

PART C – Decision under Appeal

The appellant appeals the ministry's decision dated May 1, 2012 denying his request for reconsideration regarding reimbursement of funds deducted from his July 2011 disability assistance on the basis that the appellant's request for reconsideration was submitted outside the legislated time frame (20 days) pursuant to section 16 of the *Employment and Assistance for Persons with Disabilities Act* and section 71 of the *Employment and Assistance for Persons with Disabilities Regulations*.

PART D – Relevant Legislation

Section 16 of the *Employment and Assistance for Persons with Disabilities Act* - EAPWDA
Section 71 of the *Employment and Assistance for Persons with Disabilities Regulations* – EAPWDR

PART E – Summary of Facts

The evidence before the ministry submitted with the request for reconsideration included:

- Written submissions of the appellant (not dated, but identified by the appellant as written in late April 2012)
- A copy of the appellant's bank records for the months of March through July 2011 (5 pages);
- A copy of the appellant's income tax and GST information computer printout (2 pages);
- A copy of the appellant's Canada Revenue Agency notice of assessment for the 2009 tax year dated April 7, 2011 showing a direct deposit refund to the appellant of \$1,111.53 (3 pages);
- A copy of the appellant's Canada Revenue Agency notice of reassessment for the 2009 tax year dated March 5, 2012, indicating that the appellant owes Canada Revenue Agency \$710.97 given the mistake in his reported income (3 pages); and
- A copy of the appellant's request for reconsideration form completed by a ministry worker and dated April 4, 2012.

The ministry did not attend the hearing. The panel received confirmation from the Tribunal that the ministry had been notified of the date, time and location of the hearing on May 22, 2012. Accordingly, under s. 86(b) of the *Employment Assistance Regulation*, the panel heard the appeal in the ministry's absence.

The appellant is a person with disabilities who receives disability assistance. The appellant told the panel that in May 2011, he received a tax refund of \$1,111.53 for the 2009 tax year, which he reported to the ministry and which was deducted from his disability assistance in July 2011. In mid-March 2012, the appellant received a notice of reassessment from Canada Revenue Agency advising him that there was a mistake in his reported 2009 income, that his tax refund received in May 2011 was in error (too high), and that he owes Canada Revenue Agency for the overpayment of his tax refund from May 2011. The appellant was not sure of the exact date he received the notice of reassessment, but told the panel that he thinks it was sometime in mid-March, about 10 days after the date on the notice of reassessment, which is March 5, 2012. The appellant told the panel that he immediately advised the ministry of the notice of reassessment which he had received mid-March 2012 and asked the ministry to reconsider the deduction from his July 2011 disability assistance which was based on his May 2011 income and which he had just learned he has to pay back to Canada Revenue Agency.

The panel makes the following findings of fact:

- The appellant is a person with disabilities who receives disability assistance;
- The appellant's disability assistance for July 2011 was reduced based on the appellant's reported income in May 2011, which included a tax refund for the 2009 year;
- The appellant received a notice of reassessment of his 2009 taxes from Canada Revenue Agency sometime in mid-March 2012 advising that the tax refund of May 2011 was too high;
- The appellant filed a request for reconsideration on April 4, 2012, based on the information contained in the notice of reassessment.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's decision dated May 1, 2012 denying the appellant's request for reconsideration because the appellant failed to comply with the time limits set out in section 16 of the EAPWDA and section 71 of the EAPWDR.

Section 16 of the EAPWDA provides:

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

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

(c) a decision that results in a reduction of disability 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], 17 and 18(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 the Employment and Assistance Act and the regulations under that Act.

(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 disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

Section 71 of the EAPWDR states;

(1) A person who wishes the minister to reconsider a decision referred to in section 16(1) [reconsideration and appeal rights] 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 16(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 told the panel that he is aware of the time limit for filing a request for reconsideration in the legislation, but he says that he did not receive notice from the Canada Revenue Agency of the overpayment in May 2011 until March 2012. The appellant says that as soon as he was made aware of the overpayment in the tax refund of May 2011, he advised the ministry and asked for

reconsideration within 20 days of receiving the notice of reassessment from the Canada Revenue Agency. The appellant says that there was no way for him to request reconsideration any earlier than he did as he was not advised of the overpayment of May 2011 by the Canada Revenue Agency until March 2012.

The panel finds that the appellant was first notified of the overpayment of tax refund of May 2011 in mid-March 2012 and that the appellant's request for reconsideration is dated April 4, 2012, within 20 days of receiving the notice of reassessment from the Canada Revenue Agency. The panel further finds that the appellant was aware of his right to request reconsideration of a ministry decision, but that the information on which his reconsideration request is based was not available to him until sometime in mid-March 2012 at the earliest, and that he filed his request for reconsideration less than 20 days after that date.

Section 16(3) of the EAPWDA 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 decision to deny the appellant's request for reconsideration was not a reasonable application of the applicable legislation in the circumstances of the appellant under s. 24(1)(b) of the *Employment and Assistance Act*, and therefore, the panel rescinds the ministry's decision denying the appellant's request for reconsideration under s. 24(2) of the *EAA*. It follows that the appellant is entitled to have the request for reconsideration proceed to reconsideration.