

PART C – Decision under Appeal

The outcome under appeal is the Ministry of Social Development's (ministry) decision of June 25th, 2012 wherein the ministry determined that a reconsideration is not available to the appellant because the appellant did not deliver a completed Request for Reconsideration on the ministry's reconsideration decision of September 9th, 2011 to the ministry within the legislated 20-business day time limit as stated under section 71(2) Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The request for reconsideration was not submitted until June 11th, 2012.

PART D – Relevant Legislation

Employment and Assistance for Persons Act (EAPWDA), section 16,
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 71

PART E – Summary of Facts

The evidence before the ministry at the time a reconsideration was under consideration:

- Request for reconsideration dated June 11th, 2012.
- Reconsideration decision dated September 9th, 2011 wherein the appellant had been denied disability income assistance for months of June and July as per section 10(1)(b) EAPWDA and section 28(1) EAPWDR. The Reconsideration upheld the appellant's appeal and stated "The ministry has determined you should not be denied income assistance due to failure to provide information required to determine eligibility..." The decision continued, "Now that you have provided the requested information, a complete eligibility assessment may be conducted. If you wish to re-apply for Income assistance, please contact the ministry district office to discuss eligibility criterion."

In May 2011 the appellant's file came under review and the Investigative Officer (IO) requested the appellant submit several documents to determine the appellant's continued eligibility for income assistance. On August 4th, 2011 the ministry completed the Request for Reconsideration package for the appellant and the package along with Reconsideration and Appeals brochure was picked up by the appellant's advocate. On September 9th, 2011 the ministry rendered a Reconsideration decision on the matter and on September 13th, 2011 the Reconsideration Branch mailed the decision package to the appellant. The reconsideration was not disputed by the appellant. There was no contact between the ministry and the appellant or the appellant's advocate between September 2011 and January 19th, 2012 when the appellant attended the ministry office on another matter. On January 1st, 2012, the appellant re-applied on-line for disability assistance.

On May 2nd 2012 the appellant's advocate contacted the ministry inquiring into reimbursement of benefits for the appellant for the period July 2011 to September 2011, a matter addressed in the reconsideration of September 2011. The ministry advised the appellant the request for reimbursement of retro-active benefits was denied. On June 11, 2012 the appellant filed a Request for Reconsideration which was not granted as the appellant had failed to file her application for reconsideration of the September 9th, 2011 decision within 20 business days as set out in section 71(2) EAPWDR.

At the hearing the appellant submitted the following documents for the panel's consideration:

1. Letter from the appellant's doctor dated July 6th, 2011 relating to the appellant's medical condition.

The panel accepts the letter as new evidence because the letter provides support for the appellant's argument in this appeal and therefore is admitted under section 22(4) EAA as the letter is in support of the information or record that was before the ministry at the time of reconsideration.

2. 6 page submission prepared by the appellant's advocate providing an overview of the appellant's background, the circumstances leading up to the reconsideration of September 9th, 2011 and the appellant's circumstances after the reconsideration decision.

The panel finds document does not contain new evidence and is received as argument only.

The ministry did not object to the documents being received by the panel.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of ministry's outcome of June 25th, 2012 to determine that the appellant was not allowed a reconsideration of the Reconsideration decision of September 9th, 2011 because the appellant did not deliver a completed Request for Reconsideration to the ministry within the legislated 20-business day time limit as stated under section 71(2) EAPWDR.

The legislation considered:

Employment and Assistance for Persons with Disabilities Act (EAPWDA)

Section 16

(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 72 The minister must reconsider a decision referred to in section 16 (1) of the Act, and mail a written determination on the reconsideration to the person who delivered the request under section 71 (1) *[how a request to reconsider a decision is made]*,

- (a) within 10 business days after receiving the request, or
- (b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request.

At the hearing the ministry relied on section 71(2) EAPWDR which states a person who wishes the ministry to reconsider a decision must deliver a request for reconsideration to the ministry within 20 business days after the date the person was notified of the decision. The ministry argued the reconsideration decision of September 9th, 2011, which denied the appellant income benefits for June and July 2011 and instructed the appellant to contact the district ministry office so that eligibility could be re-established, was mailed to the appellant on September 13th, 2011. The ministry argued the appellant did not meet the criteria within section

71(2) EAPWDR as she did not deliver her request for reconsideration until June 11, 2012.

At the hearing the appellant argued that the ministry did not meet the legislated criteria within the Act as the reconsideration decision was not received within the 10 day time frame. The appellant argued the ministry's process in declaring her ineligible for benefits was not fair and was unjustified as the ministry only gave her 4 business days to provide the information and the ministry did not properly notify her that she had been declared ineligible to receive income benefits. The appellant argued that the advocate was not always available to attend the ministry office with the appellant (the appellant suffers from Post Traumatic Stress Disorder [PTSD] and needs someone with her) when she attends the ministry office as the office is located in a building within other ministry offices which may impact on the appellant. The appellant argued that between September 2011 and January 2012 she was focused on dealing with other personal matters, i.e. house renovations, exterminating house pests and caring for her dog. The appellant argued that when she moved her household effects went into several locations and she did not have a record of what was located where and therefore would not have been able to readily retrieve any information requested by the ministry.

In reference to the ministry's decision under section 52 EAPWDR, the panel finds that the ministry acknowledged that this section enables the ministry to issue a reconsideration or appeal supplement once a recipient requests a supplement to be paid and agrees in writing to repay the amount of the supplement if the appeal is not upheld. In this circumstance the ministry determined the appellant did not meet the criteria within section 52 EAPWDR and that had the appellant met the criteria, the appellant would have been required to repay the amount of the supplement as the appellant's appeal was not upheld at Reconsideration. At the hearing the appellant did not make any argument against the ministry's decision or offer any evidence contrary to the ministry's comments.

The panel finds that under section 73(1)(b) EAPWDR, the panel has no jurisdiction to make a determination on this matter (failed to issue a supplement) as this matter (reconsideration and appeal supplements under section 52 EAPWDR) is not appealable to the tribunal (Employment and Assistance Appeal Tribunal).

The panel finds that the appellant's Request for Reconsideration is based on a ministry's reconsideration decision dated September 9th, 2011 which determined the appellant could re-apply for income assistance if she wished and that she needed to contact the ministry district office to discuss eligibility criteria. The decision was mailed to the appellant on September 13th, 2011. Section 71 EAPWDR states that a person who wishes the ministry to reconsider a decision must deliver the request, either by hand or by mail, to the ministry office within 20 business days after the date the person is notified of the decision. The evidence indicates the appellant's first contact with the ministry after the Reconsideration decision of September 9th, 2011 was on January 19th, 2012 (the appellant had re-applied on-line for benefits January 1st, 2012), however, the appellant did not submit a Request for Reconsideration until June 2012.

The panel accepts that the appellant has a PWD designation and suffers from multiple medical issues and may have some challenges in attending to the ministry's office, however, there is no evidence before the panel that she attempted to contact the ministry office in another other fashion, i.e. phone, mail, etc. The panel does not accept the appellant's position that she was too busy to contact the ministry and/or re-apply for benefits. The panel finds there were no undue or unforeseen circumstances that prevented the appellant from complying with section 71(2) EAPWDR.

The panel finds the appellant did not meet the criteria within section 71(2) EAPWDR and therefore the ministry's decision to deny the appellant a Reconsideration was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 16(3) 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 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 Act for the reasons outlined above.

In view of this finding, our jurisdiction is limited to confirming or rescinding the ministry's decision. The panel confirms the ministry's decision that there is no right to reconsideration under section 24(2)(b) EAA.