

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (ministry) decision dated May 6, 2013, which denied the appellant's request for reconsideration of the ministry's decision of February 15, 2013 on the grounds that the appellant's request for reconsideration was submitted outside the time frame of 20 days prescribed under section 17 of the Employment Assistance Act (EAA) and section 79 of the Employment assistance Regulations (EAR). In its February 15, 2013 decision, the ministry determined that the appellant was not eligible for income assistance from November 2012 to January 2013 as he was in receipt of Canada Pension Plan (CPP) income of \$862.24 per month, which must be included when calculating income assistance, and that the appellant was overpaid income assistance amounting to \$1865.00 for 3 months at the rate of \$610.00 per month.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 17
Employment and Assistance Regulation (EAR), section 79

PART E – Summary of Facts

The evidence before the ministry at reconsideration included:

1. Application for Income Assistance from the appellant dated November 5, 2012 which, *inter alia*, states that the appellant was receiving monthly benefits from CPP in the amount of \$862.24 per month;
2. An Overpayment Chart dated February 15, 2013 detailing an overpayment of \$1865.00 to the appellant for the period November 2012 to January 2013;
3. An undated but duly acknowledged and signed Overpayment Notification by the appellant. The Overpayment Notification informs the appellant, *inter alia*, that: (a) the ministry has determined that there has been an overpayment to the appellant of income assistance amounting to \$1865.00; and (b) if the appellant disagrees with the said decision, he must submit a request for reconsideration to the Employment Assistance Centre within 20 business days after the date the appellant was notified of the decision.
4. Request for Information (Sections 1 and 2) completed on February 15, 2013 by a worker at the ministry, which, *inter alia*, states that: (a) the appellant signed an Application for Income Assistance on November 5, 2012 in which he declared that he was receiving monthly benefits from CPP in the amount of \$862.24 per month; (b) the appellant was deemed by the ministry to be eligible for income assistance and received monthly assistance benefits of \$610.00 per month from November 2012 to January 2013; (c) On February 6, 2013, the appellant contacted the ministry to enquire about income assistance for February 2013; (d) the ministry reviewed the appellant's file and determined that he was deemed eligible in error in the past on the grounds that the appellant was in receipt of CPP income of \$862.24 per month, which should have been included in calculating the appellant's eligibility for income assistance; (e) the CPP income of \$862.24 is higher than the income assistance of \$610.00 per month; (f) the appellant was advised of the overpayment on February 13, 2013; (g) the appellant signed an Overpayment Notification and was advised of his right to reconsideration on February 15, 2013; and (h) the appellant contacted the ministry on March 26, 2013 to request reconsideration of the ministry's decision dated February 15, 2013 and was advised that his request was past the 20 days that are allowed to reconsider the ministry's decision;
5. An file note ("History") created by a worker at the ministry on February 15, 2013, which, *inter alia*, notes that: (a) the appellant was at the ministry to discuss overpayment; (b) the overpayment was reviewed with the appellant in detail; (c) the appellant was provided with an overpayment chart and an overpayment notification; (d) the appellant was explained his right to reconsideration in detail and was provided with an advocate list;
6. Reasons for Request for Reconsideration (Section 3) dated April 23, 2013 completed by the appellant in which he made submissions to the effect that: (a) he applied for income assistance support in November 2012; (b) he supplied copies of his bank statements to the ministry; (c) he disclosed to the ministry about his CPP income of \$862.24; (d) had appellant known that he would be penalized and incur significant overpayment charges, he would never have applied for income assistance; (e) the overpayment charge incurred by the appellant has resulted in substantial harm, aggravation and enormous stress to his over burdened disable

condition; (f) the ministry should have detected his income status, including the CPP income disclosed by him; and (g) the appellant is severely hampered by the ministry's determination of the overpayment.

The appellant has filed a Notice of Appeal dated May 17, 2013 in which he, *inter alia*, states that: (a) he had made a total disclosure of his CPP income; (b) the ministry had requested termination of the appellant's health and financial aid from another Province, which had left him without proper medical aid and led to his financial ruin; (c) the ministry's errors have caused medical and financial hardship for the appellant.

At the beginning of the hearing of the appeal, the appellant requested that a representative of his be permitted to attend and participate in the appeal proceedings, both as his advocate as well as a witness. The ministry representative did not object to this request and therefore the appellant's representative was permitted to participate in the appeal proceedings on behalf of the appellant.

Although the appellant and his representative were informed by the panel at the beginning of the appeal hearing that the appeal is in respect of the ministry's reconsideration decision dated May 6, 2013, and not about the merits of the earlier decision of the ministry dated February 15, 2013, both the appellant and his advocate, *inter alia*, made a number of submission relating to the merits of the February 15, 2013. From amongst these, the submissions most relevant to this appeal were as follows:

- The appellant confirmed that he was in receipt of the full Record of Ministry's decision dated May 6, 2013;
- The appellant was informed about the ministry's earlier decision dated February 15, 2013 on the same date. On the same date: (a) he had also received from the ministry the Overpayment Chart for the period November 2012 and January 2013 and the Overpayment Notification (referred to above); (c) he was informed about his right to request a reconsideration of the decision dated February 15, 2013 within 20 business days after the notification of the decision; (d) he signed the Overpayment Notification on February 15, 2013. The Notification expressly highlights that "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"; (e) between February 15, 2013 and March 26, 2013, the appellant faced a number of medical and financial challenges, which prevented him from submitting the reconsideration request until April 26, 2013; (f) apart from his ill health, the appellant also had difficulty in obtaining the services of an advocate. Therefore he had requested the ministry to grant him extension of time to submit the reconsideration request; and (g) the extenuating circumstances that had resulted in the delay in the submission of the reconsideration request were never communicated by the appellant or his advocate to the ministry within 20 business days of that decision of February 15, 2013 i.e. by March 16, 2013.

The ministry representative relied upon the decision dated May 6, 2013 and submitted that the appeal is about the said May 6 decision and not about the merits of the ministry's decision dated February 15, 2013. The ministry's representative highlighted a "History" note in the Record of appeal about a discussion on February 15, 2013 between the ministry and the appellant. As stated hereinbefore, this historical record notes that the appellant was explained his right of reconsideration in detail and was provided with an advocate list. The ministry's representative also submitted that although the appellant had a right to request an extension of time for making a reconsideration request, the

ministry had never approved such a request.

The ministry's representative acknowledged that the overpayment of \$1865.00 had come about as a result of the error of the part of the ministry and acknowledged that there was no intention on the part of the appellant to mislead the ministry through his Application for Income Assistance, which had clearly disclosed the CPP benefits being received by the appellant.

Based on the relevant evidence and foregoing submissions of the appellant and the ministry's representative, the panel makes the following findings of fact:

1. The appellant was at the ministry on February 15, 2013 to discuss overpayment of income assistance to him;
2. The overpayment was reviewed by the ministry with the appellant in detail on the same date;
3. The appellant was provided with an Overpayment Chart and an Overpayment Notification on the same date;
4. The appellant was explained his right to reconsideration in detail and was provided with an advocate list on the same date; The appellant had understood and acknowledged his right to reconsideration request by signing the Overpayment Notification on February 15, 2013;
5. The appellant did not submit a request for reconsideration to the ministry until March 26, 2013;
6. On the date of the reconsideration decision dated May 6, 2013, there was no record before the ministry of any extenuating circumstances for the delay in the request for reconsideration of the February 15, 2013 decision.

PART F – Reasons for Panel Decision

The issue on this appeal is whether or not the ministry reasonably determined that the appellant is not entitled to a reconsideration decision from the ministry in respect of its decision dated February 15, 2013 and whether the denial of the reconsideration was a reasonable application of the enactment in the circumstances of the appellant. The ministry determined that a reconsideration decision could not be provided because the appellant's request for reconsideration was submitted outside the time frame of 20 days prescribed under section 17 of the Employment Assistance Act (EAA) and section 79 of the Employment assistance Regulations (EAR).

The time frame and rules relating to a request for reconsideration are set out in section 17 of EAA and section 79 of EAR, which are respectively as follows:

Reconsideration and Appeal Rights - EAA

17. (1) Subject to section 18, 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 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.

How a Request to Reconsider a Decision is Made - EAR

79 (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.

The appellant's position was that he made a full disclosure of his income sources to the ministry at the time of his application for income assistance in November 2012. The ministry's decision at that time to grant him income assistance was an error on the part of the ministry. He acknowledged that although he was notified about this decision on February 15, 2012, he had requested extension of time to appeal against the minister's said decision. He further contended that had he known that he would be penalized and incur significant overpayment charges, he would never have applied for income assistance. The overpayment charge incurred by the appellant has resulted in substantial harm, aggravation and enormous stress to his over burdened disable condition.

The ministry acknowledged that the overpayment of \$1865.00 had come about as a result of the error of the part of the ministry and that there was no intention on the part of the appellant to mislead the ministry, as the appellant has made full disclosure about the CPP benefits being received by the appellant. However, the ministry served a Notice of Overpayment to the appellant on February 15, 2013 and on the same day also explained to the appellant in detail his appeal rights and the timeline relating thereto, which expired on March 26th 2013. The ministry also acknowledged that the appellant had requested extension of time to appeal against the minister's decision of February 15, 2013, but that extension request had never been approved. The ministry's position was that the ministry received the appellant's request for reconsideration on April 26th, 2013, which was past more than the 20 business days allowed under the relevant legislation.

Having regard to the panel's finding of facts in Section E of this decision, the panel is of the view that the evidence establishes that the appellant was advised of his right to reconsideration on February 15, 2013 and was also advised of the 20 business days timeline for the delivery of the request for reconsideration expiring on March 16, 2013. The panel is also of the view that the evidence establishes that the appellant did not deliver his request for reconsideration to the ministry until March 23, 2013. This date is outside the 20 business days from the date of being informed of the ministry's decision on February 15, 2013 as required by Section 79 of the EAR.

Section 17(3) of the EAA 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 the ministry's determination that the appellant did not have the right to reconsideration is a reasonable application of the applicable enactment in the appellant's circumstances under section 24 (1) (b) of the EAA for the reasons outlined above. In view of this finding, the panel confirms under section 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. The panel therefore confirms the decision of the ministry.