

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated October 13th, 2015 which held that the minister was unable to conduct a reconsideration of the decision to deny a crisis supplement for clothing/shoes because the request was not submitted within the time limits specified under section 71 of the Employment and Assistance for Persons With Disabilities Regulation, which states that the required forms must be submitted within 20 business days after the date the person is notified of the decision.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, section 16

Employment and Assistance for Persons with Disabilities Regulation, section 71

PART E – SUMMARY OF FACTS

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The appellant is a recipient of disability assistance as a sole recipient.

The evidence and documents before the Ministry at reconsideration included the following :

1. On August 10, 2015 the appellant requested a crisis supplement for shoes.
2. On August 13, 2015 the appellant was advised of the decision that the request was denied.
3. On August 19, 2015 the appellant attended at the office and requested reconsideration of the decision.
4. On August 21, 2015 forms were prepared for the appellant indicating they must be returned by September 10, 2015
5. On September 14, 2015 the Request for Reconsideration forms were submitted by the appellant.
6. On October 6, 2015 a resubmission of the Request for Reconsideration forms was made by the appellant with a request for an extension of the submission time limits.

In his Notice of Appeal dated October 28, 2015, the appellant wrote that he is unable to find shoes in his size and does not feel the unusual sizing is covered by his current resources.

At the hearing the appellant's advocate provided the following verbal evidence:

- It is not disputed that on August 10, 2015 the appellant requested the crisis supplement, on August 13, 2015 the appellant was advised of the denial of the request, and on September 14, 2015 the Request for Reconsideration forms were submitted by the appellant.
- The appellant has a frontal lobe brain injury since 1996, which is well known to the ministry, and has impairments in judgment and memory.
- The appellant has no mental health support and lives in a rooming house and often gets taken advantage of by others eating his food or taking his possessions.
- The appellant cannot follow a calendar and it is admitted that the timeline was missed.
- Because of the appellant's brain injury the ministry should recognize a duty to accommodate him.

The Ministry relied on the Reconsideration Decision and added:

-
- While the Request for Reconsideration HCR100 form was completed for the appellant on August 21, 2015 indicating it must be submitted by September 10, 2015, on calculation of the 20 business days as there had been a labour day holiday day, the 20 days actually extended to Friday, September 11, 2015.
 - The form was handed in by the appellant on Monday, September 14, 2015
 - A note in the ministry file shows that when the appellant returned the Request for Reconsideration forms on September 14th, 2015 he verbally requested an extension of time, advising he was unable to see an advocate until October 10.
 - The Ministry confirmed that at any time after the submission has been received and before a reconsideration decision is made an appellant can verbally request an extension of 10 business days if more time is needed to gather and submit information.
 - While the appellant could have had the Request for Reconsideration form in as late as September 11, 2015, as it was not received until September 14, 2015 this was outside the timelines and the Ministry could not make a decision.

The panel finds that the additional oral evidence was admissible under S. 22(4) of the Employment and Assistance Act as it was in support of, or tended to substantiate, the information and records before the minister at reconsideration.



PART F – REASONS FOR PANEL DECISION

The issue in this case is the reasonableness of the Ministry's decision that it was unable to conduct a reconsideration of the decision to deny a crisis supplement for clothing/shoes because the request was not submitted within the time limits specified under section 71 of the Employment and Assistance for Persons With Disabilities Regulation.

The legislation provides:

Employment and Assistance for Persons with Disabilities Act (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.

Employment and Assistance for Persons with Disabilities Regulation (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 with an employee in the ministry office, or

(b) being received through the mail at that office

The ministry argues that the appellant had 20 business days to submit the Request for Reconsideration from the date of denial of August 13, 2015 which would be September 11, 2015. As the appellant submitted the Request for Reconsideration on September 14, 2015 the minister could not make a decision because it was outside the timelines.

The appellant by his advocate does not dispute that the denial occurred on August 13, 2015 and that the Request for Reconsideration form was submitted to the ministry on September 14, 2015. The appellant has a brain injury and therefore should be accommodated due to his circumstances.

Section 71(2) of the EAPWDR states that the request for reconsideration **must** be delivered to the ministry in the form specified by the ministry within 20 business days after the date the person is notified of the decision. The legislation is not discretionary.

The panel finds the request for reconsideration was not delivered within 20 business days and therefore a reconsideration of the decision cannot be made.

Section 16(3) of the EAPWDA provides that, subject to certain exceptions, a person who is dissatisfied with the "outcome of a request for reconsideration under subsection (1)(a) to (d) may appeal the decision that is the outcome of the request to the Tribunal." In this case, the ministry's determination that there is no right of reconsideration was the "outcome" of the appellant's request.

The panel finds that the ministry's determination that the appellant did not have a right to reconsideration is reasonably supported by the evidence. S. 71(2) states the request must be delivered within 20 business days after the date the person is notified of the decision. The 20th business day was September 11 and the Request for Reconsideration was not submitted until September 14. In view of this, the panel confirms the ministry decision that there is no right to reconsideration.

The panel finds the ministry's decision was reasonably supported by the evidence confirms the decision. The appellant is not successful in their appeal.