

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (ministry) decision of December 3, 2012, which held that the appellant was not entitled to reconsideration of the ministry's earlier decision not to designate the appellant as a person with disabilities (PWD). The basis for the ministry's decision was that the appellant had not submitted a completed Request for Reconsideration form within the time limit imposed by s. 71 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

**PART D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act (EAPWDA), s. 16*  
*EAPWDR s. 71*

## PART E – Summary of Facts

The appellant did not attend the appeal hearing. After confirming that the appellant had been notified, the hearing proceeding in accordance with s. 86(b) of the Employment and Assistance Regulation.

The information before the ministry at the time of the decision under appeal included the following:

- The appellant submitted an application for designation as a PWD on May 15, 2012.
- The appellant's PWD application was denied on June 14, 2012.
- On June 26, 2012 the appellant submitted to the ministry a 4 page handwritten letter requesting reconsideration of the June 14 decision. She submitted it by mail, writing that she had no way to get to a ministry office in person.
- On September 13, 2012 it came to the ministry's attention that it had not created a reconsideration Service Request (SR) for the appellant. A file note created by the ministry at 2:18:06 pm on that date indicates that the ministry supervisor ordered a reconsideration SR to be created.
- A subsequent file note created at 2:30:19 pm on September 13, 2012 indicates that a ministry worker informed the appellant that "a request has been put in for her PWD reconsideration and she would either be contacted when the recon package is ready or it will be mailed to her."
- The ministry's written decision of December 3, 2012 found that the appellant submitted an unsigned Request for Consideration form on September 13, 2012.
- The appellant submitted her signed Request for Reconsideration form HR0100 (the Request Form) on November 21, 2012, as evidenced by a file note created at 9:19:57 am that day. The file note indicated that the Request Form had been received by the ministry "at office returned by Post Office marked 'Refused, Return to Sender'. The package had been opened and the paper was out of order. Worker organized and scanned to SR as signed HR0100 was included."

At the appeal hearing, the ministry explained in response to questioning by the panel that the "2012-Sep-20" date appearing on the appellant's Request Form means that the Request Form was printed by the ministry on that date and would have been provided to the appellant for her signature either in person or by mail. Given the appellant's earlier statement about not having any way to attend the ministry's office in person, the panel finds that it is more likely than not that the Request Form was mailed to the appellant. If it had been provided to her in person at the ministry's office the likelihood is that the appellant would have signed the form at that time and handed it back to the ministry worker. In the circumstances where the appellant received the form, signed it, and mailed it back to the ministry, the panel finds it is more likely than not that the "Refused, Return to Sender" message was written by the appellant.

The appellant signed the Request Form on November 1, 2012, and as referenced above it was received by the ministry on November 21, 2012, some 43 business days after the form was mailed to

the appellant by the ministry.

The new information provided by the ministry at the appeal hearing gave additional detail regarding the evidence that was before the ministry. The panel accepted this new information as oral testimony in support, in accordance with s. 22(4) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision of December 3, 2012 not to provide the appellant with a reconsideration of its earlier decision to deny the appellant's application for designation as a PWD.

The relevant legislation is as follows:

### EAPWDA

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.

### EAPWDR

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.

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As referenced above, the appellant did not attend the appeal hearing and did not advance any argument to explain the timing for submission of the Request Form.

The ministry's position is that the completed Request Form was received by the ministry well after the 20 business days required by s.71 of the EAPWDR, so that it was reasonable for the ministry to refuse reconsideration.

#### *Panel Decision*

The legislation requires the appellant to request reconsideration on the specified form HR0100 within 20 business days of being notified of the disputed decision. In this case, the appellant notified the ministry of her desire to request reconsideration well within the 20 business days, but her notification was not on the specified form. The ministry then did not supply the appellant with the specified form until September 20<sup>th</sup>, and effectively ratified the delay to that time as being the result of the ministry's failure to provide the appellant with the specified form.

Accordingly, it was reasonable for time to start running when the ministry supplied the specified form. It was some 6 weeks between the time the ministry posted the form to the appellant on September 20 until the appellant signed it on November 1. Then it was almost 3 weeks until the form was received at the ministry's office. Even allowing for delays in the mail, the 20 business day time limit was exceeded by approximately 100%. The appellant has provided no justification for the delay. Accordingly, the panel finds that it was reasonable for the ministry to deny reconsideration.

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 s. 24(1)(b) of the EAA for the reasons outlined above. In view of this finding, the panel confirms under s. 24(2) of the EAA 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.