

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 28, 2015 which found that the appellant did not deliver a completed Request for Reconsideration to the ministry within the time limit mandated by Section 71 of the *Employment and Assistance for Persons with Disabilities Regulation* and, therefore, is not entitled to a reconsideration of the ministry's decision that she received assistance for which she is not eligible and is required to repay this amount, pursuant to Section 16 of the *Employment and Assistance for Persons With Disabilities Act*.

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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act (EAA)*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Letter dated January 31, 2006 in which a social development teacher at an elementary school wrote that the appellant has been, in recent months, the primary contact in the home with respect to the child's school matters;
- 2) Note dated July 12, 2006 in which a medical practitioner wrote that the appellant has a diagnosed mental disorder and is in excellent control and fully competent to manage her affairs and look after her son;
- 3) Letter dated October 24, 2006 in which the manager of a third party company wrote that the appellant was hired on July 11, 2005 as a part-time employee;
- 4) Letter dated October 25, 2006 in which the ministry wrote that the appellant's cheque has been held and she may be asked to submit further information. Handwritten notes on the letter indicate: "asked for appeal kit October 23, 2006. Did not receive one. Was told to phone [person], which [she] did early October 2006."
- 5) Letter dated October 27, 2006 in which the appellant wrote that she did not declare all of her income. She repeatedly asked the ministry for support and shelter costs for her son. She has been informed that she must supply "legal papers." When she asked for an appeal kit October 23, 2006, she was told by the ministry that she "could not receive one until [she] spoke with [name]." The appellant wrote that she had already talked to the named person and, without legal help, she put together the information in the best allowable way she can;
- 6) Letter dated October 27, 2006 in which a school counselor and teacher of an elementary school wrote that the appellant has been instrumental in the child's physical, social and psychological well-being.
- 7) Letter dated January 9, 2007 to a third party company in which the ministry requested completion and return of the attached Confirmation of Earnings form for the appellant;
- 8) Letter dated February 1, 2007 to Revenue Canada in which a social worker confirmed that she visited the appellant at her basement suite and she lives exclusively with her young son;
- 9) Statement faxed October 22, 2007 setting out gross and net earnings for the appellant from June 2005 through December 2006;
- 10) Letter dated February 13, 2009 to Revenue Canada in which the appellant's advocate wrote with respect to a motor vehicle accident that occurred in October 2008. Due to this collision, she can no longer work in her full-time position and she needs benefits from Revenue Canada;
- 11) Letters dated May 27, 2009 and February 15, 2010 in which a nurse clinician wrote that the appellant regularly brings her son to appointments at the hospital for which she requires financial assistance;
- 12) Letter dated February 18, 2010 in which a teacher wrote that with the child's health issues it is important that he is able to have a relationship with both of his parents and the living arrangement with both parents sharing the same home with separate suites needs to continue;
- 13) Letter dated March 5, 2010 to Canada Revenue Agency in which a case manager with mental health wrote that she has visited the appellant's home which is a self-contained basement suite;
- 14) Note dated June 12, 2010 in which a medical practitioner wrote that the appellant and her son has very major health problems and severe financial difficulties living in official poverty;
- 15) Note dated October 27, 2010 in which a medical practitioner wrote that the appellant and her son have struggled with success to cope against extreme odds;

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- 16) Letters dated September 18 and November 1, 2013 in which a nurse clinician wrote that the appellant has attended the child's appointments at the hospital from 1996 to 2000 and has regularly brought him to his appointments since 2004;
 - 17) Letter dated November 2, 2013 from a third party who wrote that the appellant is a dedicated mother as a single parent of a child with health issues;
 - 18) Letter dated November 27, 2013 in which a pediatrician wrote that she has known the appellant since 1996 and she has always been proactive in the child's care;
 - 19) Letter dated September 21, 2015 in which a medical practitioner wrote that the appellant has had a life long struggle with serious mental health issues that have made it difficult for her to work on a regular basis. She sought part-time work in 2006 because the amount of money received by social assistance was totally inadequate to provide for the extra needs of a sick young child;
 - 20) Letter dated October 1, 2015 in which a pediatrician wrote regarding the appellant's parenting of her son and that "penalizing her financially is also going to seriously impact her son."
 - 21) Letter dated October 1, 2015 in which a psychologist wrote that he is concerned that the stress of dealing with the financial issues might precipitate the appellant to decompensate into her mental health conditions;
 - 22) Medical History Summary dated October 2, 2015 listing the appellant's health conditions, medications and some appointment dates;
 - 23) Letter dated October 2, 2015 in which a medical practitioner wrote that the appellant is the primary caregiver for her son and that she "should not be forced to repay \$7,043 as she does not have the money to pay this back."
 - 24) Letter dated October 2, 2015 in which the appellant's advocate request that the ministry forego any collection action and cancel the debt because the appellant was caring for a seriously ill son without receiving any assistance from the ministry during the time she is alleged to have received an overpayment and because she continues to care for him in spite of her own health problems;
 - 25) Overpayment Chart printed October 5, 2015 for the months September 2005 through October 2008, indicating a total overpayment amount of \$7,792.19;
 - 26) Letter dated October 13, 2015 in which a teacher wrote that the appellant was the primary contact with respect to the child and at no time was his father involved;
 - 27) Undated letter in which the appellant's child wrote of the things his mother has supplied him;
 - 28) Affidavit sworn October 16, 2015 in which the appellant stated that between September 2005 and October 2006 he lived with his mother at all times in a basement suite;
 - 29) Letter dated October 19, 2015 in which the appellant's advocate enclosed documents and wrote that the appellant does not have the ability to repay the overpayment of \$7,792.19 to the ministry. The documents show that the appellant was the only one caring for her son between September 2005 and October 2006 even though she was receiving no support from the ministry for him. The letter dated October 25, 2006 shows that the appellant tried to appeal the decision within the time limit but was prevented from doing so by the ministry. The attached letters and notes also show that the appellant continues to struggle financially and she continues to help her son; and,
 - 30) Undated Request for Reconsideration.

In her Request for Reconsideration, the appellant wrote that:

- The attached additional pages show that even though she was being paid by the ministry as a single person from September 2005 through October 2006, she was supporting, living with, and caring for her disabled son.

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- She received no money from the ministry for her son even though she was caring for him.
 - She was paying rent to her ex-husband for the basement apartment she was living in with her son.
 - Her son was receiving no money from his father for his needs.
 - Her son, who is now an adult, can swear to these facts.
 - She was not able to request that the ministry reconsider her case in time.
 - She tried to request reconsideration in 2007 but the ministry refused to accept her request. She supplied doctors' letters at that time.

In her Notice of Appeal dated November 2, 2015, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- At the time she was assessed for the over-payment, she pointed out to the ministry that she was living with, supporting, and caring for her disabled son by herself.
- Her information was ignored by the ministry at that time.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Application for income assistance signed by the appellant September 16, 2004;
- 2) Letter dated May 7, 2005 in which the appellant's foster sister wrote that the appellant is an excellent parent to her son;
- 3) Notice of Deposit dated December 17, 2008 in the amount of \$1,345.58, with handwritten notes that indicate: "First cheque given to me for support of [child]" and the amount child/adult \$1,345.58 minus \$900 for single adult, results in \$445.58 difference "about the amount of pay cheque I kept to support [the child];"
- 4) Canada Child Tax Benefit Notice dated March 20, 2009 indicating that the appellant's marital status is married or living common law, the 2005 family net income is \$68,107, and child tax payments for 2002, 2003, 2004 resulted in a cheque issued to the appellant for \$8,556.69;
- 5) Assignment of Maintenance Rights dated May 12, 2009;
- 6) Notice dated February 16, 2010 which indicated that the appellant and her son have resided in a basement suite from September 2006 until February 16, 2010. The appellant has paid \$540 monthly for rent for the years 2006 through 2010 separate from the upstairs apartment; and,
- 7) Letter dated November 20, 2015 in which the appellant's advocate enclosed the additional documents and provided argument on behalf of the appellant.

The ministry relied on its reconsideration decision as its submission on the appeal. The ministry's evidence included that:

- A review of the appellant's file commenced on September 14, 2006 because information from Canada Revenue did not match the information that the appellant had provided to the ministry about her earnings. The appellant was requested to provide confirmation of her earnings by October 16, 2006 for the period from September 2005 through October 2006.
- On October 16, 2006 the appellant requested an extension of time as she was consulting with a lawyer.
- In order to establish her current eligibility, the appellant was asked to confirm that she was employed and she responded that she was "not at liberty to answer that."
- The appellant requested the ministry to reconsider the decision and the appellant was advised that a decision concerning her current eligibility had not yet been made in order to give the appellant an opportunity to provide the confirmation of her earnings.
- On November 1, 2006, the appellant requested another extension to November 18, 2006 to



provide her current employment information.

- On November 6, 2007 a registered letter was sent to the appellant advising of an overpayment of \$7,792.17 and explained the requirement to repay assistance she was not eligible to receive and her right to request the ministry to reconsider the decision and the time limits involved with making a request.
- Canada Post confirmed that the appellant had received and signed for the letter on November 15, 2007.
- On October 2, 2015 the appellant's advocate advised the ministry that the appellant wished the ministry to reconsider the decision to recover the overpayment debt attached to her file.

Admissibility of Additional Information

The ministry did not raise an objection to the admissibility of further information provided by the appellant regarding her parenting of the child, their residence and financial benefits, and the panel admitted the additional documentary evidence as being in support of the information and records before the ministry on reconsideration, pursuant to section 22(4) of the *EAA*. The panel considered the letter from the appellant's advocate dated November 29, 2015 as argument on the appellant's behalf, as reviewed below in Part F- Reasons for Panel Decision.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision, which found that the appellant did not deliver a completed Request for Reconsideration to the ministry within the time limit mandated by Section 71 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* and, therefore, is not entitled to a reconsideration of the ministry's decision that she received assistance for which she is not eligible and is required to repay this amount, pursuant to Section 16 of the *Employment and Assistance for Persons With Disabilities Act (EAPWDA)*, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstances.

Section 16 of the EAPWDA provides as follows:

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.

Under Section 71 of the EAPWDR provides:

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.

Ministry's position

The ministry's position, as set out in the reconsideration decision, is that the appellant did not deliver a completed Request for Reconsideration to the ministry within the time limit mandated by Section 71 the EAPWDR and, therefore, is not entitled to a reconsideration of the ministry's decision that she received assistance for which she is not eligible and is required to repay this amount, pursuant to Section 16 of the EAPWDA. The ministry relied on a registered letter confirmed received by the appellant as evidence that the appellant was "notified" of the decision regarding the overpayment on November 15, 2007, which letter included an explanation of the reconsideration process and the time limits. The ministry stated that the appellant requested the ministry to reconsider the decision regarding her eligibility at the time and the ministry advised that there was nothing to reconsider because a decision had not been made on her eligibility at the time since the ministry was awaiting requested information from the appellant. The ministry stated that the subject appeal relates to the ministry decision regarding the appellant's eligibility prior to 2007, for the period September 2005 through October 2006, during which time she received income assistance for which she was not eligible. The ministry wrote that the appellant did not contact the ministry concerning this issue until October 2, 2015, which was long after the time limit to request reconsideration had lapsed and, therefore, the overpayment decision is not subject to reconsideration.

Appellant's position

The appellant's position, as set out in the letter dated November 20, 2015 from her advocate, is that in 2007 the appellant tried to appeal the decision that she owed the ministry for an overpayment, within the stipulated limitation period but she was prevented from doing so because no one at the ministry would supply her with an appeal kit. The appellant relied on the October 25, 2006 letter from the ministry with her handwritten note stating that she had asked for an appeal kit from two persons at the ministry and was denied an appeal kit on both occasions. The appellant relied on her October 27, 2006 letter to the ministry to show that, in spite of requesting an appeal kit from two persons with the ministry, she was denied an appeal kit. In her Request for Reconsideration the appellant wrote that she was not able to request that the ministry reconsider her case in time since she tried to request reconsideration in 2007 but the ministry refused to accept her request.

The appellant also argued that she was supporting her son between September 2005 and October 2006 and was, therefore, entitled to assistance as a recipient with one dependant, but she only received assistance from the ministry during this time as a single person. The appellant argued that if the ministry paid the appellant retroactive payments for the difference, the ministry would owe the appellant money.

Panel's decision

Section 71 of the EAPWDR stipulates that a person who wishes the ministry to reconsider a decision must deliver a Request for Reconsideration in the prescribed form to the ministry within 20 business days after the date the person is "notified" of the decision. The panel finds that the ministry reasonably concluded that the appellant was notified of the ministry's decision regarding the overpayment on November 15, 2007 as this is the date that Canada Post confirmed that the appellant

signed for a registered letter setting out the ministry's decision to seek repayment of an overpayment of assistance in the amount of \$7,792.17 and her right to request the ministry to reconsider the decision and the time limits involved with making a request. The appellant did not dispute that she received this letter on November 15, 2007 and, accordingly, the 20 business day time limit began to run and this time period ended on December 12, 2007.

The advocate relied on the October 25, 2006 letter from the ministry with the appellant's handwritten note and the appellant's October 27, 2006 letter to the ministry to show that, in spite of requesting an appeal kit from two persons with the ministry, the appellant was denied an appeal kit. However, both documents refer to the appellant asking for an appeal kit specifically on October 23, 2006 and this time period is over a year before the appellant received the ministry's letter on November 15, 2007 that advised of the ministry's decision and the requirement to submit a Request for Reconsideration within the 20 business day time limit. Both the advocate and the appellant also stated that the appellant tried to appeal the ministry's decision by requesting reconsideration "in 2007" but "no one at the ministry would supply her with an appeal kit" or "refused to accept [her] request." Given the lack of detail by either the appellant or her advocate as to when "in 2007" the appellant says she asked for "an appeal kit," despite a plethora of other letters and documents provided to establish facts relating to the subject of the appeal, the panel finds that the facts regarding the interactions between the ministry and the appellant at that time are as set out by the ministry in the reconsideration decision. In effect, the appellant made a request for reconsideration before a decision had been made by the ministry on the issue of her eligibility for 2007, whereas the subject appeal relates to the decision regarding the appellant's eligibility for the period September 2005 through October 2006, or prior to 2007, and the appellant did not contact the ministry concerning this issue until October 2, 2015.

As the appellant was notified of the ministry's decision to pursue the overpayment for the period September 2005 through October 2006 on November 15, 2007, the panel finds that the deadline for submitting a Request for Reconsideration was December 12, 2007. Although there were many documents submitted by the appellant on the appeal relating to her claim that she was entitled to assistance as a single recipient with one dependant, there was no written correspondence over the period from November 15, 2007 to December 31, 2007 (as the last day in 2007) addressed to the ministry and requesting a Request for Reconsideration package. The panel finds that the ministry reasonably concluded that the appellant did not contact the ministry concerning the overpayment issue until October 2, 2015, long after the time limits to request a reconsideration of the decision has lapsed and, pursuant to Section 71 of the EAPWDR, the overpayment decision is therefore not subject to reconsideration.

Conclusion

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 a reasonable application of the applicable enactment in the appellant's circumstances under Section 24(1)(b) of the EAA for the reasons outlined above. In view of this finding, the panel confirms the ministry's decision that there is no right to reconsideration. It follows that the appellant is not entitled to have the request for reconsideration proceed to reconsideration.