

PART C – Decision under Appeal

The decision being appealed is the Ministry's January 24, 2012 decision that the Appellant had no right to a reconsideration because her request for a reconsideration of a November 17, 2011 Ministry decision was not received by the Ministry within the 20 business days stipulated in section 79 of the EAR. On November 17, 2011 the Ministry advised the Appellant of its decision that she was not eligible for income assistance because she had assets valued at more than the allowable limits. The Appellant's request for a reconsideration of that decision under section 17(2) of the EAA was received by the Ministry on January 6, 2012.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 17.

Employment and Assistance Regulation (EAR) section 79.

PART E – Summary of Facts

Neither the Appellant nor the Ministry attended the hearing. The Panel confirmed that both the Appellant and the Ministry were notified of the hearing and then proceeded with the hearing pursuant to section 86(b) of the EAR.

For its January 24, 2012 decision the Ministry had the following evidence:

1. Information in the Ministry's records that on November 17, 2011 the Ministry advised the Appellant that she was not eligible for income assistance because the value of her assets exceeded the asset limit for her family unit.
2. Ministry request for reconsideration form indicating that the Ministry advised the Appellant of this decision on November 17, 2011 and also indicating that the form was completed and signed by the Appellant on January 6, 2012.
3. Information in the Ministry records that the Appellant returned the completed request for reconsideration form on January 6, 2012.

In the Appellant's January 30, 2012 notice of appeal she wrote that she rarely receives mail through her parents especially in the last few months due to stress. Her father had a tumor removed from his spine. Also there was a conflict of interest with lawyers and she is meeting with another one on February 19th.

Since the Appellant did not appear at the hearing the Panel will consider the Appellant's statements in her notice of appeal to be her submissions for this hearing. The Panel finds that those statements are related to the information about the Appellant's delay in sending in her request for reconsideration which the Ministry had at the time it made its January 24, 2012 decision. Therefore the Panel admits these statements as being in support of the Ministry decision to refuse a reconsideration pursuant to section 22(4) of the EAA.

As the Ministry did not attend the hearing the Panel will consider the Ministry's submissions to be the reasons it set out in its January 24, 2012 decision to refuse a reconsideration.

The Panel makes the following findings of fact:

1. On November 17, 2011 the Ministry advised the Appellant that she was no longer eligible for income assistance.
2. The Appellant completed her request for a reconsideration of this decision and delivered it to the Ministry on January 6, 2012.
3. January 6, 2012 was more than 20 business days after November 17, 2011.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant had no right to a reconsideration because her request for a reconsideration of the Ministry's November 17, 2011 decision denying her income assistance was received by the Ministry after more than the 20 business days stipulated in section 79(2) of the EAR.

The following sections of the EAA set out the reconsideration and appeal rights applicable in this appeal:

17(1) Subject to section 18, a person may request the minister to reconsider any of the following decisions made under this Act or the regulations:

- (a) a decision that results in a refusal to provide income 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 income assistance or a supplement provided to or for someone in the person's family unit...

(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.

(3) Subject to a regulation under subsection (5) and to sections 9(7) [*employment plan*], 18 and 27(2) [*overpayments*], a person who is dissatisfied with the outcome of a request for reconsideration under subsection (1)(a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

The following sections of the EAR set out how a request to reconsider a decision is made:

79(1) A person who wishes the minister to reconsider a decision referred to in section 17(1) 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 17(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.

In its January 24, 2012 decision, the Ministry indicated that it had reviewed all the information relevant to the Appellant's request for reconsideration. The Ministry referred to section 17(2) of the EAA and also to section 79 of the EAR which sets out the requirements for submitting reconsideration requests. The Ministry determined that the Appellant did not return her request for reconsideration form until January 6, 2012, after the time limit for submission had lapsed. Therefore the Ministry determined that the Appellant was not entitled to a reconsideration of its November 17, 2011 decision denying her income assistance.

The Appellant's position is that she rarely received mail at her parent's, and also family illness and legal issues caused her stress affecting her ability to complete and deliver the reconsideration request.

The Panel notes that section 17(2) of the EAA provides that a request for a reconsideration of a Ministry decision about income assistance eligibility must be made within the time limits set out in the regulations. Section 79(2) of the EAR clearly stipulates that such a request must be delivered within 20 business days after the date that the Appellant was notified by the Ministry that she was not eligible for income assistance. In this case the Appellant's request for a reconsideration was dated

and delivered to the Ministry on January 6, 2012 which was more than 20 business days after the Ministry's November 17, 2011 decision to deny her income assistance. Therefore the Panel finds that the Ministry's decision to deny a reconsideration was reasonably supported by the evidence and a reasonable application of the applicable enactment in the Appellant's circumstances.

Section 17(3) of the EAA provides that, subject to certain exceptions, a person who is dissatisfied with the "outcome of a request for reconsideration under subsection (1)(a) to (d) may appeal the decision that is the outcome of the request to the Tribunal". In this case, the Ministry's determination that there is no right of reconsideration was the "outcome" of the Appellant's request. The Panel finds that the Ministry's determination that the Appellant did not have a right to reconsideration is a reasonable application of the applicable enactment in the Appellant's circumstances under section 24(1)(b) of the EAA for the reasons stated above. Based on this finding the Panel confirms, under section 24(2)(a) of the EAA, the Ministry's decision that the Appellant had no right to reconsideration. Therefore the Appellant is not entitled to have her request for reconsideration proceed to reconsideration.