

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of January 15, 2014, wherein the ministry decided that the appellant was not eligible for a diet supplement of \$40 for the month of October, 2013. The ministry concluded that since it had not determined the appellant’s eligibility until November 19, 2013, section 23(2) of the Employment and Assistance for Persons with Disabilities Regulation (the “EAPWDR”) precluded the ministry from backdating the appellant’s supplement to October, 2013.

PART D – Relevant Legislation

*Employment and Assistance for Persons with Disability Act* (“EAPWDA”), section 5  
EAPWDR section 23(2), 22(3.01), 22(3.1), and 72

## PART E – Summary of Facts

The ministry did not attend the appeal hearing. Having determined that the ministry had been notified of the hearing, the panel proceeded with the hearing in accordance with s. 86(b) of the EAPWDR.

The information before the ministry at the time of reconsideration included the following:

- Prescriptions from the appellant's physicians dated August 9, 2009, September 2, 2011, and October 22, 2013.
- The ministry's file notes pertaining to the appellant, with entries for the period September 27, 2013 to January 10, 2014.
- The appellant's Request for Reconsideration dated December 26, 2013.

The appellant is a recipient of disability assistance. For approximately 6 years she had been receiving a high protein diet supplement of \$40 in accordance with section 66 of the EAPWDR and section 6(1)(d) of Schedule C of the EAPWDR. The ministry normally reassesses eligibility for a diet supplement every 2 years and requires a recipient to submit to the ministry a new prescription form from a medical practitioner at each reassessment.

In the appellant's case, she had submitted new prescriptions from her physician for reassessments in August, 2009 and September, 2011. On September 27, 2013 the appellant called the ministry to advise that her assistance cheque for October, 2013 was missing the \$40 diet supplement. The ministry instructed the appellant to submit a new prescription as she had in previous years.

In her Request for Reconsideration, the appellant wrote that she advised the ministry worker that she had an appointment with her physician for later in October, and asked whether she should make an earlier appointment in order to be able to provide the required prescription sooner. According to the appellant, the ministry worker assured the appellant that later in October would be fine.

On October 25, 2013, the appellant submitted to the ministry a prescription for the diet supplement (dated October 22, 2013). On November 19, 2013 the appellant called the ministry to advise that her request for the diet supplement had not been processed. The ministry updated its files and mailed cheques to the appellant to cover the diet supplement for the months of November and December, 2013. The appellant received the cheques for November and December on November 21, 2013 and called the ministry to say that she had not received a cheque to cover the diet supplement for October, 2013.

In an entry dated November 22, 2013, the ministry's file notes indicate that the ministry has a policy of rectifying an "administrative underpayment" if the underpayment had been the result of an "office error". The ministry concluded, however, that an "office error" had not occurred in the appellant's case since "service requests are processed as soon as possible".

In her oral testimony on appeal, the appellant repeated what she had previously told the ministry in her Request for Reconsideration - that during her telephone conversation with ministry staff in September she had been assured that so long as she submitted a new prescription in October her diet supplement would continue without interruption as had occurred in previous years. She stated



that she was told that processing her request would take 3 to 5 business days. The appellant said that when she contacted the ministry on November 19 after not receiving a cheque for the diet supplement, she was told that her application had been found sitting unprocessed on a worker's desk at the ministry's office.

The appellant's oral testimony provided additional detail regarding information that was before the ministry at the time of reconsideration, and has been accepted by the panel as being oral testimony in support, in accordance with section 22(4) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision which found the appellant ineligible for a diet supplement for the month of October, 2013 on the basis of section 23(2) of the EAPWDR.

### EAPWDA

#### 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.

### EAPWDR

23(2) Subject to subsections (3.01) and (3.1), a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.

...

(3.01) If the minister decides, on a request made under section 16 (1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).

#### Time limit for reconsidering decision

72 The minister must reconsider a decision referred to in section 16 (1) of the Act, and mail a written determination on the reconsideration to the person who delivered the request under section 71 (1) [*how a request to reconsider a decision is made*],

(a) within 10 business days after receiving the request, or

(b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request.

\* \* \*

The appellant's position is that the ministry unreasonably denied her a diet supplement for October, 2013. She said she did exactly what the ministry told her to do within the timelines she was given. In previous years she followed the same procedure and was provided the diet supplement without interruption. She stated that this time she feels as though she is being punished because a ministry employee delayed the processing of her application for too long.

The ministry's position, as set out in its reconsideration decision, is that the appellant's eligibility for the diet supplement ended at the two year anniversary of the last reassessment of eligibility. The ministry says that it was bound by section 23(2) of the EAPWDR, and that since it did not make a determination of eligibility on the new application until November 19 it could only find the appellant eligible for the diet supplement from the month of November, 2013.

Panel Decision

The evidence indicates that the appellant followed the ministry's instructions with respect to the reassessment process as she had in previous years, and that delays in the ministry's processing of her application resulted in her receipt of the diet supplement being discontinued for the month of October.

The ministry indicated in its file notes that it does - by policy - effectively ignore the eligibility restriction imposed by s. 23(2) of the EAPWDR in circumstances where it feels it has made an "office error". However, the panel is bound by the clear language of section 23(2) of the EAPWDR. The ministry did not decide on the appellant's eligibility for the diet supplement until November 19 and the ministry is precluded by section 23(2) from backdating eligibility to October. While it is sympathetic to the appellant's situation, the panel does not have the jurisdiction to override the clear language of the legislation based on any views it may have of when the ministry could have or ought to have made its eligibility decision.

For these reasons, the panel concludes that the ministry's denial of the diet supplement for October, 2013, was a reasonable application of the legislation in the circumstances of the appellant, and confirms the ministry's decision.