

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) determination of February 25, 2015 which denied the appellant’s request for reconsideration of the ministry’s decision to establish an overpayment for income assistance received by the appellant for which she was not eligible during the period September 1994 to June 1995, on the basis that the appellant’s request for reconsideration was submitted outside of the legislated 20 day time limit set out in Section 17 of the Employment and Assistance Act (EAA) and Section 79 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 17
Employment and Assistance Regulation, Section 79

PART E – Summary of Facts

The evidence before the ministry at the time it denied reconsideration consisted of the following:

- Request for Reconsideration containing the following dates:
 - Section 2 signed and dated by a ministry worker on January 21, 2015 which stated that the original decision of the ministry was effective January 15, 1997, that the requestor was informed of the decision January 15, 1997 and that the requestor must submit the completed form by February 12, 1997;
 - Section 3 signed and dated by the appellant January 27, 2015 in which the appellant noted her reasons for seeking reconsideration.
- court order dated October 22, 1996 prohibiting a person (“R”) from contact with the appellant;
- May 7, 2014 letter from the ministry to the appellant informing her of the outstanding balance of her debt to the Province of British Columbia arising from income assistance (IA) benefits received by the appellant between September 1994 and June 1995 for which she was ineligible, advising her to contact government collection services to negotiate a settlement and providing a telephone number to enable the appellant to request a complete copy of her file from information access services if she so wished. The appellant added the following handwritten note to the bottom of the ministry’s letter: “I called and left you a message, but you never returned my call! I am willing to take a polygraph to prove that what I am saying is true”.

In her Notice of Appeal dated March 4, 2015 the appellant stated that in 1997 she was threatened by a ministry lawyer to sign the repayment agreement, and if the lawyer had given her the opportunity to obtain independent legal advice she would never have signed the document.

At the hearing the appellant stated that the 20 business day time limit for submitting a request for reconsideration is too short to allow her to access the records she needed to present to the reconsideration officer. She added that she called government information access services and was told that it would take 30 days to provide the information she requested, and that 30 day time limitations were standard in hospitals and other public agencies. In response to a question from the ministry representative the appellant acknowledged that between 1997 and 2014 she made no attempt to contact the ministry to collect the information she needed. She also acknowledged that she did not respond to the May 20, 2014 letter from the ministry until January 20, 2015 because she was busy.

The ministry relied on the reconsideration decision, which is summarized as follows:

- On January 9, 1997 the ministry determined that the appellant received IA for which she was not eligible because she was in a dependency relationship with R. The ministry also determined that the appellant was liable to repay the overpayment of IA.
- On January 15, 1997 the appellant signed a repayment agreement commencing February 1, 1997.
- On April 4, 2014 the appellant contacted the ministry to enquire about the outstanding debt and informed the ministry that she should not have signed the agreement.
- On May 20, 2014 the ministry mailed a letter to the appellant advising her of the outstanding balance of her debt due to the province and suggesting that she contact information access services if she required a complete record of her file.
- On January 21, 2015 the appellant requested reconsideration of the overpayment decision. The ministry completed Section 2 of the request for reconsideration form prescribed by the EAR and provided it to the appellant for completion of Section 3.

- On January 27, 2015 the appellant completed and signed Section 3 of the request for reconsideration in the prescribed form.
- On February 24, 2015 the appellant submitted her request for reconsideration to the ministry. The ministry determined that the appellant did not submit the request for reconsideration within 20 business days of January 9, 1997, the date on which she was advised of the IA overpayment.
- On April 4, 2014 the appellant contacted the ministry to express her opinion that she should not have signed the repayment agreement, but she did not make a request for reconsideration until 8 months later.
- Because the appellant did not submit a request for reconsideration within 20 days of being notified of the decision as required by EAA Section 17(1) and EAR Section 79 the ministry determined that she no longer had a right to reconsideration.

At the hearing the ministry representative clarified that the denial of reconsideration is based on the period of time that has elapsed since January 9, 1997, which is the date on which the ministry determined that the appellant had received an overpayment of IA for the period September 1994 to June 1995.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry determination of February 25, 2015 which denied the appellant's request for reconsideration of the ministry's decision to establish an overpayment for income assistance received by the appellant for which she was not eligible during the period September 1994 to June 1995, on the basis that the appellant's request for reconsideration was submitted outside of the legislated 20 day time limit set out in Section 17 of the Employment and Assistance Act (EAA) and Section 79 of the Employment and Assistance Regulation (EAR).

The relevant legislation is 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.

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 appellant argues that she was never involved in a dependency relationship with R and did not receive an overpayment of IA. She adds that she was coerced into signing the repayment agreement on January 15, 1997 by a ministry representative who threatened to take her child from her if she did not sign. She also argues that no one from the ministry advised her to seek independent legal advice before signing the repayment agreement.

The appellant also argues that the time limit of 20 business days in which the person notified of a decision of the ministry must deliver a request for reconsideration to the ministry office is unfair and unreasonable, and does not allow sufficient time to obtain the necessary documentation.

The ministry argues that the appellant was notified of the ministry's decision to declare an overpayment of IA on January 9, 1997 but did not deliver a signed request for reconsideration to the ministry until February 24, 2015. Because the request for reconsideration was not submitted within the legislated time limits set out in EAA Section 17(2) and EAR Section 79 the ministry is not able to undertake reconsideration of the original decision.

Panel Decision

EAA Section 17(2) states that a request for reconsideration must be made within the time limits and in accordance specified in the EAR. Section 79 of the EAR requires a person requesting reconsideration to deliver the request within 20 business days after the date on which the person is notified of the ministry's decision. The appellant was informed of the ministry's decision to declare an overpayment of IA on January 9, 1997, but she did not deliver her request for reconsideration to the ministry until February 24, 2015, which is more than 18 years after she was notified of the ministry's decision.

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 because the legislated time limit set out in EAA Section 17 (2) and EAR Section 79 has been exceeded was the "outcome" of the appellant's request. The panel therefore 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. Accordingly the appellant is not entitled to have the request for reconsideration proceed to reconsideration.