

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry's) decision dated February 6, 2014 which denied the appellant's request for reconsideration of a ministry decision denying a scooter as the minister concluded that the appellant did not deliver his completed Employment and Assistance Request for Reconsideration to the ministry within the legislated 20-day limit as required under section 16 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and section 71 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance Persons with Disabilities Act (EAPWDA) section 16
Employment and Assistance Persons with Disabilities Regulation (EAPWDR) and section 71

PART E – Summary of Facts

Evidence

The evidence outlined in the February 6, 2014 Decision from the ministry was the following:

- That on July 11, 2013 the appellant submitted a request to the ministry for a motorized scooter;
- That on September 24, 2013 the minister denied the appellant's request and by letter of that date advised the appellant of his right to appeal within 20 working days of the receipt of the letter;
- That on September 25, 2013 the appellant spoke to the ministry on the telephone and was advised of the decision to deny the appellant a scooter;
- That 20 business days from September 25, 2013 would be October 24, 2013;
- That on December 6, 2013 the appellant requested reconsideration of this decision and the ministry mailed the appellant the reconsideration package on December 10, 2013;
- That on January 29, 2014 the appellant submitted a Request for Reconsideration to the ministry; and
- That on February 6, 2014 the minister made a final decision

The evidence outlined in the Request for Reconsideration section 2 from the ministry stated that on December 6, 2013 the appellant requested reconsideration of the September 24, 2013 decision of the ministry to deny the appellant's request for a scooter. The date the appellant was informed of the decision noted is October 22, 2013 and the date the appellant must submit the form by is noted as November 19, 2013.

The ministry file notes on the appellant outline the relevant dates from September 3, 2013 to January 29, 2014 and confirm the chronology of actions as noted above.

The evidence outlined in the Request for Reconsideration section 3 from the appellant stated to "please see additional notes from OTs".

Additional Evidence

In the Notice of Appeal dated February 14, 2014 the appellant states that all of the paper work asked for is now present.

The ministry did not provide any additional written evidence.

The panel determined that the written information from the appellant was admissible under section 22 (4) of the EAA as it is in support of the information that was before the Ministry at the time of its reconsideration decision.

Findings of Fact

The appellant was notified of the ministry decision to deny the requested scooter on September 25, 2013 by telephone.

PART F – Reasons for Panel Decision

Issue to be Decided

The issue under appeal is whether the ministry's decision, which denied reconsideration because the appellant did not deliver his completed Employment and Assistance Request for Reconsideration to the ministry within the legislated 20-day limit as required under section 16 of the EAPWDA and section 71 of the EAPWDR, was a reasonable application of the applicable enactment in the circumstances of the appellant.

Legislation

EAPWDA section 16

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
- (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.

EAPWDR section 71

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.

Ministry's Position

The ministry argues that the time limit for filing the appellant's reconsideration request for the September 24, 2013 denial decision expired as of October 24, 2013. The ministry's reason is that a person must deliver to the ministry a completed Employment and Assistance Request for Reconsideration (EIA 100) within 20 business days of the date of being informed of a ministry decision as outlined under section 71 of the EAPWDR. The ministry concluded that the minister cannot make available to the appellant a reconsideration of this matter and therefore, no reconsideration was conducted.

Appellant's Position

In the Notice of Appeal dated February 14, 2014 the appellant states that all of the paper work asked for is now present.

Panel Decision

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 notes discrepancies in the dates as follows: the September 24, 2013 letter from the ministry to the appellant states that he may request reconsideration within 20 working days of receiving his letter; the ministry file states that the appellant was mailed letter on September 24, 2013; and the Request for Reconsideration relevant dates noted are that the appellant was informed of the decision October 22, 2013 and the appellant must submit the form by November 19, 2014. Even though there may have been discrepancies in dates the panel finds that this does not affect the decision. The panel finds that the appellant did not deliver Employment and Assistance Request for Reconsideration (EIA 100) to the ministry within 20 business days after September 25, 2014, the date he was notified of the decision, as required under section 16 of the EAPWDA and section 71 of the EAPWDR.

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 under section 24 (2) of the EAA 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.