

## PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation (ministry) decision of June 18<sup>th</sup>, 2013 appeal 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 June 23<sup>rd</sup>, 2010 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 June 10<sup>th</sup>, 2013 and the deadline for submission was July 21<sup>st</sup>, 2010.

## 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 of reconsideration:

- Persons Who Have Persistent Multiple Barriers (PPMB) to Employment Checklist dated May 7<sup>th</sup>, 2008.
- Letter dated May 26<sup>th</sup>, 2008 from the ministry advising the appellant his application for PPMB designation has been denied;
- Ministry's Overpayment Payment chart – 4 pages – covering period 2008 June to 2010 May.
- Letter dated June 15<sup>th</sup>, 2010 from the ministry to appellant regarding the appellant's eligibility for income assistance.
- Repayment agreement acknowledging debt dated June 23<sup>rd</sup>, 2010 signed by the appellant.

On May 26<sup>th</sup>, 2008 the appellant was found ineligible for Persons with Persistent Multiple Barriers (PPMB) level of assistance and the appellant was informed of that decision by mail and his right to appeal the reconsideration decision. On June 15<sup>th</sup>, 2010 the appellant received a letter from the ministry advising him some issues regarding his eligibility for assistance needed to be addressed which included an overpayment and a repayment agreement needed to be signed. On June 23<sup>rd</sup>, 2010 the appellant signed a Repayment Agreement acknowledging that he had received \$1,150.08 of assistance that was repayable under the EAA and that he acknowledged to repay this debt to the Province of BC within the terms of the Agreement. The ministry advised the appellant of his right to a reconsideration of this decision, the process and the timelines involved.

On June 10<sup>th</sup>, 2013 the appellant submitted a request for reconsideration of the ministry's decision to have him repay \$1,150.08 for the overpayment that he had received.

The ministry advised the appellant the ministry is unable to conduct a reconsideration on this matter because under section 79(2) EAA, a request for reconsideration must be delivered to the ministry within 20 business days after the date of the person was notified of the ministry's decision to have the appellant repay the \$1,150.08 for an overpayment that the appellant had received.

In the Notice of Appeal the appellant submitted that he never received proper notification when his application for PPMB was denied back in 2008. The appellant submitted the overpayment was the ministry's error and that he was forced to sign the repayment agreement or his assistance would be discontinued. The appellant submitted that because he was not informed of the 2008 decision and the PPMB benefits were paid to him that his right to appeal the 2008 decision was gone. The appellant submitted there is a fundamental process argument to be made in this appeal.

On July 3<sup>rd</sup> the Tribunal Chair adjourned the hearing for this appeal to this date.

At the hearing the appellant testified that when he met with the Employment and Assistance worker (EAW) on June 23<sup>rd</sup>, 2010 and was informed verbally about the reconsideration and the timelines involved, he felt pressured that if he didn't sign the Repayment Agreement he would not get the assistance cheque which he needed. The appellant testified that he did not have time to deal with the reconsideration because one week after meeting with the EAW he was arrested and incarcerated. The appellant testified that he was incarcerated from July 1<sup>st</sup>, 2010 until July 1<sup>st</sup>, 2011 and after he was released from jail he tried at several ministry offices to obtain a reconsideration package but was refused because the time limit had expired. The appellant's advocate submitted that he did not understand what reconsideration was at the time he was verbally informed and did not have the proper opportunity to review it in writing to more fully understand it. The advocate submitted that the appellant, therefore, was denied procedural fairness.

The panel finds the appellant's testimony does 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 is

admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The ministry relied on the facts as set out in the reconsideration decision. The ministry testified that the ministry record indicates that on June 23<sup>rd</sup>, 2010 when the appellant met with the EAW the Repayment Agreement was discussed with the appellant, the agreement was signed and the appellant was informed of his right to reconsideration and the timelines involved. The ministry testified that if the appellant had indicated to the EAW that he wanted a reconsideration that the reconsideration package to appeal the overpayment would have been prepared and his income assistance cheque for that month (June 2010) would have been issued.

The panel makes the following finding of fact:

1. On June 23<sup>rd</sup>, 2010 the appellant signed a Repayment Agreement with the ministry acknowledging that he had received an overpayment and owed a debt to the Province of BC that had to be repaid.
2. On June 10<sup>th</sup>, 2013 the appellant requested a reconsideration decision of the ministry's decision to repay the assistance (overpayment) that he had received.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of ministry's decision of June 18<sup>th</sup>, 2013 which determined that the appellant was not allowed a reconsideration of the ministry's decision of June 23<sup>rd</sup>, 2010 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.

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.

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 ministry argued that the appellant must comply with the legislation and submit his request for reconsideration within the 20 business day time frame. The ministry argued that if the appellant had indicated to the EAW on June 23<sup>rd</sup>, 2010 that he wanted a reconsideration of the overpayment decision a package would have been prepared. The ministry argued the ministry records indicate the Repayment Agreement was signed on June 23<sup>rd</sup>, 2010 and the appellant was informed at that time of his right to reconsideration.

The appellant argued that the ministry's decision on the overpayment and his option to request a reconsideration of that decision was never given to him in writing because it prevented him from reading it at a later time and deciding what he needed to do. The appellant argued that he did not understand the repayment agreement and just signed the agreement so that he could get his assistance cheque. The appellant argued that he didn't have sufficient time to request the reconsideration because he was arrested and incarcerated a week after he met with the EAW. The appellant argued that once he was released from incarceration he tried several times to obtain the reconsideration package from the ministry but was refused each time because the time limit had expired. The appellant argued that it was not until recently that the ministry agreed to provide him with a reconsideration package to appeal the ministry's decision to deny him a reconsideration on the overpayment issue.

The evidence is that on June 15<sup>th</sup>, 2010 the ministry sent a letter to the appellant advising him he needed to attend the ministry office as he had received an overpayment in benefits and that a Repayment Agreement needed to be signed. The evidence is that on June 23<sup>rd</sup>, 2010 the appellant met with an EAW and signed a Repayment Agreement with the Ministry acknowledging the overpayment and the terms of repayment. The ministry's position is that the appellant was informed on June 23<sup>rd</sup>, 2010 of his right to a reconsideration of the ministry decision and the appellant's position is that when he met with the EAW he was told that if he didn't sign the Repayment Agreement that he would be cut off assistance. The appellant testified that he did sign the Repayment Agreement and was informed of the reconsideration and the timelines although he argues that he did not understand what he was being told by the EAW.

The panel finds that the appellant was informed of the overpayment situation in a letter dated June 15<sup>th</sup>, 2010 and again on June 23<sup>rd</sup>, 2010 during the meeting with the EAW when he signed the Repayment Agreement. The panel finds the appellant was informed of his right to reconsideration on June 23<sup>rd</sup>, 2010 during the meeting with the EAW.

The panel finds that the appellant submitted his request for a reconsideration on June 10<sup>th</sup>, 2013 when the EAA legislation would require that his request for reconsideration would have had to be delivered to the ministry by July 21<sup>st</sup>, 2010.

The panel finds there is no legislation within the EA Act or EA Regulation that sets out that the ministry must offer reconsideration of 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 79(2) EAR although the appellant argued that he did not have time to submit his reconsideration from when he met with the EAW on June 23<sup>rd</sup>, 2010 and when he was allegedly arrested and incarcerated on July 1<sup>st</sup>, 2010. There is also no evidence that when the appellant was incarcerated he was prevented from or incapable of communicating with the ministry and following through with his request for a reconsideration within the 20 business days as set out in section 79(2) EAR.

The panel finds that on June 23<sup>rd</sup>, 2010 the appellant was informed of his right to reconsideration, however, he did not deliver his request for reconsideration within the 20 business days as set out in section 79(2) EAR. Therefore, the panel finds the ministry's decision to deny the appellant Reconsideration was reasonable.

Section 17(3) 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 EA Act for the reasons outlined above.

The panel's jurisdiction is limited to confirming or rescinding the ministry's decision. The panel confirms the ministry's decision under section 24(2)(a) EAA that the appellant has no right to reconsideration.