

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry") Reconsideration Decision of November 5, 2013, which determined that the appellant had no right to a reconsideration because her Request for Reconsideration of a September 10, 2013, decision which found that she had received an overpayment of \$523.86, was not submitted to the ministry until October 24, 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 1, 5 and 13
Employment and Assistance for Persons with Disabilities (EAPWD) Regulation section 71(2)

PART E – Summary of Facts

Information and Records before the ministry at the time of reconsideration include the following:

- A copy of the appellant's Request for Reconsideration signed and dated by the appellant on both October 21, and 22, 2013.
- A copy of a letter to the ministry from the appellant dated October 21, 2013, with attached documentation in support of her arguments for believing the ministry's decision of September 10, 2013, which determined that she had received an overpayment of \$523.86 was not reasonably supported by the evidence.
- Ministry records which indicate that the appellant received a letter on September 10, 2013, informing her of the ministry decision that she had received an overpayment of \$523.86. The appellant contacted the ministry by phone September 10, 2013 in an attempt to resolve the matter. In a telephone conversation with the ministry on September 27, 2013, the appellant was informed of her right to a reconsideration which she requested. On September 30, the reconsideration package was mailed to the appellant. The ministry received the appellant's Request for Reconsideration on October 24, 2013.

After reconsideration and prior to the hearing the following information was submitted to the Tribunal.

- A copy of a letter from a Registered Clinical Counselor dated November 10, 2013, which provides information about the appellant's medical conditions and character.
- A copy of a letter from the appellant to the ministry dated November 12, 2013, requesting that she be taken off the Volunteer Program. The letter describes the appellant's past involvement with the program; the fact that she has been unable to attend an Art Group and that she intends to continue with one of her placements working in a local department store.
- A copy of a letter attached to the appellant's Notice of Appeal dated November 8, 2013, in which she reports that she is requesting a review of the ministry's decision not to give her reconsideration due to the 20 day deadline which she states she missed. The letter then goes on to provide argument in support of her reasons for believing the ministry's decision of September 10, 2013, which determined that she had received an overpayment of \$523.86 from the ministry, was not reasonably supported by the evidence.

At the hearing the appellant explained that she had done her best to comply with all of the rules set out by the ministry regarding reporting of her income and completing and submitting her Request for Reconsideration within the legislated time line.

The ministry did not attend in person however it did attend by phone. The ministry explained that there had been an error made and that the appellant's Request for Reconsideration was actually received on October 22, 2013, not October 24, 2013, as reported in the Record. In response to a question from a panel member regarding the date the appellant was told she had a right to a reconsideration, the ministry stated that while they believed the appellant was informed September 10, 2013, the first date that their records confirm she was advised of her right to reconsideration was September 27, 2013. This took place in a telephone conversation in which the appellant requested a reconsideration package.

The panel made the following findings of fact:

- The appellant received notification that she had an overpayment of \$523.86 from the ministry September 10, 2013.
- The ministry received the appellant's Request for Reconsideration on October 22, 2013.



PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined the appellant had no right to reconsideration of the ministry's September 10, 2013, decision which determined that the appellant had no right to a reconsideration because her Request for Reconsideration of a September 10, 2013, decision which found that she had received an overpayment of \$523.86, was not submitted to the ministry until October 24, 2013, more than the 20 business days stipulated in section 71(2) of the Employment and Assistance for Persons with Disabilities Regulation. In arriving and their decision the ministry relied upon the following legislation:

Employment and Assistance for Persons with Disabilities Act

Interpretation

1 (1) In this Act:

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Reconsideration and appeal rights

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;
- (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

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- (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.

No appeal from decision based on same circumstances

Employment and Assistance for Persons with Disabilities Regulation

How a request to reconsider a decision is made

- 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 ministry's position is that it received the appellant's Request for Reconsideration more than 20 business days after the date she was notified that she had received an overpayment of \$523.86, and therefore she failed to meet the requirements in section 71(2) of the EAPWD Regulation.

The appellant's position is that she had done her best to comply with all of the rules set out by the ministry regarding reporting of her income and completing and submitting her Request for Reconsideration within the legislated time line.

The appellant argued that because she had talked to and been provided with advice from a ministry worker in another city she was not clear about the exact date she was informed of her right to reconsideration.

The ministry argued that there was no record on the appellant's file regarding any such conversation taking place with ministry staff however they did report that the earliest date they can confirm the appellant was informed of her right to reconsideration was September 27, 2013.

The panel finds there is no dispute by either party that the appellant was in receipt of disability assistance on September 10, 2013, the day that she received written notification of the ministry's determination that she had received an overpayment of \$523.86. There is also no dispute that she met the legislative requirements set out above in sections 1, 5 and 16 of the EAPWDA, which is required in order to be eligible for a reconsideration of the ministry's decision, or that the ministry received the appellant's Request for Reconsideration on October 22, 2013. While the panel found no documentary evidence was provided in the Record, or in the ministry's oral testimony at the hearing, confirming that the appellant was advised of her right to reconsideration prior to September 27, 2013, there is clearly no dispute that she was notified of the ministry's decision on September 10, 2013. Section 71(2) of the EAPWD Regulation set out above states that "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".



The panel finds that the appellant's Request for Reconsideration was submitted on October 22, 2013, more than 20 business days after September 10, 2013, the date she was informed by the ministry that she had received an overpayment of \$523.86, the ministry's decision that the appellant did not have a right to a reconsideration is a reasonable application of the applicable enactment and therefore confirms the ministry's decision.