

## PART C – Decision under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Social Innovation (the ministry) dated 04 June 2015 that determined that, as the 20 business day time limit to file a Request for Reconsideration had expired, under section 71 of the Employment and Assistance for Persons with Disabilities Regulation, there is no legislative authority for the ministry to reconsider the original decision.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act (EAPWDA)*, section 18.  
*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, section 71.

## PART E – Summary of Facts

The appellant did not appear at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

At the request of the appellant and with the consent of the ministry, the hearing, originally scheduled for 03 July 2015, was adjourned until after 03 August 2015.

The evidence relevant to this appeal before the ministry when it made its decision consisted of the following:

1. The appellant is a recipient of disability assistance.
2. The appellant's Request for Reconsideration form prepared by the ministry, showing the following relevant dates:
  - Date requestor informed decision: 20 April 2015.
  - Date requester must submit form: 19 May 2015.

Section 2 explains the ministry's original decision. The section concludes with:

"Please note;

-You have the right to ask for help for this reconsideration. If you would like an advocate but don't know how to find one in your area please call [1-800 number] or go to your local office to request a list of advocates.

-If you require an extension to complete your reconsideration, you must submit your request in writing with the signed copy of this form (section 4) no later than the due date indicated on this form below. Generally a decision is mailed to you within 10 business days. A request for extension can provide an additional 10 business days from the date you submit your signed Request for Reconsideration."

Attached to the request for reconsideration form are two statements dated January and February 2015 from the appellant's landlords showing \$1000 per month payments to the tenant/appellant for contract work.

3. The appellant's signed Request for Reconsideration dated 28 May 2015, to which are attached her Reasons for the Request.
4. From the ministry's files, as set out in the reconsideration decision:

"On May 25, 2015 you [the appellant] contacted the ministry stating that you did not return the Request for Reconsideration forms as you did not intend on following through with the request. You were advised the time limit for submission had lapsed and it was unlikely a Reconsideration decision could be conducted but you could continue with the process if you wished. You stated you needed assistance with completing forms. You were advised a contact list for local Advocates can be provided for you."

"On May 26, 2015 you contacted the ministry to advise the information noted on the Request for Reconsideration forms was not correct. You were advised to point out the errors with your submission. You stated you required assistance to complete the forms and

the ministry was required to provide an advocate for you and you wished to request an extension of time limit to submit your completed forms. You were advised the ministry could provide you with a list of local Advocates and you are responsible for making arrangements or you could schedule an appointment with a ministry Employment and Assistance Worker (EAW). . . .”

The appellant’s Notice of Appeal (NOA) is dated 12 June 2015. Attached to the NOA are 5 documents:

- “Reason for Appeal,” dated 12 June 2015, in which the appellant provides background to her disagreement with the ministry’s decision and describes her efforts to have the decision reconsidered when she realized that the deadline had passed.

The appellant describes a series of phone calls to employment and assistance workers (EAWs) at the call center beginning on 22 May 2015. She writes; “I explained to [an EAW] at the time limit had expired for me to submit the Reconsideration and inquired how I would continue pursuing the matter. [She] put me on hold and came back and told me I could have a one week extension and to get ‘it’ in by the end of the week.”

In a subsequent call with another EAW on 8 June 2015 [after the reconsideration decision had been made] the appellant asked the EAW to look back at the records of phone calls and notes and read back where the notes stated that she was told that she could have an extension on her Request for Reconsideration. The EAW read back that she “was to have ‘it’ in by the end of the week and the appellant understood that “it” to be her request for consideration. She asked to speak with another EAW/Supervisor who had been helpful to her previously. On 10 June this EAW contacted the adjudicator as to the next step the appellant should take. The appellant writes that this EAW stated “The adjudicator said to take the Request for Reconsideration to Tribunal through the Appeal Process”

The balance of this document goes to argument, both with respect to the original decision and the decision under appeal (see also Part F, Reasons for Panel Decision, below).

- “Identification and Clarification of Errors,” dated 10 June 2015, in which she takes issue with several statements in section 2 of the Request for Reconsideration and in the reconsideration decision. (See Part F, Reasons for Panel Decision, below).
- “Section 3 Reason for Request for Reconsideration (amended),” dated 12 June 2015, regarding how the work/rent “barter” arrangement with her landlords should be treated.
- A second copy of “Reason for Appeal,” dated 12 June 2015, described above.
- A second copy of “Identification and Clarification of Errors,” dated 10 June 2015, described above.

In her Appeal Adjournment Request, dated 23 June 2015, the appellant states that she is under a lot of stress due the lengthy and involved process in trying to get her issues with the ministry straightened out, including the difficulty in finding an advocate, while having to move by 30 June

2015. She attaches a note from her physician dated 23 June 2015, stating that the appellant has been under considerable stress, as well as having sustained a serious ankle fracture on 19 May 2015.

At the hearing, the ministry stood by its reconsideration decision. In answer to a question as to whether the appellant had been granted an extension, as argued by the appellant, the ministry representative stated that she had not and submitted the file record concerning the 25 May 2015 conversation between the ministry worker and the appellant:

“Clt calling in re: recon, states that she was not going to follow through with recon hence did not submit. Checked with sup and advised client to hand in asap as it is passed due date and can be fwded to recon and ultimately the recon branch would make decision. Clt stated she needed help with recon, advised clt advocate list can be provided....”

The ministry representative explained that in EAW does not have the authority to provide an extension to the deadline for submitting a Request for Reconsideration. If the deadline is passed, standard practice is to advise the client to submit the Request for Reconsideration as soon as possible and make the case for having the original decision reconsidered. It will then be up to reconsideration adjudicator to make a decision as to whether or not to conduct a reconsideration.

#### *Admissibility of new information*

The ministry objected to the admissibility of the physician's note provided by the appellant in her Appeal Adjournment Request as the information contained in it was not before the ministry at reconsideration. The panel finds that this information is not in support of the information and records before the ministry at reconsideration: the physician's assessment that the appellant has been under considerable stress and has suffered an ankle fracture does not substantiate or corroborate any information in the Record of the Ministry Decision. The panel therefore does not admit this note as evidence under section 22(4)(b) of the *Employment and Assistance Act*.

The panel finds that the file note of the 25 May 2015 conversation between the appellant and EAW is in support of the information before the ministry at reconsideration, as it tends to corroborate the passage in the reconsideration decision concerning this conversation. The panel therefore admits this file note as evidence.

## PART F – Reasons for Panel Decision

The issue under appeal is the ministry determination, that as the 20 business day time limit to submit a Request for Reconsideration under section 71 of the EAPWDR had expired and that therefore there is no legislative authority for the ministry to reconsider the original decision, is reasonably supported by the evidence or is a reasonable application of the legislation under the circumstances of the appellant.

The applicable legislation is 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.

And 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.

The position of the ministry, as set out in the reconsideration decision, is that the appellant was notified of the original decision on 20 April 2015. She was provided the specified forms and these explained the time limits for the return of forms and noted 19 May 2015 as the date the forms must be submitted. The forms also explained that request for submission of time limit extensions must be received by 19 May 2015. The appellant requested an extension of the submission time limits on 26 May 2015; this was after the time limits had expired. The appellant submitted a completed request for reconsideration forms on 28 May 2015, after the time limits for submission had expired. The ministry held that there is no legislative authority to conduct a reconsideration of the decision if the Request for Reconsideration forms are submitted after the time limits have expired.

The appellant's position, as explained in her Notice of Appeal, is that she found her situation with the ministry confusing and overwhelming and thought she could not begin to understand the complexity of trying to dig into this matter. She acknowledges she hesitated to get started on her Request for Reconsideration as the time slipped by until her friend asked her about the matter and she realized the deadline had just passed. She contacted the ministry and believed she had been granted an extension until 29 May 2015, having been told that "if she got 'it' in by the end of the week it would still be considered." She argues that, as she submitted her Request for Reconsideration on 28 May 2015, she met the deadline as extended. She submits that, given the complexity of her situation and since she met the deadline as extended, it is unreasonable that the ministry would deny her a reconsideration decision.

#### *Panel decision*

The appellant holds that in her conversations with the ministry following the deadline for submitting her Request for Reconsideration, she was advised that she had been granted an extension until the end of the week and that she met that extended deadline. The evidence from the ministry is that such an extension was never granted. Instead, the appellant, even though the deadline for submission had passed, was advised to promptly send in the Request for Reconsideration anyway, with the implication that the ministry would make a decision on whether to proceed with a reconsideration

In addressing a Request for Reconsideration submitted after the due date, the legislation requires the ministry to be guided by section 16(2) of the *EAPWDA*, which states that a request for a reconsideration of a ministry decision **must** be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation – i.e. the 20 business day time limit set out in section 71(2) of the *EAPWDR*. The panel finds the "must" language to section 16(2) to be directive.

For the reasons given above, the panel finds that the ministry's decision that there is no legislative authority for the ministry to reconsider the original decision is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.