

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) decision dated December 18, 2012 which denied the appellant's request for reconsideration of the ministry decisions of July 4, 2012 that the appellant was not eligible for Income Assistance from November 2011 to June 2012 as she had assets in excess of her limits and that she had been over paid income assistant in the amount of \$9,114.64 on the basis that the appellant's request for reconsideration was submitted outside the legislated time frame (20 business days) pursuant to section 17 (1) of *the Employment and Assistance Act (EAA)* and section 79 (1) of the *Employment and Assistance Regulations (EAR)*.

## PART D – Relevant Legislation

*Section 17 (1) of the Employment and Assistance Act - EAA*  
*Section 79 (1) of the Employment and Assistance Regulations – EAR*

## PART E – Summary of Facts

The evidence before the ministry at reconsideration included:

- A copy of the overpayment chart for November 2011 to June 2012;
- A copy of the appellant's Bank Profile dated May 8, 2012 stating the value of a Canadian dollar as \$2,886.91 and US dollar for the amount of \$23,857.13;
- A letter from the ministry to the appellant dated July 4, 2012 stating that the ministry obtained and reviewed information relating to her bank accounts which indicates that they were in excess of her limits. The ministry informed the appellant that she might have been paid assistance in the amount of \$9,114.64 between November 2011 and June 2012 that she was not eligible for. The ministry requested that the appellant contact the ministry to set up a meeting to discuss the over payment;
- A letter from the ministry to the appellant informing her that she was not eligible for income assistance dated July 4, 2012;
- A copy of the Overpayment Notification dated July 4, 2012, signed by the appellant acknowledging that she received the notification;
- A copy of a letter from a Family Maintenance Worker to the appellant stating that she is no longer receiving assistance and there are no arrears of maintenance owing to government;
- A copy of the letter from the bank dated August 18, 2011 stating that the appellant has joint bank accounts with her daughter due to her daughter not being of legal age. The letter stated that the amount was deposited from an inheritance from the grandmother of the appellant's daughter;
- Request for reconsideration signed by the appellant on December 3, 2012.

In the request for reconsideration the appellant stated that she made a full financial disclosure when she applied for income assistance in August 2011. The appellant said that she applied for income assistance because her ex-husband has not been paying the court ordered child support. The appellant said that the money that was in her daughter's trust account came from her grandmother who left a portion of her estate to her granddaughter. The appellant submitted that she did not realize that her daughter's inheritance would result in her having an overpayment of \$9,114.64. The appellant said that she spoke with the ministry staff in May and later in July and was told that if she didn't hear from the ministry within 48 hours she should not be worried. The appellant said that she received the letter dated July 16, 2012 stating that she was not eligible for income assistance and that she owed money to the government. The appellant said that she spoke with the ministry on July 4, 2012 after receiving the initial letter and when she received the July 16<sup>th</sup> letter, she assumed that the matter was cleared and she did not have to contact the ministry.

The appellant submitted that she receives \$408.00 per month for child tax credit and had received child support since March 2012 which put her ex-husband \$15,000.00 in arrears. She said she cannot collect the money because her ex-husband is involved in illegal activities. The appellant stated that she has no resources to payback the overpayment. She sold her vehicle in June to pay court costs so she would not lose custody of her children.

The appellant in the Notice of Appeal submitted that she does not have any assets and the funds in the joint accounts with her daughter are not hers.

At the hearing, the appellant stated that when she received the ministry's letter dated July 16, 2012, she assumed that she did not owe any money to the ministry and that was why she didn't submit her request for reconsideration. The appellant said that she didn't understand that the ministry did not make a reconsideration decision because she did not submit her request for reconsideration earlier and she was under the assumption that today's hearing was regarding the money the ministry said she owed them. The appellant said that she has not touched her daughter's money and it is in a trust fund for her and she does not owe any money to the government.

The appellant further submitted that she could not remember whether she contacted the ministry to discuss the ministry's decision on July 12, 2012 because during that time, she was dealing with a family court matter regarding the custody of her children. She said that she didn't realize that the July 16<sup>th</sup> letter was from a Family Maintenance Worker as it was similar to the letters she received from the ministry regarding her income assistance. The appellant submitted that she did not receive any income assistance since July 2012 because she was told that she was not eligible; however, the appellant said that she did not submit a request for reconsideration until December 2012. The appellant stated that she cannot remember when she signed the Overpayment Notification dated July 4, 2012.

The ministry relies on its decision which determined that no reconsideration of this matter would be conducted by the ministry because the appellant filed her request for reconsideration after the time limit was expired pursuant to Section 79 of the EAR.

The following facts are not in dispute:

- The appellant received two letters from the ministry in July 2012 stating that she was not eligible for income assistance and that she might have been paid assistance in the amount of \$9,114.64 which was not eligible for;
- The appellant received the ministry's over payment notification (that she received \$9,114.64 income assistance that she was not eligible for) and signed the overpayment notification document; however, the appellant does not remember when she signed this document;
- The over payment notification signed by the appellant includes a statement informing the applicant that "If you disagree with the ministry's decision that you received assistance for which you are not eligible, you may request the ministry to reconsider that decision. A request for reconsideration must be delivered to the Employment Assistance Centre within 20 business days after the date you were notified of the decision";
- The appellant submitted her request for reconsideration on December 3, 2012.

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's decision dated December 18, 2012 which denied the appellant's request for reconsideration of the ministry decisions of July 4, 2012 because the appellant failed to comply with the time limits set out in section 17 of the EAA and section 79 of the EAR.

The time limits and rules for a request for reconsideration of a decision are set out in section 17 of the EAA and section 79 of the EAR.

Section 17 of the EAA provides:

- (1) Subject to section 18, a person may request the minister to reconsider any of the following decisions made under this Act or the regulations;
  - (a) a decision that results in a refusal to provide income 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 income assistance or a supplement provided to or for someone in the person's family unit;
  - (c) a decision that results in a reduction of income 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], 18 and 27 (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 this Act and the regulations.
- (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 income assistance, hardship assistance or a supplement is not appealable to the tribunal.

Section 79 of the EAR states;

- (1) A person who wishes the minister to reconsider a decision referred to in section 17 (1) 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 17 (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 79(1) and (2) of the EAR state that a person must deliver a request for reconsideration in the form specified by the minister to the ministry office within 20 business days after the date the person is notified of the decision. The panel notes that the appellant signed the Overpayment Notification indicating the following:

- The ministry determined that the appellant received \$ 9,114.64 of assistance that she was not eligible for it;
- The overpayment was a debt to the government and the appellant was liable to repay under section 27 (1) of the EAA;

- The minimum amount that would be deducted from the appellant's assistance to repay the debt is \$10 per month;
- If the appellant disagreed with the decision she may request the ministry to reconsider the decision;
- The request for reconsideration must be delivered to the Employment Assistance Centre within 20 business days after the appellant was notified;
- The appellant by signing the document also acknowledged that she received the notification and was aware of her right to request a reconsideration of the decision.

The ministry relies on the reconsideration decision.

The appellant argues that she thought that the matter was solved after receiving the July 16<sup>th</sup> letter and as such she thought she didn't need to take any actions including submitting her request for reconsideration. The appellant agreed that she was aware that she was not receiving any income assistance; however, she said that she decided not to contact the ministry because of the ministry's claim that she owes money to them. The appellant further argues that she was going through a very difficult time dealing with the custody for her children and does not remember reading and signing the Overpayment Notification but agreed that the signature on the document was hers.

The panel finds that the appellant had been notified of the decision that denied her income assistance and informed her of the over payment in July 2012. The panel further finds that the appellant was advised of her right to request reconsideration of the decision, and of the time limits to submit the request for reconsideration. The panel considered the appellant's difficulty dealing with the family court matter and that she thought the letter from the Family Maintenance Worker was from the ministry stating that she did not owe any maintenance to the government; however, the panel finds that the time limits as described in the section 79 of the EAR are not discretionary.

The panel finds that the appellant did not submit the request for reconsideration within the 20 days limit set out in section 79(2) of the EAR and as required by section 17(2) of the EAA. The panel finds that the ministry's decision to deny the appellant's request for reconsideration was a reasonable application of the applicable legislation in the circumstances of the appellant and therefore, the panel confirms the decision.