

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated February 3, 2016 which found that the ministry was not able to reconsider the appellant's request for a crisis supplement for clothing as the Request for Reconsideration dated January 25, 2016 (RFR) was not submitted within 20 business days as required by section 17 of the *Employment and Assistance Act* (EAA) and section 79(2) of the *Employment and Assistance Regulation* (EAR).

## PART D – Relevant Legislation

EAA section 17  
EAR section 79

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Ministry notes indicating that the appellant received a crisis supplement for clothing in February 2015 and requested a further crisis supplement for clothing on November 27, 2015, reporting that he lost his clothing, had only one set of clothes, and needed a winter jacket. The ministry notes indicate that the appellant called back on November 27, 2015 reporting that his clothes had been stolen from the laundromat. The ministry notes indicate that the appellant's request for a crisis supplement was denied, that the appellant was notified of the decision on December 4, 2015, and that on December 9, 2015 the ministry made available and mailed the appellant a reconsideration package. The ministry notes indicate that on December 21, 2015 the appellant called and requested the reconsideration package to be mailed to him at his new address and that on December 22, 2015 the ministry mailed the reconsideration package to the appellant's new address.
- RFR in which the appellant states that his clothes were stolen when he was at the Laundromat doing laundry, that all he has left are the clothes on his back, and that his shoes have holes in them.

### **Additional Information**

In his Notice of Appeal with attached email dated February 9, 2016 the appellant states that he never received the reconsideration package in the mail and that he went to the ministry office to get a new one to send.

The ministry objected to the admission of the information in the appellant's Notice of Appeal and attached email stating that it considers the submissions about not receiving the reconsideration package to be new evidence.

The panel has admitted the information contained in the Notice of Appeal and attached email into evidence as they are in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the delivery of the reconsideration package which is central to the issue to be determined in the appeal.

The appellant did not attend the hearing. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the hearing pursuant to EAR section 86(b).

The ministry relied on the reconsideration decision and did not introduce any additional evidence.

## PART F – Reasons for Panel Decision

The issue to be determined at appeal is whether the ministry reasonably concluded that it was not able to reconsider the appellant's request for a crisis supplement for clothing as the RFR was not submitted within 20 business days as required by section 17 of the EAA and section 79(2) of the EAR.

The relevant sections of the legislation are as follows:

### **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

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- (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.

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The appellant's position, as set out in the Notice of Appeal and attached email, is that he never received the reconsideration package by mail from the ministry and that he had to go in to the ministry office to get it. The appellant's position is that he never knew there was a time limit to submit the RFR, that the ministry's reconsideration decision is not fair, and that he has every right to the crisis supplement for clothing.

The ministry's position, as set out in the reconsideration decision, is that a person must make a request for the minister to reconsider a decision within the time limits as set out in section 17 of the EAA and that section 79(2) of the EAR specifically requires a person to submit a reconsideration request within 20 business days of being notified of the original ministry decision. The ministry's position is that the appellant was notified of the reconsideration decision on December 4, 2015 and therefore, the request for reconsideration should have been submitted by January 6, 2016. The ministry also states that while the appellant requested that the reconsideration package be re-mailed to him on December 21, 2015, he still had sufficient time to submit the RFR by January 6 or 11, 2016 at the latest.

The ministry's position is that the appellant received the reconsideration package advising him of the January 11, 2016 due date and advised him two times to submit the request for reconsideration within 20 business days of being notified of the original ministry decision. The ministry's position is that as the RFR was not submitted within 20 business days of the date that the appellant was notified of the original decision, and as the appellant did not provide any information to indicate that he was not able to submit the RFR within the timelines due to factors out of his control, the minister is not able to reconsider his request under section 17 of the EAA and section 79(2) of the EAR.

### *Panel Decision*

Section 17 of the EAA provides that a person must submit a request for reconsideration within the specified timelines, and section 79(2) of the EAR states that a request for reconsideration must be delivered within 20 business days after the date the appellant was notified of the reconsideration decision.

The panel finds as fact (based on the information in the reconsideration record) that the appellant was notified of the reconsideration decision on December 4, 2015 and that the deadline to submit the RFR was January 6, 2016. Although the appellant states that he never received the reconsideration package and did not know about the time limit, the panel finds that the ministry reasonably concluded that the appellant's completed RFR was delivered outside the time period set out in Section 79 of the EAR, as it was not received by the ministry until January 25, 2016. This is more than two weeks past the deadline of January 6, 2016. The ministry states that it made available and mailed the reconsideration package to the appellant on December 9, 2015, and even if this later date was used to determine the date on which the appellant was notified of the original decision, the RFR would still have been required by January 11, 2016. As the signed RFR was not received by the ministry until January 25, 2016, the panel finds that the ministry reasonably determined that it was not delivered within the 20 business days as required by section 79(2) of the EAR.

### **Conclusion**

Section 17(3) of the EAA 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 it is not able to reconsider its decision to refuse the crisis supplement for clothing was the "outcome" of the appellant's request. As noted by the ministry, there is no discretion within the legislation for the ministry to consider an RFR that is received outside of the statutory time frame. The panel therefore finds that the ministry's determination that it was not able to reconsider the decision to refuse the crisis supplement for clothing is a reasonable application of the applicable enactment in the appellant's circumstances under Section 24(1)(b) of the EAA.

The panel finds that the ministry's decision that it was not able to reconsider the appellant's request under section 17 of the EAA and section 79(2) of the EAR was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry's reconsideration decision.