



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) Reconsideration Decision dated November 4, 2015, which held that the appellant is not entitled to a reconsideration of the ministry decision dated May 16, 2007 which determined that she had received an overpayment of employment assistance benefits which she was required to repay to the ministry. The ministry determined that the appellant did not deliver her request for reconsideration of the May 16, 2007 decision within the legislated time limit of 20 business days as provided by section 16 of the *Employment and Assistance for Persons with Disabilities Act* and 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 evidence before the ministry at the time of the Reconsideration Decision included:

1. The appellant's Request for Reconsideration ("RFR") dated October 28, 2015 to which is attached the following:
 - One page of written submissions written by the appellant and dated October 28, 2015 ("RFR Submissions");
 - A ministry Overpayment Chart dated April 25, 2007 ("Chart #1"); and
 - Two Statements of Earnings and Deductions issued to the appellant and dated February 9, 2007 and February 23, 2007;
2. An Overpayment Notification letter addressed to and signed by the appellant on May 16, 2007 ("Overpayment Letter") to which is attached an Overpayment Chart of the same date ("Chart #2");
3. A record of the appellant's earnings dated December 2, 2006 ("Earnings Record");
4. The appellant's Record of Employment dated August 31, 2006 ("ROE");
5. Eight pay stubs issued to the appellant for the period beginning April 13, 2006 and ending August 31, 2006; and
6. Nine pay stubs issued to the appellant for the period beginning December 15, 2006 and ending April 20, 2007.

Admissibility of Additional Evidence

At the hearing, the appellant submitted additional documentary evidence in support of her appeal which had not been previously provided to the ministry. That evidence consisted of a one-page letter dated December 2, 2015 and prepared by her family physician ("Physician Letter"). In the letter, the physician writes that the appellant has suffered from external stressors that have affected her health and mental state and that the appellant has been under the physician's care since 2007.

The ministry did not object to the Physician Letter being admitted at the hearing, commenting that the appellant's health and mental state were known to the ministry through her file at the time of reconsideration.

After reviewing the Physician Letter and considering the ministry's submissions that the information in it was known to the ministry at reconsideration through the appellant's file, the panel finds that the Physician Letter is admissible as written testimony in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *Employment and Assistance Act* ("EAA").

Oral Evidence

The appellant gave oral evidence at the hearing. Her evidence included her recollection of the chronology of the investigation of the alleged overpayment of income assistance by the ministry as well as her personal circumstances at that time and continuing to the present. The panel finds that the appellant's oral evidence is admissible as it is in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *EAA*.

Facts

Following a file review initiated by the ministry on April 10, 2007, it was determined that the appellant had received an overpayment of income assistance. On May 16, 2007, the appellant signed the Overpayment Letter which set out the amount of the overpayment and which further indicated that if the appellant disagreed with the ministry concerning the overpayment calculation she could request a reconsideration of that decision by delivering a request to the Employment and Assistance Centre within 20 business days after the date she

was notified of the decision.

On September 25, 2015, the appellant notified the ministry that she wished to have the May 16, 2007 overpayment decision reconsidered as she had proof that the amount of the overpayment had been incorrectly calculated. The ministry refused this request on the basis that the statutory 20 business day time limit for delivering a reconsideration request had expired.

In the RFR Submissions, the appellant wrote that due to a ministry miscalculation of her February 9 and 23, 2007 employment earnings, the amount of the overpayment was also miscalculated by \$55.89 and the appellant sought to have the overpayment reduced by that amount.

Evidence On Appeal

Appellant's Evidence At Hearing

At the hearing, the appellant stated that since the time of the file review in April 2007, she has suffered from a number of very stressful personal and medical problems which have led to frequent and lengthy hospitalization, a number of moves and extensive medication requirements. When she re-applied for income assistance in January 2015, she was "pretty sure" she knew about the overpayment and discussed the matter with a ministry worker but was led to understand that the miscalculation of her overpayment was an administrative issue that would be taken care of by the ministry. The appellant stated that the miscalculation of the overpayment was due to the two paycheques from February 2007 referred to above.

In response to questions, the appellant stated that she did not recall being told that she could attend the meeting with the ministry investigation officer on May 16, 2007 with an advocate. The appellant did not know where her documents relating to this matter were other than her pay records. The appellant stated that she was aware that the amounts required to be paid back to the ministry that arose from the overpayment were being deducted from her paycheques. The appellant acknowledged that she signed the Overpayment Letter.

Ministry's Evidence At Hearing

At the hearing, the ministry stated that it relied on the reconsideration decision and that the appellant had not delivered a request for reconsideration to the ministry within the statutory 20 business day time limit.

PART F – Reasons for Panel Decision

The issue on the appeal is the reasonableness of the ministry's decision that the appellant is not entitled to a reconsideration of the ministry's May 16, 2007 decision which found that she had received an overpayment of income assistance which she was required to re-pay. The ministry determined that the appellant did not deliver her request for reconsideration within the 20 business day time limit as provided by section 16 of the *EAPWDA* and section 71 of the *EAPWDR*.

Legislation

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.

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 panel notes that section 16(1) of the *EAPWDA* was amended in December 1, 2007. Prior to that date, the section read "Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act or the regulations:..." The panel is of the view that the amendment to section

16 has no practical effect on the reconsideration and appeal rights of the appellant and further has no effect on this appeal.

The panel further notes that section 71 of the *EAPWDR* is identical to that which was in force on May 16, 2007.

Positions of the Parties

In her Notice of Appeal dated November 13, 2015, the appellant writes that she believes that “this is an administration issue” and that she has proof that the amount of the overpayment is incorrect. She writes further that at the time of the original audit, she was dealing with personal and medical issues and that she refuses to pay more than the actual amount, as it is wrong.

At the hearing, the appellant argued that due to her personal and medical circumstances in 2007, she did not realize that she only had 20 business days to deliver a request for reconsideration of the decision that she had received an overpayment of income assistance.

The ministry takes the position that the Overpayment Notification clearly sets out that any reconsideration request must be delivered by the appellant to the ministry within 20 business days of the date that she received the overpayment decision and that as she did not meet that deadline, the reconsideration decision was reasonable.

Discussion

The combined effect of section 16 of the *EAPWDA* and section 71 of the *EAPWDR* is that a person may request a reconsideration of a decision made by the minister which reduces, discontinues or refuses to provide assistance or a supplement. However, any request for a reconsideration must be delivered to the ministry office where the person is applying for or receiving assistance within 20 business days after the date the person is notified of the decision.

In the present case, the ministry undertook an investigation of the appellant’s income assistance payments in April 2007 and, after determining that an overpayment had been made, notified the appellant of that on May 16, 2007. The appellant signed the Overpayment Letter on May 16, 2007 and, applying section 71 of the *EAPWDR*, she then had 20 business days to deliver a request for reconsideration if she wished to pursue that. The appellant did not contact the ministry to dispute the May 16, 2007 decision until September 25, 2015, over 8 years later.

The panel acknowledges that since 2007, the appellant has experienced significant personal and medical circumstances which have resulted in her being hospitalized and having to move frequently. However, after having reviewed the evidence in its entirety including the Overpayment Letter which was signed by the appellant, the Physician Letter and the appellant’s oral evidence of her personal circumstances, the panel finds that the ministry’s decision that the appellant was not eligible to seek reconsideration of the May 16, 2007 decision on the basis that she did not deliver a request for reconsideration of that decision within the statutory 20 business day period, was reasonable.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry’s Reconsideration Decision which determined that the appellant was not eligible to seek reconsideration of the May 16, 2007 decision was a reasonably supported by the evidence and the panel therefore confirms the decision.