

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”) dated January 29, 2024 (the “**Reconsideration Decision**”), in which the Ministry determined that the Appellant was not eligible for backdated disability assistance (“**DA**”) prior to December 1, 2023.

Part D – Relevant Legislation

- *Employment and Assistance Act* (the “**Act**”)- section 22(4)
- *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”) – sections 23 and 72

Note: The full text of the legislation is available after the Decision.

Part E – Summary of Facts

The Hearing was held in person on February 16, 2024. The Ministry did not attend the Hearing; as a result, the Appellant was the only party in attendance.

(a) The Reconsideration Decision

The evidence before the Ministry at the Reconsideration Decision consisted of:

- On March 13, 2023, the Ministry received the Appellant’s completed Persons With Disabilities (“**PWD**”) Application (the “**PWD Application**”). As part of his PWD Application, the Appellant submitted:
 - a Medical Report and Assessor Report completed by his doctor, dated February 13, 2023; and
 - a Self-Report, dated December 1, 2022.
- On April 26, 2023, the Ministry denied the PWD Application (the “**PWD Denial Decision**”). The Ministry mailed a decision package to the Appellant which included information about reconsideration and appeals.
- On June 8, 2023, the Appellant’s Third-Party Administration service provider (“**TPA**”) emailed the Ministry and asked for another copy of the PWD Denial Decision. The Ministry emailed the PWD Denial Decision to the TPA.
- On August 22, 2023, the TPA emailed the Ministry and advised that the Appellant wanted to appeal the PWD Denial Decision.
- On October 10, 2023, the Ministry prepared a reconsideration package for the Appellant.
- On October 19, 2023, the Appellant submitted his Request for Reconsideration.
- On November 6, 2023, the Ministry confirmed the PWD Denial Decision upon reconsideration (the “**Prior Reconsideration Decision**”). The Appellant appealed the Prior Reconsideration Decision to this Tribunal.
- On December 4, 2023, this Tribunal rescinded the Prior Reconsideration Decision. For ease of reference, the Tribunal’s decision is indexed as Appeal Number 2023-0344 (the “**Prior Appeal Decision**”).
- On December 8, 2023, the Ministry advised the Appellant of the Prior Appeal Decision and advised that his PWD designation was effective the first day of the month following the Prior Reconsideration Decision. As the Prior Reconsideration Decision was made on November 6, 2023, the Appellant’s PWD designation was effective December 1, 2023. The Ministry provided the Appellant with DA for December 2023.
- On December 13, 2023, the TPA emailed the Ministry and asked for a further reconsideration as the Appellant believed he was entitled to DA for the previous two (2)

years.

- On January 17, 2024, the Appellant submitted his Request for Reconsideration regarding the Ministry's decision not to backdate his DA to a date before December 1, 2023. In doing so, the Appellant explained that:
 - between January 2021 and December 2022, the COVID-19 pandemic prevented him from following up with his specialist and orthopedic surgeon which constituted discrimination given that the barriers arising from the pandemic were beyond his control;
 - the delays associated with the handling of his PWD Application caused him financial hardship as it took the Ministry five (5) months to receive his reconsideration package which was patently unreasonable;
 - the DA should be backdated to the date of the Appellant's original PWD Application; and
 - the Tribunal found the Prior Reconsideration Decision to be unreasonable.
- On January 29, 2024, the Ministry issued its Reconsideration Decision wherein it denied the Appellant's request for DA backdated beyond December 1, 2023. In doing so, the Ministry explained:

"While the ministry regrets the time it took for you to receive your reconsideration package (regarding the denial of PWD designation) from when you requested it, a review of your file shows you did not inform the ministry you wanted to request reconsideration until August 22, 2023. Unfortunately, legislation does not allow for discretion when determining the date that you became eligible for disability assistance.

As an Appeal Tribunal rescinded the ministry's decision to deny PWD designation, section 23 (3.2) of the EAPWD Regulation applies when determining your effective date of eligibility for disability assistance.

You submitted your request for reconsideration (signed HR100) on October 19, 2023. This means the ministry was required to complete a reconsideration decision on or by November 2, 2023 in accordance with Section 72(a) of the EAPWD Regulation. As December 1, 2023 is the first day of the month following the date the reconsideration decision was due, this is the date you became eligible for disability assistance.

As the ministry does not have legislative authority to provide you with disability assistance before the effective date of eligibility, your request for backdated disability assistance prior to December 1, 2023 is denied in accordance with Section

23 of the EAPWD Regulation."

(b) The Appeal

On February 9, 2024, the Appellant filed a Notice of Appeal (the "**Appeal Notice**").

On February 16, 2024, the Appeal was heard. The Ministry did not attend the hearing. The Panel confirmed that the Ministry had received a Notice of Hearing at least two (2) business days before the hearing was to commence, as required under section 85(2) of the Employment and Assistance Regulation, and the hearing proceeded in the absence of the Ministry as provided by section 86(b) of the same regulation.

(c) Oral Submissions

At the Appeal hearing, the Appellant generally restated many of the arguments he made in his Request for Reconsideration. Again, the Appellant argued:

- the process used by the Ministry to process the PWD Application was discriminatory given that the barriers arising from the pandemic were beyond his control;
- the delays associated with the handling of his PWD Application caused him financial hardship as it took the Ministry five (5) months to receive his reconsideration package which was patently unreasonable;
- the DA should be backdated to January 2021 when he was first diagnosed with a sever impairment or, in the alternative, August 2021 which represents the time it likely would have taken the Ministry to assess the PWD Application in the normal course; and
- the Tribunal found the Prior Reconsideration Decision to be unreasonable.

The Appellant also argued that the Ministry fabricated delay in order deprive him of DA. When questioned about this allegation, the Appellant agreed that his accusation was speculative in nature.

As it relates to the operative legislation, the Appellant submitted that section 23 of the Regulation was vague such that it was unclear as to how far back DA could be backdated.

The Appellant further argued that the Panel ought to be able to go outside of the legislation and find a way to backdate his DA to a period before December 1, 2023. When asked for case law or a legislative authority that would permit the Panel to go beyond the legislation to grant the backdated DA as requested, the Appellant advised that, despite looking for a supporting authority, he was unable to do so. Instead, the Appellant hoped that the Ministry would have attended the hearing to fill in the gaps of his understanding.

The Appellant also submitted that he had a legitimate expectation that the Ministry would backdate his DA to the date of his PWD Application. Upon questioning from the Panel, the

Appellant clarified that he understood that the DA would be backdated to the date of the PWD Application if the Ministry had approved his Prior Reconsideration Request. Put differently, it was unclear to the Appellant how far back his DA would be backdated when the Tribunal rescinded the Ministry's decision in the Prior Appeal Decision.

(d) Request for Adjournment

Half way through the Appeal hearing, when the Appellant was being questioned about his request for the Panel to go beyond the operative legislation and backdate his DA as requested, the Appellant requested an adjournment of the hearing so that he could look for case law or legislative authority given that the Ministry was not in attendance to advise on such matters. Prior to his request, the Appellant advised that he made a limited attempt to look for such authorities but was unsuccessful.

Pursuant to the Tribunal's Rules of Practice and Procedures, the Panel may grant an adjournment. When doing so, the Panel should consider the overall principles of fairness, keeping in mind that one objective of the legislation is to provide a speedy Appeal hearing. The Panel's decision to grant an adjournment is a discretionary one which can take the following factors into account:

- whether the request was made at the earliest opportunity;
- whether the circumstances giving rise to the request could not have been foreseen;
- if reasonable efforts were made to avoid the request for adjournment; and
- if the need for an adjournment is caused by the party requesting it.

On review, the Panel finds that an adjournment of the hearing was not warranted for a number of reasons.

First, the Appellant did not make his request for an adjournment at his earliest opportunity. The Appellant was aware from the commencement of the hearing that the Ministry would not be in attendance. If the Appellant required the Ministry's attendance to facilitate his understanding of the legislation, then the Applicant knew or ought to have known this when the hearing commenced. As the Appellant's request for an adjournment was made half way through the hearing, he did not make it at his earliest opportunity.

Second, the circumstances giving rise to the Appellant's request for an adjournment could have been foreseen. Again, the Appellant sought an adjournment so that he could look for case law or legislative authority to support his assertion that the Panel could go beyond the legislation in granting his request for backdated DA. However, the Appellant admitted that he had already attempted to search for such supportive authorities but was unable to find or locate any based on his searches to date. Put differently, the Appellant knew or ought to have known that he required an authority to support his submissions made to the Panel.

Third, the Panel finds that the Appellant did not undertake reasonable efforts to avoid his request for an adjournment. Again, the Appellant did not make an exhaustive search of authorities prior to attending the hearing which was convened at his request. In other words, the Appellant came to the hearing underprepared despite knowing he may require supportive authorities.

Lastly, the Panel finds that the Appellant's lack of due diligence is the sole cause of his request for an adjournment. While the Appellant is self-represented, he has appeared before the Tribunal before, both as an appellant and as an advocate for others. As a result, he knew or ought to have reasonably anticipated that he would be required to support the very submission he was making.

Given the overall circumstances giving rise to the Appellant's request, the Panel does not find it would be in the interests of justice or fairness to grant the adjournment.

(e) Additional Evidence

The Panel determined that the Appellant's submissions and evidence were admissible as additional evidence pursuant to section 22(4) of the Employment and Assistance Act as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Reconsideration Decision in which the Ministry determined that the Appellant was not eligible for backdated DA prior to December 1, 2023.

(a) Appellant's Position

The Appellant argues that he should be eligible for DA backdated to a date prior to December 1, 2023 given that:

- the legislation is vague;
- the process used the Ministry to process his PWD Application was discriminatory; and
- this Tribunal determined that the Prior Reconsideration Decision was unreasonable.

(b) Ministry's Position

The Ministry did not attend the hearing. In the Reconsideration Decision, the Ministry submits that it does not have the legislative authority to provide the Appellant with DA backdated to a date before the effective eligibility date, December 1, 2023.

(c) Panel Decision

Pursuant to section 23(3.2) of the Regulation, if the Tribunal rescinds a decision of the Minister determining that a person does not qualify as a PWD, the person's family unit is eligible to receive DA on the first day of the month after the month containing the earlier of the dates referred to in section 23(3.11).

Pursuant to 23(3.11) of the Regulation, if the Minister decides to designate a person as a PWD, the person's family unit becomes eligible to receive DA on the first day of the month after the month containing the earlier of (a) the date the Minister makes the decision, and (b) the applicable of the dates referred to in section 72 of the Regulation.

Section 72 of the Regulation provides that the Minister must reconsider a decision and mail a written determination on the reconsideration to the person who delivered the request within 10 business days after receiving the request.

Read as a whole, the Panel finds that, after the Tribunal rendered the Prior Appeal Decision, wherein it rescinded the Prior Reconsideration Decision, section 23 of the Regulation limited the Ministry's ability to backdate the Appellant's DA to December 1, 2023. For clarity, as the Ministry rendered the Prior Reconsideration Decision in November 2023, the Ministry could only backdate the Appellant's DA to the first day of the month after the Prior Reconsideration Decision was handed down which, in this case, was December 1, 2023.

To the extent the Appellant argues or appeals to human rights, the Panel notes that it does not have the authority to consider human rights issues such as discrimination. For clarity,

section 19.1(f) of the Employment and Assistance Act says that section 46.3 of the Administrative Tribunals Act applies to this Tribunal. As a result, this Tribunal is “without jurisdiction to apply the Human Rights Code.” As such, the Panel can neither comment on nor rule on the Appellant’s allegations of discrimination.

To the extent that the Appellant attempted to appeal to the Canadian Charter of Rights and Freedoms, the Panel notes that section 19.1(e) of the Employment and Assistance Act provides that section 44 of the Administrative Tribunals Act applies to this Tribunal. Pursuant to section 44 of the Administrative Tribunals Act, this Tribunal does not have jurisdiction over constitutional questions. As such, the Panel can neither comment on nor rule on the Appellant’s Charter related submissions.

To the extent that the Appellant argues that the Ministry fabricated or created delay in order to deprive him of DA, the Panel finds that the Appellant’s submissions are purely speculative and without any supporting evidence.

As it relates to the Appellant’s arguments regarding legitimate expectation, the Panel finds that the Appellant’s expectations were limited to those circumstances in which the Ministry would have overturned its own decision upon reconsideration. As admitted by the Appellant, he was unaware of how his DA would be treated if this Tribunal overturned the Prior Reconsideration Decision. As a result, it cannot be said that the Appellant had a legitimate expectation that his DA would be backdated to the date of the PWD Application when this Tribunal rescinded the Prior Reconsideration Decision.

The Panel is sympathetic to the Appellant and his circumstances. Indeed, the COVID-19 pandemic created delays for numerous people in all walks of life. In the case of the Appellant, the delays arising from the pandemic appear to be more impactful than it may have been for others. Further, the Ministry’s delay in processing the Appellant’s PWD Application also prevented the Appellant from obtaining his DA in a timely manner. That said, the legislation does not permit the Ministry to backdate DA beyond the first day of the month after the Prior Reconsideration Decision was handed down which, in this case, was December 1, 2023. As a result, the Panel finds that the Ministry’s decision to backdate the Appellant’s DA to December 1, 2023 was a reasonable application of the legislation in the circumstance.

(d) Conclusion

The Panel finds that the Ministry’s decision to backdate the Appellant’s DA to December 1, 2023 was a reasonable application of the legislation in the circumstance.

The Appellant is not successful on appeal.

(e) Legislation

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.

(3) Repealed. [B.C. Reg. 340/2008, s. 2.]

(3.01) If the minister decides, on a request made under section 16

(1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under [section 16 \(1\)](#) of the [Act](#), and

(b)the applicable of the dates referred to in section 72 of this regulation.

(3.1)If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).

(3.11)If the minister decides, on a request made under [section 16 \(1\)](#) of the [Act](#), to designate a person as a person with disabilities, the person's family unit becomes eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of

(a)the date the minister makes the decision on the request made under [section 16 \(1\)](#) of the [Act](#), and

(b)the applicable of the dates referred to in section 72 of this regulation.

(3.2)If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person with disabilities, the person's family unit is eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of the dates referred to in subsection (3.11).

(4)If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

(a)the date the family unit became eligible for disability assistance;

(b)12 calendar months before the date of payment.

(5)Subject to subsection (6), a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

(6)Subsection (5) does not apply to assistance in respect of moving costs as defined in [section 55](#).

[am. B.C. Regs. 340/2008, s. 2; 264/2013, s. 2; 151/2018, App. 2, ss. 7 and 8; 122/2019, App. 2, [s. 1](#); 35/2020, App. 2, [s. 3](#); 85/2022, App. 2, [s. 2](#); 21/2023, App. 2, [s. 2](#).]

Time limit for reconsidering decision

72 The minister must reconsider a decision referred to in [section 16 \(1\)](#) of the [Act](#), and mail a written determination on the reconsideration to the person

who delivered the request under section 71 (1) [*how a request to reconsider a decision is made*],

- (a) within 10 business days after receiving the request, or
- (b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request.

[en. B.C. Reg. 76/2008.]

2024-0055

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)

2024/03/04

Print Name

Maryam Majedi

Signature of Member

Date (Year/Month/Day)

2024/03/04

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

2024/03/04