

PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's (the Ministry's) decision dated July 2, 2015 which held that the Ministry could not reconsider the decision to deny reimbursement to the Appellant for a CPAP mask and filter because the Request for Reconsideration was not submitted within 20 business days of being notified about the denial in accordance with section 71 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 (EAPDWR) section 71

PART E – Summary of Facts

The Appellant was not in attendance at the hearing. After confirming that the Appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the Ministry at reconsideration included the following:

- A receipt for CPAP mask and filters, dated March 6, 2015, in the amount of \$260.00.
- A letter from the Ministry to the Appellant, dated April 8, 2015, denying reimbursement for CPAP mask and filters because the Ministry could not establish that all of the regulatory criteria had been met and a written request for a reconsideration must be filed within 20 working days.

The Request for Reconsideration, stamped received June 22, 2015, contains a letter from the Appellant to the Ministry, dated April 30, 2015, stating that the Appellant (1) had an immediate need for the CPAP equipment that was purchased because the Appellant was unable to sleep safely without it; (2) was misinformed that he would be reimbursed for the equipment and that it was better to be reimbursed because equipment approval can take up to 3 months; (3) is under hardship because of the cost of the equipment; and (4) understands that the Ministry needs pre-approval going forward but requests that an exception be made in this case due to the emergency need of the equipment and the miscommunication. The Appellant requests that he be awarded his request for medical equipment and devices (CPAP mask and filter).

In the Request for Reconsideration, the Ministry states that the Appellant was denied reimbursement for the CPAP mask and filters on April 8, 2015. On April 14, 2015, the Appellant requested a reconsideration of the Ministry decision. On April 15, 2015, the Ministry mailed the complete reconsideration package with the requirement that the completed package be returned within 20 business days, by May 12, 2015. On June 22, 2015, the Ministry received the Appellant's Request for Reconsideration.

In the Notice of Appeal, stamped received by the Ministry on July 8, 2015, the Appellant notes that he needs the equipment for breathing.

The panel finds that the Appellant was denied reimbursement for the CPAP mask and filters on April 8, 2015 and that the Ministry received the Request for Reconsideration form on June 22, 2015.

PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision not to reconsider the denial of reimbursement for the Appellant's CPAP mask and filters because the Request for Reconsideration was not submitted within 20 business days after notification of denial in accordance with section 71 of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

The legislation provides the following:

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 Regulation

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

The Ministry argued that in every case, the Ministry communicates timelines and expectations for

reconsideration. The Ministry further argued that Appellant's right to appeal any Ministry decision is an integral part of Ministry policy and that recipients of assistance are encouraged to keep in touch with the Ministry and can request an extension, if required. The Ministry argued that there is no evidence that the Appellant needed an extension and no evidence that he contacted the Ministry to advise them of a delay in returning the reconsideration package.

In the Request for Reconsideration, the Appellant argues that the Ministry should make an exception in order to reimburse the CPAP mask and filters because he needs the equipment in order to sleep safely and because the cost is a hardship for him.

The panel finds that the Ministry's decision not to reconsider the denial of reimbursement for the Appellant's CPAP mask and filters because the Request for Reconsideration form was not submitted within 20 business days in accordance with section 71 of the EAPWDR was reasonably supported by the evidence. The panel finds that although the Appellant wrote his letter attached to the Request for Reconsideration on April 30, 2015, the Ministry received the completed Request for Reconsideration on June 22, 2015 – 49 business days after the original decision to deny reimbursement.

As a result, the panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the Ministry's decision.