

**PART C – Decision under Appeal**

In a decision dated 21 June 2012, the Appellant was informed that the Ministry was unable to conduct a reconsideration of the Ministry decision to deny the Appellant continued disability assistance (DA) due to excess assets on February 10, 2012 because they determined the Appellant's request for reconsideration was not submitted within 20 business days after the date she was informed of the denial as specified in EAPWDR, Section 71.

**PART D – Relevant Legislation**

Employment and Assistance Persons with Disabilities Act (EAPWDA), Section 16  
Employment and Assistance Persons with Disabilities Regulations (EAPWDR), Section 71

## PART E – Summary of Facts

In the notice of Appeal, the Advocate states the Appellant has very special circumstances and cannot speak for herself, that she is concerned about the Appellant's future and wants to speak for her. She concludes that she has good reasons why she did not get the request for reconsideration in on time. In a letter received April 19, 2012, the Advocate states the Appellant is disabled and refers to an attached psychological assessment for confirmation. The Advocate is concerned for the Appellant's care once her \$300,000 inheritance is gone.

She states that she did not receive the reconsideration application until April 1, 2012 because the Appellant moved into a new care facility. The envelope shows it was received by the Appellant on February 28, 2012 but it was not sent to the Appellant's current address. She concludes the Appellant does not have a voice and the Ministry must have the ability to consider this case individually.

The Ministry states the Appellant was advised of the decision to deny her continued DA on February 10, 2012 and a reconsideration application was prepared on February 24, 2012. The Ministry received request for reconsideration back from the Appellant on April 19, 2012. The Ministry submits the deadline to submit the request for reconsideration was March 9, 2012 and April 19, 2012 exceeds the time limit permitted in the EAPWDR, Section 71.

At the hearing the Advocate corrected some of the facts from the Ministry's reconsideration decision. She stated the Appellant had lived with her mother until April 2009 at which time the mother had to move into a care facility. The Appellant was in the family home until December 2010 but in spite of a lot of support from neighbors and friends, she did not cope well and was close to a breakdown. In December 2010, she moved into a suitable care facility.

The Advocate concluded the reconsideration application was not sent to the correct address and was not forwarded. Furthermore she had personal issues going on at the same time that interfered with her ability to care for the Appellant's issues. She acknowledged the application for the reconsideration of this decision was late but stated that other issues between the Appellant and the Ministry are complicating the matter and she feels the wellbeing of the Appellant is being overlooked due to procedures.

At the hearing the Ministry stated their electronic file notes indicate on February 6, 2012, the Advocate was advised the Appellant was ineligible for continued DA and the Appellant's file was closed. On February 10, 2012 the Ministry sent the Appellant a file closure letter and a reconsideration brochure. On February 23, 2012 the Ministry advised the Advocate that the reconsideration application would be mailed to the Appellant. The application was mailed on February 28. On April 19, 2012 the Advocate advised the Ministry that she had received the application and had not been able to complete it and asked what the process would be at this point.

From the information presented, the Panel finds the following facts:

- The Ministry denied the Appellant DA on February 10, 2012.
- The reconsideration application was mailed on February 28, 2012.
- The Advocate discovered the reconsideration application on April 1, 2012.
- The Appellant submitted a request for reconsideration on April 19, 2011.

**PART F – Reasons for Panel Decision**

The issue in this appeal is the reasonableness of the Ministry not to conduct a reconsideration of the Ministry decision to deny the Appellant continued disability assistance (DA) due to excess assets on February 19, 2012 because they determined the Appellant's request for reconsideration was not submitted within 20 business days after the date she was informed of the denial as specified in EAPWDR, Section 71.

The legislation provides under EAPWDA Section 16 and EAPWDR Section 71 as follows:

**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;*

*(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.*

**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 with an employee in the ministry office, or*

*(b) being received through the mail at that office.*

The Ministry argues the Appellant did not deliver a request for reconsideration in the form specified by the Ministry within 20 business days after the Appellant was informed of the Ministry's decision. The Advocate argues she did not discover the reconsideration application until April 1, 2012 and the Appellant cannot speak for herself.

Section 16 of the EAPWDA specifies a request for reconsideration "must be made" within the time limits specified in the regulations. Section 71 of the EAPWDR states a person who wishes the Ministry to reconsider a decision must deliver a request for reconsideration within 20 business days after notification.

The Panel finds the Ministry followed the legislated procedures by sending the reconsideration application to the Appellant's address that was in their file and also notified the Advocate that the application was forthcoming. The Panel finds the time period between the Ministry's denial of the Appellant's eligibility for DA (on February 10, 2012) and receipt of the Appellant's completed request for reconsideration on April 19, 2012 is over 20 business days and the Ministry reasonably

determined that EAPWDR, Section 71(2) was not met.

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 the outcome of the request to the Tribunal". In this case, the Ministry's determination that there is no right to 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 Act for the reasons outlined above. In view of this finding, the Panel confirms under section 24(2) the Ministry's decision that there is no right to reconsideration. It follows that the Appellant is not entitled to have the request for reconsideration proceed to reconsideration.