

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) decision dated September 17, 2012 which denied the appellant's request for reconsideration of the ministry decision of October 2011, in which the ministry requested that the appellant apply for early Canada Pension Plan (CPP) in accordance to Section 8 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry determined that a reconsideration decision is not available to the appellant because she began receiving CPP benefits in May 2012 and declared the amount as her income in June 2012. The ministry concluded that the 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 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 8
Employment and Assistance for Persons with Disabilities Regulation – Section 71

PART E – Summary of Facts

The evidence before the ministry at reconsideration included:

- A copy of the CPP Income (query) date September 18, 2012 for the CPP payment month of May 2012 and states \$63.28 was paid as CPP benefit to the appellant.
- Request for Reconsideration signed by the appellant on July 27, 2012.

Information subsequently put before the appeal panel included the following:

- The Notice of Appeal dated September 21, 2012.

In the written submission included with her Request for Reconsideration the appellant stated that “if you take your CPP retirement pension before your 65, it is reduced by 0.5% for each month that you are under 65 years old”. The appellant stated that rental for an average one bedroom in her community is about \$600 per month. She receives \$375 towards rent so she pays \$225, the remainder, from the support portion of her cheque. This leaves \$341 to pay for food, utilities, clothes and transportation as well as any expenses related to medicines that the ministry doesn't cover. The appellant said that due to her health problems, she is unable to work and is on disability not my choice. The appellant submitted that she was forced to take early CPP and has lost “a fair chunk of that”. The appellant said that it is not fair to be penalized for something that was out of her control. The appellant further stated that she is losing approximately \$28.52 of her CCP benefit per month.

The appellant in the Notice of Appeal submitted that she was ill during May and June and was unable to respond sooner.

At the hearing the appellant said that she wanted to cancel this appeal hearing because few days ago she found out that the ministry's decision forcing her to apply for CPP was based on the legislation. The appellant said that the legislation is unfair as she is losing approximately \$28.52 of her CPP benefit per month times 60 months equal \$3,993.60 by applying for her benefits early. The appellant said that she will be meeting with her Member of Legislative (MLA) requesting changing the legislation. The appellant further said that she was ill during November 2011 due to kidney infection and was unable to respond sooner. The appellant further stated that she was unable to submit her request for reconsideration due to cataracts which made it impossible for her to read from February to May of 2012. The appellant submitted that she would like to change the legislation and understands that the ministry's decision was based on the current legislation.

The witness for the appellant testified that the appellant was not feeling good in the past few months. He said that it is not fair to ask people on disability to apply for CPP and then deduct the amount from their benefits.

The ministry submitted that the only issue before the minister at the reconsideration was whether the appellant submitted her request for reconsideration within the time frame, 20 business days. 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 ministry submitted that there were direct contacts between the ministry and the appellant during the months of May and June and the appellant had a chance to make her request for reconsideration during those contacts. The ministry said that the appellant was informed that she needed to apply for CPP. She began receiving the benefit in May 2012 and claimed the amount as income in her June 2012 return. The ministry submitted that based on the evidence, the appellant had 20 business days to submit her request for reconsideration and she failed to do so, accordingly, the ministry's reconsideration decision is correct.

The panel finds that:

- The appellant is a PWD on disability assistance;

- The ministry requested that the appellant apply for CPP benefit in October 2011;
- The appellant began receiving CPP in May 2012;
- The appellant had contacts with the ministry during May and June 2012 in regards to her illness;
- The appellant submitted her request for reconsideration on July 27, 2012.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's decision dated September 17, 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.

Section 8 of the EAPWDR sets out requirement to apply for CPP benefits and states:

8 If a family unit includes a recipient who may be eligible for a benefit under the *Canada Pension Plan* (Canada), for the family unit to continue to be eligible for disability assistance, the recipient, when requested by the minister, must complete a Consent to Deduction and Payment under the *Canada Pension Plan* (Canada) directing that

- (a) an amount up to the amount of disability assistance provided to or for the family unit from the date that the recipient becomes eligible for the Canada Pension Plan benefit be deducted from the amount of that benefit,

and
(b) the amount deducted be paid to the minister.

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 request in October 2011 within the 20 days legislated timelines. The appellant received her first CPP payment in May 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 was not able to submit her request for reconsideration due to cataracts which made it impossible for her to read from February to May of 2012. The appellant submitted that the law is unfair and she will be requesting her MLA's assistance.

The panel does not have the jurisdiction to review the reasonableness of the original request that the appellant must apply for CPP, made in October 2011 and as such is unable to address the appellant's submissions regarding the reasonableness of the ministry's original decision. Furthermore, the panel does not have the jurisdiction to propose changes to the legislation and as such the panel will not address the fairness of the legislation.

The issue on this appeal is the request for reconsideration of the ministry's request in October 2011 that the appellant, pursuant to Section 8 of the EAPWDR must apply for early CPP. The panel notes that the appellant received her first CPP benefit in May 2012 and claimed the benefit as an income in June 2012.

The panel notes that the time limits as described in the Section 71 of the EAPDWR are not discretionary. The panel considered the appellant's difficulty in making the request due to her illness; however, the panel finds that the appellant was in direct contact with the ministry during May and June 2012 but did not make a request for reconsideration until July 27, 2012

Respecting section 16(1) of the EAPWDA, a person may request the minister to reconsider a decision that results in reduction of 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 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.