

PART C – Decision under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Social Innovation (the ministry) dated 28 May 2014 that denied the appellant's request for reconsideration of a ministry decision that found that she was not eligible for reimbursement of the maintenance funds deducted from her disability assistance dating back to 2006. The ministry determined that, as the 20 business day time limit to file a Request for Reconsideration had expired, under section 71 of the Employment and Assistance for Persons with Disabilities Regulation, the original decision is final and not open to reconsideration.

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.

PART E – Summary of Facts

The information before the ministry included the following:

1. From the appeal record, the following chronology:
 - 28 February 2013 – the ministry denied the appellant's request for backdated assistance from September 2006 to November 2012. In the 28 May 2014 decision, the ministry states that appellant and her advocate were advised of this decision at that time.
 - 12 April 2013 – the appellant was provided a Request for Reconsideration package, giving 10 May 2013 as the deadline to submit the request for reconsideration. The package included an information sheet then states; "You must complete sections 3 and 4 and returned the form, along with all relevant documents you wish to have considered, to your Employment and Assistance Office within 20 business days of being notified of the ministry decision."
 - 10 May 2013 – the deadline for submitting the Request for Reconsideration passed without it being submitted by the appellant.
 - 05 February 2014 – the appellant again requested backdated assistance for the period September 2006 to November 2012.
 - 09 April 2014 – the ministry denied this request because the appellant had not submitted a completed Request for Reconsideration by the 10 May 2013 deadline. The appellant was provided a Request for Reconsideration package regarding this denial of reconsideration.
 - 05 May 2014 – the ministry received a note from the appellant requesting additional time to consult with a supervisor.
 - 15 May 2014 – the appellant provided a submission prepared by her advocate, to which was attached a letter from the appellant to the ministry dated 27 March 2014 (see below).
2. The advocate's submission goes to argument regarding the appellant's request for backdated assistance for unclaimed adult pass-through family maintenance for the period since her children reached 19 years of age, one in 2006 and the other in 2011. The advocate raises issues of administrative fairness, attaching an uncompleted ministry form letter that she argues had not been, and should have been, sent to the appellant when her children turned 19 years of age, advising her of how to complete the Monthly Report to show the amount of maintenance that she passes through to an adult child so that this amount will not be deducted from her monthly assistance.

The appellant's letter of 27 March 2014 requests full reimbursement of the adult pass-through maintenance that was deducted from her disability assistance from September 2006 to November 2012, stating that she only became aware in November 2012 of her ability to have adult pass-through considered in calculating her monthly assistance. She requests the ministry to calculate the full amount of the underpayment.

In her Notice of Appeal, dated 18 June 2014, the appellant writes:

"I was unable to pursue reconsideration in a timely manner because of illness. As well as anxiety, depression, heart disease, osteoarthritis and degenerative disc disease, I was very ill with bowel disease. I ended up having a section of my bowel removed as a result."

At the hearing, the appellant described how she struggled financially to raise her sons on her limited disability assistance/family maintenance income. When her sons turned 19 and went off to university, she would make sacrifices and send them money or grocery cards to help them out. She was unaware of the adult pass-through program until 2012, when she went to the ministry because of an irregularity in her monthly cheque and was told that if she passed-through the family maintenance amounts to her sons and marked this on her monthly report, these amounts would not be deducted from her monthly cheque. She is seeking reimbursement of the amounts deducted before 2012 so that she can help her sons in their early stages of adulthood. The appellant's advocate stated that the issue here was one of administrative fairness, as the appellant had been denied an opportunity because she had not been properly informed of the adult pass-through program.

With regard to missing the 10 May 2013 deadline to submit the request for reconsideration, the appellant stated that around that time she was very ill with a bowel condition. This was so severe that she had to undergo surgery in July 2013. She had an advocate at the time who had told her that her case was "unwinnable," but she assumed that the advocate would submit the Request for Reconsideration anyway. Unknown to the appellant, the advocate was also ill and took time off work for a month, not sending in the paperwork. The appellant waited and waited to hear back from the ministry and when no response was forthcoming she reapplied in February 2014.

The appellant submitted a letter from her general practitioner (GP) dated 31 July 2014. The GP confirms that the appellant's most disabling condition is chronic anxiety and depression, affecting her motivation, memory and cognitive abilities. The GP confirms that in the summer of 2013 the appellant was required to undergo major bowel surgery for a bowel obstruction. He attached his summary of her medical chart outlining her problems.

The ministry representative asked the appellant whether the April 2014 request was substantially the same as that described in the 12 April 2013 Request for Reconsideration package. The appellant's advocate confirmed that this was the case.

The ministry stood by its position as set out in the 28 May 2014 decision.

The panel finds that the information provided by the appellant in her Notice of Appeal, at the hearing and in the GP's letter that the appellant was ill with a bowel condition around the time of the reconsideration deadline, and the information regarding her then-advocate also being ill around that time, was not before the ministry when it made its decision and is not in support of (i.e. it does not substantiate or corroborate) any information before the ministry when it made its decision. Pursuant to section 22(4) of the *Employment and Assistance Act* (set out below) the panel therefore does not admit as evidence this information. The panel notes that even if this information had been admitted as evidence, it does not alter the dates at issue (see Part F, Reasons for Panel Decision below).

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(4) In a hearing referred to in subsection (3), a panel may admit as evidence only

(a) the information and records that were before the minister when the decision being appealed was made, and

(b) oral or written testimony in support of the information and records referred to in paragraph (a).

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 that she was not eligible for reimbursement of the maintenance funds deducted from her disability assistance dating back to 2006. More specifically, the issue is whether the ministry determination, that the original ministry decision is final and not open to reconsideration as the 20 business day time limit to submit a Request for Reconsideration under section 71 of the EAPWDR has expired, 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.

The position of the ministry is that 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 her Request for Reconsideration regarding the denial of her request for reimbursement of the maintenance funds deducted from her disability assistance dating back to 2006 was 10 May 2013. That deadline passed without the appellant submitting the completed Request for Reconsideration. She resubmitted her original request on 05 February 2014. This request was again denied as the deadline for reconsideration of the denial of the original request had passed. On reconsideration of this second denial, the ministry stood by its position that the time limit permitted under the EAPWDR had been exceeded and therefore found that this matter is closed and not subject to reconsideration.

The appellant's position is that her original request involves important issues of administrative fairness that warrant full and fair adjudication. Her illness, and that of her advocate, around the time of the 10 May 2013 deadline, are ample reasons for the ministry to waive the deadline and move forward to reconsider her request.

Panel findings

The appellant has acknowledged that the 05 April 2014 request is substantially the same as that denied earlier and set out in the Request for Reconsideration package provided to the appellant on 12 April 2013. The panel therefore finds that the ministry was reasonable in considering the 05 February 2014 request as a reconsideration request, albeit not on the specified form and almost 9 months after the deadline. 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. The legislation does not contain any provisions that would allow the deadline to be waived or extended in unusual, exceptional or extenuating circumstances. The evidence is that the appellant did not submit the Request for Reconsideration provided to her by the ministry on 12 April 2013, instead resubmitting her request on 05 February 2014. As the 10 May 2014 deadline for submitting the 12 April 2013 Request for Reconsideration had long since passed, the panel finds that the ministry decision to deny her a reconsideration of the original request is reasonably supported by the evidence. The panel therefore confirms the ministry's decision.