PART C – Decision under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Social Innovation ("the ministry") dated 08 April 2016 that determined that, as the 20 business day time limit to file a Request for Reconsideration had expired, under section 71 of the Employment and Assistance for Persons with Disabilities Regulation, there is no legislative authority for the ministry to reconsider the original decision.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 16.
Employment and Assistance for Persons with Disabilities Regulation (EAR), section 71.

PART E – Summary of Facts

With the consent of the appellant, a ministry supervisor attended the hearing as an observer.

The evidence relevant to this appeal before the ministry when it made its decision consisted of the following:

1. From the ministry section of the appellant's Request for Reconsideration form regarding the original decision:
    - 29 May 2015: the appellant attended the local office and requested a crisis supplement.
    - 05 June 2015: a ministry worker reviewed the request and determined that more information was needed.
    - 10 June 2015: the appellant attended the local office and provided further information.
    - 10 June 2015: the appellant contacted the ministry call centre and explained his request with a worker.
    - 10 June 2015: another worker reviewed his request and determined that he did not meet all the eligibility criteria. His request was denied.

    The Request for Reconsideration form shows that the date the appellant ('the requestor") was advised of the decision was 15 June 2015. The form shows that he must submit the completed form by 14 July 2015.

2. The appellant's signed Request for Reconsideration is dated 31 March 2016. Attached to the Request for Reconsideration is a letter dated 31 March 2016 giving reasons for his request. In addressing the issue of timeliness in submitting his Request for Reconsideration, the appellant writes:

    > "I moved into my unit on the 1st day of June 2015. An individual tampered with my mailbox while breaking into it to steal the remnants contained within my mailbox… As such, all of my mail has been taken and stored by the [housing support worker] at my supported living residence…. Every couple of days, I was provided with my mail
    >
    > From what has been explained to me by the [housing support worker] a temporary worker within the employ of the [housing association] placed some of my mail in the office without notifying other [housing support workers] about the mail in general or its whereabouts specifically. The discovery of this mail occurred on the 14th day of March 2016. On this day I was provided with this "Employment and Assistance Request for Reconsideration"…
    >
    > Previously I had spoken with the [housing association's] [housing support worker] regarding rectifying my mailbox. When this did not occur I put in a work order with maintenance for my mailbox to be fixed."

    He attaches an invoice from a locksmith and correspondence between the [housing association] and himself to corroborate this explanation.

3. From the ministry's files, as set out in the Reconsideration Decision:
    - The appellant requested a Request for Reconsideration of the original decision on 15 June 2015.
    - The Request for Reconsideration package was mailed to the appellant on 17 June 2015.
    - A file review indicates that the appellant had frequent interactions with the ministry

during this time, both via phone and visits to the local office.

4. In the reconsideration decision, the ministry accepted that the appellant "did not receive [his] mail in a timely manner."

The appellant's Notice of Appeal is dated 02 May 2016. Attached to the Notice of appeal is a letter from the appellant setting out his arguments regarding the decision under appeal and requesting adjudication of the original decision (see Part F, Reasons for Panel Decision, below).

The hearing

At the hearing, the appellant referred to an email a copy of which he had sent to the tribunal too late to be circulated to the panel and the ministry. The email was from him to the housing authority dated in early March 2016 inquiring as to whether any of his mail had not been delivered to him.

The balance of the appellant's presentation went to argument respecting the issue under appeal (see Part F, Reasons for Panel Decision, below).

The ministry stood by its position at reconsideration. The ministry representative provided data on the number of times the appellant had been through the reconsideration and appeal process in recent years.

The admissibility of new information

As the ministry has accepted that the appellant did not receive his mail in a timely manner, the panel accepts his information regarding the March 2016 email to the housing authority as background to his account of how some of his mail was missing until March 2016.

The appellant objected to the admissibility of the data provided by the ministry regarding the number of times the appellant had been through the reconsideration and the appeal process. The panel finds that these data are not in support of the information and records before the ministry at reconsideration as none of these data are included in the Record of the Ministry Decision. Pursuant to section 22(b) of the Employment and Assistance Act, the panel therefore does not admit this information as evidence.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision, which held that as the 20 business day time limit to submit a Request for Reconsideration under section 79 of the EAR had expired and that therefore there is no legislative authority for the ministry to reconsider the original decision, is reasonably supported by the evidence or is a reasonable application of the legislation under the circumstances of the appellant.

The applicable legislation is from the *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.

And from the 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.

Time limit for reconsidering decision

72 The minister must reconsider a decision referred to in section 16 (1) of the Act, and mail a written determination on the reconsideration to the person who delivered the request under section 71 (1) *[how a request to reconsider a decision is made]*,

(a) within 10 business days after receiving the request, or

(b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request.

The positions of the parties

The position of the ministry, as set out in the reconsideration decision, is that the appellant was originally notified of the decision that he was ineligible for the requested crisis supplement during a visit to his local office on 15 June 2015. The request for reconsideration form was mailed to him on 17 June 2015. Although the appellant did not receive his mail in a timely manner, he did not follow up with the ministry to inquire about this request for reconsideration until after nine months had passed. A file review indicates that he is had frequent interactions with the ministry during this time, both via phone and visits to his local office. As such, it is reasonable that he had opportunities to ask about the delay and to participate in the reconsideration process when the original decision was made.

As the 20 business day time limit has long since lapsed and there is no evidence to establish that he was unable to follow through with the reconsideration and appeal process at the time, the minister is not able to reconsider his request.

At the hearing, the appellant provided copies of the *Hudson* decision (2009 BCSC 1461), drawing attention to the court's dictum that "any ambiguity in the interpretation of the Employment and Assistance for Persons with Disabilities legislation must be resolved in favour of the applicant" as argument that any uncertainty as to the when he received his mail should be decided in his favour.

The position of the appellant, as explained in his notice of appeal and at the hearing, focuses on the meaning of "notified of the decision" as set out in section 71 (2) of the EAPWDR. He argues that the only reasonable interpretation of this term is when the person seeking reconsideration is actually in possession of the Request for Reconsideration form – he submits that this is the only reasonable interpretation for the following reasons:

a) Only when in possession of the Request for Reconsideration form, with the Ministry section completed giving the reasons for the original decision and attaching the relevant legislation would the requester be in an informed position to provide reasons for why the original decision should be overturned; and
b) There might be variations in the time it takes for the ministry to prepare the reconsideration package (i.e. 48 hours according to ministry standards but perhaps longer for a complex case) and in the time between when the ministry puts the package is in the mail and when it is delivered; this means that there would be variations in the amount of time different requestors have to complete the Request for Reconsideration package, and in any event the time for the requestor to complete the form would be less than the 20 business days specified in the legislation.

The appellant also argues that ministry's position that he should have been expecting the reconsideration package in the mail a few days after making his request for the package and following up with the ministry when it did not arrive amounts to placing an unfair onus on him, not reflected in the legislation.

The appellant submits that due to complications with his mailbox, he did not receive the request for reconsideration package until 14 March 2016 and that he completed the form and submit it within 20 business days. On this basis he submits that the ministry decision not to conduct a reconsideration of the original decision is unreasonable.

Panel decision

The panel views the *Hudson* citation as relating to the interpretation of the legislation and not, as the appellant argues, to the weighing of evidence or the finding of fact. Setting aside statutory interpretation issues, the panel notes that in the reconsideration decision the ministry accepted that the appellant did not receive his mail in a timely fashion.

Under the *EAPWDA* and the Regulation, disability or hardship assistance and several different kinds of one-time-only or monthly supplements are available to eligible persons. The legislation sets out the relevant eligibility criteria for these benefits. These benefits are provided to applicants, through an application based process, once the ministry decides that the eligibility criteria have been met. There is an implied onus, not specified in the legislation, that it is the responsibility of potential applicants to determine for themselves what benefits are available and what are the eligibility criteria for these benefits. This information is readily available from the ministry's website, from numerous brochures published by the Ministry, by visiting the local office and speaking with a ministry worker or calling the toll-free ministry call-centre. Further, a general principle of administrative law also applies: it is the responsibility of an applicant for a public benefit to provide the information necessary to establish eligibility.

While the legislation does not provide any timeframe for the ministry to make a decision in response to an application for a benefit, it is expected that such decisions would be made in an expeditious manner, taking into account the need to verify information, the complexity of the application and general workload considerations.

It is only when a decision is made respecting a benefit that is refused, discontinued or reduced that the legislation provides a timeframe: if a person is dissatisfied with such a decision, section 16 (1) of the *EAPWDA directs* that a request for reconsideration "must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation." Section 71(2) of the EAPWDR requires that the completed request for reconsideration form must be delivered within 20 business days after the date the person is notified of the decision.

From the Request for Reconsideration and the reconsideration decision, it is unclear as to whether the appellant was notified of the original decision on 10 June or 15 June 2015, when he also requested a reconsideration package. The latter date is the one shown on the request for reconsideration as the date the appellant was informed of the decision and the panel will take that as the "date of record."

According to the appellant's account, he did not receive the request for reconsideration package mailed to him until 14 March 2016 and he completed and signed the form within the 20 business days. This means that by the time he submitted the completed form to the ministry, the 14 July 2015 deadline had long since passed.

The panel considers the right of reconsideration conferred by the legislation to be akin to any other benefit covered by the legislation – that is, there is an implied onus, not specified in the legislation, that it is the responsibility of the requestor to be aware of the applicable rules. When the reconsideration package did not appear in his mail within a few days of making the request for the package, it was his responsibility, if he still wanted to pursue the reconsideration, to contact the

ministry and enquire as to its whereabouts and if necessary attend the local office to obtain another copy. There is no evidence to show that he did so.

The appellant argues that the phrase “the date the person is notified of the decision” in section 71(2) is ambiguous, or at least means that when he was in possession on the Request for Reconsideration form mailed by the ministry rather than when he was merely informed orally by a ministry worker. The panel is guided by the Supreme Court of Canada in *Bell Express Vu (2002 SCC 42):*

> "What, then, in law is an ambiguity? To answer, an ambiguity must be real. The words of the provision must be reasonably capable of more than one meaning. By necessity, however, one must consider the entire context of a provision before one can determine if it is reasonably capable of multiple interpretations…”

Considering the context of the phrase, it is clear from section 16 of the EAPWDA that the purpose of the reconsideration provisions is to establish an expeditious process that requires that a request for reconsideration must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation. The appellant’s interpretation would be inconsistent with that expeditious purpose, with the prospect of delays in addressing reconsideration requests long past when the original decision was made and the circumstances surrounding the original request no longer current.

For the reasons given above, the panel finds that the ministry’s decision that the ministry is unable to reconsider the original decision is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry’s decision.