

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) December 23, 2014 decision that the Appellant had no right to a reconsideration because she did not deliver her request for reconsideration of a Ministry decision denying her income assistance within 20 business days of being notified of that decision, as required by section 79 of the Employment and Assistance Regulation.

PART D – Relevant Legislation

Employment and Assistance Act (“EAA”) Section 17.

Employment and Assistance Regulation (“EAR”) Section 79.

PART E – Summary of Facts

For its decision, the Ministry had the following evidence:

1. Documents in its records regarding the Appellant's financial circumstances.
2. Request for reconsideration form with the Ministry's written decision that the Appellant was ineligible for income assistance and with the following information on page 2 of that form: date decision was effective - October 21, 2014; date Appellant was informed of the decision - October 22, 2014; and date by which Appellant must submit request for reconsideration - November 19, 2014.
3. Information in the Ministry's records that on October 22, 2014 the Appellant was notified of this October 21, 2014 denial and that she advised that she wanted to request a reconsideration of that decision. She was told that a reconsideration package would be available for pick up that same day.
4. Information in the Ministry's records that she picked up the reconsideration package from the Ministry on November 6, 2014 and also she was advised that she had to submit the request for reconsideration within 20 business days of the October 22, 2014 notification of the denial decision.
5. Information in the Ministry's records that the Appellant submitted her request for reconsideration form on November 25, 2014.
6. Cover fax form dated November 25, 2014 from an advocate's office to the Ministry's reconsiderations office for the Appellant, with this note: "package picked up on November 6, 2014".
7. Request for reconsideration form signed by the Appellant and dated November 25, 2014, with the note "please allow an extension to submit my request for reconsideration".
8. Request for reconsideration form signed by the Appellant on November 25, 2014 with the following note: "Please allow an extension to submit my request for reconsideration. Thank you. Extended to December 23/14. Please review the enclosed information. Thank you."
9. Cover fax form dated December 23, 2014 from an advocate's office for the Appellant with this note: "Enclosed is [Appellant's] request for reconsideration."

At the hearing, both the Appellant and her advocate provided information about the request for reconsideration. The Appellant said that she did pick up the Ministry's decision and request for reconsideration package on November 6, 2014. She also said she did not go to see the advocate until November 25, 2014 because she was under stress from a number of events.

The Appellant's advocate explained that he has experience with helping individuals with requests for reconsideration. Usually the first thing he does is contact the Ministry's reconsideration office and ask for an extension to submit such a request because often appellants come to him with only a few days to prepare a request. According to the advocate, the Ministry typically grants the request by phone without any written confirmation. In this case, the advocate said that the Appellant contacted him on November 25, 2014 and that day he sent a fax to the Ministry asking for an extension. He heard nothing back from the Ministry so on December 2nd he telephoned the reconsideration office and left a message regarding the extension request for the Appellant. The advocate said that on December 3, 2014, the Ministry advised him by phone that the extension was granted to December 23, 2014.

Pursuant to section 22(4) of the EAA, the Panel admits the evidence from the Appellant and her advocate because it is consistent with and therefore in support of the evidence that the Ministry had at reconsideration.

At the hearing, the Ministry reviewed and relied on its December 23, 2014 decision. Also, the

Ministry indicated it had no information about the extension to December 23, 2014 referred to by the Appellant's advocate.

The Panel makes the following findings of fact:

1. On October 22, 2014 the Ministry notified the Appellant of its decision that she was ineligible for income assistance and that she must deliver her request for reconsideration within 20 business days of that notification.
2. The Appellant picked up the request for reconsideration package and the request form stated that the request for reconsideration must be submitted by November 19, 2014.
4. The Appellant signed the request for reconsideration form on November 25, 2014 and it was submitted to the Ministry on that date.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant had no right to a reconsideration because she did not deliver her request for reconsideration of a Ministry decision denying her income assistance within 20 business days of being notified of that decision, as required by section 79 of the EAR.

The following legislation applies to this appeal:

EAA 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.
- (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.

EAR 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.

The Parties' Positions

The Appellant's position is that the Ministry extended the deadline for her to submit her request for reconsideration until December 23, 2014. She then submitted that request.

The Ministry's position is that the Appellant did not deliver her request for reconsideration within 20 business days after the date she was notified of the Ministry's decision to deny income assistance to her.

The Panel's Findings

The Panel finds that there is no dispute that the Ministry notified the Appellant of its decision by phone on October 22, 2014. There is also no dispute that the Appellant picked up the request for reconsideration package on November 6, 2014. The Panel notes that the request for reconsideration forms in the record clearly state that the Appellant had to submit the request by November 19, 2014, which was 20 business days after she was notified of the Ministry decision. The Appellant does not dispute that this was the deadline. There is also no dispute that on November 25, 2014 the Appellant's advocate sent the Ministry a request for an extension for her request for a reconsideration. That was the day that she came to see him, well after 20 business days from October 22, 2014.

The Panel has no reason to doubt the advocate's explanation about his efforts to get an extension;

however, there is no separate confirmation from the Ministry that it did grant the extension to December 23, 2014. Also, the Panel notes that there is nothing in the EAA or EAR or any other legislation giving the Ministry the authority to grant an extension after the legislated deadline for submitting a request for reconsideration has passed. Therefore, the Panel finds that the Ministry reasonably determined that the evidence established that the Appellant's request for reconsideration was not submitted to the Ministry within the 20 business days stipulated in EAR section 79(2).

Section 16(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.

For the reasons stated above, the Panel finds that, in accordance with section 24(1)(a) and (b) of the EAA, the Ministry's determination that the Appellant did not have a right to reconsideration was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. Therefore, under section 24(2) of the EAA, the Panel confirms the Ministry's decision that the Appellant has no right to reconsideration and therefore no right to have her request proceed to a reconsideration.