

PART C – Decision under Appeal

The appellant appeals the ministry's decision dated November 6, 2012, denying his request for reconsideration regarding a crisis supplement for furniture, on the basis that the appellant's request for reconsideration was submitted outside of the legislative time frame (20 business days) pursuant to section 16 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and section 71 of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) - section 16.
Employment and Assistance for Persons with Disabilities (EAPWD) Regulation - section 71.

PART E – Summary of Facts

Information and records before the ministry submitted with the request for reconsideration include:

- a copy of an estimate from a supplier for house-hold furniture dated August 15;
- an undated copy of an estimate from a second supplier for house-hold furniture;
- a copy of an estimate from a third supplier for house-hold furniture dated August 15;
- a copy of a physician's note from a Community Health Centre;
- a copy of a consent for release of information from an advocacy group signed by the appellant October 24, 2012;
- a copy of a cover letter and submission from the appellant's advocate dated October 30, 2012; and;
- a copy of the appellant's Request for Reconsideration form completed by the ministry dated October 24, 2012.

The appellant did not attend the hearing. The panel received confirmation from the Tribunal that the appellant had been duly notified of the date, time and location of the hearing held on December 5, 2012. Accordingly, under 86(b) of the Employment and Assistance Regulation, the panel heard the appeal in the appellant's absence.

At the hearing the ministry stood by the record, which states that the appellant is a single person in receipt of disability assistance whose file was opened in December 1996. On August 16, 2012, he was advised by the ministry that he had been denied a crisis supplement for furniture. On November 1, 2012, the appellant submitted a request for reconsideration, and on November 06, 2012, the ministry completed its review of his request for reconsideration.

Section 2 of the appellant's request for reconsideration, completed by the ministry, states that the ministry had tried unsuccessfully to contact the appellant by phone on August 16, 2012 to notify him that his request for a crisis supplement for furniture was denied. No additional documental evidence was contained in the record of the ministry decision which would have allowed the panel to determine how and when this process took place, the panel therefore requested clarification from the ministry.

As the appeal was via conference call and the ministry had access to the appellant's electronic file, the ministry was able to provide the panel with additional information not contained in the record of the ministry's decision. The ministry provided oral testimony stating that their records show the appellant was notified of their decision not to provide him with a crisis supplement for furniture on October 22, 2012, and that the appellant picked up his appeal package from their office October 23, 2012.

In the reasons section of the appellant's Notice of Appeal he states, "I do not agree with decision".

The panel makes the following finding of fact:

1. The appellant is a person with a disability who receives disability assistance.
2. The appellant was informed of the ministry's decision on October 22, 2012.
3. The appellant received his appeal package October 23, 2012.
4. The appellant filed a request for reconsideration on November 1, 2012.

PART F – Reasons for Panel Decision

This appeal concerns the reasonableness of the ministry's decision dated November 6, 2012, denying the appellant's request for reconsideration because he failed to comply with the legislative time limit (20 business days) set out in section 16 of EAPWDA and section 71 of the EAPWD Regulation.

Employment and Assistance for Persons with Disabilities Act – 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.

Employment and Assistance for Persons with Disabilities Regulation – Section 71

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 appellant's request for reconsideration was denied because he failed to comply with the legislative time limit (20 business days) set out in section 16 of EAPWDA and section 71 of the EAPWD Regulation. The appellant's position was that he did not agree with the ministry's decision.

The panel finds that based on the information provided by the ministry at the hearing, the appellant was informed of the ministry's decision not to provide him with a crisis supplement on October 22, 2012, and that he received his appeal package October 23, 2012. The panel also determined that the appellant's request for reconsideration was received less than 20 business days later, on November 1, 2012.

Section 16 (3) of EAPWDA provides that, subject to certain exemptions, 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 determined 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 section 24(1)(b) of the Act for the reasons outlined above. In view of this finding, the panel rescinds under section 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.