

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the Ministry) determination on April 3, 2012 that a reconsideration decision cannot be provided because the Appellant failed to deliver a Request for Reconsideration within the legislated time limit of 20 business days from the date of being informed of the Ministry decision made on January 30, 2012.

PART D – Relevant Legislation

Employment and Assistance Act, section 17
Employment and Assistance Regulation, section 79

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded pursuant to s. 86(b) of the Employment and Assistance Regulation.

At the hearing, the Ministry representative informed the panel that the Appellant is a person with persistent multiple barriers to employment (PPMB) and not a person with disabilities, and provided the appropriate legislation.

The Ministry representative provided evidence that:

- The Appellant was denied the appellant's request for funding for his commercial driving licence on January 30, 2012 and the forms for reconsideration were prepared and given to the Appellant on the same day.
- The Appellant was advised of the 20 business day deadline, which is February 28, 2012.
- On March 7, 2012 the Appellant delivered to the Ministry the completed forms for reconsideration.
- On March 7, 2012 the Appellant's advocate faxed a request for a 10 day extension to the Ministry. The Ministry presented a copy of this fax document to the panel and the panel admitted it as evidence as it is in support of information before the Ministry at reconsideration pursuant to s.22(4) of the Employment and Assistance Act.

Documentary evidence in the appeal record was comprised of six printed pages of the ministry's record of the appellant's file including the following entries:

- January 30, 2012 stating "Client in office requesting assistance with helping getting his commercial drivers licence... unable to assist offered reconsideration;"
- February 13, 2012 (appellant) in to pick up reconsideration;
- March 7, 2012 "R4R rec'd at RB this date."

In consideration of the documentary and oral evidence, the panel makes the following findings of fact:

- (a) the Appellant was advised of his right to reconsideration on January 30, 2012, and
- (b) the Appellant delivered his Request for Reconsideration on March 7, 2012, and
- (c) the Appellant's request for an extension was provided to the Ministry on March 7, 2012.

PART F – Reasons for Panel Decision

The issue to be decided is whether or not the Ministry reasonably determined that the Appellant is not entitled to a reconsideration decision from the Ministry. The Ministry determined that a reconsideration decision cannot be provided because the Appellant failed to deliver a Request for Reconsideration within the 20 business days from the date of being informed of the ministry decision made on January 30, 2012.

The panel notes that the Appellant is a PPMB and not a Person with Disabilities. The cited sections in the April 3, 2012 determination of the "Employment and Assistance for Persons with Disabilities Regulations, section 71 and the Employment and Assistance Regulation, section 79" both stipulate that a Request for Reconsideration must be delivered to the Ministry within 20 business days of being notified of the decision for which reconsideration is sought.

Employment and Assistance Act, section 17 states:

Reconsideration and appeal rights

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;
 - (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.

The Employment and Assistance Regulation, section 79 states:

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.

The Appellant's position is that he requested his advocate to request a 10 day extension on March 7, 2012 as more time was required to complete the documents.

It is the ministry's position that Appellant was informed of his rights to reconsideration and did not comply with the legislated filing deadline of 20 business days from January 30, 2012.

The panel finds that the evidence establishes that the Appellant was advised of his right to reconsideration on January 30, 2012, was advised of the 20 day statutory filing deadline and delivered his Request for Reconsideration on March 7, 2012. Therefore, the panel finds that the Appellant failed to deliver a Request for Reconsideration within the 20 business days from the date of being informed of the ministry decision as required by Section 79 of the Employment and Assistance Regulation.

Section 17(3) of the Employment and Assistance Act 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 s. 24(1)(b) of the Act for the reasons outlined above. In view of this finding, the panel confirms under s. 24(2) the Ministry's determination not to reconsider the Appellant's claim.