

PART C – Decision under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated April 28, 2015 that determined that the minister was not able to provide a reconsideration of the decision to deny a security deposit supplement for the appellant because the appellant did not meet the criteria required under section 71 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry found that the appellant’s Request for Reconsideration was not submitted within the prescribed period of 20 business days, after being advised of the decision.

PART D – Relevant Legislation

EAPWDA – section 16
EAPWDR – section 71

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment Assistance Act*.

The evidence before the ministry at the time of the Reconsideration Decision included:

1. A *Residential Tenancy Agreement* dated January 21, 2015 completed by the appellant and submitted by her to the ministry on February 3, 2015 together with a request that the ministry provide the appellant a security deposit supplement of \$475.
2. Ministry records that the appellant contacted the ministry to request an update on her request for a security deposit on February 11, 2015.
3. Ministry records that on February 18, 2015 the appellant's request for a security deposit supplement was denied because the appellant had been issued security deposit supplements of \$450 in September 2013 and \$512 in August 2014. So far the appellant has repaid only \$360.
4. A letter dated April 20, 2015 written by the appellant addressed "To whom it may concern" which explains the background to her request for a reassessment of her request for the security deposit supplement. The letter reports that the appellant left her previous apartment for safety reasons as she reports that she was being stalked by the maintenance man who also lives in the same apartment building. She explains that she did not seek the return of her security deposit for the apartment she vacated because she would have had to enter the apartment building in which her stalker resides in order to apply for the return of the security deposit and she was not prepared to do so.
5. The appellant's *Request for Reconsideration* signed and dated April 24, 2015. The appellant states that she has been requesting a reassessment of the denial of her request for a security deposit supplement since February 6, 2015 and has only now received the paperwork to do so. She states that her current landlady has issued an eviction notice to the appellant because the appellant has not been able to provide the required security deposit.

The appellant's *Notice of Appeal* was signed and dated on May 2, 2015 and states that the reason for the appeal is due to several unacknowledged requests since February 11, 2015. The appellant explains that she has repeatedly requested reconsideration because of the circumstances under which she left her previous premises. The appellant claims that ministry agents failed to record/report these requests.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision that determined that the minister was not able to provide a reconsideration of the decision to deny a security deposit supplement for the appellant because the appellant did not meet the criteria required under section 71 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry found that the appellant's Request for Reconsideration was not submitted within the prescribed period of 20 business days, after being advised of the decision.

The relevant legislation is as follows:

From the 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:

- (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.:

From the 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.

Appellant's Position

The appellant argues that she made repeated requests to the ministry for a reconsideration of the ministry decision to deny her the security deposit supplement and that the ministry failed to record these requests. She states that she did not receive the necessary paperwork to apply for reconsideration until around April 24 having requested it repeatedly since February 6, 2015. She explains that she did not request the return of her security deposit for her previous residence because of fear that she might encounter her stalker.

Ministry Position

The ministry argues that section 16 of the EAPWDA and section 71 of the EAPWDR specify that a request for reconsideration of a decision by the ministry to deny a supplement (security deposit) must be delivered in the form specified by the minister to the ministry office where the appellant is applying for or receiving within 20 business days after the date the appellant is notified of the decision. The ministry claims that the appellant was notified of the denial of her request for a security deposit supplement on February 18, 2015 but did not request the minister to reconsider the decision until April 17, 2015 and delivered the Request for Reconsideration forms on April 24, 2015.

Panel Decision

The panel notes that the appellant claims to have made repeated requests for reconsideration between February 6, 2015 and April 17, 2015, thereby acknowledging that she was aware of her right to reconsideration. Nonetheless, there is no record in ministry files to confirm that they received these requests nor when these requests were made. The appellant notes that she did not receive the forms for requesting reconsideration until some time in April. But there is no indication of why the appellant did not attend the ministry office to request and obtain these forms within the prescribed time frame of 20 business days. The ministry acknowledges that ministry records do not indicate that the appellant was advised of her right to request reconsideration at the time she was advised that her request for a security deposit supplement had been denied. It is not clear to the panel whether the appellant was unaware of the eligibility period for applying for reconsideration or was aware of that time frame and failed to ensure that she obtained the forms in time.

The appellant has provided no clear explanation as to why she did not submit the Request for Reconsideration forms within the prescribed time period apart from suggesting that the ministry failed to provide her with the forms despite her requests. This may well be the case but it doesn't explain why the appellant didn't attend the ministry office to request the forms in person. Accordingly, the panel concludes that the ministry reasonably determined that it was unable to provide a reconsideration of the decision to deny the appellant a security deposit supplement because the appellant did not deliver the request for reconsideration form to the ministry within 20 business days as required by section 16 of the EAPWDA and section 71 of the EAPWDR.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's determination that it was unable to provide a reconsideration of the decision to deny the appellant a security deposit supplement was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry reconsideration decision.