

Part C – Decision Under Appeal

Under appeal is a decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”) dated January 31, 2024 (the “Reconsideration Decision”) denying the Appellant’s request for backdated disability assistance prior to March 23, 2023 (for the period of June 1, 2022 to March 22, 2023).

The basis for the denial was that the Appellant was previously determined to be ineligible, and the Appellant’s file was closed December 21, 2022. March 23, 2023 was the new application and eligibility date, and the legislation did not permit backdating before the eligibility date.

Part D – Relevant Legislation

This decision cites:

Employment and Assistance for Persons with Disabilities Act (the “Act”):

Sections 10 and 16 (1)

Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”):

Sections 1(1), 15, 23 (1.2) and 28 (1)

Text of the above legislation is attached at the end of the decision.

Part E – Summary of Facts**Hearing Proceeding**

The hearing was held by telephone with an interpreter to aid communication with the Appellant. The Appellant advised that he was fluent in English, however the Panel Chair had the interpreter stand-by in case any party sought an interpretation of terms, and for the interpreter to support and translate if there appeared to be any miscommunication linked to language or cultural interpretation.

Background and Relevant Evidence

The Appellant formerly received disability assistance but in 2022 payments were stopped and the Appellant's file was closed, because the Ministry found that he was absent from British Columbia ("B.C.") for more than 30 days in the year. Before this, the Ministry made numerous failed attempts to establish contact with the Appellant, who the Ministry had not heard from since 2019. The following occurred on or about the dates identified:

2021-February-01:

A passport for a foreign country was issued to the Appellant on that date. Stamps in that passport show the Appellant in that foreign country and departing for brief periods (1 week in each of February and May 2021) before returning to that country. (The Appellant did not contest the Ministry statement that the passport confirmed that the Appellant left that foreign country to return to Canada on March 10, 2023.)

2022-December-21:

The Ministry closed the Appellant's file discontinuing disability assistance. Cheque issuance had been suspended from June 2022 after being unable to reach the Appellant and having no response. The Ministry had made repeated contact attempts, from May through to December 2022, seeking to determine whether he was in B.C. The Ministry had information that he was outside of B.C. (and Canada) for longer than allowed to maintain eligibility. The Ministry sent notices requiring the Appellant to provide verification information. The discontinuance was based upon inability to establish eligibility where verification was required.

2023-March-23:

The Appellant reapplied for disability assistance. As part of the application process, the Appellant provided his foreign passport that had been issued to him on February 1, 2021 (see above).

2023-April-20:

The Ministry provided the Appellant with pro-rated support allowance for March 23 - 31 2023 and March 2023 shelter allowance, as well as full assistance for April and May of 2023.

2023-May-19:

The Appellant spoke to the Ministry seeking payments from discontinuance in 2022 to his re-eligibility in 2023. The request was denied and he was informed that the decision considered "all factors relevant to the eligibility of Disability Assistance". In the Reconsideration Decision the Ministry stated:

You declared to the worker that you did not reside in BC at all in 2022 you were in [the foreign country] for medical treatment

Your request does not meet the condition of eligibility for ongoing Disability Assistance:

Recipient must maintain a residence in BC and not be absent from BC for more than 30 consecutive days

**Not met because you were absent from BC for more than 30 days in May (June benefits issued in May) as you stated you did not reside in BC at all in 2022 and you did not receive prior authorization for the continuance of disability assistance

2024-January-24:

The Appellant submitted a request for reconsideration (signed 2024-01-05) of the May 19, 2023 decision. The Reasons for Request for Reconsideration were:

Client stated he was out of the country and saw 4 cardiologists due to a heart condition. He informed he was unable to come back due to this and would

like to get paid for the time he was out of the country. He apparently received eviction notices which caused him health problems.

2024-January-24:

The Ministry accepted the Appellant's request for reconsideration despite it being made outside the "legislated timelines". The Ministry stated that this was because it could not be establish that the Appellant had been informed of the June 16, 2023 deadline to make that request.

2024-January-31:

The Reconsideration Decision was issued stating that the "Decision Under Consideration" was "You are requesting a reconsideration of the decision to deny backdated disability assistance." The Ministry denied the Appellant's request for backdated disability assistance prior to March 23, 2023 (for the period of June 1, 2022 to March 22, 2023). The summary and reasons identified and discussed:

- i.) the discontinuance of disability assistance;
- ii.) the closure of the Appellant's file; and
- iii.) the denial of backdating from the Appellant's 2023 application, to cover the period from discontinuance until then, March 23, 2023.

Appellant Submissions

The Appellant's Notice of Appeal states the following as the Reasons for Appeal:

People living outside of the country can't get government assistance but I was not in [the foreign country] to live. I was only there for one month. I was there to see my family.

In oral submissions the Appellant reviewed his background of a successful business life before a traffic accident and, later, heart problems. At some point he applied and the Ministry determined that he was eligible for disability assistance within B.C.

He described having a high level of stress now due to being unable to pay previously incurred bills.

He also described difficulties with an investigation by Ministry staff concerning payments made to him.

The Appellant described cancelling a cardiologist appointment and leaving B.C. to relieve stress by going to see family overseas for one month. However, he got sick there, needing to go to the hospital several times, and he stayed much longer. While there he stated that he was unable to communicate to the Ministry because the toll-free number did not work and he had difficulty with the Internet. He stayed with family who provided food and shelter.

While there he was able to communicate with his B.C. landlord, to whom he owed several month's rent. That landlord bought the Appellant's return flight ticket after the Appellant promised repayment of it and past rent from B.C. disability assistance cheques thought to be accruing. After not receiving those payments the Appellant was unable to pay the landlord and the Appellant was given an eviction notice.

The Appellant asserted that the Ministry had visited and told his landlord that the Appellant's disability cheques would accrue. He also asserted that the Ministry failed to tell him that it was stopping payments, that he had lost eligibility, and that his file was closed.

He objected to the discontinuance of payments in June 2022 and the closing of his file in December 2022 based upon his failure to verify entitlement. He stressed that his absence was not his fault but was due to illness. He also highlighted that the stress of this matter and lack of funds was threatening his health. He considered that the Ministry was "playing games."

Ministry Submissions

The Ministry made oral submissions describing the purpose of disability assistance as "not a pension" but month by month payments to assist people living in B.C. It is for while they are in B.C. Extended absence from B.C. means that person's needs are not in B.C. and are being met elsewhere. They then become ineligible for payment from B.C. That absence and loss of entitlement is triggered by being out of B.C. for longer than 30 days without permission. The Appellant was outside of B.C. for longer than that, and without permission so he became ineligible, consistent with the purposes described.

The current eligibility was assessed based upon information provided following the Appellant's re-application. Payments were made from that date based upon his need at

that “point in time”. The legislation does not allow for payment before application and finding of eligibility at that point in time.

Payments cannot be made for a time that the Appellant was not in the province. There is no judgement about why a person might be outside the province. It is just that payment is for assistance of people who are inside the province with need inside the province.

As written submissions the Ministry relied upon the reasons in the Reconsideration Decision which state:

In April of 2022 the ministry received information that you were residing outside of British Columbia. ... As you did not respond to the ministry’s request for information ... your file closed.

While the ministry is unable to establish when you left British Columbia, you have stated that you were in [the foreign country] for all of 2022. Your passport indicates you ... did not depart [the foreign country] ... until March 10, 2023. As you had not contacted the ministry since 2019, the ministry is satisfied you did not seek approval to continue to receive assistance before you left B.C. As a result, the ministry is satisfied you had been absent from B.C. for more than 30 days without prior approval from the minister when your disability assistance stopped as of June 1, 2022.

When you returned to British Columbia, your file was [already] closed, and you were required to re-apply for disability assistance.

... March 23, 2023 ... is your disability assistance application date. ...you are not eligible for backdated assistance for a period prior to then. As a result, your request for backdated disability assistance for the period of June 1, 2022 to March 22, 2023 is denied in accordance with Section 23 (1.2) of the ... Regulation.

The Ministry cited section 10 of the Act as empowering the Ministry to require recipients to provide verified information. It also cited the following sections of the Regulation with descriptions summarized here:

- Section 15: A recipient ceases to be eligible for disability assistance if they are outside of British Columbia for more than a total of 30 days in a year unless the minister has given prior authorization.

- Section 23(1.2) : An applicant who is designated as a person with disabilities becomes eligible for a disability assistance supports on the “disability assistance application date” (March 23, 2023, per section 1 of the Regulation).

Admissibility of New Evidence

Under section 22(4) of the Act, the Panel may admit evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The Panel admits the “Reasons for Appeal” stated by the Appellant as a written submission, and admit the oral statements from the Appellant and Ministry (representative) made at the hearing. Where a certain statement is relevant, and given weight that might affect findings, it is specifically mentioned in the Panel’s reasons.

Part F – Reasons for Panel Decision**Purpose and Standard of Review**

The purpose of the Panel, here, is not to redo the Reconsideration Decision under appeal. It is to review and assess whether it satisfied a standard, or benchmark, of reasonableness - even if the Panel might disagree with the outcome. The standard applied is whether the applicable laws were reasonably applied and whether the evidence was also reasonably applied in the circumstances. The evidence considered, however, is not just the evidence known at the Reconsideration Decision but includes any new or updated evidence the Panel admits. That means this decision assesses the reasonableness of the Reconsideration Decision based upon what is known now.

Uncontested Facts

In this matter the evidence is uncontroverted that the Appellant was out of B.C. for longer than 30 days in 2022 at each of the following points:

- when the Appellant's disability assistance payments converted to being paid by cheque,
- the cheques were cancelled or stopped,
- the Ministry determined that it did not have validation of eligibility, and
- the Appellant's file was closed.

The evidence is also uncontroverted that the Appellant applied for disability assistance and received it as of March 23, 2023.

Gap in Assistance Payments

As a concept, the issue here is that the Appellant seeks disability assistance for the intervening period from when payments stopped in mid-2022 to when recommenced in March 2023. However, there were a succession of decisions made up to that point through to the denial of backdating from the current entitlement date beginning in March 2023.

The Panel notes that the Appellant had the right to contest them. Specifically, section 16(1) of the Act states that a person may request the Minister to reconsider a decision that results in "a discontinuance of disability assistance" or "refusal to provide disability assistance".

Under those provisions a decision to suspend eligibility or payments (pending verification), and the decision to close the file were successive points for making a request for reconsideration of "discontinuance of disability assistance" under section 16(1)(b) of the Act. Equally, after the Ministry found the Appellant to be eligible upon the new application, the Ministry refusal to backdate payments to cover between discontinuance

and restart of payments may be a “refusal to provide disability assistance” under section 16(1)(a) of the Act.

Decision Consolidation

The Panel considers that succession of decisions here, all of which the Appellant contests. While the Reconsideration Decision described the matter as about “backdating” it was about the result of those successive decisions. The Panel considers this conceptual consolidation as a matter of efficiency due to the overlap in evidence and circumstances, and convenience of the parties. As such the Panel considers the decision-making sequence as a whole treating the discontinuance of assistance payments, file closure, and refusal to backdate by the Ministry as one decision making process.

Discontinuance - Ineligibility

Beginning here on the individual points where a cheque was cancelled or not issued, before closure of the file: The Panel finds that only the last point is at issue, with the former points subsumed and serving as evidence only. In short, only the closing of the file is at issue, as the concluding act discontinuing disability assistance.

The Ministry stated that: “The ministry closed your file because your eligibility could not be established” which suggested an indeterminate status. The Panel finds that the closing of the file was definitive. Closing of a file is not a specifically described step in legislation but, if there is no explicit decision record (as here), closure implicitly identifies a Ministry decision that the recipient is no longer entitled to disability assistance. Here the closure necessarily arose from determining that the Appellant was in breach of section 15 of the Regulation. This is different to ineligibility under section 10 of the Act where it is a suspension of eligibility pending compliance in accordance with the “prescribed period” provided by section 28(1) of the Regulation.

In the Reconsideration Decision the file was described as closed after stating that the Ministry was:

satisfied [the Appellant] had been absent from B.C. for more than 30 days without prior approval from the minister when your disability assistance stopped as of June 1, 2022.

The reasons were given as based upon the evidence that the Appellant was outside of B.C. for longer than permitted in 2022, and had not been in contact since 2019 despite attempts to reach him.

The Regulation at section 15 designates a specific circumstance that renders a recipient ineligible to receive disability assistance. It does not give the Ministry any choice in the matter to allow continuation or backdated coverage. It says:

Effect of recipient being absent from BC for more than 30 days

15 The family unit of a recipient who is outside of British Columbia for more than a total of 30 days in a year cease to be eligible for disability assistance or hardship assistance unless the minister has given prior authorization ...

The Appellant admitted to being outside the province as alleged and the legislation left no other option for the Ministry but to stop payments. Accordingly, the Panel finds that it was reasonable for the Ministry to have determined that the evidence showed that the Appellant was outside of B.C. longer than allowed. The Ministry, also, reasonably interpreted and applied, section 15 of the Regulation to find this made the Appellant ineligible for disability assistance. The Panel sees no alternatives that would be reasonable or correct. In short, the Ministry was reasonable in finding the Appellant to be ineligible in 2022.

Restart Eligibility - Backdating

The Ministry received the re-application, and evaluated whether the Appellant was eligible. His status up to that point was "ineligible" as definitively shown by closing of the file. The Panel finds that the re-application marks a point in time from which eligibility is determined. The Ministry found the Appellant was once again eligible and paid assistance from the March 23, 2023 application date.

The Panel finds that those actions were specified by the legislation as the beginning date without provision for backdating. Section 23(1.2) specifies that eligibility for payments begins on the "disability assistance application date". That date is specified in section 1 of the Regulation, with underlining added, in the following. They state:

Definitions

1 (1) In this regulation: ...

"disability assistance application date" means the date of an applicant's submission of

- (a) an application for disability assistance (part 2) form, or
- (b) an alternate application for disability assistance form;

Effective date of eligibility

23 ... (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 ... on the disability assistance application date,

(b) for a shelter allowance ... 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 ... on the disability assistance application date.

The legislation governs the Ministry's actions and does not grant it the ability to change payment dates. The Panel finds that it was reasonable for the Ministry to have identified March 23, 2023 as the Appellant's disability assistance application date. The Ministry reasonably interpreted and applied section 23(1.2) of the Regulation when they commenced payments. The Panel sees no alternatives that could be reasonable or correct.

Concluding Decision

The Appellant is not successful on appeal, the Panel having found that the Reconsideration Decision is:

1. reasonably supported by the evidence, and
2. a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel confirms the Reconsideration Decision.

Appendix – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Interpretation

1 (1) In this Act:

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the disability assistance, hardship

assistance or supplement is provided satisfies the initial and continuing conditions of eligibility

established under this Act, and

(b) the family unit has not been declared ineligible for the disability assistance, hardship

assistance or supplement under this Act.

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.

Information and verification

10 (1) For the purposes of

(a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,

(b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,

(c) assessing employability and skills for the purposes of an employment plan, or

(d) assessing compliance with the conditions of an employment plan, the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
 - (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
 - (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.
- (2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.
- (3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).
- (4) If an applicant or a recipient fails to comply with a direction under this section, the minister may
- (a) reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
 - (b) declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.
- (4.1) The Lieutenant Governor in Council may prescribe circumstances in which subsection (4) (a) or (b) does not apply.
- (5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

Reconsideration and appeal rights

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;

(d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of

- (i) the maximum amount of the supplement under the regulations, and
- (ii) the cost of the least expensive and appropriate manner of providing the supplement;

(e) a decision respecting the conditions of an employment plan under section 9 [employment plan].

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Definitions

1 (1) In this regulation: ...

"disability assistance application date" means the date of an applicant's submission of

- (a) an application for disability assistance (part 2) form, or
- (b) an alternate application for disability assistance form;

Effect of recipient being absent from BC for more than 30 days

15 The family unit of a recipient who is outside of British Columbia for more than a total of 30 days in a year cease to be eligible for disability assistance or hardship assistance unless the minister has given prior authorization for the continuance of disability assistance or hardship assistance for the purpose of

- (a) permitting the recipient to participate in a formal education program,
- (b) permitting the recipient to obtain medical therapy prescribed by a medical practitioner, or
- (c) avoiding undue hardship.

Effective date of eligibility

23 ...

(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 to 9 of Schedule A on the disability assistance application date.

Consequences of failing to provide information or verification when directed

28 (0.1) For the purposes of section 10 (4) (a) [*information and verification*] of the Act,

(a) the amount by which the minister may reduce the disability assistance or hardship assistance of the recipient's family unit is \$25 for each calendar month, and

(b) the period for which the minister may reduce the disability assistance or hardship assistance of the recipient's family unit lasts until the recipient complies with the direction.

(1) For the purposes of section 10 (4) (b) [*information and verification*] of the Act, the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction.

(1.1) Section 10 (4) (b) of the Act does not apply if the minister is satisfied that the family unit is homeless or at imminent risk of becoming homeless.

(2) For the purposes of section 10 (5) [*information and verification*] of the Act,

(a) the amount by which the minister may reduce the disability assistance or hardship assistance of the dependent youth's family unit is \$25 for each calendar month, and

(b) the period for which the minister may reduce the disability assistance or hardship assistance of the dependent youth's family unit lasts until the dependent youth complies with the direction.

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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

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2024/03/03

Print Name

Bob Fenske

Signature of Member

Date (Year/Month/Day)

2024/03/03

Print Name

Mary Chell

Signature of Member

Date (Year/Month/Day)

2024/03/03