

PART C – Decision under Appeal

The appellant appeals the decision of the Ministry of Social Development and Social Innovation ("Ministry") dated November 20, 2013 in which the Ministry denied the appellant's request for a reconsideration of the Ministry's decision of May 18, 2012 because the Ministry's received the appellant's request for reconsideration on November 6, 2013, more than 20 business days from the date the appellant was notified of the decision as required by section 79(2) of the *Employment and Assistance Regulation*.

PART D – Relevant Legislation

Employment and Assistance Act ("EAA") sections 1, 4 and 17
Employment and Assistance Regulation ("EAR") section 79

PART E -- Summary of Facts

On May 18, 2012, the Ministry advised the appellant by letter that she had received an overpayment of assistance for which she was not eligible in the amount of \$10,041.68 between February 1, 2011 and April 30, 2012. On November 6, 2013, the Ministry received the appellant's request for reconsideration of the Ministry's May 18, 2012 decision.

The appellant was a recipient of assistance from July 2005 to April 2012. In November 2010, the appellant's mother passed away. The appellant was the executor of her mother's estate. Prior to her mother's death, the appellant held a joint bank account with her mother that was used to pay the expenses associated with her mother's care. The appellant told the panel that, after her mother's death, the bank told her to convert the joint account to an individual account in the appellant's name.

As the result of an allegation in March 2012, the Ministry investigated the appellant in April 2012. During this time, the appellant provided several documents to the Ministry and communicated with the Ministry.

On May 9, 2012, the Ministry advised the appellant by letter that the Ministry had determined that she had received an overpayment of assistance for which she was not eligible in the amount of \$10,041.68 between February 1, 2011 and April 30, 2012. The letter advised the appellant that the Ministry had set up an appointment for her on May 18, 2012 to discuss the overpayment. The Ministry said in this letter that if the appellant did not attend the May 18, 2012 meeting or contact the Ministry to reschedule it, the Ministry will conclude its review and made a decision about the overpayment. This letter also stated that the appellant would be advised of any decision in writing and that she could request a reconsideration of this decision.

The appellant did not contact the Ministry about the May 9, 2012 letter, or to reschedule the meeting set for May 18, 2012. On May 18, 2012, the Ministry advised the appellant by letter that the Ministry had determined she had received an overpayment, which she was liable to repay, and the Ministry was reducing her assistance by \$25 in the following month. On the second page of the letter, it states:

You may request a reconsideration of this decision. If you decide to pursue this option, you have 20 business days from the date you are notified of this letter to submit a completed Request for Reconsideration form. This form may be obtained at any ministry office. Please refer to the enclosed Reconsideration and Appeals brochure for further details.

The Ministry enclosed with the May 18, 2012 letter to the appellant a copy of an overpayment notification. On this notification, the Ministry states: "If you disagree with the ministry's decision that you received assistance for which you are not eligible, you may request the ministry to reconsider that decision. 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."

The appellant told the panel that she had received the Ministry's letters to her of May 9 and May 18, 2012. The appellant told the panel that at that time, she thought about requesting a reconsideration of the Ministry's decision about the overpayment, but she was sick and was feeling overwhelmed by all of the documents the Ministry had asked from her during the March-April 2012 investigation and

that she had "too much to deal with" at that time. The appellant told the panel that the Ministry cut her off assistance in May 2012 because it determined that she had assets in excess of \$3,000.00. The Ministry confirmed that on May 9, 2012, it advised the appellant in a letter that she was no longer eligible for assistance because she had assets in excess of \$3,000.00. The appellant has not filed a request for reconsideration of the Ministry's May 9, 2012 decision.

The Ministry told the panel that the appellant had no contact with the Ministry between late May 2012 and the fall of 2013 and the appellant confirmed this information.

On July 31, 2013, the appellant obtained a letter from her lawyer regarding the joint bank account she held with her mother. In this letter, the appellant's lawyer writes that the appellant "was and remains a trustee of the funds ... and was never a beneficial owner of the funds." The appellant told the panel that she reapplied for assistance benefits in the fall of 2013 and provided the Ministry with the July 31, 2013 letter from her lawyer. The Ministry confirmed that it received the letter from the appellant's lawyer sometime in September 2013 and that the appellant re-applied for assistance on October 3, 2013. The appellant told the panel that she is receiving assistance now.

The appellant told the panel that at the time she reapplied for assistance in the fall of 2013, a ministry worker told her she could request a reconsideration of the Ministry's May 18, 2012 decision and provided her with a request for reconsideration form. The appellant signed the request for reconsideration form on November 5, 2013. The appellant left the section "reason for request for reconsideration" blank, but attached a one-page typed submission to her request for reconsideration form. In the submission, the appellant indicates that she has not used funds in the estate account for personal use and wrote, "I am requesting the ministry of reconsideration on the grounds that my banker requested for me to put the account in my name so it would be easier for me to handle my mom's affairs, not knowing that this act was unlawful. I feel I did not do anything wrong as no funds has ever been used for personal goals." The appellant did not provide any information to the Ministry or to the panel that she had any medical issues that prevented her from filing the request for reconsideration between late May 2012 and early November 2013.

The panel makes the following findings of fact:

- The appellant received assistance from July 2005 to April 2012;
- The appellant received the letter from the Ministry of May 18, 2012 in which the Ministry advised her that it had determined she had received an overpayment of assistance of \$10,041.68;
- The appellant signed a request for reconsideration of the Ministry's May 18, 2012 determination on November 5, 2013; and
- The Ministry received the appellant's request for reconsideration of its May 18, 2012 determination on November 6, 2013.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's decision of November 20, 2013 denying the appellant's request for reconsideration of the Ministry's May 18, 2012 decision that she had received an overpayment in assistance on the basis that the appellant did not deliver her request for reconsideration within 20 business days from when she received the Ministry's May 18, 2012 decision, as required by section 79 of the EAR.

Applicable legislation

Section 17 of the EAA sets out the rights of a person to reconsideration of a Ministry decision.

Reconsideration and appeal rights

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.

...

Section 79 of the EAR provides the following regarding the time limits and form of a request for reconsideration:

How a request to reconsider a decision is made

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 did not deny that she received the Ministry's letters of May 9 and May 18, 2012, or that she knew that there was a time limit to request reconsideration, as set out in those letters. The appellant told the panel that when she received the Ministry's decision of May 18, 2012, which she agreed she received in May 2012, she thought about requesting a reconsideration of the decision, but she was sick and felt she had too much to deal with to go through the process to request reconsideration at the time. The appellant did not contact the Ministry after May 2012 until she spoke with her lawyer in the summer of 2013. The appellant told the panel that a Ministry worker told her in the fall of 2013 when she reapplied for assistance that she could seek a reconsideration of the Ministry's May 18, 2012 decision. The appellant agreed that she filed the request for reconsideration November 5, 2013. She told the panel that she still has the same bank account and she doesn't understand why she now receives assistance when she didn't receive it from May 2012 through September 2013. The appellant agreed that she did not indicate in her reason for requesting reconsideration why it has taken her almost 18 months to request reconsideration of the Ministry's May 18, 2012 decision.

The Ministry received the appellant's request for reconsideration on November 6, 2013. The Ministry advised the appellant that it could not conduct a reconsideration of its May 18, 2012 decision because the appellant did not deliver her request for reconsideration within 20 business days after she was notified of the decision, as required by section 79(2) of the EAR. The Ministry said the appellant did not contact the Ministry from late May 2012 through early September 2013 to discuss the May 18, 2012 decision, or to request a reconsideration of the May 18, 2012 decision. The Ministry confirmed that the appellant was provided with information about requesting reconsideration in the May 9 and May 18 2012 letters, including that a request for reconsideration must be made within 20 business days of being notified of the Ministry's decision. The Ministry said there was no information in the appellant's file to confirm that she was sick at the time she was provided with the May 18, 2012 decision to explain why she could not request a reconsideration at that time.

Panel's Analysis and Decision

The legislation provides that an individual must request a reconsideration within 20 business days of receiving the decision, as set out in section 79 of the EAR, and the Ministry denied the appellant's request for reconsideration of its May 18, 2012 decision which it received on November 6, 2013, on this basis.

The appellant does not deny that she received the Ministry's May 18, 2012 letter in May 2012, and she does not deny that she was aware she had to request reconsideration within a certain period of time, but said that she had too much to deal with and was too sick to go through the process at that time. The appellant did not provide any information to the Ministry or to the panel confirming the reasons that she did not seek reconsideration in 2012. Accordingly, the panel finds that the Ministry reasonably applied the provisions of section 79 of the EAR (that the appellant did not meet the required 20 business day time limit for requesting reconsideration of the May 18, 2012 decision) and of section 17(2) of the EAA (that the appellant must request reconsideration within the set time limits) to the circumstances of the appellant in denying her request for reconsideration.

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 of November 20 2013 that there is no right of reconsideration of the May 18, 2012 decision 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 s. 24(1)(b) of the Act for the reasons outlined above. In view of this finding, the panel's jurisdiction is limited to confirming the Ministry's decision. Accordingly, the panel confirms the Ministry's decision that there is no right to reconsideration under s. 24(2)(b).