

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") Reconsideration Decision of June 4, 2024. In the Reconsideration Decision the Ministry determined that the Appellant was eligible for disability assistance effective February 1, 2024.

The Appellant's Person with Disabilities (PWD) application was submitted in September 2023 but was denied. In January 2024, the application was approved upon reconsideration. The Appellant wants the eligibility date backdated to December 1, 2023, as he believes the delays were the Ministry's fault.

Part D – Relevant Legislation

Employment and Assistance Regulation for Persons with Disabilities (the Regulation) sections 23(1), 23(3.11) and 72.

Relevant sections of the Regulation can be found in the Schedule of Legislation at the end of this document.

Part E – Summary of Facts

A hearing was held via teleconference on June 11, 2024.

Information before the Ministry at the time of reconsideration

- Email from Ministry to Appellant's doctor dated October 5, 2023, stating that page 12 of section 2 of the PWD application was missing and asking that it be completed and forwarded to the Ministry.
- A follow-up email to the doctor, undated, indicating that page 12 had not yet been received. [According to the Reconsideration Decision, this was sent on October 26, 2023.]
- Letter from Medical Office Administrator (MOA) in the doctor's office to Ministry dated December 5, 2023:
 - Indicating that the omission of page 12 of the PWD application had been rectified immediately upon notification and sent to the Ministry on November 16, 2023.
 - Requesting confirmation that the Appellant's application was now being processed.
- Letter from Ministry to MOA dated December 14, 2023, stating:
 - Page 12 was requested in October and was received November 16, 2023.
 - It did not reach the file until after it was adjudicated.
 - The decision to deny was not made solely on the non-receipt of page 12.
 - A new file was inadvertently opened.
 - (The Appellant) has requested a reconsideration. Page 12 and any other relevant information can be submitted to be reviewed by the Reconsideration Branch.
- Letter from the Appellant's doctor to the Ministry dated December 14, 2023, expressing support for the Appellant's PWD application.
- A fax transmittal from Appellant to Ministry dated February 23, 2024, including:
 - Comment by Appellant saying: "Since initially applying in Sept, several breakdowns in doctor's office and Ministry Office, had ultimately

prolonged my application by 3 – 4 months. Extra costs and issues have been prevalent from that time and am hoping to request any backdate possible.

- Letter from Appellant’s doctor dated February 22, 2024, confirming that the charts and forms were initiated in late August and early September.
 - Medical Report – Employability, dated April 26, 2023, and signed by another doctor in the Appellant’s doctor’s office.
- Section 2 of the Reconsideration Decision contains the following chronology:
 - The PWD application was submitted on September 6, 2023. The application was incomplete because page 12 of section 2 was missing.
 - The Ministry requested the missing page from the Appellant’s doctor on October 5, 2023. A second request was faxed on October 26, 2023.
 - The missing information was received on November 16 and the file was updated on November 23, 2023.
 - The Ministry reviewed and denied the application on November 16, 2023. The denial notification was sent to the Appellant via MySelfServe (MYSS) the same day.
 - On December 5, 2023, the Ministry advised the Appellant that his request had been denied and that he could request a reconsideration. The Appellant advised the Ministry that he had not received the denial because he does not use MYSS.
 - The same day, the reconsideration package was mistakenly mailed to the Appellant’s residential address instead of his post office box.
 - On December 28, 2023, the Appellant attended the Ministry office to tell them he had not received the reconsideration package in the mail.
 - The completed reconsideration package was received by the Ministry on December 28, 2023.
 - Reconsideration was completed and a PWD designation was approved on January 12, with an effective date of February 1.
 - On February 6, 2024, the Appellant requested the PWD designation be backdated to September 2023 because that was when he applied for the designation, and it was the Ministry’s fault that the approval was delayed.
 - The Ministry denied the Appellant’s request on April 22, 2024, because it was determined he was eligible for PWD designation on February 1, 2024.

- Notes with Request for Reconsideration
 - The Appellant reiterated and annotated key milestones in the process. This will be included below as part of the Appellant's position.

Information submitted after the Reconsideration Decision

- Notice of Appeal
 - No new information was provided. The Appellant's comments will be included below as part of the Appellant's position.

Testimony at the hearing

- The Appellant

The Appellant did not provide any new information but reiterated his position that he had followed the process as best he could and, without the delays, it would have completed much sooner. In response to questions from the Panel, the Appellant stated:

- He knows nothing about technology and has never touched a computer. He had gone to see a "Senior's advocate" at least a year before the application for PWD about an unrelated matter. During their discussion, he thought the advocate was demonstrating the My Self Serve (MYSS) system; it appears he was setting it up for him. He didn't know this and has never used it. His communication has been in person, by phone, or via correspondence to his post office box.
- His social worker had sent the PWD application to his doctor on September 6, 2023. The doctor's office subsequently notified him that the social worker had failed to have him sign it, so he went to the doctor's office and signed it. It was then submitted to the Ministry. He had no further contact about it until December 5, 2023, when he attended a Ministry service office.

- The Ministry

The Ministry Representative reviewed the sequence of events, adding the following information from the Appellant's file:

- The Reconsideration Decision was finalized at 12:41pm on November 16.
- A December 1, 2023, review showed that the Appellant had not read the notices on his MYSS portal.

- A batch print of the PWD application was submitted on December 4, 2023, but was cancelled. The batch print of the PWD application was re-submitted on December 5, 2023.
- After the Appellant attended a service office on December 28, 2023, reporting that the package mailed on December 5, 2023, had been improperly addressed, a Ministry supervisor call the Appellant to discuss this problem.
- On January 12, 2024, the Appellant contacted the Ministry to follow-up on the status of the Reconsideration Decision.

In response to a question from the Appellant, the Ministry representative clarified that no new information had been added when the Request for Reconsideration was submitted on December 28, 2023. The first issue had been that the application was not complete because the page had been missing and, the second was that the information on the page could not be assessed to determine if the Appellant satisfied the requirements.

In response to questions from the panel, the Ministry representative provided the following information.

- Faxes with new information are processed at the end of the day. The application was denied at 12:41pm on November 16, 2023, at which time the service request was closed. Therefore, when the new information, which was received by Fax the same day was processed at the end of the day, there would not be an open service request to indicate it should be addressed right away.
- The normal protocol when requesting information is to send a letter requesting that the information be provided within seven days. This is then followed-up with a reminder, also specifying that the material is to be provided in seven days. Protocol was not followed in this situation as no date was given by which the material must be provided. However, the elapsed time before the application was denied was six weeks, not the normal two weeks.

Admissibility of New Evidence

Both parties did not object to the oral testimony provided at the hearing.

The Panel finds that the oral testimony of both the Appellant and the Ministry at the hearing clarifies issues related to this appeal. The Panel admits this information as evidence 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 Reconsideration Decision that the Appellant was not eligible for disability assistance for any period prior to February 1, 2024, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Ministry Position

The Ministry did not receive the full PWD application until November 16, 2023, and could not adjudicate the application and determine eligibility for PWD designation until the full application was provided. The Ministry attempted twice to get the information needed from the medical practitioner beginning October 5, 2024. The decision to deny the request because the information had not been provided was completed at 12:41 on November 16, 2023. Although the missing document was received the same day, it was not processed until later in the day. Therefore, there was no open service request with which to match the received document.

The Ministry was unable to determine eligibility based on a complete PWD application until it was received at reconsideration. The Ministry approved the Appellant's request for PWD designation at reconsideration on January 15, 2024, and approved the designation effective February 1, 2024.

Section 23(3.11) of the EAPWD Regulation says an applicant for designation of persons with disabilities is not eligible for disability assistance until the first day of the month after the month in which the ministry designates the applicant as a person with disabilities.

Appellant's Position

The Appellant had worked his way through the PWD process as best he could. There were several delays due to circumstances beyond his control. As ultimately, he was approved for PWD, he believes that, without these delays, this would have been completed in November or December 2023, assuredly having a start date of December 2023 or January 2024.

- September 23, 2023: The Appellant submitted his application for PWD. The social worker who helped him to do this failed to have page 12 filled out and attached.
- November 16, 2023: Page 12 of the application was profiled to the Appellant's case beyond his knowledge and control, and this delayed the process by nine weeks. The Ministry sent the resulting denial to a MYSS portal that the Appellant was not

aware of, nor had the ability to access, delaying the process for another three weeks.

- December 5, 2023: The Ministry sent the reconsideration package to the Appellant's residential address in error, delaying the process again by three weeks.
- December 28, 2023: Reconsideration package was finally submitted.
- January 12, 2024 (sic): PWD was approved

Following the timeline of this process from September 26, 2023, to January 12, 2024, due to incongruities and errors on the part of the Appellant's doctor's office and Ministry office to which he had no control or effect of it was delayed by approximately 15 weeks. Without some or all these delays, I believe the start date of approved PWD benefits would have been November 1, 2023, perhaps December 1, 2023, depending on the Ministry's workload at that time.

Panel's Findings

The onus of establishing eligibility for ministry benefits rests with the appellant – the role of the Ministry is one of decision-maker and as such, the Ministry is not obligated to obtain information in support of an applicant's application or to ensure eligibility is established by the information provided.

Had the Appellant maintained contact with the doctor and the Ministry during the time the missing page was being solicited, the process would likely have been completed sooner or, if not, the Ministry would have been aware the information would still be forthcoming.

The Panel finds it reasonable that, without hearing anything from either the Appellant's doctor's office or the Appellant for six weeks, the Ministry would deny the PWD application based on an incomplete application and close the request.

The Panel finds that it was reasonable for the Ministry to attempt to communicate with the Appellant via MYSS. It had been set up for the Appellant by a seniors' advocate. The Ministry had no way of knowing that the Appellant didn't understand what had been done on his behalf.

The Ministry admits that they were in error in sending the reconsideration package to the incorrect address. However, the Panel notes that neither the Regulation nor the Employment and Assistance for Persons with Disabilities Act makes any provision for remedying a procedural error made by Ministry personnel.

Finally, it is uncontested that the Ministry approved the PWD designation in January 2024.

Section 23(3.11) of the Regulation says that, if an applicant is designated as a person with disabilities, eligibility for disability assistance starts on the first day of the month after the month containing the earlier of two dates:

- The date the minister designates the applicant as a person with disabilities, or
- Ten business days after the date the Ministry receives the request for reconsideration.

In the circumstances of the Appellant, the designation was approved in January 2024. The Request for reconsideration was received on December 28, 2023; ten business days after this would also be in January 2024. The Regulation does not give the Ministry any flexibility to adjust the eligibility date.

Therefore, the Panel finds that the Ministry had no choice but to specify February 1, 2024, as the effective date for eligibility.

Summary

While the Panel recognizes that many of the delays seemed outside of the Appellant's control, the Regulation puts the onus on the applicant to ensure all the required information is provided in a timely fashion. While some delays were due to a procedural error on behalf of the Ministry, the legislation makes no provision for a remedy for these errors. In this situation, it is very specific about when eligibility must start. The Ministry has no flexibility in this manner.

Conclusion

The Ministry does not have the authority to go beyond what it defined in the Regulation. Therefore, the Panel finds that the Ministry decision that the Appellant's was not eligible for disability assistance for any period prior to February 1, 2024, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

The Panel confirms the Reconsideration Decision and the Appellant's appeal is unsuccessful.

SCHEDULE OF LEGISLATION

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.

(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.

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.

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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

Wes Nelson

Signature of Chair

Date (Year/Month/Day)

2024/07/11

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2024/07/10

Print Name

Charlie Schellinck

Signature of Member

Date (Year/Month/Day)

2024/07/10