

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) decision dated 11 June 2015 determined that the appellant exceeded the 20 day time limit set by s. 79(2) of the Employment and Assistance Regulation for filing his request for reconsideration and therefore denied the appellant the right for a reconsideration of a decision made by the ministry on 24 April 2015.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 17.
Employment and Assistance Regulation (EAR), section 79.

PART E – Summary of Facts

At the beginning of the hearing, the ministry requested that a ministry worker be allowed to sit as an observer during the hearing for training purposes. The appellant consented to that request and the ministry worker was allowed to participate in the hearing as an observer.

The following evidence was before the ministry at the time of reconsideration:

- On 17 February 2015, the appellant submitted an online application for income assistance on behalf of his family unit composed of three persons, the appellant, his spouse and a child.
- On 27 February 2015, the ministry contacted the appellant regarding his application and asked him to submit further documentation in order to determine his eligibility for income assistance.
- On 10 April 2015, the appellant submitted some of the documents requested.
- On 24 April 2015, the ministry reviewed the appellant's document and determined the appellant was not eligible for income assistance because his available assets exceeded the legislative maximum to be eligible for income assistance. He was advised of his ineligibility on the same day.
- A 5-page document titled "Application for Income Assistance" dated 6 May 2015 and signed by the appellant, his spouse and a witness.
- On 8 May 2015, the appellant requested a reconsideration package from the ministry.
- On 11 May 2015, according to the ministry's file, the ministry informed the appellant by phone that his signed Request for Reconsideration was due by 25 May 2015, being the 20th business day from 24 April 2015, the date he was informed of the ministry's decision. The appellant was also informed of the process for requesting an extension to file the said Request for Reconsideration.
- On 3 June 2015, the ministry received the appellant's Request for Reconsideration, with no request for extension or explanation as to missing the deadline for delivering it.

At the hearing the appellant testified that his aged mother abroad was not in good health and he decided to go back home for 2 weeks, leaving on 12 May 2015 and returning on 25 May 2015 and that he left a message on voice mail at the ministry's office before leaving explaining that. He stated that a ministry worker had called him on the Friday before he left for his trip abroad (that would be 8 May) being advised to get a reconsideration package and was told about the 20 business day time limit to file his Request for Reconsideration. When he returned, he was jet lagged and since he had not heard back from the ministry he thought it was acceptable to file his Request for Reconsideration after the deadline and left a voice message to the worker to that effect.

The ministry testified that their phone system had been changed some time ago and there was a central contact number and the clients were not in a position to call a direct line for a ministry worker. Further, there was no indication of any phone call on the appellant's ministry file and that in general there are no records of phone calls. The process to obtain an extension for filing a Request for Reconsideration is to make that request in section 3 of the ministry's approved form for a Request for Reconsideration and that up to a 10 day extension may be granted.

The panel determined the additional oral evidence was admissible under s. 22(4) of the EAA as it was in support of the records before the minister when determining whether a reconsideration of its earlier decision was available to the appellant. The additional evidence indicated the reasons why the appellant did not file his Request for Reconsideration before the deadline.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant exceeded the 20 day time limit set by s. 79(2) of the EAR for filing his request for reconsideration and was therefore denied the right for a reconsideration of a decision made by the ministry on 24 April 2015 was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation in this matter is s. 17(1) of the EAA:

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.

As well as s. 79 of the EAR:

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 ministry argued that the appellant was advised of the decision denying income assistance on 24 April 2015 and that he was advised on 11 May 2015 that he had to file his signed Request for Reconsideration before 25 May 2015 and the process for requesting an extension of time to file if need be was also provided. The ministry submitted that the appellant filed his signed Request for Reconsideration on 3 June 2015, which was 7 business days after the 20 business day's deadline mandated by s. 79(2) of the EAA, and therefore he was not eligible for a reconsideration of the decision.

The appellant argued that he had compelling reasons for not being able to file his Request for Reconsideration on time as he had to go abroad to visit his ailing mother and that he had advised the ministry of the delay by leaving a voice message on the ministry worker's voice mail. He stated he did not receive any response to his messages and believed it was acceptable to file his documents passed the 20 business day's deadline.

Panel decision:

The panel notes that there are some inconsistencies between the evidence presented by the ministry and the appellant's evidence in terms of the phone calls before he went abroad. According to the ministry, there was a call on Friday 8 May when the appellant was advised to get a reconsideration package and on 11 May when he was advised of the time limit to file his Request for Reconsideration. The appellant indicated there was only 1 phone call on 8 May. The panel finds that whether there was 1 or 2 phone calls is not important but that the appellant was advised by phone about the need to get a reconsideration package and to file his signed request by 25 May 2015, which is not disputed by the appellant. The panel also accepts the appellant's evidence that he travelled abroad from 12 to 25 May 2015.

As well, the panel notes that there is no dispute that the appellant was advised of the decision on 24 April 2015, that the deadline to file his signed Request of Reconsideration was 25 May 2015 and that the appellant was advised of that deadline before he went on his trip. The panel takes into account that s. 79 of the EAA specifies that a client "must deliver a request for reconsideration in the form specified by the minister" and that the procedure section of *Form HR0100-Employment and Assistance Request for Reconsideration* specifies that the request 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)" that date mentioned on the form the appellant signed as being 25 May 2015. The ministry provided a reconsideration package to the appellant including that form mentioned above that the appellant signed on 2 June 2015, 6 business days after the deadline, delivered the next day, 3 June, 7 days after the deadline, and the panel notes that in section 3 the appellant did not ask for or mention an extension for filing his request even though he had been advised of the process.

S. 79 of the EAA is very specific that not only must an applicant deliver a Request for Reconsideration in the form specified by the minister but that request must also be delivered "within 20 business days after the date the person is notified of the decision". Once the request is delivered without an application for an extension, the minister has no discretion to grant such an extension. The appellant testified he had left messages on a ministry worker's voice mail but the panel notes it is not the process the ministry advised the appellant to follow if he were to ask for an extension to file his request. Thus, the panel finds the ministry reasonably determined the appellant's request for reconsideration was not delivered within 20 business days after he was notified of the ministry's decision and reasonably determined his request for reconsideration could not be considered since it was not made within the time limits specified by legislation under s. 17(2) of the EAA and 79(2) of the EAR.

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.