

## PART C – Decision under Appeal

The outcome under appeal is the Ministry of Social Development's (ministry) decision of November 5, 2015 wherein the ministry determined that a reconsideration under section 16(1) *Employment and Assistance For Persons With Disabilities Act* ("EAPWDA") is not available to the appellant because the appellant did not deliver a completed Request for Reconsideration of the ministry's decision of September 21, 2015 to the ministry within the legislated 20 business day limit as stated under section 71(2) of the *Employment and Assistance For Persons With Disabilities Regulation* ("EAPWDR").

## 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 reconsideration:

- Request for Reconsideration (“RFR”) signed by appellant October 22, 2015;

The appellant had requested a crisis supplement for clothing which was denied by the ministry on September 21, 2015. At the time, the ministry advised him that if he wanted to request a Reconsideration of the ministry’s decision the RFR forms must be submitted to the ministry within 20 business days or by October 20, 2015. The ministry mailed the required forms to the appellant on September 22, 2015 and received the completed forms on October 29, 2015.

The panel notes that its jurisdiction in this appeal is limited to determining whether the ministry decision that they could not provide a reconsideration decision was reasonable and does not include a review of the evidence with respect to the appellant’s request to the ministry.

The ministry’s submission in this matter “is the reconsideration summary provided in the Record of the Ministry’s decision”.

The appellant did not make a submission.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's outcome of November 5, 2015 wherein the ministry determined that a reconsideration under section 16(1) EAPWDA is not available to the appellant because the appellant did not deliver a completed Request for Reconsideration on the ministry's decision of September 21, 2015 within the 20 business day time limit as stated under section 71(2) EAPWDR.

The legislation considered:

### **EAPWDA**

#### **Reconsideration and appeal rights**

##### **Section 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.

### **EAPWDR**

#### **How a request to reconsider a decision is made**

##### **Section 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.

### **EAA**

#### **Reconsideration and appeal rights**

##### **Section 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;

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- (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.

**Employment and Assistance Regulation - EAR**  
**How a request to reconsider a decision is made**

**Section 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 panel notes that in the Reconsideration decision the ministry based their decision on the legislation as set in section 17(1) of the *Employment and Assistance Act* (“EAA”) and section 79 of the *Employment and Assistance Regulation* (“EAR”). The appellant has a Persons with Disabilities “PWD”) designation and therefore the Reconsideration officer should have referenced the applicable legislation under the *Employment and Assistance For Persons With Disabilities Act* and *Employment and Assistance For Persons With Disabilities Regulation* when making the decision on the appellant’s Request for Reconsideration.

The panel notes the language set out in the legislation of the *Employment and Assistance Act* and the *Employment and Assistance For Persons With Disabilities Act* is the same and is the same in the Regulation as well, the only difference being in the section number, i.e. EAA – section 17 and in EAPWDA it is section 16.

Since the appellant has a PWD designation the panel will reference the applicable legislation set out in the EAPWDA and EAPWDR.

**Ministry’s Position**

In the Reconsideration decision the ministry relied on section 71 EAPWDR (section 79 EAR) which states a person who wishes the ministry to reconsider a decision, must deliver the completed Request for Reconsideration (RFR) forms to the ministry within 20 business days after the date the person was notified of the decision. The ministry argued the appellant was notified of the ministry’s decision on September 21, 2015. The ministry argued the appellant did not return the completed RFR forms until October 29, 2015 which is more than 20 business days past the date he was notified and therefore is not entitled to Reconsideration as set out in section 16(2) EAPWDA [section 17(2) EAA].

**Appellant’s Position**

The appellant did not provide any argument as to why the 20 business day time limit should not apply in his case.

### **Panel Decision**

The panel notes there is a discrepancy in the date when the appellant delivered the forms to the ministry; in the Summary of Facts the delivery date is referenced as October 28, 2015 and in the Reconsideration decision the date of October 29, 2015 is referenced. The panel considers the discrepancy in delivery dates to be a typographical error.

The panel finds that the appellant was notified of the ministry's decision on September 21, 2015, signed the RFR form on October 22, 2015 and delivered the completed RFR to the ministry on either October 28, 2015 or October 29, 2015. The panel notes that on the RFR form the requestor (the appellant) is advised the RFR must be submitted by October 20, 2015.

The panel finds the ministry relied on the legislated 20 business day time limit in making their decision on Reconsideration. The panel finds it does not matter which date (October 29 or 29) you consider the delivery date of the appellant's RFR to be correct, the completed RFR form was not delivered to the ministry by October 20, 2015 which was the date the 20 business day time limit expired.

Section 16(2) EAPWDA states, "A request under subsection (1) [section 16 EAPWDA] must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation".

### **Conclusion**

The panel finds that the appellant did not meet the legislated criteria set out in section 16(2) EAPWDA and in section 71(2) EAPWDR and therefore the ministry's decision to deny the appellant Reconsideration was reasonably supported by the evidence and confirms the ministry's decision.