

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") decision dated July 31, 2012 (the "Decision") in which the Ministry determined that no reconsideration would be conducted because the time limit for filing the request for reconsideration had expired.

The Ministry states that the appellant was informed of their decision to make a deduction to her March 2012 disability assistance on February 23, 2012. Section 71 of the *Employment and Assistance for Persons with Disabilities Regulation* stipulates that a person must deliver a Request for Reconsideration form within 20 business days of the date of being informed of a decision. The Ministry states that as the deadline to submit the Request for Reconsideration was March 22, 2012 and it was not submitted until July 11, 2012, the decision is no longer open to reconsideration and no reconsideration of the decision will be conducted.

PART D – Relevant Legislation

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

PART E – Summary of Facts

When the Ministry made the Decision, the Ministry had the following evidence:

1. Appellant's Request for Reconsideration dated July 20, 2012 in which the appellant wrote that she was provided with student funding of \$2,682 which was less than her actual tuition and schooling costs of \$2,726. She states that when the Ministry deducted \$391 from her March 2012 cheque, she was left in fear of being evicted and in debt. The appellant also states that the issue appears to be the interpretation of the legislation regarding the exemption of education costs and that the Ministry was basing its decision just on the amount she received but not properly considering the amount of her actual education costs; and
2. Fax cover from an advocate with attached memo and educational forms including StudentAid BC Notification of Assessment dated November 8, 2011, Authorization to Release Information dated February 27, 2012, Registration Fee Assessment dated February 23, 2012, Educational facility Account Activity and College Student BookList (the "Memo"). The Memo states that \$391 was incorrectly deducted from the appellant's March 2012 disability assistance and requesting that the Ministry review this matter and advise the appellant of their decision. The Memo indicates that the appellant's educational costs totaled \$2,726.57 and her student financial assistance received was \$2,682 such that her costs exceeded the amount provided.

In her Notice of Appeal, the appellant states that the Ministry informed her repeatedly that they were still reviewing her decision and that she was not informed of their decision until July after which she submitted her Request for Reconsideration immediately.

At the hearing, the appellant submitted a document that included a Release of Information to StudentAid BC dated March 28, 2012 (the "Release"). The Ministry did not object to this document being admitted into evidence. Pursuant to Section 22(4) of the Employment and Assistance Act (EAA), the panel accepted this document as evidence as it was a document that was in support of the information before the Ministry at the time the Decision was made.

At the hearing the appellant's advocate also submitted a one page document containing a summary of the appellant's position (the "Submission"). The Submission does not contain new information or evidence. The Submission states that the actions taken by the Ministry indicated that they were undertaking a review of the matter, including a review of the Memo and asking the appellant to sign the Release. The Submission states that when the appellant learned of the status of the Ministry review in July 2012, she immediately asked for a reconsideration package.

At the hearing, the Ministry submitted new evidence which comprised the Ministry's case file notes of February 22, 23, March 28, July 5 and July 10, 2012. The note of February 22 indicates that the appellant was advised that the Ministry was making a deduction to her March 2012 cheque. The first note of February 23, 2012 indicates that the appellant was advised by telephone that the deduction was made and that the appellant advised that the deduction was an error. The note further indicates that the appellant was advised to submit receipts of her expenses and the Ministry will review her eligibility. The second note on February 23, 2012 indicates that the appellant attended the Ministry office in person and that the Ministry explained the deduction. The appellant was provided with her March 2012 cheque as calculated by the Ministry. There was also some discussion about a previous deduction made to her November 2011 assistance cheque. The note of March 28, 2012 indicates

that the appellant attended the Ministry office in person to inquire about the March 2012 deduction. The Ministry had the appellant sign the Release to obtain clarification regarding the appellant's student aid funding. The note dated July 5, 2012 indicates that the appellant called to inquire regarding the March 2012 deduction. The note dated July 10, 2012 indicates that the Ministry worker attempted to call Student Aid to verify the amount of the appellant's student loan payment. The note further indicates that the Ministry was unable to retrieve the information. The note also indicates that the appellant wanted a reconsideration of the Ministry's deduction of \$391 from her March 2012 assistance cheque.

The appellant did not object to the Ministry's notes being admitted into evidence but the appellant's advocate wanted the record to reflect that the Ministry's notes appear to be incomplete. In particular, the advocate notes that it is concerning that the Ministry's notes do not contain any reference to the Memo, a crucial piece of information, despite the fact that the advocate confirmed with the Ministry that the Memo was being delivered, and despite the fact that the Memo is contained in the appeal record. Pursuant to Section 22(4) of the Employment and Assistance Act (EAA), the panel accepted this document as evidence as it was a document that was in support of the information before the Ministry at the time the Decision was made.

At the hearing, the appellant's advocate explained that he met with the appellant in February 2012 when the appellant came to see him as she thought the Ministry had incorrectly deducted \$391 from her March 2012 disability assistance. The advocate explained that in his experience there are often several options to addressing issues without the necessity of a formal Request for Reconsideration, which can include calling the Ministry representative to discuss the matter or asking the local office to conduct a review as they are often faster and resolve matters quickly. The advocate explained that he discussed these options with the appellant and they decided to ask the local office for a review. The advocate explained that he prepared the Memo and faxed it to the Ministry supervisor at the New Westminster office. The advocate explained that as is always his practice, he called the Ministry and left a message to confirm that the facsimile was being delivered.

The advocate explained that the appellant understood that a review was taking place and after not hearing back from the Ministry, she attended the office on March 28, 2012 to inquire as to the status of the review. On that date, the Ministry had the appellant sign the Release, so the advocate submitted that the appellant reasonably understood that the review was continuing in that the Ministry was requesting further information to consider the matter. The advocate explained that after not hearing further from the Ministry, the appellant again inquired on July 5, 2010 and when she learned that the Ministry had not changed their decision, she immediately requested reconsideration.

The appellant's evidence was that she never received any communication from the Ministry that she did not initiate herself. She stated that on February 23, 2012 the Ministry advised her to submit receipts for her expenses and they would review the matter. She obtained assistance from the advocate and the Memo was submitted to the Ministry on February 27, 2012 and the appellant understood that the Ministry was reviewing the deduction calculation. The appellant stated that after not hearing from the Ministry, she attended the office on March 28, 2012 with her friend, and asked again what was happening with the review. The appellant stated that she was asked to sign the Release and she understood that the Ministry was still looking into the matter. The appellant admitted that she understood that the calculation was made on February 22, 2012 to deduct \$391 from her cheque and that the deduction was a decision, but that she did not understand it was a

decision that triggered the timelines for a Request for Reconsideration as she understood the Ministry was still reviewing the decision. The appellant stated that she had experience with reviews of her student loan funds in past years where the Ministry had to review her expenses and reconsideration had not been required previously and that those previous reviews had also taken a long time to complete.

The appellant stated that when she attended the Ministry office on March 28, 2012, at which time the Ministry representative asked her to sign the Release, which she did, and she understood it was being requested so that the Ministry could obtain further information in conducting its ongoing review. The appellant stated that there were signs posted in the office indicating that a computer upgrade was in process. She understood that it may take longer than usual to obtain information from the Ministry and as she had been through the process in past years where there were reviews of her student loan amounts, she expected the review to take some time. The appellant stated that she continued on with her schooling and after a few months, after not hearing anything further from the Ministry, she called them on July 5, 2012 and was told that the decision regarding the deduction was final. The appellant's position is that she did not understand that the Ministry's decision was final until July 5, 2012 at which time she requested a Request for Reconsideration form and submitted it on July 20, 2012, within the required 20 days.

The appellant stated that she feels violated by this process as she put her trust in the Ministry, thought a review was taking place and had every indication that an ongoing review was being conducted.

The appellant's witness stated that she has been a friend of the appellant's for many years and that on March 28, 2012 she attended the New Westminster income assistance office with the appellant. They waited in line and when they reached the front, the appellant explained that she needed a worker to look into the student loans issue regarding the deductions. The witness stated that the Ministry representative stated that she would look into the matter and brought the Release for the appellant to sign. There were no discussions about reconsideration. When questioned by the Ministry representative, the witness stated that she did not know whether the Ministry initiated the request for the Release or whether the appellant requested to sign the Release form.

The Ministry relied on the Decision. The Ministry's evidence is that the appellant was advised of the deduction to her cheque on February 22, 2012 and that her original cheque was cancelled and a new cheque issued with the deducted amount on February 23, 2012. The Ministry stated that two conversations with the appellant took place on February 23, 2012, one on the phone and one in person and that the appellant was advised of the decision at that time. The Ministry representative acknowledged the note of February 23, 2012 in which the Ministry advised the appellant to submit further receipts of her expenses and that the Ministry would review them but states that did not change the fact that the decision was made on February 23 and that the appellant was notified of the decision. The Ministry representative stated that the appellant had a choice and decided to request an informal review rather than submitting a Request for Reconsideration.

When questioned by the advocate as to why the Memo was not recorded in the Ministry's notes, the Ministry representative stated that when facsimiles are received, they are added to a list of documents but it is not necessarily shown on the Ministry system. The Ministry representative also stated that when a facsimile is received, the administrative staff do not check who it is addressed to

or alert anyone to the receipt. The Ministry representative confirmed that if a facsimile is sent to a certain person, the sender must call to advise the recipient that the facsimile is being sent.

The Ministry stated that they did not know why the Memo was not noted in the Ministry's file notes. The Ministry stated that although the Ministry received further information in the Memo on February 27, 2012 and had the appellant sign the Release on March 28, 2012, those steps did not change the fact that the decision was made and communicated to the appellant on February 23, 2012 such that a Request for Reconsideration had to be submitted within 20 business days. The Ministry's evidence is that the computer upgrades taking place in the office did not happen until after April 1, 2012 so the upgrades did not affect the appellant's case in that the decision was already made on February 23, 2012.

The Ministry's evidence is that the Ministry typically advises clients of their right to reconsideration but he acknowledged that there is no note regarding the appellant being advised of her right to reconsideration.

The panel makes the following findings of fact:

1. On February 22, 2012 the Ministry made a calculation to deduct \$391 from the appellant's March 2012 income assistance cheque;
2. On February 23, 2012 the Ministry advised the appellant of its decision to deduct \$391 from her March 2012 cheque;
3. On February 23, 2012, the Ministry also advised the appellant to submit receipts for her expenses and they would review her eligibility;
4. On February 27, 2012, the appellant submitted the Memo to the Ministry;
5. On March 28, 2012, the Ministry asked the appellant to sign the Release;
6. On July 5, 2012 the appellant telephoned the Ministry to inquire about the results of the Ministry review and the Ministry advised the appellant that no further review was being conducted with respect to her March 2012 cheque;
7. On July 10, 2012 the appellant requested a Request for Reconsideration form; and
8. On July 20, 2012 the appellant submitted the Request for Reconsideration.

PART F – Reasons for Panel Decision

The issue for the panel to determine is the reasonableness of the Ministry's decision to deny the appellant's Request for Reconsideration under the EAPWDR, Section 71 because the time limit for the appellant to file a Request for Reconsideration had expired.

The time limits and rules for a request for reconsideration are set out in Section 16 of the EAPWDA and Section 71 of the EAPWDR as follows:

EAPWDA Section 16:**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 parties disagree as to when the appellant was notified of the decision. The appellant's position is that she was informed that the Ministry made a calculation on February 22 and 23, 2012 regarding the amount of her March assistance cheque but that she was not informed that a final decision was made regarding that deduction calculation until July 5, 2012. The Ministry's position is that the appellant was notified of the decision on February 23, 2012.

The advocate submitted that the appellant was acting in good faith and that the Ministry has to recognize that there is more than one option to resolving issues and that the appellant should be able to request a review without giving up her appeal rights. The advocate submits that the Ministry notes indicate that an alternative was proposed to the appellant when the Ministry advised her to submit receipts for her expenses. The advocate submitted that while acknowledging the Ministry's job is not easy, the lapses in this case have disadvantaged the appellant. The advocate submits that the principles of administrative fairness must apply and when the appellant was acting on a reasonably founded understanding that her matter was under review, and had no clear notice of a final decision, she should not be denied the opportunity to appeal the Ministry's decision.

The Ministry's position is that the appellant was advised of the decision on February 23, 2012 and that although the Ministry received further information in the Memo on February 27, 2012 and had the appellant sign the Release on March 28, 2012, those steps did not change the fact that the decision was made and communicated to the appellant on February 23, 2012 such that a Request for Reconsideration had to be submitted within 20 business days. The Ministry's position is that by requesting a review and submitting the Memo, the appellant knew that a decision had been made and that she needed to submit a Request for Reconsideration within 20 business days of the decision

of February 23, 2012.

The panel finds that the Ministry's decision to deduct \$391 from the appellant's March 2012 cheque on February 22 and 23, 2012 is a decision that resulted in a reduction of disability assistance as set out in Section 16(1)(c) of the EAPWDA. However, given the Ministry's advice to the appellant on the same date whereby the Ministry advised her to submit further receipts for her expenses and that the Ministry would conduct a review of her eligibility, the panel finds that the Ministry's decision that the appellant was notified of the decision on February 23, 2012 such that it would trigger the timelines to submit a Request for Reconsideration within 20 business days was not reasonable. Given the Ministry's advice requesting further documentation to support her expenses, the panel finds that the appellant, in following that advice and submitting the Memo on February 27, 2012, had a reasonable expectation that the Ministry was conducting an ongoing review as they advised her they would do.

The panel finds that when the appellant attended at the Ministry office again on March 28, 2012 to inquire about the results of the review, she was asked to sign the Release. The panel finds that the appellant's understanding that she was being asked to sign the Release to assist the Ministry in its ongoing review of her March 2012 income assistance deduction and student loan amounts was reasonable and that she continued to have a reasonable expectation that the Ministry was conducting an ongoing review.

Although the Ministry's evidence is that they did not take further steps to notify the appellant that the decision of February 23, 2012 was final because they were not conducting a further review, the panel finds that the Ministry's position in that regard is not consistent with their notes advising the appellant to submit further information after which a further review would be conducted or with the actions of the Ministry requesting the appellant to sign the Release on March 28, 2012. The panel also finds that by advising the appellant to submit further information and documentation for further review and requesting her to sign the Release, while not advising her of her right to reconsideration contributed to the appellant's reasonable expectation that she was not foregoing her appeal rights.

Between March 29 and July 4, 2012 the appellant did not make any further inquiries with the Ministry and the Ministry did not communicate further with the appellant such that neither the Ministry nor the appellant pursued this matter diligently during this period. The appellant's evidence is that she was busy with school and understood that it would take the Ministry some time to obtain any results from the Release and to conduct its ongoing review. The Ministry's position is that the appellant did not make any further inquiries because she knew that the February 23, 2012 was final and by not submitting a Request for Reconsideration she signaled her acceptance of the Ministry decision. The Ministry also argues that it did not take any further steps during this period because a further review was not being conducted.

As the last step taken was the Ministry requesting the appellant to sign the Release so that they could obtain further information regarding the appellant's student loan funding the panel finds that it was reasonable that the appellant had an ongoing understanding and expectation that the Ministry was conducting an ongoing review of her March 2012 eligibility and that a final decision had not been made. Although it was a long period before the appellant made further inquiries in July 2012 regarding the results of the Ministry review, the panel accepts the appellant's evidence that in her experience the Ministry investigations often took a long time and that it would take the Ministry some time to obtain documentation pursuant to the Release. The panel accepts that the appellant had a

reasonable understanding and expectation that the Ministry was conducting an ongoing review between March 29 and July 5, 2012 and that she was not notified of the Ministry's decision to maintain the March 2012 assistance deduction until July 5, 2012.

The panel finds that as the Ministry did not notify the appellant of their final decision to maintain the March 2012 disability assistance deduction until July 5, 2012, the Ministry's decision that the appellant does not have a right to reconsideration is not reasonable. The panel also finds that as the appellant submitted her Request for Reconsideration on July 20, 2012 it was submitted within 20 business days as required by Section 71(2) of the EAPWDR.

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 not a reasonable application of the applicable enactment in the appellant's circumstances under s. 24(1)(b) of the Act for the reasons outlined above. In view of this finding, the panel rescinds under s.24(2) the Ministry's decision that there is no right to reconsideration. It follows that the appellant is entitled to have the request for reconsideration proceed to reconsideration.