

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated March 13, 2012 which denied the appellant's request for reconsideration of the ministry decisions of March 8, 2011 and March 20, 2011 in which the ministry determined that the appellant was not eligible for Income Assistance from January 2011 to April 2011 as she was attending school and that she had been over paid income assistant in the amount of \$1,319.30, on the basis that the appellant's request for reconsideration was submitted outside the legislated time frame (20 days) pursuant to section 17 of the Employment and Assistance Act (EAA) and section 79 of the Employment and Assistance Regulations (EAR).

## PART D – Relevant Legislation

Section 17 of the Employment and Assistance Act - EAA  
Section 79 of the Employment and Assistance Regulations – EAR

## PART E – Summary of Facts

The evidence before the ministry at reconsideration included:

- A copy of the overpayment chart for February 2011 and March 2011;
- A letter from the ministry to the appellant informing her that she was not eligible for income assistance dated March 6, 2011;
- A copy of the appellant's student loan record;
- A copy of the overpayment notification signed by the appellant on March 10, 2011;
- Request for reconsideration signed by the appellant on March 6, 2012.

In the request for reconsideration dated March 6, 2012, the appellant stated that she did not mean to hide anything from the ministry and she in fact reported that she was receiving student loan as soon as she received an approval for the student loan. The appellant submitted that she reluctantly accepted the decision of the ministry to repay the income assistance she received when she was attending school because the ministry's investigative officer was not able to assist her. The appellant further submitted that it was not fair for the ministry to recommend that she withdraw from school as she would have lost her credits. The appellant stated that she is not able to repay the income assistance she received for February and March 2011.

The appellant in a letter dated April 18, 2012 stated that on February 8, 2012 she met a ministry's staff who told her that she could appeal the ministry's decision of March 2011. The panel admits the appellant's written statement in support of information and records before the minister pursuant to section 22.4 of the EAA.

The ministry in the reconsideration decision dated March 13, 2012 stated that the ministry was unable to conduct a reconsideration of the matter before it as the time limit for filing a request for reconsideration was expired. The ministry found that the appellant was denied January to April 2011 income assistance on March 8, 2011. The ministry stated that the appellant was verbally advised of this decision on March 10, 2011. The ministry further stated that the appellant was advised that she received an over payment on March 20, 2011.

The following facts are not in dispute:

- The appellant was attending school from January 4, 2011 to April 18, 2011;
- The appellant received a letter dated March 8, 2011 from the ministry informing her that she was not eligible for income assistance for the period she was attending school;
- The appellant received the ministry's over payment notification (that she received \$1,319.30 income assistance that she was not eligible for) and signed the overpayment notification document on March 10, 2011;
- The over payment notification signed by the appellant includes a statement informing the applicant that "If you disagree with the ministry's decision that you received assistance for which you are not eligible, you may request the ministry to reconsider that decision. A request for reconsideration must be delivered to the Employment Assistance Centre within 20 business days after the date you were notified of the decision".

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's decision dated March 13, 2011 denying the appellant's request for reconsideration because the appellant failed to comply with the time limits set out in section 17 of the EAA and section 79 of the EAR.

The time limits and rules for a request for reconsideration of a decision are set out in section 17 of the EAA and section 79 of the EAR.

Section 17 of the EAA provides:

- (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;
  - (c) a decision that results in a reduction of income 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.
- (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 a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.
- (4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in this Act and the regulations.
- (5) The Lieutenant Governor in Council may designate by regulation
  - (a) categories of supplements that are not appealable to the tribunal, and
  - (b) circumstances in which a decision to refuse to provide income assistance, hardship assistance or a supplement is not appealable to the tribunal.

Section 79 of the EAR states;

- (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.

Section 79(1) and (2) of the EAR state that a person must deliver a request for reconsideration in the form specified by the minister to the ministry office within 20 business days after the date the person is notified of the decision. The panel notes that on March 10, 2011 the appellant signed the ministry's decision indicating the following:

- The ministry determined that the appellant received \$1,319.30 of assistance that she was not eligible for it;
- The overpayment was a debt to the government and the appellant was liable to repay under section 27 (1) of the EAA;

- The minimum amount that would be deducted from the appellant's assistance to repay the debt is \$10 per month;
- If the appellant disagreed with the decision she might request the ministry to reconsider the decision;
- The request for reconsideration must be delivered to the Employment Assistance Centre within 20 business days after the appellant was notified;
- The appellant by signing the document also acknowledged that she received the notification and was aware of her right to request a reconsideration of the decision.

In the notice of appeal, the appellant stated that she was told by the ministry staff that she could request reconsideration of the ministry's decisions, even though it had been outside of the legislated time frame.

The appellant's advocate in a letter dated April 19, 2012 submitted that:

1. The appellant requested reconsiderations for two different decisions for two different time periods;
2. It is understandable that the appellant did not apply for reconsideration when she was continuing discussion with the ministry to solve her situation attending school;
3. The appellant has enrolled in a program and would like to complete her schooling;
4. It was not reasonable that the ministry did not render a decision;
5. The appellant is asking that the Tribunal to rescind the decision of the ministry.

The appellant's advocate argued that the appellant requested reconsideration for two different decisions and she considered the first issue outstanding and not resolved and as such did not file her request for reconsideration until the matter about her attending the college is resolved.

The panel notes that the appellant received a letter dated March 8, 2011 from the ministry informing her that she was not eligible for income assistance and that she had 20 business days from the day she received the letter to submit a completed request for reconsideration. The appellant then attended the ministry's office and signed the overpayment notification. The panel finds that the appellant had been notified of decisions that denied her application for income assistance and informed her of the over payment in March 2011. The panel further finds that the appellant was aware of her right to request reconsideration of the decisions, and of the time limits to submit the request for reconsideration. The panel considered the appellant's difficulty with English and that the ministry made two decisions in two different times; however, the panel finds that the time limits as described in the section 79 of the EAR are not discretionary.

The panel finds that the appellant did not submit the request for reconsideration on either decision within the 20 days limit set out in section 79(2) of the EAR and as required by section 17(2) of the EAA. The panel finds that the ministry's decision to deny the appellant's request for reconsideration was a reasonable application of the applicable legislation in the circumstances of the appellant and therefore, the panel confirms the decision.