

PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") February 24, 2015 decision denying a reconsideration of the ministry's denial of the appellant's Persons with Disabilities Designation application. The ministry determined the appellant failed to deliver a completed Employment and Assistance Request for Reconsideration within the time limit required by section 16 of the Employment and Assistance for Persons with Disabilities Act and section 71 of the Employment and Assistance for Persons with Disabilities Regulations.

PART D – Relevant Legislation

EAPWDA Employment and Assistance for Persons with Disabilities Act, section 16 EAPWDR
Employment and Assistance for Persons with Disabilities Regulation, section 71

PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- ⑩ August 28, 2014 *Persons with Disabilities Designation Application Applicant Information* completed by the appellant.
- ⑩ September 25, 2014 *Persons with Disabilities Designation Application Physician Report* completed by the appellant's physician.
- ⑩ September 26, 2014 *Persons with Disabilities Designation Application Assessor Report* completed by the appellant's physician.
- ⑩ December 3, 2014 *Persons with Disabilities Designation Decision Summary*
- ⑩ December 3, 2014 letter from the ministry to the appellant denying her request for persons with disabilities status, advising of the right to request reconsideration and stating her written request for reconsideration must be filed with her EA office within 20 working days of receiving the letter. The letter said a reconsideration brochure was attached, and referred the appellant to her local EA office or ministry web site for more information. The brochure included the instruction to return the reconsideration request within 20 business days, and stated “*At any time after your submission has been received and before a reconsideration decision is made, you can request an extension of 10 business days, if more time is needed to gather and submit information.*”
- ⑩ December 30, 2014 the appellant attended the local ministry office, indicated receiving the ministry's letter denying her request for persons with disabilities status on December 16, 2014, and requested reconsideration.
- ⑩ December 30, 2014 *Request for Reconsideration* form with page 1 completed by the ministry, showing January 16, 2015 as the date by which the requestor must submit the form, and on page 2 the form notes *IMPORTANT: The request to have the Ministry decision reconsidered must be submitted to your Employment and Assistance Office within 20 business days of when you receive the decision concerning eligibility. (see “Date Client Informed of Decision” box on page 1).*
- ⑩ December 31, 2014 the appellant picked up the reconsideration package.
- ⑩ *Consent to Disclosure of Information* form signed by the appellant February 7, 2015.
- ⑩ February 7, 2015 *Request for Reconsideration* form completed by the appellant, date stamped February 20, 2015 by the Province of British Columbia, with two witness letters describing the appellant's disabilities, and a note from the appellant apologizing for the delay and explaining “Reasons: To get all the papers written & for people to fill out paper letters was hard to get them on the days that would work for them. Also weather was a tremendous factor. Could not on account of snow & mud in yard even get out of yard – Then car broke down – finally fixed so I can get this done...Also everyone was not well since Jan 2015.”

Upon appeal the appellant stated the time limit was exceeded because of complications due to weather/vehicle/ride and letters, and the problem has not subsided, rather it has worsened.

At the hearing the appellant and her representative both testified. They explained the winter weather conditions and appellant's physical condition combined to prevent her from being able to submit her

request for reconsideration to the ministry on time. The appellant suffers from bad hips, she can't drive, or bend, sit or stand for long. She had one hip replaced, has a knee problem, her hands are weak, and she cannot go up and down stairs. The weather in her rural community was unusually harsh this winter, including a sudden snowfall of three feet followed by a melt and more snow. During the time in question the appellant's long driveway was either very muddy or covered in deep snow, isolating the appellant. She was unable to get to the community mail box, located at a gas station one to one-and-a-half miles from her home. Furthermore, she was ill during that time. The appellant said she tried calling the ministry at least five times to request extra time, but the ministry's line was always busy and she was unable to get through.

The panel admits this evidence under section 22(4) of the Employment and Assistance Act as being in support of information and records that were before the minister when the decision being appealed was made.

The ministry said the time frame for requesting reconsideration was not met, and no extension was requested within the deadline. The ministry said a brochure was provided to the appellant that explained the process to request a reconsideration, and included the information an extension of ten business days could be requested within the 20 business day deadline. In reply to questions, the ministry said the telephone number in the brochure is a central number, that there is no public access to local office phone numbers. The ministry does not call the applicant, they use regular mail and rely on the applicant to advise when the letter is received. The ministry confirmed if someone is denied PWD status, they can re-apply.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's February 24, 2015 decision denying a reconsideration of the ministry's denial of the appellant's Persons with Disabilities Designation application, on the basis the appellant failed to deliver a completed Employment and Assistance Request for Reconsideration within the time limit required by section 16 of the Employment and Assistance for Persons with Disabilities Act and section 71 of the Employment and Assistance for Persons with Disabilities Regulations.

Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

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:*

- (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.*

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATIONS

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.

Appellant's Position

The appellant argues harsh winter conditions, illness, and her physical disabilities prevented her from meeting the ministry's deadline to submit her application for reconsideration. She states she was unable to reach the ministry by telephone to request an extension as the ministry's line was constantly busy.

Ministry's Position

The ministry argues the appellant failed to meet the legislative requirement that a request for reconsideration must be delivered to the ministry within 20 business days of the appellant receiving the ministry's decision refusing to provide disability assistance.

Panel's Decision

The ministry denied the appellant's application for a person with disabilities designation. The appellant received the ministry's decision December 16, 2014, picked up a reconsideration package from the ministry office December 31, 2014, and submitted the completed request for reconsideration on February 20, 2015. The ministry denied the appellant's request for reconsideration on the basis the completed form was not delivered to the ministry within the 20 business day deadline. The panel finds there is no dispute that the appellant submitted her request for reconsideration after the 20 business days stipulated by section 71 of the EAPWDR.

The ministry's brochure states that after the reconsideration request has been received and before a reconsideration decision has been made, an appellant can request an extension of 10 business days if more time is needed to gather and submit information. However, the 20 business day deadline to submit the request form still applies. The panel acknowledges that the appellant had difficulties submitting the request for reconsideration on time, but the legislation does not provide for any extension to that deadline.

Section 16(3) of the EAPWDA states that, subject to certain exceptions, *"a person who is dissatisfied with the outcome of a request for reconsideration under (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 outlined above, the panel finds 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 and reasonably supported by the evidence. The panel confirms the decision.