

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated January 3, 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 she received assistance for which she is not eligible and is required to repay this amount, 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) Cheque dated December 8, 2011 to an educational institution for \$5,300 as a tuition fee deposit;
- 2) Receipt dated January 10, 2012 from an educational institution for the appellant's tuition fee;
- 3) Letter from educational institution 'To Whom It May Concern' dated February 7, 2012 stating in part that the appellant is currently enrolled in their 19 month full-time dental hygiene program which commenced January 23, 2012;
- 4) Fax dated December 14, 2012 from an advocate to the ministry attaching the Request for Reconsideration and stating in part that the appellant was out of the country until October and did not receive the EIA100 (reconsideration documents) until November 30, 2012 (note added: December 14, 2012); and,
- 5) Request for Reconsideration dated December 14, 2012.

In her Notice of Appeal, the appellant stated that \$5,300 was paid to the educational institution as tuition and the cheque given by her husband for \$997 in September 2011 was not accepted by the bank due to improper signatures. The appellant wrote that she would like to explain the sequence of events that lead to delay of the Request for Reconsideration.

At the hearing, the appellant provided a written summary of her evidence, dated February 12, 2013. The ministry did not object to admission of this document. The panel reviewed the document and accepted the written submission as providing further details of the sequence of events leading to the appellant's Request for Reconsideration and being in support of the information before the ministry on reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

At the hearing, the appellant stated that she has the assistance of a support worker to communicate with people and help her fax documents. The appellant stated that the first Investigative Officer (IO) that she and her support worker were dealing with from the ministry requested a letter from the bank regarding the cheque that her husband gave her for \$997 and which was not honoured. The appellant stated that her support worker faxed that letter to the ministry. The appellant stated that another IO took over her file and she communicated regularly with him and thought that she had provided everything that he wanted.

The appellant stated that she never received any communication or correspondence from the ministry in April 2012 with regard to the overpayment established. She was in contact with the Investigative Officer (IO) and she believed that she had provided all the required documentation. The appellant stated that her last class in her program was on June 27, 2012 and her doctor advised that she needed to take a break from the program until her arm is treated. The appellant stated that from the middle of July 2012 to October 5, 2012 she was in another country receiving medical treatment. When she returned to Canada in October 2012, she discovered invoices from B.C. Revenue Services dated August, September and October, 2012 for an overpayment and this was the first notification that she received about the overpayment. The notice did not detail what the overpayment was for, so the appellant called immediately to inquire about it. The appellant stated that she was very surprised when she was told it was an overpayment with the ministry. The appellant stated that her income assistance benefits were terminated in November 2011. The appellant stated that she and her support worker contacted the IO to inquire about the details of the overpayment and how it was established. The IO said he would look into the details and call the appellant back later. The appellant stated that she asked the IO to send her the reconsideration appeal forms so that she could file her appeal and he said that he would send them to her.

The appellant stated that a month went by and she did not receive a call from the IO about the overpayment details and she did not receive the reconsideration appeal forms either. On November 27, 2012, the appellant and her support worker called the IO again and advised him that the appellant had not received the reconsideration appeal forms, and he stated that he had calculated the overpayment to be a lesser amount, or \$245.80. Later that same day, the IO called back and stated that he recalculated the overpayment and

confirmed that the original figure of \$1,242.08 was correct. The IO again told the appellant that he would send her the reconsideration forms. The appellant stated that her support worker had put her in contact with an advocate who said that she needed the reconsideration documents to be able to help the appellant. In early December 2012, the appellant called the IO again and informed him that she still had not received the reconsideration forms and he stated he would send them. The appellant stated that she finally received the reconsideration appeal forms package on December 12, 2012 and it included the original notification of overpayment letter but it was the first time that she had seen it. The appellant went with the forms to an advocate on December 14, 2012 and the completed forms were faxed to the ministry on the same day. The appellant stated that sending such a letter via registered mail would ensure that the letter is received. In response to a question, the appellant confirmed that her address has not changed since April 2012.

The ministry relied on its reconsideration decision. At the hearing, the ministry's confirmed that the appellant has Person With Disabilities (PWD) designation as of June 2011. The appellant was originally advised that she was required to repay the assistance she received for which she was not eligible on April 18, 2012 via telephone with an IO of the ministry. The ministry clarified at the hearing that there was no note made in the ministry file on April 18, 2012 to confirm that the IO advised the appellant of her right to reconsideration at that time. The ministry stated that the decision made at that time by the IO to pursue the overpayment would be reviewed and confirmed by a supervisor. The ministry stated that, in the normal process, a letter sent to the appellant on April 18, 2012 would advise of her right to reconsideration but there is no reference to whether the reconsideration documents were also enclosed at that time. On April 25, 2012, the appellant's file with the ministry automatically closed since there were two months with no assistance paid. On April 30, 2012, the appellant and the IO had a conversation and the appellant was advised of documents that she was required to provide. The ministry clarified that there are no notes in the ministry file to indicate that the appellant provided the required documents. The ministry stated that the usual process is for a series of letters to be sent to the client, likely in May, June and July, 2012, and if the overpayment is not paid, that the file would then be transferred to B.C. Revenue Services for collection. The ministry acknowledged that it cannot be proven that the April 18, 2012 letter went out to the appellant, but this is the normal process and it is usually followed and her address has not changed. The ministry acknowledged that the letter was likely not dated due to a problem with the computer system.

## 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 of the Employment and Assistance for Persons with Disabilities Regulation and, therefore, is not entitled to a reconsideration of the ministry's decision that she received assistance for which she is not eligible and is required to repay this amount, 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.

Under Section 16 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), which covers reconsideration and appeal rights, 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.

Under Section 71 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR),

- (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 of the overpayment on April 18, 2012 via a telephone conversation with an IO of the ministry. The ministry argues that the reconsideration notification and forms were likely mailed to the appellant as a letter would have been forwarded to her on April 18, 2012, in the normal course. The ministry argues that the 20 business day time limit began to run when the appellant was notified of its decision, and this time period had long since lapsed by the time the appellant submitted a Request for Reconsideration.

The appellant acknowledges that she had conversations over the telephone and also met with an IO of the ministry regarding a child support payment received from her husband and monies that she paid to an educational institution, that she likely spoke to the IO on April 18, 2012, but that the IO had asked for a letter from her bank and copies of cheques, and she believed she had provided all the required documents. The appellant argues that she did not receive an overpayment notification letter in the mail and that she was completely unaware that she had an overpayment with the ministry until she returned to Canada in October 2012, at which time she received the invoices from B.C. Revenue Services. The appellant argues that upon her return to Canada, she requested several times that the IO forward the reconsideration appeal forms so that she could file an appeal and that the IO said he would send them to her. The appellant argues that she did not receive the reconsideration forms and the overpayment notification letter until December 12, 2012. The appellant argues that she took the forms to an advocate within two days and the completed form was faxed to the ministry on December 14, 2012. The appellant argues that she should be given a fair and reasonable opportunity to appeal the overpayment decision and be granted a reconsideration decision by the ministry.

Section 71 of the EAPWDR (the ministry mistakenly referred to Section 79 in its decision) 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. Although the ministry argues that the appellant was notified of the ministry's decision to pursue an overpayment on April 18, 2012 by way of a telephone conversation with an IO, and that a follow-up letter would be sent in the normal course, the appellant states that the IO did not advise her that the ministry had decided to pursue the overpayment and that she did not receive an overpayment notification letter via the mail in April 2012. The ministry did not provide a copy of the letter that the ministry states was likely sent to the appellant on April 18, 2012 and admits that the letter would not have a date due to a problem with the computer system at the time, and that the file notes do not indicate whether the reconsideration forms were enclosed with the letter. As the time period for a right to reconsideration of the ministry's decision begins to run from the date the person is notified of the decision, the panel finds that the evidence of the date of the notification must be clearly established by the ministry. The appellant states that she received the overpayment notification letter together with the reconsideration forms on December 12, 2012, and the panel finds that the appellant was notified of the ministry's decision to pursue the overpayment on December 12, 2012. As the appellant delivered her Request for Reconsideration to the ministry by fax on December 14, 2012, the panel finds that it was delivered within the 20 business days after the appellant was notified of the decision, pursuant to Section 71 of the EAPWDR.

Section 16(3) of the EAPWDA (the ministry mistakenly referred to Section 17 in its decision) 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 Section 24(1)(b) of the Employment and Assistance Act for the reasons outlined above. In view of this finding, the panel rescinds 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.