

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 5, 2013 which found that the appellant did not deliver a completed Request for Reconsideration to the ministry within the time limit mandated by Section 71 of the *Employment and Assistance for Persons with Disabilities Regulation* and, therefore, is not entitled to a reconsideration of the ministry's decision that she received assistance for which she is not eligible and is required to repay this amount, pursuant to Section 16 of the *Employment and Assistance for Persons With Disabilities Act*.

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

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Letter dated September 12, 2012 from the ministry to the appellant indicating that the appellant submitted her income records and bank statements and the ministry's review determined that the ministry overpaid for the months January through May 2013 in the amount of \$2,000. The ministry requested that the appellant attend to sign the overpayment repayment agreement and \$20 per month will be deducted from her cheque;
- 2) Overpayment Chart printed October 4, 2013 for the months January through May 2013, indicating a total overpayment amount of \$2,000;
- 3) Bank statements for the appellant's account with transaction details for the months January through April 2013;
- 4) Bank statements for the appellant's spouse's account with transaction details for the months of February and March 2013;
- 5) Statement of the appellant's income for the period December 2012 through April 2013;
- 6) Receipts for UPS shipment, dietary supplements, counseling sessions, prescriptions; and,
- 7) Request for Reconsideration dated October 22, 2013, with attached Reasons dated October 21, 2013.

In her Request for Reconsideration, the appellant wrote that on May 9, 2013 she dropped off requested information including bank statements for January through April 2013, along with records of money received. The appellant wrote that she had multiple contacts with the ministry over the period December 23, 2013 until May 2013. The appellant wrote that she was "belatedly informed of any of [her] rights and responsibilities only in May 2013 well after several attempts initiated by [her] beginning in December 2012 to find out what the guidelines and rules were." The appellant wrote that the ministry worker told her she was applying to have "this issue" postponed until November 2013. The appellant wrote that she then got a letter stating that she will have her GST payments and tax returns taken in order to repay this amount "so apparently there was no postponing of anything."

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision. The appellant wrote that she was given the reconsideration package on October 7, 2013 and it was dated October 4, 2013. At that time, she was told that she had 20 business days to fill out the form, provide any documentation, and submit it. The appellant wrote that she compiled the package and submitted it to the local ministry office on October 22, 2013, which was well within the 20-business day deadline. The appellant wrote that she has not been given a fair opportunity to present her position and has not been given information regarding time deadlines until October 2013.

The appellant wrote that she was in contact over several months with different ministry workers who did not inform her of her rights. She did not receive any letter nor did any financial aid worker contact her in June 2013 to inform her that she had 20 days to respond. The appellant wrote that she is disabled and not once was she offered assistance. She receives regular medical treatments that render her completely incapacitated and completely unable to function on any level for a period of time, which reduces the days she is able to respond, or to deal with any of this. The appellant wrote that she had a conversation with a worker sometime in March 2013 but she could not understand or communicate due to medication from a medical treatment and asked that the worker call back.

At the hearing, the appellant's advocate stated that although the Request for Reconsideration set out that the appellant was informed of the decision on May 13, 2013, this is not correct because she was

not informed of her right to appeal. The Request for Reconsideration documents were issued on October 4, 2013 and the appellant submitted her Request on October 22, 2013, so she was within the time period of 20 business days. The appellant stated that she was told about the overpayment in May but the ministry gave her a 6-month extension because of her circumstances and "mental health conditions." The advocate stated that there was family loss and the appellant was very emotional at the time. The appellant stated that she did not receive a cheque for June assistance, which would have been provided at the end of May 2013. The appellant stated that her file with the ministry closed in July 2013. The appellant stated that she received a letter in September 2013 from Revenue Canada which indicated that the ministry was taking her GST rebate due to the overpayment and that is when she inquired with the ministry.

The appellant stated that she took her documents into the ministry at the beginning of May 2013 and that she subsequently received the letter from the ministry which is incorrectly dated September 12, 2012. The appellant stated that she did not agree with the statement that the ministry has overpaid her by \$2,000. The appellant stated that the Overpayment Chart was not enclosed with the letter and she had never seen it before, and the advocate pointed out that it was printed on October 4, 2013. The appellant stated that the overpayment repayment agreement was also not enclosed in the ministry's letter. The appellant stated that she had a telephone conversation with the ministry, likely around May 23, 2013, and they discussed the spousal support and other issues and the ministry said she would be given a 6-month extension to get things sorted out, which she understood to relate to all issues involving the ministry, and that the extension would give her until November 2013. The appellant stated that no one informed her of a 20-day deadline or her ability to get an advocate to assist her with the process.

The ministry relied on its reconsideration decision. The ministry's evidence included that the appellant was advised by telephone on May 9, 2013 and then by letter dated May 13, 2013 (dated September 12, 2012 in error) that she had an overpayment of \$2,000 as a result of undeclared maintenance from her ex-spouse. Although the letter is dated September 12, 2012, the ministry program records the date and time each document is produced and confirmed that the letter was created on May 13, 2013. At the hearing, the ministry clarified that the ministry's file notes indicate that the appellant called the ministry on May 15, 2013 regarding the spouse support issue and the worker discussed the claim for an overpayment with her and tried to explain the appellant's rights and responsibilities. The appellant said that she knew her rights and responsibilities and she discontinued the call with the ministry. The ministry stated that the appellant's deadline for submitting the Request for Reconsideration was June 13, 2013. The Request for Reconsideration was received by the ministry on October 22, 2013 which exceeds the time limits permitted by legislation.

The appellant did not object to the admissibility of further information provided by the ministry regarding the telephone conversation on May 15, 2013, and the panel admitted the oral evidence as detail of the appellant's interaction with the ministry at that time, as being in support of the information and records before the ministry on reconsideration, pursuant to section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision, which found that the appellant did not deliver a completed Request for Reconsideration to the ministry within the time limit mandated by Section 71 of the *Employment and Assistance for Persons with Disabilities Regulation* and, therefore, is not entitled to a reconsideration of the ministry's decision that she received assistance for which she is not eligible and is required to repay this amount, pursuant to Section 16 of the *Employment and Assistance for Persons With Disabilities Act*, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstances.

Under Section 16 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), which covers reconsideration and appeal rights, 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.

Under Section 71 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR),

- (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 the appellant was "notified" of the decision of the overpayment on May 15, 2012 via a telephone conversation with the ministry. The ministry argued that the 20 business day time limit began to run when the appellant was notified of its decision, and this time period ended on June 13, 2013. The ministry argued that the appellant submitted a Request for Reconsideration on October 22, 2013 which exceeded the 20 business day time period set out in the EAPWDR and, therefore, the overpayment decision is not subject to reconsideration.

The appellant acknowledged that she received the ministry's letter in May 2013 and had conversations over the telephone with the ministry regarding the spouse support issue. The advocate argued that the appellant was aware of the overpayment claimed by the ministry in May 2013 but that the right to have that decision reconsidered was not explained to the appellant at the time, either in the letter or the telephone conversations. The appellant argued that the ministry had granted a 6-month extension in May that would give her until November 2013 to deal with issues relating to the spouse support. The advocate argued that the appellant received the Request for Reconsideration package on October 4, 2013 and submitted it to the ministry on October 22, 2013 and, therefore, she was within the 20-business day time period and is entitled to a reconsideration of the overpayment decision.

Section 71 of the EAPWDR stipulates that a person who wishes the ministry to reconsider a decision must deliver a Request for Reconsideration to the ministry within 20 business days after the date the person is "notified" of the decision. The panel finds that the ministry reasonably concluded that the appellant was notified of the ministry's decision regarding the overpayment on May 15, 2013. The appellant admitted receiving the letter sent May 13, 2013 (dated September 12, 2012 in error), which set out the amount of the overpayment and the ministry's intention to pursue the amount, and the ministry reiterated the claim for an overpayment with the appellant by telephone on May 15, 2013.

Although the advocate argued that the appellant was not advised at that time of her right to a reconsideration of the decision and of the specific time period which applied, the panel finds that section 71 of the EAPWDR starts the clock running from the time the person is notified of the ministry's 'decision', and that nothing further is required in that notification besides the particulars of the decision itself. If further information is not provided by the ministry, a person who disagrees with the ministry's decision must inquire of the options available to her in response. In her Request for Reconsideration, the appellant wrote that she was "belatedly" informed of her rights and responsibilities in May 2013, and she clarified on the hearing that she meant she was only informed with respect to the ongoing payment of spouse support. However, the ministry stated at the hearing that the appellant called the ministry on May 15, 2013 and the worker tried to explain the appellant's rights and responsibilities with respect to the overpayment, and the appellant said that she knew her rights and responsibilities and discontinued the call with the ministry.

The appellant argued that she had been granted a "6-month extension" when she spoke to the ministry on or about May 23, 2013 and the panel finds that the appellant must have understood that there was an applicable time period in order for there to be a need for her to have it 'extended.' The appellant did not provide any further evidence or information regarding the details of an extension. The panel finds that the fact that the ministry had pursued the overpayment amount and was seeking

to enforce this amount through Revenue Canada, for which the appellant received a letter in September 2013, is evidence that the ministry had not extended the time period for reconsidering the overpayment decision.

As the appellant was notified of the ministry's decision to pursue the overpayment on May 15, 2013, the panel finds that the ministry reasonably determined that the deadline for submitting a Request for Reconsideration was June 13, 2013. It is not disputed that the appellant delivered her Request for Reconsideration to the ministry on October 22, 2013, and the panel finds that the ministry reasonably concluded that the Request was delivered outside the time period, pursuant to Section 71 of the EAPWDR, and the overpayment decision is therefore not subject to reconsideration.

Section 16(3) of the EAPWDA 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* (EAA) for the reasons outlined above. In view of this finding, the panel confirms 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.