

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) decision of March 4, 2015, which held that the appellant was not entitled to reconsideration of the ministry’s earlier decision to deny disability assistance for failure to provide information in accordance with section 10 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The basis for the ministry’s decision not to provide reconsideration was that the appellant did not request reconsideration within the 20 business day time limit required by section 16(2) of the EAPWDA and section 71 of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”).

PART D – Relevant Legislation

EAPWDA section 16
EAPWDR section 71

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Letters from the ministry to the appellant requesting that he provide specified information. The letters were dated April 30, May 15, May 27, November 18, and November 28, all in 2014.
- A letter from the ministry to the appellant dated May 10, 2014 advising the appellant that he was no longer eligible for disability assistance because of his failure to provide requested information in accordance with section 10 of the EAPWDA. The same letter stated “You have the right to a reconsideration of this decision. To request a reconsideration, you must submit a completed Request for Reconsideration form to a ministry or government agent’s office within 20 business days from the date you are notified of the decision. Please refer to the enclosed Reconsideration and Appeals brochure for further details...If you wish to request a reconsideration form, or to discuss this decision, you may contact me at [phone number].”
- The appellant’s Request for Reconsideration form and the appellant’s 11-page handwritten statement both signed by the appellant on February 27, 2015.

The appellant was designated as a person with disabilities at the time the ministry advised him through its May 10, 2014 letter that he was no longer eligible for assistance.

In its March 4, 2015 decision refusing reconsideration the ministry stated that:

- The appellant contacted the ministry on December 23, 2014 to discuss the December 10, 2014 notice of ineligibility. The appellant confirmed that he had received the December 10, 2014 notice, but could not specify the date on which it had been received. The appellant was again advised that he had the right to request reconsideration, and was advised that the 20-day time limit to request reconsideration commenced on December 20, 2015. Based on a commencement date of December 20, 2015 the 20 business day limit lapsed on January 23, 2015.
- On February 13, 2015 the appellant advised the ministry that he wished to request reconsideration. The Request for Reconsideration form was prepared for the appellant on February 20, 2015.
- On February 27, 2015 the appellant submitted his completed Request for Reconsideration to the ministry.

In his written statement of February 27, 2015 the appellant stated that:

- He suffers from a mental disability and was experiencing “high anxiety” during 2014.
- He was unable to function in any normal fashion and his sleep patterns became even more abnormal than usual.
- The May 10, 2014 date on the notification of ineligibility is arbitrary and doesn’t reflect when it was received by the appellant. He did not receive the letter until about December 19, 2014. There was no Reconsideration and Appeals brochure included with the letter.
- The ministry worker – an investigative officer - who sent the December 10, 2014 letter was not

available until about January 6, 2015. The investigative officer did not inform the appellant verbally of the Request for Reconsideration procedures and hung up on the appellant while he was still trying to acquire and understand the relevant information.

- The appellant thought that the January 6, 2015 conversation with the investigative officer satisfied his obligations regarding the Request for Reconsideration procedures. It wasn't until later that he realized that the ministry needed to first provide him with a "SD100 package" with sections 1 and 2 filled in by the ministry. The appellant said that he would have requested this in December 2014 and January 2015 if he had known. The SD100 package was not made available for the appellant to pick up until February 20, 2015.
- The investigative officer's claims and accusations are rife with falsities and inaccuracies.

In his oral testimony on appeal, the appellant stated that:

- The investigative officer was deliberately working against him. The appellant usually received mail from the ministry late and consequently his responses often crisscrossed subsequent letters from the ministry in the mail.
- The investigative officer had threatened the appellant with jail for fraud.
- The appellant relied on the investigative officer to treat him fairly.
- There was no brochure included in the ministry's December 10, 2014 letter.
- He was anxious and suicidal during the relevant time period and that is still the case today.
- During subsequent conversations with another ministry worker the appellant was advised that some of the information that the investigative officer had requested was outside the scope of his authority to request.
- The appellant received the December 10, 2014 letter around December 19 or 20, 2014. He tried to contact the investigative officer but he was away. He spoke to someone else at the ministry and as a result of that conversation he believed that matters could be resolved over the telephone.

In response to questions from the ministry representative the appellant replied that he has an envelope from the ministry dated December 10, 2014 and another dated November 28, 2014.

In response to questions from the panel the appellant stated that:

- He was not told about the timeline extending to January 23, 2015.
- He had no trouble receiving his mail except from the province.
- He received the December 10, 2014 letter on December 18 or 19th, but the ministry set the date at December 20, 2014.
- In the appellant's mind, the timeline expired on January 10, 2015. He spoke to the investigative officer on January 10, 2015 and the investigative officer did not mention that he had until January 23, 2015 to submit his Request for Reconsideration.
- Based on his conversation with the investigative officer, the appellant believed he had provided everything he needed to request reconsideration.
- The appellant had submitted his Notice of Appeal to the ministry on March 23, 2015 and requested that it be forwarded to the Employment and Assistance Appeal Tribunal (the "Tribunal"). After a month went by without hearing from the Tribunal, the appellant went back to the ministry and again asked for his Notice of Appeal to be forwarded to the Tribunal. The

Notice of Appeal was date-stamped "Received" by the Tribunal on April 29, 2015.

In her oral testimony the ministry representative stated that:

- Based on ministry mailing procedures the December 10, 2014 letter probably was mailed on December 11, 2014.
- During his section 10 audit of the appellant's eligibility the investigative officer had asked for some information for which he did not have authority. In particular, she said that the investigative officer had asked the appellant to provide information from persons from whom the appellant was estranged. She said that for personal safety reasons the ministry does not expect individuals to seek information from others in those circumstances.

In response to a question from the appellant the ministry stated that the investigative officer did not have the authority to threaten the appellant with jail.

In response to questions from the panel the ministry stated that:

- the appellant had two reconsiderations underway at the same time. She said that both reconsideration packages were made available on February 20, 2015;
- Under the ministry's standard procedures it would have been the investigative officer's responsibility to ensure that a Reconsideration and Appeals brochure was included with the December 10, 2014 ineligibility notice.

Admissibility of Additional Information

The oral information provided by the appellant and the ministry was substantially reiterative of information that had been before the ministry at the time of reconsideration. The panel accepted it into evidence as oral testimony in support in accordance with section 22(4) of the *Employment and Assistance Act* ("EAA").

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision of March 4, 2015 not to provide the appellant with a reconsideration of its earlier decision of December 10, 2014 to deny the appellant's eligibility for assistance. The basis for the ministry's decision not to provide reconsideration was that the appellant did not request reconsideration within the 20 business day time limit required by section 16(2) of the EAPWDA and section 71 of the EAPWDR.

The relevant legislation is as follows:

EAPWDA

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

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's position is that the ministry should provide him with reconsideration since it misled him as to the timeline for submitting his Request for Reconsideration in several ways. He argued that:

- there was no Reconsideration and Appeals brochure included with the March 10, 2014 letter;
- the ministry worker he spoke to around December 23, 2014 left him with the impression that things could be worked out over the telephone and did not advise him that the timeline for requesting reconsideration had been "extended" to January 23, 2015;
- the investigative officer was intentionally working against the appellant, and during their telephone conversation in early January left the appellant with the impression that the appellant had satisfied all the requirements to request reconsideration verbally.

The appellant also argued that his mental disability provides a reason why he did not understand the 20 business day timeline and should be granted reconsideration.

The ministry's position is that the completed Request for Reconsideration form was received by the ministry well after the 20 business days required by s.71 of the EAPWDR, so that it was reasonable for the ministry to refuse reconsideration.

Panel Decision

Section 71 of the EAPWDR requires the appellant to request reconsideration on the specified form (the HSD100 Request for Reconsideration form) within 20 business days of being notified of the disputed decision. The appellant bears the onus of proving on the balance of probabilities that he satisfies the legislative criteria for reconsideration.

In this case, the appellant acknowledged receiving the December 10, 2014 notice of ineligibility at least by December 20, 2014, and acknowledged discussing the notice with ministry staff about December 23, 2014. There is no dispute that the appellant did not request the requisite form verbally until February 13, 2015 (which was well outside the legislated 20 business day time limit) and he did not submit the completed form until February 27, 2015.

The appellant argued that the ministry was to blame for his late request in a number of different ways. However, the December 10, 2014 notice of ineligibility was clear that a completed Request for Reconsideration form had to be submitted to the ministry or a government agent's office within the 20 business day timeline. In the panel's view, the appellant's unsupported argument that at least two ministry workers (the investigative officer and the worker he spoke to on December 23, 2014) verbally contradicted the plain wording of the December 10, 2014 letter and the legislative requirements for properly requesting reconsideration - either intentionally or through inadvertent omission - is unlikely and does not satisfy the burden of proof.

The alleged misconduct of the investigative officer with respect to exceeding his authority during the section 10 audit is outside the scope of this appeal and must be addressed through other processes.

There is no medical evidence before the panel in support of the appellant's argument that his mental disability prevented him from understanding the ministry's requirements. Accordingly, the panel has given the appellant's evidence on this point little weight.

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 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 s. 24(1)(b) of the EAA for the reasons outlined above. In view of this finding, the panel confirms under s. 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.