



### PART C – Decision under Appeal

The decision under appeal is the Ministry for Social Development and Social Innovation's (the Ministry's) decision, dated September 11, 2015, which held that the Ministry was unable to reconsider the decision that the Appellant was ineligible for a medical transportation supplement because the Request for Reconsideration was not delivered within 20 business days of the decision as required under section 16 of the Employment and Assistance for Persons with Disabilities Act and under 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 (EAPWDR) section 71

## PART E – Summary of Facts

The Appellant's wife joined the hearing as the Appellant's advocate. Because a signed release of information form was not in the appeal package, the Appellant gave oral consent at the hearing to allow his wife to represent him at the hearing.

The evidence that was before the Ministry at reconsideration included the following:

- A request for reconsideration form listing the following "relevant dates":
  - Date decision effective: July 22, 2015
  - Date requestor informed of the decision: July 22, 2015
  - Date requestor must submit form by: August 20, 2015
  - Date signed by Ministry worker: July 22, 2015
- Section 3 of the request for reconsideration contains a letter from the Appellant's wife explaining the need for the supplement that was requested. It is signed and dated September 4, 2015.
- A letter from the Ministry to the Appellant, dated July 22, 2015, stating that the Appellant was ineligible for the supplement, and that if the Appellant was dissatisfied with the decision he had 20 business days to submit a completed Request for Reconsideration form.

The Appellant stated that he did not realize that there was a deadline to file his request for reconsideration form, and did not dispute that the form was submitted after the 20 business day deadline.

The panel finds that the additional oral evidence was admissible under section 22(4) of the Employment and Assistance Act as it was in support of the information available at reconsideration and it corroborates the dates that the Ministry listed in their request for reconsideration.

The panel finds that the decision to deny a supplement to the Appellant was made on July 22, 2015 and that the appellant was notified the same day. The Appellant signed and submitted the request for reconsideration on September 4, 2015, 29 business days after he was notified of the decision.

## PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision, dated September 11, 2015, which held that the Ministry was unable to reconsider the decision that the Appellant was ineligible for a medical transportation supplement because the Request for Reconsideration was not delivered within 20 business days of the decision required under section 16 of the EAPWDA and under 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 the deadline, August 20, 2015, was communicated in writing to the Appellant. The Ministry noted that the worker mailed the request for reconsideration on the same day that the Appellant was advised of the decision by telephone and that the deadline was noted on the request for reconsideration, on the letter that was sent to the Appellant on July 22, 2015, and on the pamphlet explaining the reconsideration process. The Ministry also notes that even if 5 business are added to the deadline in order to account for mailing, the Request for Reconsideration was still submitted after this addition.

The Appellant did not dispute that the request for reconsideration was submitted after the 20 business day deadline. He argued that he did not realize that there was a limited window of time in which he could request a reconsideration and thought that a request for reconsideration was needed in order to process future requests for assistance from the Ministry.

The panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence. Under section 71(1) of the EAPWDR, a person who wishes to appeal a decision referred to in section 16(1) of the EAPWDA must deliver a request for reconsideration in the form specified by the Minister, and under section 71(2) of the EAPWDR, a request for reconsideration must be delivered within 20 business days after the date the person is notified of the decision. The panel finds that the Appellant delivered the Request for Reconsideration after 20 business days had elapsed since the Appellant was notified of the decision. Because the legislation states that a "request for reconsideration **must** be delivered" within 20 days, and because the undisputed evidence shows that the Request for Reconsideration was delivered on September 4, 2015, the panel confirms the Ministry's decision.