

PART C – Decision under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Social Innovation (the ministry) dated 20 January 2014 that denied the appellant's request for reconsideration of a ministry decision that found that he was not eligible for non-local medical transportation assistance. The ministry determined that, as the 20 business day time limit to submit a Request for Reconsideration had expired since he was advised of the original decision, under section 71 of the Employment and Assistance for Persons with Disabilities Regulation, the minister was not able to reconsider this decision.

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.
Employment and Assistance Act, section 24.

PART E – Summary of Facts

The evidence before the ministry included the following:

- The appellant's Request for Non-Local Medical Transportation Assistance dated 12 November 2013.
- The appellant's bank transaction statement for the period 28 October 2013 to 28 November 2013.
- The appellant's Request for Reconsideration, signed by him on 03 January 2014. The section completed by the ministry shows that he was informed of the decision concerning the above transportation assistance request on 25 November 2013 and gives 23 December 2013 as the date he must submit the form. The appellant sets out his reasons for his request for reconsideration of the transportation assistance denial decision. The ministry worker completed the ministry section and signed the form on 31 December 2013.

In his Notice of Appeal, dated 22 January 2014, the appellant writes:

"I disagree with the decision because I did not receive the letter in the mail containing the decision & reconsideration brochure. [Name] my third-party... did not receive the written decision either, which contains reconsideration deadline of 20 business days." (The balance of his Reasons for Appeal relate to issues concerning the denial of his medical transportation request.)

At the hearing, the appellant acknowledged that his third-party contact notified him of the ministry decision denying him the requested travel assistance on or about 25 November 2013. He stated that at that time she said that the ministry would be sending him a written decision in the mail. He also stated that the third-party contact did not pass along anything about reconsideration rights or deadline. He described how he had been in receipt of disability assistance for about 10 years and decisions regarding other requests that he had made, including when he was not under third-party administration, were always in writing accompanied by the reconsideration brochure. He noted that the bank transaction record attached to the request for reconsideration form was date stamped by the bank on 28 November 2013, showing transactions up to that date, and questioned how the ministry could have made its decision before that date.

The balance of the appellant's presentation, and that of his advocate, went to argument (see Part F, Reasons for Panel Decision, below).

The ministry explained that there was a lot going on regarding the appellant's file at the time when the travel assistance request was being considered and that the ministry had other information regarding the appellant's financial circumstances when it made its decision on the matter.

The ministry representative provided the following chronology and explanation:

- Ministry records show the decision to deny the appellant's transportation assistance request was actually made on 19 November 2013 and his third-party contact was advised of the decision on that date. When the ministry worker was completing the ministry section of the Request for Reconsideration form, the worker checked with the third-party contact, who advised that she was not able to notify the appellant of the decision until 25 November 2013. Accordingly, that date was used as the basis for determining the 23 December 2013 deadline for submitting a Request for Reconsideration.
- The appellant did not request a reconsideration package (the form itself and reconsideration

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brochure) until 20 December 2013, the Friday before the Monday deadline. Ministry standards are to respond to a request for a reconsideration package, including completing the ministry section of the form, within three business days. Because of the Christmas break and weekends, the ministry section of the form could only be completed by 31 December 2013, after the deadline had passed.

The ministry representative explained that, for those decisions normally conveyed to a client verbally, it is ministry policy and practice to advise the client of his/her reconsideration rights and the deadline. The provision of such advice is normally, but not always, noted on the client's file. This would also be the case when a client is notified through a third-party contact, though in this case no such notation was made on the appellant's file. The ministry representative also stated that the client may also request a decision that was given verbally to be given in writing. The ministry representative acknowledged that occasionally the reconsideration deadline might be extended under extenuating circumstances, such as if the client were hospitalized.

The appellant disputed the ministry's version of events concerning the time gap between when the decision was made and when he was notified: he stated that during that period, he was in touch daily with his third-party contact because he needed to know whether the costs of his travel would be covered.

The panel finds that the information provided by the appellant in his Notice of Appeal and in his oral testimony and by the ministry at the hearing is in support of the evidence before the ministry when it made the decision under appeal, as it related to the chronology of events leading up to the ministry's decision. The panel therefore admits the information provided by both the appellant and the ministry as evidence under section 22(4) of the *Employment and Assistance Act*.

Findings of fact

The panel finds as fact that the appellant was notified on or before 25 November 2013 of the ministry's decision that denied his request for travel assistance.



PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry was reasonable in denying the appellant's request for reconsideration of a ministry decision that found him not eligible for non-local medical transportation assistance. More specifically, the issue is whether the ministry determination, that the minister is not able to reconsider his request, as the 20 business day time limit to submit a Request for Reconsideration under section 71 of the EAPWDR has expired since he was advised of the original decision, is reasonably supported by the evidence or is a reasonable application of the legislation under the circumstances of the appellant.

The applicable legislation is from the *EAPWDA*:

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.

From the EAPWDR:

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.

And from the *Employment and Assistance Act (EAA)*:

Decision of panel

24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

(a) reasonably supported by the evidence, or

(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

(a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and

(b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

The position of the ministry, as set out in the reconsideration decision, is that on 25 November 2013 a ministry worker informed the appellant of the decision in question. Section 71 of the EAPWDR requires a person seeking reconsideration of the ministry decision to deliver his or her Request for Reconsideration within 20 business days after the date he or she was informed of the ministry's decision. The deadline for the appellant to deliver his Request for Reconsideration was 23 December 2013. His Request for Reconsideration was not delivered to the ministry until 06 January 2014, exceeding the time limit permitted under the EAPWDR. Accordingly, the ministry found that this matter is closed and not subject to reconsideration.

The appellant's position is that the decision denying him his request for a medical transportation supplement, along with the necessary information regarding his reconsideration rights and the deadline, were not conveyed to him in writing, as he was led to believe would be the case by his third-party contact and is in any event his right. As a person under third-party administration, verbal communication between three parties leaves too much room for confusion, misinterpretation and missing information. The appellant submits that the ministry violated the principles of natural justice and administrative fairness by not providing him with a written decision and the associated notification of the reconsideration deadline and then enforcing the deadline and not giving him the benefit of reconsideration.

Panel findings

The panel notes that the legislation clearly states that a Request for Reconsideration must be delivered to the ministry within 20 business days after the date the person is notified of the decision. However, under the legislation there is no requirement for a ministry decision, other than a

reconsideration decision, to be conveyed to a client in writing. According to the testimony of the ministry representative at the hearing, while many ministry decisions are in writing, many others are not. This is especially the case where the request is made verbally in person in the office or by telephone. While the decision may not be conveyed in writing, the request and its outcome are noted in the client's file. In this appeal, the panel has found as fact that the appellant was notified on 25 November 2013 of the decision denying his request for medical transportation supplement.

While the appellant argues that he was not informed of his right of reconsideration, there is no legislative requirement for the ministry to advise the client of his/her reconsideration rights and the deadline, but the ministry states its policy and practice is to provide this information as a service to its clients. The panel notes rights of reconsideration and/or appeal, with time limits, are set out in the legislation.

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 *EAA* for the reasons outlined above. In view of this finding, the panel confirms under section 24(2)(a) 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.