

PART C – Decision under Appeal

The Appellant appeals the decision of the Ministry of Social Development and Social Innovation (Ministry) dated January 23, 2015 in which the Ministry denied the Appellant's request for a reconsideration of the Ministry's decision of October 14, 2014 because the Ministry received the Appellant's request for reconsideration on January 20, 2015, more than 20 business days from the date the Appellant was notified of the decision as required by section 71(2) of the *Employment and Assistance for Persons with Disabilities Regulation*.

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 Appellant did not attend the teleconference hearing, although the panel waited for 10 minutes to begin the hearing. The panel confirmed that the Appellant had been notified of the date and time of the hearing. Accordingly, under subs. 86(b) of the *Employment and Assistance Regulation*, the panel conducted the hearing in the absence of the Appellant.

The Appellant submitted an application for designation as a person with disabilities (PWD) to the Ministry on July 25, 2014. On October 14, 2014, the Ministry denied the Appellant's request for PWD designation and advised him by letter of the decision which states the following on the first page:

... If you disagree with this decision, you have the right to request reconsideration. You must file your written request for reconsideration with your EA Office within 20 working days of receiving this letter. Please contact your EA Office to obtain your request for reconsideration form. ... Attached is a reconsideration brochure. ...

A Ministry worker completed the Ministry portion of the request for reconsideration form on October 16, 2014, noting on this form that the Appellant contacted a Ministry office on October 15, 2014, was informed of the Ministry's decision denying his application for PWD, and requested reconsideration of the Ministry's decision. The Ministry sent the Appellant a request for reconsideration package on October 16, 2014 on which the date the Appellant must submit the form to the Ministry by was noted as November 12, 2014.

On January 20, 2015, the Appellant submitted his request for reconsideration of the October 14, 2014 decision to the Ministry. He attached a copy of a letter from his physician dated December 22, 2014 with his request for reconsideration. In this letter, the Appellant's physician indicates that he is writing the letter in support of the Appellant's application for reconsideration of PWD designation, that the Appellant did not complete grade 12 and struggles with chronic pain in his leg, as well as depression.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the Ministry's decision of January 23, 2015 denying the Appellant's request for reconsideration of the Ministry's decision denying his application for designation as a person with disabilities on the basis that the Appellant did not deliver his request for reconsideration within 20 business days from when he received the Ministry's October 14, 2014 decision, as required by section 71 of the EAPWDR. Was the Ministry's decision reasonable based on the evidence or a reasonable application of the legislation in the Appellant's circumstances?

Applicable legislation

EAPWDA - 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) ...;

(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 this Act and the regulations.

...

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

The Appellant did not attend the hearing. In his notice of appeal dated January 29, 2015, the Appellant wrote that he disagreed with the Ministry's decision denying his request for reconsideration because his doctor had his "papers for 6 days" and the Appellant suffers each day from chronic pain from his medical condition which makes it hard for him to perform day-to-day activities such as walking, standing and showering. The Appellant does not dispute in his written submissions on reconsideration or on appeal that he was notified of the Ministry's decision denying his application for PWD designation on or about October 15, 2014, and he does not dispute that he did not submit his request for reconsideration of the Ministry's decision until January 20, 2015.

The Ministry received the Appellant's request for reconsideration on January 20, 2015. The Ministry said the Appellant contacted the Ministry on October 15, 2014, was advised of the denial and requested a reconsideration of the October 14, 2014 decision. The Ministry confirmed that the

Appellant was provided with information about requesting reconsideration in the October 14, 2014 decision letter, including that a request for reconsideration must be made within 20 business days of being notified of the Ministry's decision. The Ministry confirmed it mailed the request for reconsideration form and attached pamphlet regarding the reconsideration process to the Appellant on October 16, 2014. The Ministry advised the Appellant that it could not conduct a reconsideration of its October 14, 2014 decision because the Appellant did not deliver his request for reconsideration within 20 business days after he was notified of the decision, as required by section 71(2) of the EAPWDR.

Panel's Analysis and Decision

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 of January 20, 2015 that there is no right of reconsideration of the October 14, 2014 decision was the "outcome" of the Appellant's request.

Section 71 of the EAPWDR provides that an individual must request reconsideration within 20 business days of receiving the decision, and the Ministry denied the Appellant's request for reconsideration of its October 14, 2014 decision, which it received on January 20, 2015, on this basis.

The Appellant does not deny that he was notified of the Ministry's October 14, 2014 decision on October 15, 2014, and he does not deny that he was aware he had to request reconsideration within a certain period of time. The Appellant did not provide any information to the Ministry or to the panel stating the reasons why he did not submit his request for reconsideration by November 12, 2014, the 20-day legislated timeline. Accordingly, the panel finds that the Ministry reasonably applied the provisions of section 71 of the EAPWDR (that the Appellant did not meet the required 20 business day time limit for requesting reconsideration of the October 14, 2014 decision) and of section 16(2) of the EAPWDA (that the Appellant must request reconsideration within the set time limits) to the circumstances of the Appellant in denying his request for reconsideration.

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 *Employment and Assistance Act* for the reasons outlined above. In view of this finding, the panel's jurisdiction is limited to confirming the Ministry's decision. Accordingly, the panel confirms the Ministry's decision that there is no right to reconsideration under s. 24(2)(a) of the *Employment and Assistance Act*.