APPEA

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) decision dated 8 May 2014 determined that the appellant exceeded the 20 day time limit set by s. 79(2) of the Employment and Assistance Regulation for filing his request for reconsideration and therefore denied the appellant the right for a reconsideration of a decision made by the ministry on 11 December 2012.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 17.
Employment and Assistance Regulation (EAR), section 79.

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- An undated, unsigned document, apparently hand written notes from a ministry worker pointing out to a number of issues in respect of the appellant's financial situation.
- An undated, unsigned document titled "Investigation Worksheet" with the appellant's name and indicating a number of financial issues in respect of assets and other related matters. It also mentions "Admin error letter to be done".
- A printout of a ministry Overpayment Notification dated 11 December 2012 to the appellant advising him that he had received an overpayment of assistance for which he was not eligible for the months of October and November 2012, constituting a debt due to the province to be repaid. At the bottom of that letter, there is a paragraph stating: "I acknowledge that I have received this notification and I am aware of my right to request a reconsideration of this decision" but the rest of the paragraph is blank, including where the appellant's signature was to be affixed. Attached to that document was an Overpayment Chart printed on 10 December 2012 indicating the exact amount to be repaid and the reasons thereof.
- A letter dated 11 December 2012 to the appellant informing him of the overpayment "as an error made by the ministry". The letter also stated that the appellant had 20 business days after he was notified of the decision to file a request for reconsideration.
- On 13 December 2012, the ministry indicates the appellant was advised of the decision in person.
- In what appears to be a printout of the appellant's file at the ministry and dated 8 May 2014, it states that the appellant attended a meeting on 13 December 2012 at what seems to be the ministry's office in his community and discussed his situation. He was advised he was "not eligible for assistance as a full time student and assets in excess... Client [the appellant] is not pwd and a new application and it was an admin error that he was even issued in the first place. This file is going to be closed by Investigative Officer as there is no eligibility. Client does have the right to appeal. There are no appeal benefits to be issued he did not receive I.A. last month."
- A document dated 4 January 2013 titled "Review Overview" by a ministry review worker indicating an overpayment for undeclared assets and "ineligible as in School" also indicating "Admin Error Identified" and "Valid consent signed October 12, 2012. This file is a combination of errors." It also states "Notice of admin overpayment letter completed and placed on file to be delivered to client at first contact. Client is no longer receiving assistance. Cheque production turned off."
- A Fax Cover Sheet dated 19 March 2013 from the appellant to the ministry in respect of an Eviction Notice. It states "RE: reconsideration and request for assistance. Please let me know by telephone [number] if you are able to provide assistance at this point or if you require anything further." Attached to this fax is a Notice to End a Residential Tenancy dated 15 March 2013 by the landlord giving the appellant 10 days to vacate his rental premises for failing to pay his rent.
- In October 2013, the ministry indicates the appellant began receiving assistance again but on that month's cheque dated 30 October 2013, the ministry manually deducted $20 for the repayment of the debt he owed. Ongoing $20 monthly repayments were set up to begin with the February 2014 cheque.
- Repayments of $20 each were taken from the appellant's monthly assistance in February and March 2014.
- On 19 March 2014, the appellant met a ministry worker and requested that the ministry return the $20 repayment. The worker explained to the appellant that the reason for the repayment was for an overpayment incurred in 2012 and the notes further mention the appellant stated he had not

been informed of the 2012 decision and had not received an overpayment letter. The notes also mention the appellant indicated he was aware that $20 had been deducted from another assistance cheque before March and that he had requested a reconsideration of ministry's decisions on numerous occasions. The appellant was informed he had exceeded the time allocated by legislation for filing a request for reconsideration.

- At page 2 of 4 of a document dated 24 March 2014 titled "Employment and Assistance Request for Reconsideration" by the ministry it is indicated at "Relevant Dates" that the decision was effective on 11 December 2012, that the "Date requestor informed of decision" was 30 October 2013 and that the "Date the requestor must submit form" was 27 November 2013.
- In his request for reconsideration dated 27 April 2014, the appellant indicated he had not been informed of the decision made in December 2012 about the overpayment of October and November 2012. With respect to the meeting on 19 March 2014, he denied having requested the repayment of $20 be returned to him but rather asked the worker what the amount was for. He stated that was the first time the ministry notified him of the 2012 overpayments but that he had been advised of an overpayment by letter dated 22 July 2013 and that he had made several requests for reconsideration in respect of that letter. He stated that on 6 August 2013, he reapplied for income assistance and filed a request for reconsideration of any decision dealing with an outstanding debt but that the ministry ignored it. He further stated he was not aware that $20 had been deducted from his monthly assistance cheque prior to the meeting with the ministry worker who informed him of those deductions. He claimed no letter informing him of the overpayment was sent to him as it was incorrectly addressed despite the ministry being aware of his mailing address and fax number. He denied having been delivered that letter prior to 29 March 2013. He indicated that the mention that he had been informed in person of the decision on 13 December 2012 is false and that he had previously made a complaint against that worker. The appellant then stated that he had provided documentary evidence to the ministry investigator about his health condition and situation but that documentation was rejected. Recognizing the meeting on 13 December 2012 took place, he stated that he was told further documentation was required before any decision would be made, with no specific deadline given. He claimed that illegal decisions were made with respect to his financial situation and student situation and those decisions should be reconsidered.

In his Notice of Appeal dated 5 June 2014, the appellant reiterates the facts as presented in his request for reconsideration. He adds that he filed a request for a Person with Disabilities (PWD) designation in November 2012 and that there are "multiple requests for reconsideration already at this point".

Since there are a number of inconsistencies between the evidence provided by the ministry and by the appellant, the panel makes the following findings of facts:

- The appellant did not receive the 11 December 2012 letter since the ministry's notes indicate it was "addressed to the office as no forwarding address" and the appellant's evidence is to the effect he did not receive that letter.
- The panel accepts that the appellant understood from the 13 December 2012 meeting that he had to provide further documentation with no specific deadline since the ministry could have had the appellant sign the acknowledgement that he had received notification of the overpayment and that appeared at the bottom of the document "Overpayment Notification" dated 11 December 2012 but it provided no evidence that it even attempted to have that acknowledgement signed. Additionally,

the printout of that meeting demonstrates there was a discussion with the appellant about his eligibility for income assistance but no mention of any overpayments in the previous months. Further, in a ministry document dated 4 January 2013, the worker indicates "Notice of admin overpayment letter completed and placed on file to be delivered to client at first contact", suggesting that in all likelihood, at that date, the appellant had not yet been advised of the overpayment and confirming his evidence.

- The ministry did not provide any evidence that the appellant was notified of the decision in respect of the overpayments on 30 October 2013 as mentioned on page 2 of the Request for Reconsideration dated 24 March 2014 other than stating that the October 2013 cheque was issued on that date and included a mention of a $20 deduction.
- The appellant realized that the ministry deducted $20 from his monthly assistance for the months of October 2013, February and March 2014 since, from his own evidence, he went to the ministry's office on 19 March 2014 to ask why this amount was deducted from his assistance cheque.
- While the ministry makes no mention of a letter dated 22 July 2013 sent to the appellant in respect of those overpayments, the appellant's evidence is that he did receive such a letter and filed a request for reconsideration accordingly. However, the appellant did not provide any documentary evidence of that alleged request for reconsideration nor of its delivery to the ministry's office and in the absence of concrete evidence either from the appellant or from the ministry's notes, the panel concludes that if that request for reconsideration was made, it was for another matter, not the issue of the October and November 2012 overpayments.
- The appellant was notified at the latest on 19 March 2014 of that decision if not earlier, at the very least when he realized $20 was deducted from his monthly assistance and his cheques indicated such deduction.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant exceeded the 20 day time limit set by s. 79(2) of the EAR for filing his request for reconsideration and was therefore denied the right for a reconsideration of a decision made by the ministry on 11 December 2012 was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation in this matter is s. 17 of the EAA:
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...

And s. 79 of the EAR:
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 ministry acknowledges that the appellant may not have received the documents dated 11 December 2012 but argues that the appellant was advised in person on 13 December 2012 when he met with a ministry worker. The ministry further argues that greater weight must be given to its notes. Yet, it notes that the $20 repayment of 30 October 2013 does not confirm the appellant was then informed of the overpayment decision of 11 December 2012 but that the appellant acknowledges having been informed by letter on 22 July 2013. Thus, in any event, the ministry argues that the request for reconsideration was filed beyond the 20 days limit even considering the latest date, 19 March 2014, when the appellant claims he was informed of the decision.

The appellant first argues that the EAA and the EAR do not apply but the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and the Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) should apply since meanwhile he was designated as a PWD. Further, he argues he has not been advised of the 11 December 2012 decision until 19

March 2014 because he never received the letter sent on 11 December 2012 and was not told on the face to face meeting he had with a ministry worker on 13 December 2012 that he had to repay the overpayment but only that he had to provide more documentation to address this issue. He argues that he did not know of the overpayment despite the $20 deduction made on his cheques in October 2013 or later in February and March 2014.

With respect to the applicable legislation, the panel notes that both s. 79(2) of the EAR and s. 71(2) of the EAPWDR set the same 20 days time limitation to deliver a request for reconsideration and thus finds the argument that the EAPWDA and the EAPWDR should apply has no merit.

The panel notes this matter was the result of a series of errors by the ministry and that the evidence the ministry provided was often inconsistent. Thus, the panel considers the evidence in favour of the appellant and concludes that, without any doubt, he had been notified of the overpayments for October and November 2012 and the reasons thereof, on 19 March 2014. Yet, the appellant dated his Request for Reconsideration on 27 April 2014, received at the ministry's office the next day, 28 April 2014, well beyond the 20 business days provided by s. 79(2) of the EAR and a review of the legislation shows that no extension of the time period can be granted. Consequently, the ministry still reasonably determined his Request for Reconsideration was not delivered within 20 business days after he was notified of the ministry's decision and reasonably determined the appellant's request for reconsideration could not be considered since it was not made within the time limits specified by regulation under s. 17(2) of the EAA.

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.