

**PART C – DECISION UNDER APPEAL**

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The decision under appeal is the ministry's Reconsideration Decision dated March 31, 2011, in which the ministry denied the appellant's request for disability assistance for December 2010. The effective date of eligibility for disability assistance is the first day of the month after the month in which the minister designates the applicant as a Person with Disabilities (PWD) as per section 23 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The minister approved the PWD designation for the appellant on December 3, 2010.

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**PART D – RELEVANT LEGISLATION**

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(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 23.

## **PART E – SUMMARY OF FACTS**

The appellant did not attend the tele-conference hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the EAR.

The evidence before the ministry at the time of reconsideration consisted of: (a) a copy of the Application for Disability Assistance (Part 1) dated October 22, 2010; (b) a copy of the Application for Disability Assistance (Part 2) dated October 22, 2010; (c) a PWD Approval letter dated December 3, 2010 and (d) a Request for Reconsideration dated February 22, 2011 which included a note from the appellant's mother.

The appellant completed Parts 1 and 2 of the Application for Disability Assistance on October 22, 2010 in which he confirmed that he was 18 years of age.

A Person with Disabilities Approval letter dated December 3, 2010 and addressed to the appellant specified that this designation is made under the Employment and Assistance for Persons with Disabilities Act and is effective from January 1, 2011. It further states that if the appellant wishes to receive Disability Assistance, he will need to contact the local ministry office to complete requirements.

With the Request for Reconsideration, the appellant's mother writes on behalf of the appellant who is unable to read or write. It is written that the appellant sustained severe head and neck trauma following a car accident and that he has a major fear of being in an automobile. It is for this reason that the appellant had not .....[illegible] to attend an appointment. It is also indicated that the process of trying to contact the ministry office had been very frustrating for the appellant's mother who phoned 3 or 4 times per day for weeks and could not get through. She states that she would be told to wait on the line and then after an hour or more was disconnected. The appellant's mother also states that she would have been able to make appointments sooner should the ministry's contact system worked better. Further, she writes that she was not going to drive around with a child who was afraid of cars in hope of getting someone to listen. Noted as reason #2, the appellant's mother adds that she is in receipt of long term disability for extreme chronic pain and depression and cannot simply get up and go at any given time.

The ministry's evidence is that the appellant completed parts 1 and 2 of the application for Disability Assistance on October 22, 2010. At the same time, he received the application package for Persons with Disabilities designation. The appellant's PWD designation application was returned to the ministry on December 1, 2010 and then approved by the minister on December 3, 2010. The appellant was then advised by a PWD Approval letter dated December 3, 2010 that his PWD designation was effective as of January 1, 2011.

At the hearing, the ministry reconfirmed their position that the appellant became eligible for disability assistance on January 1, 2011 which was the first day of the month after the month in which the minister had designated the applicant as a Person with Disabilities (PWD) as per the legislation.

## Findings of Fact

- The appellant completed Parts 1 and 2 of the Application for Disability Assistance on October 22, 2010 in which he confirmed that he was 18 years of age.
- The appellant received his application package for PWD designation on October 22, 2010.
- The appellant's application for PWD designation was returned to the ministry on December 1, 2010.
- The appellant was designated by the Minister as a Person with Disabilities on December 3, 2010.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's reconsideration decision that held that the appellant was not eligible for disability assistance for December 2010 as the effective date of eligibility for disability assistance is the first day of the month after the month in which the minister designates the applicant as a Person With Disabilities which was December 3, 2011, pursuant to section 23(1) of the EAPWDR.

### Effective date of eligibility

**23** (1) Subject to subsection (1.1), 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) A 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 his or her 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 date of the applicant's submission of the application for disability assistance (part 2) form,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for disability assistance (part 2) form, 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 section 6 to 9 of Schedule A on the date of the applicant's application for disability assistance (part 2) form.

The appellant argues that it was very difficult to contact the ministry's office by telephone to set up an appointment. Also, the appellant is fearful of being in a vehicle which is another reason for not going to the ministry's office without first having made an appointment.

The ministry argues that the appellant applied for PWD designation 4 months after his 18<sup>th</sup> birthday. On October 22, 2010 parts 1 and 2 of the application process for disability assistance were completed. The PWD application was only received by the ministry on December 1, 2010 and two days after on December 3, 2010 the PWD designation was approved.

With regards to designation of PWD and disability assistance, the legislation specifies that eligibility can only begin when the applicant turns 18 years of age. The appellant was 4 months past his 18<sup>th</sup> birthday when he applied for disability assistance. The panel finds that the ministry reasonably determined that the appellant at the time of this application on October 22, 2010 had not yet been designated a Person with Disabilities and therefore section 23(1.1) of the EAPWDR was not applicable.

Although, the appellant completed parts 1 and 2 of the application process on October 22, 2010, the panel finds that he did not yet have his PWD designation and therefore the ministry reasonably determined that the appellant was not eligible for disability assistance on the date of the application (part 2) form as per section 23(1.2) of the EAPWDR.

The panel recognizes that the appellant had a difficult time contacting the ministry which delayed getting the required forms in to the ministry office. Once the PWD application was received by the ministry, approval for PWD designation was given within two days. As the date of the PWD designation is December 3, 2010, the panel finds that the ministry reasonably determined that the effective date of eligibility for disability assistance would be January 1, 2011, which is the first day of the month after the month in which the minister designated the applicant as a Person With Disabilities, as per section 23(1) of the EAPWDR.

The panel finds that the ministry decision was a reasonable application of the legislation in the circumstances of the appellant and confirms the reconsideration decision.

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