

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 8, 2014 which found that the appellant did not deliver a completed Request for Reconsideration to the ministry within the time limit mandated by Section 79 of the *Employment and Assistance Regulation* and, therefore, is not entitled to a reconsideration of the ministry's decision that she is not eligible for income assistance for failing to provide information as directed, pursuant to Section 10 of the *Employment and Assistance Act*.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 10

Employment and Assistance Regulation (EAR) Section 79

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Letter dated April 26, 2013 from a company to the appellant confirming part-time employment;
- 2) Letter dated May 23, 2013 from a financial institution 'To whom it may concern' confirming that funds in the appellant's account will not be released to her;
- 3) Letter dated July 9, 2014 from the ministry to the appellant which states in part that the appellant's file has been selected for review and that information may be requested in order to determine or audit eligibility for assistance; the ministry stated that listed information or documentation is required by July 23, 2014:
- 4) Letter dated July 29, 2014 from the ministry to the appellant that states in part that the appellant's file has been selected for review and that information may be requested in order to determine or audit eligibility for assistance; the ministry stated the information requested in the July 9, 2014 letter has not been provided and is required by August 8, 2014;
- 5) Letter dated August 15, 2014 from the ministry to the appellant advising that as the ministry has not received information requested in previous letters sent to her, the appellant is no longer eligible for assistance. The appellant is advised that if she is dissatisfied with this decision, she can ask the ministry to reconsider it. She has 20 business days from the day she receives the letter to submit a complete Request for Reconsideration form. A Reconsideration and Appeal brochure is enclosed to give her more information;
- 6) Letter dated September 5, 2014 from a financial institution 'To whom it may concern' confirming the appellant has closed her membership; and,
- 7) Request for Reconsideration dated September 18, 2014 which sets out the appellant's reasons which includes her handwriting on the page that sets out a number of relevant dates as follows:
 - the month the decision is effective is September 2014,
 - the date the appellant was informed of the decision is August 22, 2014,
 - the date by which the appellant must submit the form is September 19, 2014, and,
 - the date of signature by the ministry is September 9, 2014.

In her Request for Reconsideration, the appellant wrote that:

- She had her file closed. She cannot get any money from the ministry to pay her rent and she has no food. She is being treated like a homeless person.
- She has given all the forms [the ministry] needs and she is still denied.
- She did the job but she never got paid.

In her Notice of Appeal dated October 20, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- She does not have the piece of ID [the ministry] wants from her. She does not have her citizenship card and she has not worked in 2 years.
- She has given all the forms [the ministry] asked for. The other forms, i.e. separation slips, she does not have.
- She has given [the ministry] her SIN number, driver's license, tax returns and any other forms [the ministry] has asked for, so she does not understand.

- She does not know what else to do and asks for help. She believes [the ministry] is trying to upset her and she does not know what else to do.

The ministry relied on its reconsideration decision as its submission. The ministry's decision included the following information:

- On August 15, 2014 the ministry sent the appellant a letter advising her that she was ineligible for assistance and she had 20 business days from when she received the letter to complete and submit a Request for Reconsideration form;
- On September 5, 2014 the appellant advised the ministry that she would like to request a reconsideration of the decision to deny her assistance.
- On September 10, 2014 the appellant picked up the Request for Reconsideration package and the ministry advised the appellant of the time frames for the reconsideration process.
- On September 11, 2014, the appellant advised the ministry that she dropped off her reconsideration package with an advocate and she would get it to the ministry as soon as possible.
- On September 26, 2014 the ministry received the appellant's Request for Reconsideration of the ministry's decision.

The panel notes that in its reconsideration decision the ministry indicated that the August 15, 2014 letter was sent to the appellant the same day while in the Request for Reconsideration it was indicated that it was sent on August 19, 2014. The panel accepts that the letter was sent on August 19, 2014 which is the date the most favourable for the appellant.

Admissibility of New Information

The ministry did not raise an objection to the admissibility of the further information provided by the appellant in her Notice of Appeal, and the panel admitted the written evidence as detail of the appellant's interaction with the ministry at that time, as being in support of the information and records before the ministry on reconsideration, pursuant to section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision, which found that the appellant did not deliver a completed Request for Reconsideration to the ministry within the time limit mandated by Section 79 of the *Employment and Assistance Regulation* and, therefore, is not entitled to a reconsideration of the ministry's decision that she is not eligible for income assistance for failing to provide information as directed, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstances.

Section 17 of the *Employment and Assistance Act* (EAA) provides as follows:

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.

Section 79 of the *Employment and Assistance Regulation* (EAR) provides:

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.

Ministry's position

The ministry's position is that the appellant communicated with the ministry on September 5, 2014 that she would like to request a consideration and had been "notified" of the decision of her ineligibility for income assistance by the ministry's letter dated August 15, 2014. The ministry argued that the 20 business day time limit began to run when the appellant was notified of its decision on August 22, 2014, and this time period ended on September 19, 2014. The ministry argued that the appellant submitted a Request for Reconsideration on September 26, 2014 which exceeded the 20 business day time period set out in the EAR and, therefore, the decision that the appellant is not eligible for income assistance is not subject to reconsideration.

Appellant's position

The appellant did not take a position with respect to the issue of when she was notified of the ministry's decision or regarding when she provided her completed Request for Reconsideration to the ministry. Rather, the appellant argued that she has provided the ministry with all of the information requested of her by the ministry, or the information or documentation does not apply to her.

Panel's decision

Section 79 of the EAR stipulates that a person who wishes the ministry to reconsider a decision *must* (emphasis added) deliver a Request for Reconsideration to the ministry within 20 business days after the date the person is notified of the decision. The Request for Reconsideration form, upon which the appellant's handwriting appears and indicating that the appellant looked at this page, sets out the relevant date of when the appellant was informed of the decision as August 22, 2014, and the appellant does not dispute this information. The Request for Reconsideration form also set out the relevant date of when the appellant must submit the form as September 19, 2014 and the appellant also does not dispute this information. The panel finds that the ministry reasonably determined that September 19, 2014 is the date which is 20 business days from August 22, 2014, not counting Labour Day which is a statutory holiday, and is the deadline that the appellant was required to meet. The panel notes that the directory language of Section 79, which uses the word "must", requires that the Request of Reconsideration be provided to the ministry within the time period set out.

While the appellant advised the ministry on September 5, 2014 that she would like to request a reconsideration of the decision to deny her assistance, Section 79 of the EAR requires that the Request for Reconsideration *must* (emphasis added) be in the form specified by the minister, which is a printed form to be completed in writing by the appellant. The ministry stated that the appellant submitted the Request for Reconsideration in the form required on September 26, 2014 and the appellant does not dispute this information. Therefore, the panel finds that the ministry reasonably concluded that the appellant's completed Request for Reconsideration form was delivered outside the time period, pursuant to Section 79 of the EAR, as it was not delivered by the deadline of September 19, 2014, and the ministry's decision that she is not eligible for income assistance is not subject to reconsideration.

Conclusion

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)(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 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.