

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated February 13, 2013 which found that the appellant did not deliver a completed Request for Reconsideration to the ministry within the time limit mandated by Section 71 the Employment and Assistance for Persons with Disabilities Regulation and, therefore, is not entitled to a reconsideration of the ministry's decision that he is no longer eligible for assistance for failure to provide requested information, pursuant to Section 16 of the Employment and Assistance for Persons With Disabilities Act.

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

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Letter from the ministry to the appellant dated September 18, 2012 stating in part that the ministry requires listed information or documentation in order to determine his eligibility for assistance;
- 2) Letter from the ministry to the appellant dated October 9, 2012 stating in part that the appellant was sent a letter on September 18, 2012 requesting specific information which has not yet been provided to the ministry;
- 3) Letter from the ministry to the appellant dated October 9, 2012 stating in part that the appellant's cheque for the month of November will be held until the requested information has been received by the ministry;
- 4) Letter from the ministry to the appellant dated November 15, 2012 stating in part that the ministry has not received requested information from the appellant, his eligibility cannot be determined and, therefore, he is no longer eligible for assistance. His file will be closed on December 13, 2012. The letter included the statement: "If you are dissatisfied with this decision, you can ask the ministry to reconsider it; you have 20 business days from the day you receive this letter to submit a complete Request for Reconsideration form;" and,
- 5) Request for Reconsideration dated January 28, 2013.

The ministry relied on its reconsideration decision which included that the appellant has been in receipt of disability assistance as a single person and last received assistance on November 6, 2012. The ministry also provided evidence from the notes made on the appellant's file with the ministry as to the ministry's interactions with him, as follows: On September 10, 2012, the ministry spoke with the appellant and explained process and letter he will be receiving requesting information. The appellant told the ministry that he has a sister who can assist in getting information via fax to the ministry. A letter requesting information was mailed to the appellant on September 18, 2012. Some information was provided by the appellant and a second letter was sent by the ministry to the appellant on October 9, 2012 following up for the remaining information. On October 22 and 23, 2012, the ministry spoke with the appellant about providing the outstanding information. On October 29, 2012 the ministry spoke with the appellant who stated he is going to surgery and will be back on November 2, 2012, and it was agreed the information could be submitted after November 2, 2012.

On November 7, 2012 the ministry spoke with the appellant who refused to provide requested information and disengaged call. A letter was sent to the appellant on November 15, 2012 advising him that he had been denied disability assistance due to failure to provide information as directed and setting out the appellant's right to reconsideration. On November 28, 2012 the ministry spoke with the appellant who stated that he is blind and cannot read the letter. The ministry informed the appellant that the decision letter could be read to him and explained his right to reconsideration and the appellant disengaged the call. On December 18, 2012 the ministry spoke with the appellant from a new contact number and the appellant stated that he is aware that his file is closed and that he can apply for an extension of the time for a request for reconsideration and the appellant disengaged the call. On January 10, 2013 the ministry spoke with the appellant and he requested a right to reconsideration of the ministry's decision. The ministry advised the appellant of the lapsed time limits and that he would need to include the circumstances to why an extension is required. On January 31, 2013, the appellant submitted a Request for Reconsideration.

In his Notice of Appeal, the appellant stated that he is requesting an extension of the appeal process. He disagrees with the ministry's reconsideration decision because he has been blind since July 2012. The appellant stated that during the period of October/November 2012 he was in and out of hospital for eye operations. He has had 3 operations so far but he is still unable to see. The appellant stated that during this period he had no help with the paper work. His sister is now helping him. He is unable to work, drive, or live without assistance. He has no income, no money at all.

In his Request for Reconsideration the appellant stated that he is blind. He has trouble getting help to see in order to fill out forms. The appellant stated that he was so stressed with being cut off from his only source of money, and he was not able to respond within the time for appeal.

At the hearing, the appellant stated that he did not understand that as part of his Request for Reconsideration he had to say why he needed an extension of the time. The appellant stated that he has diabetes and he has ended up having 3 operations to try to correct his vision but it has not worked. As a result of his diabetes, he has also faced the possibility of having part of his foot amputated. The appellant stated that he cannot see to drive and he cannot move about very well. At the time, he lived in a trailer in a small community and had difficulty getting to the mail box which is along a gravel road with many pot holes. The appellant stated that he has gone through number of stressful events with his house burning down a while ago, the tenant was not paying rent, and the problems with his vision and then he found himself caught up in this "horrendous bureaucracy." The appellant stated that his sister finally helped him with the paper work and he is currently sleeping on her couch at a different address. The appellant stated that it is hard to rely on others to do this for him. The appellant stated that he needs to get this process over with so he can get some income, buy some food and get his bills paid. The appellant stated that all of this stress has not helped with his recovery from his eye operations. In response to questions, the appellant stated that he does not remember the specific dates of the conversations with the ministry but he does remember being very frustrated in his initial interactions with the ministry because he had nobody to help him. He recalled that the conversation with a supervisor on January 10, 2013 was when he really understood that the time for requesting a reconsideration of the ministry's decision had expired. The appellant stated that this was such a stressful time for him, that he has never had to deal with something like this before and he cannot read letters or look at the computer screen to get information.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision, which found that the appellant did not deliver a completed Request for Reconsideration to the ministry within the time limit mandated by Section 71 the Employment and Assistance for Persons with Disabilities Regulation and, therefore, is not entitled to a reconsideration of the ministry's decision that the appellant is no longer eligible for assistance for failure to provide requested information, pursuant to Section 16 of the Employment and Assistance for Persons With Disabilities Act, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstances.

Section 16 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), provides:

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.

Section 71 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) provides:

How a request to reconsider a decision is made

- (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 was "notified" of the decision on November 15, 2012 when the appellant was sent a letter advising him of the ministry's decision and his right to reconsideration. The ministry argues that the 20 business day time limit began to run on November 15, 2012 when the appellant was notified of its decision, which would result in a deadline of December 13, 2012 for delivery of a Request for Reconsideration of the decision. The ministry argues that the signed Request for Reconsideration was not returned to the ministry until January 31, 2013, which exceeds the time limits permitted under the EAPWDR.

The appellant's position is that he has been blind since July 2012 and during the period of October/November 2012 he was in and out of hospital for eye operations and had other stressful events such as his house having burned down, the tenant not paying rent, and being cut off from his only source of income. The appellant argues that he has never been through this process before and, during this period, he had no help with the paper work but his sister is now helping him. The appellant argues that, due to his circumstances, an extension of the time period for submitting the Request for Reconsideration should be granted.

Section 71 of the EAPWDR stipulates that a person who wishes the ministry to reconsider a decision must deliver a Request for Reconsideration to the ministry within 20 business days after the date the person is "notified" of the decision. The appellant states he could not read the ministry's November 15, 2012 letter to him due to his blindness as a complication of his diabetes, and the panel finds that the appellant was notified of the ministry's decision to deny disability assistance when the ministry explained the contents of the November 15, 2012 letter and his right to reconsideration during a telephone conversation with the appellant on November 28, 2012. The 20 business day time limit for delivery of the Request for a Reconsideration, as set out in Section 71 of the EAPWDR, would, therefore, begin to run from November 28, 2012. Section 71(1) further requires that the Request for Reconsideration must be "in the form specified by the minister", and there is no dispute that the completed Request in the form specified by the minister was not delivered by the appellant to the ministry until January 31, 2012. In his Request for Reconsideration, the appellant stated that he was not able to respond within the time for appeal, that he is blind and has trouble getting help in order to fill out forms. The panel finds that there is no evidence that the ministry granted an extension of time based on the appellant's explanation for not responding within the required time period. Therefore, the panel finds that the Request for Reconsideration was not delivered to the ministry within the mandated 20 business days from the date that the appellant was notified of the ministry's decision, or prior to December 28, 2012.

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, our jurisdiction is limited to confirming the ministry's decision.

The panel confirms the ministry's decision that there is no right to reconsideration under Section 24(2)(a) of the EAA.