13