

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) decision dated June 6, 2012 which denied the appellant's request for reconsideration of the ministry decision of March 14, 2012, in which the ministry determined that the appellant was not eligible for disability assistance due to disposal of an asset, on the basis that the appellant's request for reconsideration was submitted outside the legislated time frame, 20 business days, pursuant to section 16 (1) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) and section 71 of the *Employment and Assistance for Persons with Disabilities Regulations* (EAPWDR).

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act – Section 16 (1)*  
*Employment and Assistance for persons with Disabilities Regulation – Section 71*

## PART E – Summary of Facts

The evidence before the ministry at reconsideration included:

- BC Benefits Application signed by the appellant on April 18, 2001;
- Hospital assessment and consultation report dated June 13, 2001;
- Copies of letters from a legal counsel to the appellant dated August 21 and July 27, 2001;
- Freehold Transfer form dated August 25, 1998;
- Freehold Transfer form dated October 1, 2007;
- Freehold Transfer form dated April 3, 2009;
- A letter from the Investigative Officer to the appellant dated March 1, 2011;
- Ministry's decision dated March 14, 2012 which determined that the appellant is no longer eligible for assistance due to inadequate disposal of assets and advise the appellant of her right to reconsideration;
- Authorization to Release Information dated April 24, 2012;
- Request for Reconsideration signed by the appellant on April 24, 2012;
- A letter from the appellant's friend dated April 30, 2012;
- Title Search Print dated May 8, 2012;
- A copy of the BC Coalition of People with Disabilities questionnaire completed by a medical practitioner dated May 16, 2012;
- A copy of an affidavit signed by the appellant's brother on May 22, 2012;
- A copy of an affidavit signed by the appellant on May 22, 2012;
- A copy of submissions by a legal advocate on May 22, 2012.

The appellant submitted written submissions on July 4, 2012 which included a copy of the ministry's letter to the appellant dated April 17, 2012. The letter stated that a review of the appellant's receipt of assistance between April 1, 2009 and March 31, 2012 was conducted and based on the investigation the appellant might have been paid income assistance in the amount of \$29,016.80 for which she was not eligible. The ministry requested that the appellant meet with the ministry to discuss the overpayment. The ministry informed the appellant that if she did not attend the meeting or call the ministry, the ministry would make a decision without the appellant's input. The ministry further advised the appellant that she may request a reconsideration of this decision.

The appellant submitted that:

- The ministry has a duty to provide reasonable interpretations of home statutes, including the EAPWDA;
- The appellant in her request for reconsideration argues that she did not inadequately dispose of assets and should not be ineligible for income assistance or be liable for any overpayment of income assistance;
- The appellant concedes that the request for reconsideration was submitted in excess of the legislated time limit; however, the appellant submitted that she was not aware of the overpayment and that the ministry's decision that she was not eligible for income assistance was unreasonable;
- The appellant was not concerned with the decision finding her ineligible for income assistance because she was already turned 65 and was anticipating receipt of old age security (OAS) benefit and knew that she would not be eligible for income assistance after receiving her OAS benefit;
- The appellant requested for reconsideration after receiving the letter on April 17, 2012, indicating she owed the ministry \$29,016.80;
- The appellant submitted the request for reconsideration on April 24, 2012, only 5 business days later;
- The appellant did not dispose of assets for inadequate consideration and should not be liable for an overpayment of income assistance;
- The appellant is aware that pursuant to section 18 (2) of EAPWDA, the minister's decision about the amount a person is liable to repay is not appealable; however, the appellant disputes whether the determination of the overpayment was valid at all and not the specific amount of the overpayment;

- The appellant is entitled to request a reconsideration of the ministry's decision pursuant to section 16(1) of the EAPWDA; hence decisions about overpayments are subject to reconsideration and appeal;
- The appellant accepts that the minister would still be entitled to review the issue regarding disposal of assets and even the overpayment, but contends that it is unreasonable for the ministry's decision to stand without having reviewed all of the information submitted at reconsideration;
- The appellant has history of severe depression.

The appellant in the Notice of Appeal submitted that the decision of the ministry was unreasonable, stating that further documentation is pending.

The ministry, after reviewing the content of the appellant's submission, did not object to the admission of the ministry's letter dated April 17, 2012 and the written submission. The panel accepts the submission and the letter from the ministry regarding overpayment as being in support of the information before the ministry under section 22(4) of the Employment and Assistance Act (EAA) and therefore admitted them into evidence.

At the hearing the appellant's advocate reviewed the content of the written submission and stated that the appellant, in the request for reconsideration dated April 24, 2012, addressed the issue of liability for any overpayments. The appellant said that originally she was not concerned about not being eligible for income assistance as she was eligible for receiving OAS benefit shortly after. However, the appellant stated that she submitted the request for reconsideration immediately after receiving the April 17<sup>th</sup> letter. The appellant further submitted that on March 14, 2012, she had an interview with the ministry's staff and she was told that she was not eligible for income assistance and that she might be liable for overpayment. The appellant said that she thought she might have owed the ministry around \$6000 to \$7000 and as such did not complete the request for reconsideration form at that time. The appellant submitted that when she received the April 17<sup>th</sup> letter and found out she owed \$29,016.80; she immediately contacted the advocate's office and submitted her request within 5 days of receiving the ministry letter.

The appellant submitted that the ministry wrongly used March 14, 2012 as the date because the subsequent letter provided information directly relevant to the issue of reconsideration. The appellant submitted that she was not given the opportunity to present herself and she should have had the benefit of presenting her case.

The appellant submitted that under section 10(c) of the EAPWDR a family unit's place of residence is exempt for the purposes of subsection (2). The appellant submitted that she was living in the property at issue at the time it was transferred to her brother. The appellant stated that this transfer was not made to receive assistance fraudulently and she did not want to defraud the ministry.

The ministry submitted that the letter of April 17, 2012 is a separate issue. The issue before the minister at the reconsideration was whether the appellant submitted her request for reconsideration of the ministry's decision on March 14, 2012 within the time frame, 20 business days. The ministry stated that the April 17, 2012 letter has nothing to do with the decision of March 14, 2012. Furthermore, in the April 17, 2012 letter, the appellant was advised to request for reconsideration if she was not satisfied with the decision. The ministry submitted that the appellant did not submit her request for reconsideration regarding the ministry's March 14 decision within the time limit mandated by the legislation and as such the ministry could not make available to her a reconsideration of this matter (ineligibility of assistance).

The ministry further submitted that pursuant to section 71(1) of the EAPWDR, a person who wishes the minister to reconsider a decision must deliver a request for reconsideration in the form specified by the minister and the form must be delivered within 20 business days after the date the person is notified of the decision. The appellant was informed on March 14, 2012 that she was not eligible for income assistance because she gave property to her brother. The ministry submitted that on March 16, 2012 the appellant called the ministry requesting reconsideration form to be mailed to her. The ministry further submitted that on March 21, 2012 the

appellant was advised that the package was ready and it was mailed to her on the same day. The appellant was advised that she must return the package signed and dated by April 12, 2012. The ministry submitted that based on the evidence, the appellant was advised that she had 20 business days to submit her request and she failed to do so, accordingly, the ministry's reconsideration decision is correct.

The appellant submitted that the ministry's position in this matter is based on a very bureaucratic, institutional formality. The fact is that one of the decisions of the ministry was the overpayment and as such the request for reconsideration was made within the time limit.

The panel finds that:

- On March 14, 2012, the appellant was advised of the decision of the ministry regarding ineligibility for disability assistance;
- The appellant was advised that she had up to April 12, 2012 to submit her request for reconsideration;
- The appellant submitted her request for reconsideration on April 24, 2012, 5 days after receiving the letter dated April 17, 2012 informing her that she owed \$29,016.80 overpayment;
- The ministry in the April 17, 2012 letter advised the appellant to contact the ministry to discuss the overpayment matter;
- The appellant did not contact the ministry after receiving the letter;
- The letter states that if the appellant did not contact the ministry, a decision would be made about an overpayment without the appellant's input and that she would be advised of any decision in writing and she may request a reconsideration of this decision;
- There is no evidence before the panel that a decision was made following the letter dated April 17, 2012;
- The appellant submitted her request for reconsideration on April 24, 2012.

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's decision dated June 6, 2012 denying the appellant's request for reconsideration because the appellant failed to comply with the time limits set out in section 16 (1) of the EAPWDA and section 71 of the EAPWDR.

The time limits and rules for a request for reconsideration of a decision are set out in section 16(1) of the EAPWDA and section 71 of the EAPWDR.

### Reconsideration and appeal rights

**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

### How a request to reconsider a decision is made

**71 (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 ministry's position is that the ministry's decision is reasonable because the issue before the minister at the reconsideration was whether the appellant submitted her request for reconsideration of the ministry's decision on March 14, 2012 within the allocated time, 20 business days. The ministry argued that the letter of April 17, 2012 has nothing to do with the decision of March 14, 2012. The ministry submitted that the appellant did not submit her request for reconsideration within the time limit mandated by the legislation and as such the ministry could not make available to her a reconsideration of this matter.

The appellant argued that she submitted the request for reconsideration immediately after receiving the letter dated April 17, 2012. The appellant further submitted that on March 14, 2012, she had an interview with the ministry's staff and she was told that she was not eligible for income assistance and that she might be liable for overpayment. The appellant stated that she thought she might have owed \$6000 or \$7000 to the ministry. The appellant submitted that when she received the April 17<sup>th</sup> letter and found out she owed over \$29,000; she immediately contacted the advocate's office and submitted her request within 5 days of receiving the letter. The appellant submitted that the ministry used the wrong date because the subsequent letter provided information directly relevant to the issue of reconsideration. The appellant submitted that she was not given the opportunity to present herself and she should have had the benefit of presenting her case.

The panel does not have the jurisdiction to review the reasonableness of the original decision made on March 14, 2012 and as such is unable to address the appellant's submissions regarding the reasonableness of the ministry's original decision.

The issue on this appeal is the request for reconsideration of the ministry's decision on March 14, 2012. The panel notes that the appellant received a letter dated March 14, 2012 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 panel further finds that the appellant was advised that she would be receiving a letter regarding the amount she owed the ministry because of the overpayment. The panel notes that the appellant did not complete the request for reconsideration within the 20 business days because she knew she was going to receive OAS benefit and would not be eligible to receive disability assistance. The panel further finds that the appellant was aware of her right to request reconsideration of the decision, and of the time limits to submit the request for reconsideration. The panel considered the appellant's difficulty understanding the content of the April 17, 2012 letter and that the ministry made two decisions in two different times; however, the panel finds that the time limit respecting the decision that the appellant was not eligible for assistance expired by April 17, 2012 and that the time limits as described in the section 71 of the EAPDWR are not discretionary.

Respecting section 16(1) of the EAPWDA, a person may request the minister to reconsider a decision that results in a refusal to provide disability assistance. Subsection (2) states that 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.

The panel finds that the appellant did not submit the request for reconsideration of March 14, 2012 decision to deny assistance within the 20 days limit set out in section 71(2) of the EAPWDR and as required by section 16(2) of the EAPWDA.

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 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 Employment and Assistance Act (EAA) for the reasons outlined above. In view of this finding, the panel confirms the ministry's decision under section 24(2) of the EAA that there is no right to reconsideration of the March 14, 2012 decision. The panel finds that the appellant is not entitled to have the request for reconsideration proceed to reconsideration.