

PART C – Decision under Appeal

The outcome under appeal is the Ministry of Social Development and Social Innovation (ministry) decision of July 30th, 2014 wherein the ministry determined that a reconsideration is not available to the appellant because the appellant did not deliver a completed Request for Reconsideration on the ministry's decision of October 2nd, 2013 to the ministry within the legislated 20-business day time limit as stated under section 71(2) Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

EAPWDA - section 16
EAPWDR – section 71

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- 3 pages of statement of payments disbursed from April 2004 to June 2013;
- Divorce Judgment involving the appellant ordering child support payments of \$500 per month;
- Ministry case notes indicating the appellant received maintenance sporadically; that her dependant was never on her file; that the dependant lived with the father; that the dependant did not attend post-secondary school;
- Letter from ministry to appellant dated May 13th, 2013 stating there is legislation within EAPWDR that permits maintenance payments to “pass through” or pay, a portion of the child maintenance you receive to your dependant;
- Request for Reconsideration of ministry’s decision of October 2nd, 2013 wherein the appellant requested the ministry issue an underpayment for family maintenance payments because the appellant was not aware she could pass the maintenance through to her dependant.
- Request for Reconsideration dated July 16th, 2014 with a letter dated July 10th, 2014 attached.

On October 2nd, 2013 the appellant was informed of the ministry’s decision, of the same date, that denied the appellant’s request for the ministry to issue an underpayment of family maintenance that had been deducted from her income assistance. The appellant requested a reconsideration of the decision and the ministry prepared a Request for Reconsideration package. The appellant had to complete the reconsideration package and return the package to the ministry office by October 30th, 2013. On December 6th, 2013 the ministry considered the appellant’s request abandoned and closed the service request as the appellant had not returned the package to the ministry office.

On June 20th, 2014 the appellant re-submitted the request for backdated assistance for maintenance income. The ministry denied the appellant’s request because this was the same issue the ministry had decided on October 2nd, 2013 and the appeal period for that decision expired on October 30th, 2013. The appellant again requested reconsideration on July 16th, 2014.

On June 23rd, 2014 the ministry prepared a request for reconsideration package with a deadline of July 18th, 2014. On July 16th, 2014 the appellant submitted the reconsideration package which was reviewed by the ministry on July 30th, 2014. The ministry determined the appellant was not entitled to reconsideration as the ministry had already made a decision on this matter on October 2nd, 2013 and since the appellant did not appeal that decision by submitting the Request for Reconsideration package, the ministry considered the appellant’s request to be abandoned.

The appellant attached a memo signed by her dated July 10th, 2014 to the Notice of Appeal. She stated that she is appealing this decision due to an error between the BC Family Maintenance Enforcement Program (BCFMEP) and the ministry. The appellant stated the family maintenance payments were deducted from her income assistance and then from her disability income assistance cheques in error and that initially the ministry thought the payments were for one sibling when they were for another. She stated she became aware of the error in a letter from the ministry dated May 13th, 2013 and that it was at this time also that she learned of the “adult pass through option” – income exemption legislation (set in in Schedule B).

At the hearing the appellant stated that she had more than one dependant but only one Maintenance Order because the maintenance from her ex-spouse was so far in the arrears that the Employment and Assistance worker (EAW) advised her to get another Order would be futile. The appellant stated that in 2012 she was a victim in a motor vehicle accident that resulted in her having a number of health issues which still have an impact on her today. The appellant stated that she did not know that the maintenance payments she received could be exempt from her income and “passed through” to her dependant until she received the May 13th, 2013 letter from her EAW. She stated it was at that time that she requested the underpayment from the

ministry for the return of those assistance funds. The appellant stated that when she received the ministry's October 2nd, 2013 decision she still had several health issues and didn't really understand what was happening so she didn't complete and return the reconsideration package. The appellant testified that now she is feeling better and is trying to address some of her former issues.

In response to questions from the panel, the appellant testified that she does recall being advised of the ministry's decision in October 2013 and requesting a reconsideration of that decision but doesn't recall picking up the Reconsideration package. She testified that she didn't complete the Reconsideration package because she was ill at the time.

The panel finds the appellant's oral testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and is admissible as evidence in accordance with section 22(4) EAA.

The ministry relied on its reconsideration decision and provided no additional information

The panel makes the following findings of fact:

1. The ministry's decision on the appellant's request for an underpayment of family maintenance payments that were deducted from her income assistance benefits was made on October 2nd, 2013;
2. The reconsideration package for the ministry's decision of October 2nd, 2013 had to be completed and delivered to the ministry office by October 30th, 2013;
3. The reconsideration package for the October 2nd, 2013 decision was not delivered to the ministry office;
4. On June 20th, 2014 the appellant's re-submitted her request for back-dated disability assistance for maintenance income;
5. On July 16th, 2014 the appellant submitted a Request for Reconsideration of the ministry's decision of July 30th, 2014.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of ministry's decision of July 30th, 2014 wherein the ministry determined that a reconsideration is not available to the appellant because the appellant did not deliver a completed Request for Reconsideration on the ministry's decision of October 2nd, 2013 to the ministry within the legislated 20-business day time limit as stated under section 71(2) EAPWDR.

The legislation considered:

EAPWDA

Reconsideration and appeal rights

Section 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 - How a request to reconsider a decision is made

Section 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 with an employee in the ministry office, or
 - (b) being received through the mail at that office.

The ministry relied on section 71(2) EAPWDR which states a person who wishes the ministry to reconsider a decision must deliver a request for reconsideration to the ministry within 20 business days after the date the person was notified of the decision. The ministry argued the reconsideration package including the decision of October 3rd, 2013, which denied the appellant back-dated income exemptions for family maintenance

payments for her adult dependant, was prepared for pick-up at the ministry office and had to be completed and returned to the ministry office by October 30th, 2013. The ministry argued that the appellant did not pick-up the reconsideration package and the ministry considered her request abandoned. The ministry argued the appellant's issue in October 2013 and her issue in June 2014 (request for back-dated income exemption-underpayment) is the same, that the ministry made a decision on that issue on October 2nd, 2013 and the appellant did not appeal that decision. The ministry argued the appellant did not submit a completed Request for Reconsideration on the ministry's decision of October 2nd, 2013, as set out in section 71(2) EAPWDR, and the time frame has lapsed and the ministry has no discretion to vary from the legislated 20-day requirement.

The appellant argued that she had several health issues as a result of the motor vehicle accident and she was not well in October 2013 and now is feeling better and trying to address previous matters – underpayment of family maintenance.

The evidence before the panel is that on October 2nd, 2013 the ministry denied the appellant's request for an underpayment of family maintenance payments that were deducted from her income assistance because she did not meet the terms of the maintenance order and therefore the income exemption set out under Schedule B, section 1(a)(xviii) EAPWDR did not apply in her circumstance. The evidence is that the appellant requested a reconsideration of the ministry's decision, the ministry made up a Reconsideration package for the appellant to pick up at the local ministry office, but the appellant did not pick up the package and the ministry considered the appellant's request abandoned. The appellant does not dispute that she did not complete the reconsideration package and return it to the ministry office by October 30th, 2013.

On June 20th, 2014 the appellant re-submitted her request for the back-dated income exemptions for family maintenance payments, stating there had been an error made between the ministry and the BCFMEP. The ministry's position is that the appellant is not entitled to reconsideration because the ministry made a decision on this issue on October 2nd, 2013 which was not appealed by the appellant and the time limits on appeal have lapsed. The appellant's position is that although she did not submit the documentation for reconsideration at that time, she had medical issues and was in poor health and did not comprehend what was happening.

The panel finds the issue in the ministry's October 2nd, 2013 decision and the appellant's request of June 20th, 2014 are the same and therefore the appellant is not entitled to a reconsideration because the appellant did not deliver a Request for Reconsideration of the October 2nd, 2013 decision to the local ministry office within the time limits set out in section 71(2) EAPWDR.

The panel accepts that the appellant has a PWD designation and may suffer from multiple medical issues which may have impacted on her ability to file the reconsideration package in October 2013, however, there is no medical evidence before the panel to support the appellant's argument and that she was unable to comply with the requirements of section 71(2) EAPWDR for health reasons. For this reason, the panel finds there were no undue or unforeseen circumstances that prevented the appellant from complying with section 71(2) EAPWDR.

Therefore, the panel finds that since the appellant did not meet the criteria within section 71(2) EAPWDR the ministry's decision of July 30th, 2014 to deny the appellant a Reconsideration was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the ministry's decision.