

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) decision dated November 26, 2014 in which the ministry determined that the appellant did not have a right of reconsideration as she had not delivered her Request for Reconsideration (RFR) within the 20 business days required by section 71 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

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 evidence before the ministry at the time of reconsideration consisted of:

- 1) The appellant's RFR dated November 20, 2014 which states that her doctor has added additional information to the application which the appellant asked the ministry to consider;
- 2) Letter from the ministry to the appellant dated August 7, 2014 and Persons with Disability (PWD) Designation Decision Summary dated July 8, 2014;
- 3) A PWD application comprised of a Self-report (SR) signed by the appellant on March 27, 2014; a Physician Report (PR) and an Assessor Report (AR) both dated March 10, 2014; and
- 4) Consult reports from the appellant's specialist dated March 14 and April 8, 2013.

In the Notice of Appeal the appellant states that there was confusion because the ministry sent her an approval letter and then denied her PWD application after that, so her appeal was late. The appellant states that her doctor added in new information to the original application that she wants the tribunal to consider.

Admissibility of New Evidence

At the hearing the appellant, through her interpreter, provided additional oral testimony regarding the reason that her RFR was delivered late. The appellant states that the ministry sent her one letter approving her PWD application, and then she received another letter denying her PWD application. The appellant states that she went to the ministry office, told the ministry representative that she was struggling because of her own health conditions, her husband's health condition requiring hospitalization and looking after five children and that the ministry representative advised her that she could submit her RFR after the deadline for delivery. The appellant's evidence is that she then attended the ministry office on November 4, 2014 and was advised that her file had been closed on October 31, 2014.

The appellant's husband was a witness at the hearing. His evidence was that the ministry's initial acceptance and then denial of the appellant's PWD application caused a lot of confusion and with all the difficulties he and the appellant were having the ministry should accept that it was their error that caused their problems. The appellant's husband said that he wished someone would come to their house and look them in the eyes and see how hard it is for them.

The panel admitted the oral testimony into evidence as it was in support of the information before the ministry at the time of reconsideration in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the oral testimony provided additional information regarding the appellant's delay in submitting the RFR.

The ministry representative confirmed that the ministry had initially sent the appellant a letter approving her PWD application on July 14, 2014 but upon realizing the error sent the appellant a letter dated August 7, 2014 correcting the decision. The ministry then provided the appellant with a RFR package on August 15, 2014 and due to the confusion, they extended the time for the appellant to provide the RFR until October 30, 2014 but the RFR was not submitted until November 20, 2014. The ministry representative stated that the appellant could submit a new PWD application.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's determination that the appellant had no right of reconsideration was a reasonable application of the applicable legislation in the circumstances of the appellant.

The applicable legislation is as follows:

EAPWDA section 16 – Reconsideration and appeal rights, is as follows:

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 section 71 – How to request a reconsideration of a decision, is as follows:

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 panel notes that its jurisdiction in this appeal is limited to determining whether the ministry's decision that they could not provide a reconsideration decision was reasonable and does not include a review of the evidence with respect to the appellant's PWD application.

The appellant's position is that because of the ministry error in approving then denying her PWD application, the ministry advised that she could submit her RFR late. The appellant states that because of her health situation, her husband's health condition and struggles with their five children, two of which are twins and two of which are disabled, in addition to the fact that she could not drive are extenuating circumstances in which the ministry should consider her RFR.

The ministry's position is that although there was a ministry error initially advising the appellant that she was approved for PWD designation, they corrected the error by letter dated August 7, 2014. The ministry provided the appellant a RFR package on August 15, 2014 and extended the time for her to provide the RFR until October 30, 2014 but the appellant did not submit the RFR until November 20, 2014. The ministry's position is that the RFR package clearly outlines the appellant's responsibilities in submitting a RFR and the deadlines that are important. The ministry's position is that as they extended the timeline for the appellant to provide the RFR and she still did not submit it by October 30, 2014, the ministry cannot make available a reconsideration of this matter and no reconsideration was conducted.

Panel Decision

The panel finds that although the ministry made an error in initially advising the appellant that she was approved for PWD designation when in fact she was not, the ministry sent the appellant a corrected letter on August 7, 2014 advising the appellant that her application for PWD designation was denied.

The panel finds that the ministry provided the appellant with a RFR package on August 15, 2014 and extended the deadline for her to submit the RFR until October 30, 2014 but that the appellant failed to submit the RFR until November 20, 2014. Although the appellant's health condition, her husband's health condition and their family situation with five children, two of which are disabled, makes the appellant's circumstances difficult, the appellant did not communicate with the ministry between August 15 and the November 19, 2014. As section 71 of the EAPWDR states that a RFR must be delivered within 20 business days after the date the appellant was notified of the decision, the appellant did not submit her RFR within the legislated timelines, or the extended deadline provided by the ministry.

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 was 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 under section 24(2) of the EAA 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.

Conclusion

As the ministry's decision which determined that they could not provide a reconsideration decision was a reasonable application of the applicable legislation in the circumstances of the appellant, the panel confirms the ministry's decision.