

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the "Ministry") February 8, 2013 decision that the Appellant had no right to a reconsideration because her request for reconsideration of an October 18, 2012 denial of her application for Persons with Disabilities ("PWD") designation was not submitted to the Ministry until February 7, 2013, more than the 20 business days stipulated in section 71(2) of the Employment and Assistance for Persons with Disabilities Regulation.

### 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

For its reconsideration decision the Ministry had the following evidence:

1. The Appellant's application for PWD designation, submitted on September 13, 2012.
2. The Ministry's October 18, 2012 denial of the Appellant's application.
3. Information from its records indicating that the Appellant contacted the Ministry on October 29, 2012 requesting a reconsideration of that denial. The Appellant stated that she was informed of the decision by phone on October 19, 2012 and received the denial letter on October 26, 2012. The Ministry provided contact information for an advocate and informed the Appellant that she could ask for an extension of time if needed for a legitimate reason.
4. The Appellant's completed request for reconsideration, signed on November 29, 2012.
5. Fax transmittal from an advocate for the Appellant dated February 7, 2013 and stating "please accept [the Appellant's] appeal for PWD benefits", with the reconsideration request.
6. Ministry records indicating the Appellant's request for reconsideration was submitted to the Ministry on February 7, 2013 and that the Ministry's decision was due on February 22, 2013.

For this appeal, the Appellant's advocate submitted written arguments and additional medical information to support the Appellant's application for PWD designation. In the submission, the advocate stated that the request for reconsideration was submitted within the noted timeline.

The Ministry relied on its February 8, 2013 decision.

The Panel makes the following findings of fact:

1. The Ministry denied the Appellant's PWD application on October 18, 2012 and phoned her about the denial on October 19, 2012.
2. The Appellant received the Ministry's written denial on October 26, 2012.
3. The Appellant's request for reconsideration was submitted to the Ministry on February 7, 2013.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant had no right to a reconsideration because her request for reconsideration of an October 18, 2012 denial of her application for PWD designation was not submitted to the Ministry until February 7, 2013, more than the 20 business days stipulated in section 71(2) of the EAPWDR.

### Applicable Legislation

The following sections of the EAPWDA apply to the Appellant's circumstances in this appeal:

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;
- (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.

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal:

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 Parties' Positions

The Ministry's position is that it received the Appellant's request for reconsideration more than 20 business days after the date she was notified of the decision to deny her application for PWD designation. Therefore, the Ministry determined that the Appellant has no right to reconsideration.

The Appellant's position is that her request for reconsideration was submitted within the noted timeline and therefore the Ministry should proceed with the reconsideration.

### The Panel's Findings

The Panel finds that there is no dispute that the Appellant was notified by phone on October 19, 2012 and then received the Ministry's letter on October 26, 2012 about the denial of her PWD application. There is also no dispute that the Appellant submitted her request for reconsideration through an advocate on February 7, 2013, more than 3 months past the 20 business day time limit in section 71(2) of the EAPWDR. There is no evidence in the record that the Appellant asked for an extension of time within which to submit the reconsideration request. Therefore, the Panel further finds that the Ministry reasonably determined that the Appellant's request for reconsideration was not submitted within the 20 days stipulated in section 71(2) of the EAPWDR and accordingly that she does not have

the right to a reconsideration.

Section 16(3) 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 for the reasons stated above. In view of this ruling, the Panel confirms, under section 24(2), the Ministry's decision that there is no right to reconsideration. It follows that the Appellant is not entitled to have her request for reconsideration proceed to reconsideration.