

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (ministry) decision, dated May 23 2014, which denied the appellant a reconsideration of the decision to discontinue his Person's with Persistent Multiple Barriers (PPMB) level assistance. The ministry found the appellant failed to request reconsideration within 20 business days as required under sec. 79(2) of the Employment and Assistance Regulation.

### PART D – Relevant Legislation

Employment and Assistance Regulations, (EAR) sec. 79

Employment and Assistance Act, (EAA) sec. 17

## PART E – Summary of Facts

### Evidence

The evidence in the appeal record showed that on Nov. 8, 2013 a letter was sent to the appellant advising he must submit certain information to the ministry, by Jan. 31, 2014, to review his eligibility for PPMB, or his PPMB would be discontinued. On Mar. 13, 2014 a denial letter for PPMB, sent to a different address than the Nov. letter, was sent to the appellant, advising he would no longer receive PPMB benefits, as he had not provided the required information. This letter advised he had 20 business days to request reconsideration. The letter also included other material which also stated the appellant had 20 business days within which to file a Request for Reconsideration. The Request for Reconsideration, dated stamped by the ministry on May 16, records that the appellant was advised on Mar. 20 of the decision to deny him further PPMB benefits.

In the Request for Reconsideration the appellant advised he was late with the material because his doctor was on vacation. The request also included the required information requested by the ministry for the PPMB assessment.

The decision determined the ministry would not conduct the reconsideration, as the time limit for such a process had expired. The decision noted the appellant was advised on Mar. 13 and 20<sup>th</sup> of the decision to stop his PPMB supplement and the deadline for reconsideration was April 17. The request to reconsider was not provided until May 16, which exceeds the time allowed by the Regulation. The decision noted that although the appellant stated his Doctor was on vacation, he had been informed in Nov. that the material was required for a review of his PPMB status. Further, no one had contacted the ministry to request an extension or to advise the ministry there was a problem meeting the deadline to request reconsideration.

In his Notice of Appeal the appellant stated he knows he was late getting the PPMB back within the time frame but all the proper information is now provided. He asked for an in person hearing so he could make clear his disabilities.

At the hearing the appellant advised he did not receive the Nov. letter as he had moved to a different town. His medical conditions have not change since his initial PPMB designation. Initially he thought the Dr. was on vacation but he now understands the Dr. was injured and off work. It took a period of time to get in to see the Dr. He has a rare condition, and except for a Dr. in another city, only this Dr. can advise as to his medical conditions. He thought that he needed to provide all the information at once, which is what he did once he had the material. He confirmed that he did receive the March 13 letter and that he would have attended the ministry shortly after, likely March 20, when he requested reconsideration. He had previously requested an extension of time for reconsideration when he initially applied for PPMB the first time two years ago. He realizes now he should have filed sooner. He did not contact the ministry when he found out the Dr. was unavailable.

At the hearing the ministry advised that the process for a Request for Reconsideration involves a person advising the ministry they want reconsideration, at which time the Reconsideration Form, (HR100) is drawn up, including the ministry's reasons for denial. Page 2 of this form records the date the requestor is informed of the decision, March 20, and also records the date, April 17, by which the request for reconsideration had to be submitted. The initial denial letter, in this case the March 13

letter, includes information on how to appeal and also includes information on advocates. The legislation allows 20 business days for a reconsideration request and this matter was not a few days late, the request was provided more than a month late. There had never been any request for an extension or any contact by the appellant to advise of any difficulties. The appellant's PPMB application is being reviewed, but as a new application. Here the only issue was the late request for reconsideration.

### **Findings of Fact**

The panel finds as a fact that the initial Nov. letter was not received by the appellant as he had moved to another town. This is corroborated by the different address of the March letter.

The panel finds that the March 13 letter was received by the appellant and that he attended a ministry office on March 20 where he was informed of the decision and advised the ministry he wished to appeal the denial of his PPMB.

The panel finds that the appellant was aware, from his initial PPMB application two years prior, that if needed, he could apply for an extension to provide further information after submitting a request for reconsideration.

## PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision to deny the appellant reconsideration was reasonable based on the evidence and the applicable legislation.

The relevant legislation is as follows:

### ***Employment and Assistance Act***

#### ***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.
- (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 income assistance, hardship assistance or a supplement is not appealable to the tribunal.*

### **Employment and Assistance Regulation**

#### **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.*

#### **Positions of Parties**

The ministry's position is that the appellant was entitled to appeal to the tribunal as the decision resulted in a reduction of income assistance or a supplement, however the decision should be upheld as the legislation requires a time limit of 20 business days and the appellant is well beyond this. The appellant argues that he thought he should deliver the material all at once and did so once he had the forms prepared by the Dr.

#### **Decision**

It was not disputed that under sec 17(1)(c) that the appellant was entitled to appeal to the tribunal, as the decision resulted in a reduction of income assistance or a supplement. The issue is whether the ministry reasonably determined that reconsideration should not be conducted in these circumstances. The legislation provides a 20 business day time limit for requesting reconsideration. The decision relied on the Nov. letter to show the appellant was non-responsive, which the panel finds the appellant never received. However, it is clear from the evidence that the appellant was aware that he could apply for an extension to provide further material, after submitting a request for reconsideration, as he had done previously. It is also clear that material was provided to the appellant by the ministry, in the March 13 letter and the Request for Reconsideration Form, which clearly sets out in several places that the appellant has 20 business days to submit the request. The appellant was aware of extensions being granted if needed. This was not a matter where the appellant was a few days out of time, he was a month late.

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)(c) 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 s.24 (1)(b) of the Act

for the reasons outlined above. In view of this finding, the panel confirms under s.24 (2) of the Act 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.