

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry)'s decision, dated November 7, 2014 in which the ministry denied the appellant a reconsideration of his September 9, 2014 decision, denying his request for a transportation allowance to attend a drug and alcohol treatment facility, because the request for reconsideration was not delivered to the ministry within 20 business days of the date he was notified of the original decision as set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 71 (2), specifically because the request for reconsideration had to be received by the ministry office by October 7, 2014 and the appellant's request for reconsideration was not received until October 30, 2014.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 5, 16(1) and 16(2)
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 71(2)

PART E – Summary of Facts

The appellant has been designated as a Persons with Disabilities and his advocate made a request for non-local medical transportation assistance on August 26, 2014 in order to travel to a federally funded drug and alcohol treatment facility. On September 9, 2014 the ministry denied the appellant's request for travel funds and on October 17, 2014 his advocate requested a reconsideration of that decision, via telephone and the ministry received the appellant's request for reconsideration on October 30, 2014.

The information before the ministry at the time of reconsideration included the following:

- 1) A Request for Non-local Medical Transportation Assistance, dated August 26, 2014, completed by the appellant's advocate, estimating the transportation cost to be \$317.44. In Part 3 of the form, when asked "Are you able to contribute to the cost of this medical transportation?", it was checked "No". When asked, "Have you considered the following options to assist with your medical transportation cost?", both Family /Friends and Voluntary Agencies were checked "No".
- 2) A letter from the appellant's advocate, dated October 29, 2014, citing section 77(1) of the Employment and Assistance Regulation. The letter provides a brief summary of the appellant's health history and need for access to treatment services and argument as to why the appellant meets the legislative criteria for non-local medical transportation assistance.
- 3) In Section 4 of the Request for Reconsideration, dated October 30, 2014, the appellant has signed in the space provided and Section 3, Reason for Request for Reconsideration, was left blank.

Attached to the Notice of Appeal, signed by the appellant's advocate on November 27, 2014 is a letter from the same advocate. In this letter the advocate states that she submitted the Request for Non-local Medical Transportation on August 26, 2014 and "Historically, MSDSI has always contacted the [advocacy group] regarding service requests submitted on behalf of the client." The letter states that although the appellant had been notified of the decision to deny the original request, the advocacy group was not aware that the request had been denied, even though, "it was made very clear" on the application to contact the advocate regarding questions for this service request. The letter concludes, "If [the advocacy group] had been contacted directly by MSDSI by the original denial date," they, "would have submitted a reconsideration package in a timely manner."

The appellant did not attend the hearing, but a signed Release of Information, dated December 10, 2014 was provided to the Employment and Assistance Appeal Tribunal indicating the appellant's consent to have his advocate attend the hearing and make decisions on his behalf.

The advocate's evidence at the hearing included the following information:

- The advocate stated that the appellant is extremely marginalized and his addiction to alcohol has led to life threatening disabilities. Due to his high risk for aggressive behavior and previous residential school trauma, this addiction treatment centre was his only option.
- The advocate stated that the appellant has an 'unofficially' decreased mental capacity and therefore the advocacy group works on his behalf to assist him with navigating the system and accessing the treatment he needs. This is why the advocacy group completed the Request for Non-local Medical Transportation on August 26, 2014 on his behalf.
- The advocate explained that the original request had been denied because the ministry determined that the appellant had already travelled to the treatment facility and it was a federally funded program. She explained that the ministry had contacted the appellant at the treatment centre to inform him of the application denial, and this denial was not communicated to the advocate until October 16, 2014.
- The advocate feels that missing the legislated deadline was due to miscommunication and if the ministry had contacted the advocate, who was clearly named as the Applicant on the Request for Non-local Medical Transportation form, then the office would have been aware and made the request for reconsideration within the appropriate time frame.
- The advocate reports that there are current Release of Information forms on file for the appellant, the most recent being February 17, 2014 that were faxed to the ministry.

The ministry relied on the information within the reconsideration decision and otherwise submitted no new information. The ministry confirmed that the denial of the Request for Non-local Medical Transportation was communicated to the appellant by a telephone call to the treatment facility he was attending on September 9, 2014. The ministry confirmed that the first note on their files regarding communication with the advocate for this particular issue was on October 16, 2014 when the advocate requested a Request for Reconsideration package. The ministry notes that they would not discuss issues pertaining to the appellant with the advocate without a current Release of Information on file and there is not one for the advocate or her group on file since February 18, 2012, expiring in February, 2013. The ministry representative was unfamiliar with the fax number the advocate reported that the current Release of Information form was sent to.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision of November 7, 2014, to deny the appellant's request for reconsideration of his September 9, 2014 decision, denying his request for a transportation allowance to attend a drug and alcohol treatment facility, because the request for reconsideration was not delivered to the ministry within 20 business days of the date he was notified of the original decision, was reasonable, on the basis that his request did not meet the legislative criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 71 (2), because the request for reconsideration had to be received by the ministry office by October 7, 2014 and the appellant's request for reconsideration was not delivered until October 30, 2014.

The relevant section of the EAPWDA is as follows:

Disability assistance and supplements

Section 5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

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 or the regulations:

- (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.

The relevant sections of the EAPWDR are as follows:

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

The appellant's advocate argues that their office completed the Request for Non-local Medical Transportation form and were listed as the Applicant, therefore any questions or denial notification should have been communicated with their office. The advocate further states that their office has signed Release of Information forms, signed by the appellant, the most recent being February 17, 2014, which were faxed to a ministry office and should be part of the appellant's file.

The ministry's position is that there are no current Release of Information forms for the advocate or advocacy group on file and due to privacy issues, the ministry would not be able to communicate the appellant's denial of his Request for Non-local Medical Transportation to their office without his consent. The ministry representative was unfamiliar with the fax number the advocate reported that the current Release of Information form was sent to. The ministry's position is that even though the appellant may not have communicated his application denial to his advocate, the Request for Reconsideration package was delivered beyond the legislated 20 business day time limit.

The panel finds that although the appellant's denial of his Request for Non-local Medical Transportation application was not communicated directly to his advocate, it was communicated to the appellant on September 9th, and the ministry did not receive a Request for Reconsideration package until October 30, 2014, which was outside the 20 business day time limit of October 7, 2014, for delivery, and therefore did not meet the legislative criteria set out in the EAPWDR Section 71 (2).

Conclusion

Section 16 (3) of the EAPWDA 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.

In conclusion, 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.