



PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) decision dated November 25, 2015 determined that the appellant exceeded the 20 day time limit set by s. 16 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and s. 71 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) for filing his Request for Reconsideration and therefore denied the appellant the right for a reconsideration of a decision made by the ministry on September 28, 2015.

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

Prior to commencing the oral presentation component of this hearing, the panel provided the following statement to the parties:

- As a point of clarification the only issue the panel will be addressing in this appeal is the reasonableness of the ministry's decision not to provide the appellant with a reconsideration decision. The panel will not be considering any issues or evidence submitted to the Tribunal relating to the ministry's decision of September 28, 2015, regarding the appellant's eligibility for a crisis supplement.

The following evidence was before the ministry at the time of reconsideration:

- A copy of the appellant's Request for Reconsideration signed and dated by the appellant on November 23, 2015.
- A copy of a Fortis BC Notice of Disconnection mailed to the appellant July 23, 2015, showing the amount overdue as \$227.82

Ministry records report amongst other things that:

- The appellant is currently in receipt of disability assistance as a sole recipient.
- On September 28, 2015 the appellant was notified of the ministry's denial to pay an outstanding balance to Fortis BC. The appellant requested that the minister reconsider the decision. The Request for Reconsideration forms indicated they must be returned by October 27, 2015. These forms also advised that if the appellant required an extension to the time limits to complete his submission and return the forms to the ministry by October 27, 2015, he must provide a written request for the extension to the ministry before that date.
- The appellant reported that he contacted the ministry office by telephone on October 23rd and 27, 2015, to request an extension to the time limits to submit his Request for Reconsideration, however there was no record of any contact by the appellant with the ministry on either of those dates.
- On November 12, 2015, the appellant was advised over the phone by the ministry that the time limits to submit the Request for Reconsideration forms had lapsed. The appellant reported that he was not aware there was a time limit.
- On November 20, 2015, the appellant requested in writing additional time to complete the Request for Reconsideration forms as he had been ill.
- On November 23, 2015, the appellant's signed Request for Reconsideration form was received by the ministry.

The appellant's appeal submission does not deal with the ministry's refusal to render a reconsideration decision but rather with the decision made by the ministry on September 28, 2015, regarding the appellant's eligibility to receive a crisis supplement. The letter does however outline the appellant's frustration in having to deal with at least 9 different ministry workers causing constant mix-ups and miscommunications.

At the hearing the appellant reported that he understood the scope of the hearing and stated that he had basically given up on the ministry and did not expect to get any help from them. When asked about the 20 day time limit he said he was sick for part of the time (7 days) and that he was in telephone contact with the ministry on October 23 and 27 to discuss having his advocate handle his appeal. The appellant stated that these two telephone discussions had nothing to do with a request for an extension or the 20 day time limit. The appellant acknowledged that he was informed that the 20 day time limit had lapsed on November 12, and that he had told the ministry he was unaware that there was a time limit. The appellant reported that he called the ministry on

November 20, 2015, explained that he had been ill and requested additional time to have his advocate complete his Request for Reconsideration which was faxed to the ministry November 23, 2015.

The ministry stood by the record clarifying that the appellant was denied a crisis supplement on September 28, 2015, and requested reconsideration at that time. On October 2, 2015, after several attempts, the ministry was successful in contacting the appellant by phone. They reviewed the process for completing his reconsideration package with him including the date his Request for Reconsideration must be delivered to the ministry (October 27, 2015) and the process for requesting additional time to complete his request in necessary. The package was mailed to him that day.

The ministry also reported that they had attempted to arrange a meeting with the appellant following a telephone conversation with him on November 12, 2015, to discuss his reasons for missing his 20 business day appeal deadline but were unable to do so. The ministry added that while the appellant had clearly missed the 20 working day time limit by November 12, 2015, in some instances they do have the ability to provide additional time if the circumstances warrant it and that this was their reason for wanting to meet with the appellant.

There was no new evidence presented at the hearing and as to the appellant's letter accompanying his Notice of Appeal dated December 2, 2015, the contents of this letter did not deal directly with the subject of this appeal but rather with a decision made by the ministry September 28, 2015, regarding the appellant's eligibility to receive a crisis supplement. While the panel considered it's content this letter was treated as information only.

The panel made the following Findings of Fact:

- The appellant requested reconsideration of the ministry decision to deny his request for a crisis supplement on September 28, 2015.
- The ministry received the appellant's Request for Reconsideration on November 23, 2015.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant exceeded the 20 day time limit set out in the legislation below for filing his request for reconsideration and therefore denied him the right for a reconsideration of a decision made by the ministry on September 28, 2015, was a reasonable application of the legislation or reasonably supported by the evidence. The applicable legislation in this matter is as follows:

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.

No appeal from decision based on same circumstances

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 it with an employee in the ministry office, or
 - (b) being received through the mail at that office.

The ministry argued that the appellant was advised of the decision denying his request for a crisis supplement to pay off the balance of his Fortis BC account on September 28, 2015, and that he had to file his signed Request

for Reconsideration by October 27, 2015. The process for requesting an extension of time to file his reconsideration if need be was also provided. The ministry submitted that the appellant filed his signed Request for Reconsideration on November 23, 2015, which was 18 business days after the 20 business day deadline mandated by s. 71 of the EAPWDR, and consequently there is no legislative jurisdiction for the ministry to conduct a reconsideration of the denial of a crisis supplement.

The appellant stated both at the hearing, and in his letter of December 3, 2015, as a result of having to deal with at least 9 different ministry workers which has caused constant mix-ups and miscommunications he will no longer be dealing directly with the ministry. The appellant also argued that he was unaware of the 20 business day time limit for submitting his Request for Reconsideration prior to being told it had lapsed in a November 12, 2015, during a telephone conversation with the ministry. He reported that he does not expect to get any help from the ministry and that his advocate was responsible for submitting his Notice of Appeal to the Tribunal.

Panel decision:

The panel finds that there is no dispute that the appellant was advised of the ministry's decision not to provide him with a crisis supplement on September 28, 2015; However the appellant does dispute the ministry's position that he was informed of the deadline to file his signed Request for Reconsideration was October 27, 2015. While the appellant may have experienced some frustration in dealing with the ministry office the panel finds that based on the ministry record the appellant was provided with both verbal and written instruction regarding the 20 business day time limit and the required process for requesting and extension to the time limit. While the appellant may have requested an extension of the time limit, at some point either before or after the dead line, this request was made by phone and so did not comply with the legislative requirements that the request be made in writing.

The panel further finds that the ministry did not receive the appellant's signed Request for Reconsideration until November 23, 2015.

Thus, the panel finds the ministry reasonably determined the appellant's request for reconsideration could not be considered because it was not made within the legislative time limits.

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and a reasonable application of the legislation and confirms the decision.