

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 26, 2015 that held that the appellant had no right to a reconsideration because she did not deliver her request for reconsideration of a ministry decision denying her a crisis supplement to pay rent, within 20 business days of being notified of that decision, as required by Section 79 of the Employment and Assistance Regulation.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 17.
Employment and Assistance Regulation (EAR), Section 79.

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The information before the ministry at reconsideration included the following:

The appellant's Request for Reconsideration which is dated November 13, 2015 and stamped "RECEIVED" by the ministry on November 23, 2015.

A support letter regarding a crisis supplement from the appellant's roommate which was included with the Request for Reconsideration and stamped "RECEIVED" by the ministry on November 23, 2015.

A copy of a Shelter Information form dated September 12, 2015 and stamped "RECEIVED" by the ministry on October 7, 2015.

A decision of a Tenancy Dispute Resolution Hearing dated September 3, 2015.

A notice of a Tenancy Dispute Resolution Hearing dated August 5, 2015 and stamped "RECEIVED" by the ministry on October 7, 2015.

A copy of a Shelter Information form dated June 21, 2015.

In the Notice of Appeal dated December 9, 2015 the appellant indicated that her Request for Reconsideration was turned in on time.

At the hearing, the ministry stood by their reconsideration decision. In response to a question by the panel, the ministry representative indicated that they use a digital audit tracking system and time stamp to record the details from everyone who touches a file. The ministry representative reported that there were no entries in the appellant's file between November 11 and November 23, 2015. When asked if it was possible that the appellant's Request For Reconsideration could have been lost, the ministry representative stated that it was possible. Further when asked, the ministry representative stated that it was common practice for an appellant to request and be approved for an extension in order to submit their Request For Reconsideration.

Findings of Fact:

1. On October 15, 2015 the ministry informed the appellant of its decision that she was ineligible for a crisis supplement to pay rent.
2. On October 27, 2015 the appellant requested a reconsideration of the decision.
3. On October 28, 2015 the ministry mailed the Request For Reconsideration package to the appellant noting that the requestor must submit the request form by November 13, 2015.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision that the appellant had no right to a reconsideration because she did not deliver her request for reconsideration of a ministry decision denying her a crisis supplement to pay rent, within 20 business days of being notified of that decision, as required by Section 79 of the Employment and Assistance Regulation.

Relevant Legislation

EAA: Reconsideration and appeal rights

17 (1) Subject to section 18, 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 income 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 income assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of income 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], 18 and 27 (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 this Act and the regulations.

(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 income assistance, hardship assistance or a supplement is not appealable to the tribunal.

EAR: How a request to reconsider a decision is made

79 (1) A person who wishes the minister to reconsider a decision referred to in section 17 (1) 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 17 (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's position is that it cannot conduct a reconsideration review denying the appellant's request for a crisis supplement to pay rent because she exceeded the legislated timeframe to return her Request For Reconsideration forms to the ministry. The ministry argues that they had mailed out the reconsideration forms on October 28 which noted that they must be returned by November 13, 2015. Further, between October 28 and November 23, 2015 the appellant did not call the ministry to

request an extension to the legislated timeframes or has provided any evidence to confirm why she would not be able to submit the required forms by November 13, 2015.

The appellant's position which was in a written statement attached to her notice of appeal dated December 9, 2015 is that she submitted the Reconsideration Request forms on November 13, 2015 and a witness was present. The appellant argues that on Friday, November 20, 2015 she checked to see if there was a decision and was told that her request had not been received. She was then told by a ministry worker "No Problem" it might not have been scanned and to get a copy and bring it back on Monday and it would be okay. The appellant stated that the ministry worker was going to leave a message on file saying that she remembered them bringing in the form on the November 13.

The panel finds that there is no dispute that the ministry notified the appellant of its decision on October 15, 2015. There is also no dispute that the appellant received the Request For Reconsideration package that was mailed out on October 28, 2015. The panel notes that the request for reconsideration forms in the record clearly state that the appellant had to submit the request form by November 13, 2015 which was 20 business days after she was notified of the ministry decision. The appellant does not dispute that this was the deadline.

While the panel acknowledges that the appellant's Request For Reconsideration form could have been lost by the ministry, the panel notes that there is no record in the ministry's file that the appellant contacted the ministry on Friday November 20, 2015 for an update of the ministry's decision and that she was then informed that the ministry had not received her Request for Reconsideration and that she should bring in another copy on Monday November 23, and it would be okay. Also, the panel notes that there is nothing in the EAA or EAR giving the ministry the authority to grant an extension after the legislated deadline for submitting a request for reconsideration has passed.

The panel finds that the ministry reasonably determined that the evidence established that the appellant's Request For Reconsideration was not submitted to the ministry within the 20 business days stipulated in EAR Section 79(2).

Therefore, the panel confirms the ministry's decision that the appellant has no right to reconsideration.