

## PART C – Decision under Appeal

Under appeal is the Ministry of Social Development's (ministry) decision of March 21<sup>st</sup>, 2013 wherein the ministry determined that a reconsideration is not available to the appellant because the appellant did not deliver a completed Request for Reconsideration of the ministry's decision of December 13<sup>th</sup>, 2012 to the ministry within the legislated 20-business day time limit as stated under section 79(2) Employment and Assistance Regulation (EAR). The request for reconsideration was not submitted until March 13<sup>th</sup>, 2013 and the deadline for submission was January 15<sup>th</sup>, 2013.

## 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 the time a reconsideration was:

- Request for reconsideration dated March 8<sup>th</sup>, 2013.
- Ministry's decision dated December 13<sup>th</sup>, 2012 that determined the appellant was ineligible for income assistance under section 10 EAA for failing to provide all requested documentation and for possibly having assets in excess of the limits set out in section 11 EAR.
- The electronic notes of the ministry's file for the appellant.

The ministry's electronic notes on file indicates that on December 13<sup>th</sup>, 2012, during a telephone conversation between the appellant and an Investigative Officer (IO), the appellant was advised that he was not eligible for income assistance because he was a full-time student and for having assets (purchased a home) with a total value in excess of \$10,000. During this conversation the appellant was advised he needed to provide/submit a list of documents so a review could be conducted and his eligibility determined. The file notes indicate that later this same date (December 13<sup>th</sup>, 2012) the appellant met with the IO in the IO's office. The appellant produced a blank withdrawal application withdrawal form as proof that he had withdrawn from educational classes. The appellant was advised this was not acceptable as proof of withdrawal. The appellant advised the IO that he does own his own home in BC that is valued at over \$100,000 dollars. When asked how he had paid for the home, the appellant responded that he had not paid for it yet, that he had not made a mortgage payment. When asked if he still had the money from the sale of his previous home, the appellant would not respond. The file indicates the IO then advised the appellant that his is not eligible for assistance as a full time student and assets in excess. The file notes indicate the appellant refused to understand and stated that he could have assets up to \$200,000. The file indicates "client (appellant) is not PWD (does not have a Persons with Disabilities designation) and a new application and it was an admin error that he was even issued in the first place. This file is going to be closed by Investigative Officer as there is no eligibility. Client does have the right to appeal. There are no appeal benefits to be issued he did not receive I.A. (income assistance) last month. Request for Reconsideration had to be submitted to ministry by January 15<sup>th</sup>, 2013."

On January 24<sup>th</sup> the appellant's advocate contacted the ministry and was informed of the documents the appellant needed to provide to determine his eligibility for income assistance. The advocate was advised this decision was no longer appealable because the time limit had passed but the appellant could re-apply for income assistance.

On February 18<sup>th</sup>, 2013 another advocate contacted the ministry and was advised that although the 20 business day period to submit a Request for Reconsideration had lapsed; the appellant still had the right to request a reconsideration if he wished.

On March 13<sup>th</sup>, 2013 the ministry received the appellant's Request for Reconsideration.

In the appellant's written submission he provided the following documents:

1. 10 photocopied pages of electronic notes from the ministry's file for the appellant covering the period from October 22<sup>nd</sup>, 2012 to February 25<sup>th</sup>, 2013;
2. Letter dated November 30<sup>th</sup>, 2012 from a medical practitioner (MP) advising the appellant is experiencing some deterioration in his medical condition and to discontinue his participation in a specific study program.
3. Letter dated December 13<sup>th</sup>, 2012 from an educational facility regarding the appellant and the terms of the Part-Time Studies loan and grant program;
4. Hand written list of information requested on December 13<sup>th</sup>, 2012;
5. Canada Post rental information report dated December 27<sup>th</sup>, 2012;
6. Several documents that do not relate to his appeal, i.e. acquisition of property, Persons with Disabilities application, unrelated Reconsideration Decision, letters from education facility regarding his studies.

The panel finds the documents numbered 1, 3, 4 and 5 above provided by the appellant contain information relevant to the issue under appeal and that these documents contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore are admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The panel finds the documents numbered and the documents contained in number 6 provided by the appellant do not contain information relevant to the issue under appeal and that these documents do not contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore are not admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The appellant's submission is that he didn't receive a written copy of the ministry's decision (denied income assistance) of December 13<sup>th</sup>, 2012; that the ministry did not inform him of his right of appeal to appeal this decision; and that he was not made aware that he needed to submit a Request for Reconsideration by January 15<sup>th</sup>, 2013 to have this decision reviewed. The appellant submitted that the IO refused to accept documentation already submitted; put false information in his file and referred to false information in the file for which the appellant has made an information request. The appellant submitted that when he left the IO's office on December 13<sup>th</sup> with the list of documents the ministry wanted/needed he did not understand that he was being denied assistance; that he understood that he needed to provide more information when a final decision would be made. The appellant submitted that the reason he went to the ministry office on December 13<sup>th</sup>, 2012 was to determine why he had not received a payment. The appellant submitted the ministry didn't inform him at that time on the result of the Reconsideration decision; that the decision was mailed to a former address as he was in the process of moving. The appellant submitted that it was January 24<sup>th</sup>, 2013 when the ministry made the decision to deny him income assistance because it was on this date that his advocate called the ministry and was informed the appellant had been denied assistance and his file was closed. The appellant submitted that the amount of information requested for basic eligibility is excessive and the process is flawed.

The appellant submitted that the request for reconsideration was submitted within 20 business days of this date (January 24<sup>th</sup>, 2013) which meets the legislated guideline.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of ministry's decision of March 21<sup>st</sup>, 2013 which determined that the appellant was not allowed a reconsideration of the ministry's decision of December 13<sup>th</sup>, 2012 because the appellant did not deliver, in the form specified, a completed Request for Reconsideration to the ministry within the legislated 20 business day time limit as set out under section 79(2) EAR.

The legislation considered:

Employment and Assistance Act (EAA)

### Section 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 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 18

- (1) If a person reapplies for income assistance, hardship assistance or a supplement after
  - (a) the eligibility of the person's family unit for the income assistance, hardship assistance or supplement has been determined under this Act,
  - (b) a right of appeal under section 17 (3) has been exercised in respect of the determination referred to in paragraph (a), and
  - (c) the decision of the tribunal in respect of the appeal referred to in paragraph (b) has been implemented,
 no right of reconsideration or appeal exists in respect of the second or a subsequent application unless there has been a change in circumstances relevant to the determination referred to in paragraph (a).

## Employment and Assistance Regulation (EAR)

### Section 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.

In the written submission the ministry relied on criteria set out in section 79(2) EAR and argued the notes of December 13<sup>th</sup>, 2012 in the ministry's file confirms the appellant was informed of the ministry's decision and the appeal rights. The ministry argued that the appellant's file was closed on January 4<sup>th</sup>, 2013 as no contact had been received from the appellant. The ministry argued the next contact with the appellant was on January 24<sup>th</sup>, 2013 when the ministry was contacted by the appellant's advocate who was informed the appellant's file had been closed as the appeal period had expired, however, the appellant was welcome to reapply for income assistance. The ministry stated the appellant next contacted their office on February 14<sup>th</sup>, 2013 to request a reconsideration of the ministry's decision; a reconsideration package was prepared and the appellant delivered the package to the ministry's office on March 13<sup>th</sup>, 2013. The ministry argued the appellant did not meet the criteria set out in section 79(2) EAPWDR and is not entitled to a reconsideration. The ministry argued the deadline for receiving the request for reconsideration was January 15<sup>th</sup>, 2013.

In this appeal the appellant is relying on the fact that he did not receive a written copy of the ministry's December 13<sup>th</sup>, 2012 decision and therefore was not informed of this decision (that he was ineligible for income assistance) until January 24<sup>th</sup>, 2014. The evidence is that the appellant contacted the ministry on February 14<sup>th</sup>, 2013 to request a reconsideration (which was within 20 business days), a request for reconsideration was prepared for him, however, the reconsideration was not delivered to the ministry office as set out in section 79(1) EAR until March 13<sup>th</sup>, 2013 which is 34 business days later or 14 days past the legislated requirement set out in EAR.

The panel finds the legislative requirements for submitting a request for reconsideration set out in section 79(2) EAR are quite clear and the ministry and the appellant are compelled to comply with this legislation.

The evidence is that the electronic notes in the ministry's file indicated the appellant was told on two separate occasions on December 13<sup>th</sup>, 2012, once in-person and once on the phone, that he was not eligible for income assistance. The ministry file indicates that on December 13<sup>th</sup>, 2012 the IO gave the appellant a list of documents the ministry needed to determine his eligibility and the appellant acknowledges that he understood this instruction but he does not acknowledge that he understood that he was not eligible for income assistance. The ministry's file also indicates "Client does have right to appeal. There are no appeal benefits to be issued he did not receive I.A. last month." The appellant's file was closed on January 4<sup>th</sup>, 2013 as no contact had been received from the appellant.

The panel finds that the evidence supports the ministry's position that the appellant was informed on December 13<sup>th</sup>, 2013 of the ministry's decision that he was ineligible for income assistance; this requires that the appellant's request for reconsideration had to be delivered to the ministry by January 15<sup>th</sup>, 2013.

The panel finds there is no legislation within the EA Act or EA Regulation that sets out that the ministry must deliver their decision in writing to an applicant or recipient of assistance. The panel finds there were no undue or unforeseen circumstances that prevented the appellant from complying with section 71(2) EAPWDR.

The panel finds the appellant did not meet the criteria set out in section 79(2) EAR and therefore the ministry's

decision to deny the appellant a Reconsideration was reasonable.

Section 18(c) 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 a right to reconsideration is a reasonable application of the applicable enactment in the appellant's circumstances under section 24(1)(b) of the Act for the reasons outlined above.

In view of this finding, our jurisdiction is limited to confirming or rescinding the ministry's decision. The panel confirms the ministry's decision that there is no right to reconsideration under section 24(2)(a) EAA.