

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) decision dated December 1, 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 the *Employment and Assistance Regulation* and, therefore, is not entitled to a reconsideration of the ministry's decision that she incurred an overpayment of assistance.

## PART D – Relevant Legislation

*Employment and Assistance Act* (EAA) Section 17

*Employment and Assistance Regulation* (EAR) Section 79

## PART E – Summary of Facts

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

- 1) Handwritten letter from the appellant dated February 17, 2010 'To whom it may concern' stating in part that when the appellant first applied for income assistance she was living with her then common law spouse until August 2009. She did not declare this common law relationship at the time because he did not want her to. During this period he was sometimes working and on EI [employment insurance], receiving about \$800 every two weeks;
- 2) Handwritten note by the appellant stamped received by the ministry on February 25, 2010 confirming that the appellant was living with another party from August 2008 until November 2009;
- 3) Letter dated March 17, 2010 from the ministry to the appellant advising that the ministry has determined that the appellant received assistance for which she was not eligible and enclosing an overpayment chart to demonstrate how the overpayment of \$14,580.92 was calculated. The ministry set out that if the appellant was dissatisfied with the decision, she could ask the ministry to reconsider it. She has 20 business days from the day she received the letter to submit a complete Request for Reconsideration form. A Reconsideration and Appeal brochure was enclosed to give her more information; and,
- 4) Request for Reconsideration dated October 29, 2014 which sets out the appellant's reasons which included attached typed pages. The appellant wrote:
  - The letter is to tell the ministry why she feels she needs her fine reconsidered.
  - Details are given of the circumstances of her living with the father of her child, including his emotional and physical abuse.
  - In November 2010, the appellant stayed with her parents and, with her dad's support, she decided to tell the ministry the truth because she did not want to be in that situation.
  - The ministry told her to stay on income assistance and to sign a statement that she would pay back the money at the rate of \$20 every month. She only agreed because she truly needed the help until she got her life together.
  - She had already found a place for her and her child to live, so she signed to get the help. She never imagined that she would get her life together, get a job, and then get this fine.
  - She apologizes as she did not receive the reconsideration form that was sent out the first time "a few years ago." If she did, she "would have written this in a heartbeat."

In her Notice of Appeal dated January 19, 2015, the appellant expressed her disagreement with the ministry's decision and wrote that:

- She was not aware of the income her child's dad made at the time. He never gave her money even after her child was born.
- She was constantly threatened by him not to contact the ministry to inform them about her living with him.
- She only received the bill of overpayment in September 2012. She was told that she had no right to request a form of reconsideration at that time.

At the hearing, the appellant provided an additional document which was a written submission on behalf of the appellant and included some background factual information as follows:

- On February 17, 2010 the appellant and her father met with the ministry and the appellant told the ministry the truth about her living situation with the father of her child.
- The ministry advised her that she had to sign a statement to agree to pay back \$20 each

month.

- The ministry said that in order for her to receive income assistance, she had to say how much she thought the father of her child was making. She said she did not know for sure what he did for a living or how much income he made. She was advised to put something in writing and that is why she wrote that he was making \$800 every two weeks.
- She has never known how much he made as he has not given her a single penny to support their child. He owes her over \$11,000 in child support and he claims he makes less than \$20,000 per year.
- The ministry did not tell her about having to pay \$14,580.92.
- She did not receive the ministry's letter dated March 17, 2010 that was either sent to her previous address that she shared with the father of her child or to an address that she was not able to receive the mail from.
- In January 2012, her income assistance ended.
- She contacted the ministry on September 10, 2012 when she received the notice of debt, and this letter was either mailed to her mother's address or to her current address with the ministry at the time.
- On September 11, 2012, the ministry told her she was too late for reconsideration.
- The ministry stated that it attempted to contact her on September 17, 2012 but she had changed her telephone number because of harassment from the father of her child.
- Over the period of September 2012 through October 2014, she contacted several women's advocacy organizations and spoke with lawyers and tried to make a good life for her and her child despite the constant mental abuse that she suffered from the father of her child. She found a job and it has given her some stability. She contacted the MLA office and they helped her seek a reconsideration.
- On October 21, 2014, the ministry prepared a request for reconsideration package which instructed for her to complete it and return it to the ministry by November 19, 2014, which she did.

At the hearing, the appellant and her advocate stated that:

- When the appellant went to see the ministry in February 2010, she was told that she had to make a written statement in order to continue to receive income assistance and she needed to say how much the father of her child received in income. He had stopped working at one point and, when he was working, she never saw any of the money. She guessed at an amount because she really did not know at the time but wanted to cooperate with the ministry.
- She had found a place for her and her son to live and she wanted to ensure that she received the assistance. She cannot remember if the ministry told her that she would be responsible for the amount outstanding at the time that she signed her statement. It was such a difficult and stressful time for her and she felt she had no other option.
- They want to emphasize that the letter dated March 17, 2010, which set out the ministry decision, was not received by the appellant until 2 years later. The appellant moved right away to talk to the ministry about the decision and she was told that the reconsideration time was up. The appellant then clarified that the letter she received in September 2012 was from Revenue Canada but referenced the debt with the ministry.
- The appellant had been in an abusive relationship with the father of her child and had both moved and changed her telephone number to get away from him.
- In September 2012, the ministry had tried to call her but she had changed her telephone number to avoid the father of her child and she admits that she did not give the ministry her

new number.

- At the time that this occurred, she was very young and was emotionally abused. She was trying to figure life out and was in a bad depression when they “kept sending me the debt.”
- She finally got the MLA to help her with her request for reconsideration. She wants to get the debt out of her life so she can have a nice future for her and her child.
- On October 21, 2014 when the ministry gave her the reconsideration package, she was convinced that the time was reinstated.
- She would like another chance to deal with this on the merits rather than have the ministry decision stand “on the basis of a technicality.”

The ministry relied on its reconsideration decision, as summarized at the hearing. At the hearing, the ministry clarified that from the time that the appellant signed the statement in 2010, \$20 per month has been deducted from the appellant’s assistance to apply toward the outstanding overpayment.

The ministry’s decision included the following information:

- On March 17, 2010 the appellant was advised of the decision. The ministry sent the appellant a letter advising her that she had incurred an overpayment and she had 20 business days from when she received the letter to complete and submit a Request for Reconsideration form.
- The appellant was in receipt of income assistance in March 2010, the letter was mailed to the current address on file and there was no change of address until November 2010.
- The deadline to submit the Request for Reconsideration was April 14, 2010.
- On September 10, 2012 the appellant contacted the ministry regarding the overpayment as Revenue Canada had contacted her. The ministry verbally informed the appellant of the overpayment at that time.
- On October 21, 2014 the ministry was contacted about reconsidering the decision and a reconsideration package was prepared.
- On November 19, 2014 the appellant submitted her request for reconsideration to the ministry.

### ***Admissibility of New Information***

The ministry did not object to the admissibility of the further information provided by the appellant in her written submission and did not raise an objection to the oral testimony on behalf of the appellant. The panel admitted the written and oral evidence as detail of the appellant’s interaction with the ministry, and being in support of the information and records before the ministry at the time the decision being appealed from was made, 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 incurred an overpayment of assistance, 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 had been "notified" of the decision regarding her liability for an overpayment of assistance both verbally on February 17, 2010 and again on September 10, 2012, and in writing by the ministry's letter dated March 17, 2010. The ministry argued that the letter dated March 17, 2010 was mailed by the ministry to the current address on file for the appellant and that there was no change of address until November 2010. The ministry argued that the 20 business day time limit began to run when the appellant was notified of its decision and this time period ended on April 14, 2010. The ministry argued that the appellant submitted a Request for Reconsideration on November 19, 2014 which exceeded the 20 business day time period set out in the EAR and, therefore, the decision that the appellant incurred an overpayment of assistance is not subject to reconsideration.

#### *Appellant's position*

The appellant's position is that she was notified of the ministry's decision when she received the letter on September 10, 2012. The appellant argued that as soon as she received a copy of the ministry's decision, she exerted all efforts to contact the ministry so that she could have the right to request reconsideration. The appellant argued that over the period September 2012 to October 2014, she tried to make a good life for her and her son despite the constant mental abuse that she suffered from the father of her child. The appellant argued that the ministry prepared a reconsideration package for her on October 21, 2014 and instructed her to return it by November 19, 2014, and she complied with this deadline. The appellant argued that the ministry's letter of October 21, 2014 provided her with a new time to file a Request for Reconsideration and the ministry thereby recognized that her time for reconsideration had been reinstated. The appellant argued that she should be given another chance to deal with the question of the overpayment on the merits rather than have the ministry decision stand "on the basis of a technicality."

#### *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. In her written submission provided at the hearing, the appellant wrote that on February 17, 2010 the appellant and her father met with the ministry and the appellant told the ministry the truth about her living situation and the ministry advised her that she had to sign a statement to pay back \$20 each month. There is a handwritten letter from the appellant dated February 17, 2010 stating in part that when the appellant first applied for income assistance she was living with her then common law spouse. At the hearing, the ministry clarified that \$20 per month has been deducted from the appellant's assistance to apply toward the outstanding overpayment, from the time she signed the statements in 2010. In her written submission, the appellant wrote that the ministry did not tell her at that time about having to pay back the sum of \$14,580.92. At the hearing, the appellant stated that she cannot be certain that the ministry did not tell her the amount of the overpayment at that time as it was such a difficult and stressful time for her. The panel finds that the ministry reasonably concluded that the appellant was verbally notified of the ministry's decision regarding her liability for an overpayment at the time that she met with the ministry

and signed the statement dated February 17, 2010. The appellant admitted that she knew she had to pay back a certain amount to the ministry at the rate of \$20 per month and the appellant did not dispute that this amount was deducted from her assistance after she signed the statement. If the appellant was not sure how much she had to pay back to the ministry at the rate of \$20 per month, she could have contacted the ministry for this information.

While the appellant argued that she did not receive the ministry's letter dated March 17, 2010, which set out the overpayment amount of \$14,580.92 and included an overpayment chart, the ministry stated that the letter was addressed and mailed to the address for the appellant on file with the ministry and that her address was not changed with the ministry until November 2010. The panel finds that the ministry reasonably determined that the appellant was required to submit her request for reconsideration by April 14, 2010 at the latest, as being 20 business days from the date of the March 17, 2010 letter. Although the appellant argued that she should be given another chance to deal with the question of the overpayment on the merits rather than have the ministry decision stand "on the basis of a technicality," 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 20 business days and, in the appellant's case, over 4 years have elapsed since the deadline.

While the appellant stated that she advised the ministry on September 11, 2012 that she would like to request a reconsideration of the decision regarding her liability for an overpayment, 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 November 19, 2014 and the appellant does not dispute this information. The appellant argued that the ministry's letter of October 21, 2014 provided her with a new time to file a Request for Reconsideration and the ministry thereby recognized that her time for reconsideration had been reinstated; however, the appellant acknowledged that the ministry advised her in September 2012 that she was out of time for a reconsideration and the ministry position has not changed since the reconsideration package was provided to the appellant at her insistence. 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 April 14, 2010, and the ministry's decision regarding her liability for an overpayment 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.