

PART C – Decision under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Social Innovation (“the ministry”) dated 09 May 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 that denied the appellant persons with disabilities (PWD) designation.

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

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

1. A letter dated 02 December 2015 from the ministry to the appellant informing the appellant that the ministry had denied his application for PWD designation. The letter stated
“If you disagree with this decision, you have the right to request reconsideration. You must file your written request for reconsideration with your local ministry office within 20 business days of receiving this letter. Please contact your local ministry office to obtain your request for reconsideration form. Reconsideration is your opportunity to submit any new information regarding your request. Attached is a reconsideration brochure. For more information about the reconsideration and appeal process, you may call your local ministry office or visit the ministry website...”

Attached to the letter is a Persons with Disabilities Designation Denial Decision Summary, also dated 02 December 2015

2. The appellant's Request for Reconsideration form prepared by the ministry on 15 March 2016 regarding the original decision: the form shows that the date the appellant (“the requestor”) was advised of the decision was 10 March 2016 and that that he must submit the completed form by 11 April 2016. The section completed by the ministry contains the following note:
“Please note: If you require an extension to complete your reconsideration, you must submit your request in writing with a signed copy of this form (section 4) no later than the due date indicated on this form below. Generally a decision is mailed to you within 10 business days. A request for extension can provide an additional 10 business days from the date you submit your signed Request for Reconsideration.
3. From the ministry's files:
 - On 10 March 2016 a social worker called the ministry to state that the appellant had received the PWD denial notification and would like to request a reconsideration.
 - On 01 April 2016 the social worker contacted the ministry inquiring about the package and was told that it had been sent to the appellant. The social worker requested that a package be sent to her and that she required an extension.
 - On 07 April 2016 the social worker contacted the ministry and indicated that she had not received the decision report. Another copy was faxed to her on that date.
4. The appellant's signed Request for Reconsideration is dated 21 April 2016. Under Reasons for Request, the appellant provides information regarding his medical condition as it relates to the original decision. The ministry received the Request for Reconsideration on 27 April 2016.
5. A letter dated 21 April 2016 from a health authority social worker to the ministry. She writes:
“I am. ...currently assisting [the appellant] who is a person requesting Reconsideration for PWD designation and requires assistance in communicating with the [ministry]. I am [sic] been absent from the office and therefore unable to assist [the appellant] in completing the requirements for the reconsideration by the time you have requested. Therefore, I ask you to please accept this Reconsideration for your review at this time.”

The balance of the letter provides information regarding the appellant's medical condition.

The appellant's Notice of Appeal is dated 18 May 2016. Under Reasons for Appeal, the appellant

refers to a medical report from a specialist regarding his medical condition.

The hearing

At the hearing, the appellant stated that due to his health conditions he rarely leaves his home. He described how he lived in a remote part of town where there is no local bus or postal service. His post box is in the centre of town, about a 10-minute drive away. He dare not walk that distance for fear of having a health crisis, either on the way or on the way back. He relies on his sister to drive him into town every couple of weeks to shop for groceries and maybe pick up his mail. Under these circumstances he may check his mailbox only once or twice a month.

In response to a question, the appellant stated that he could not remember when he received the 02 December 2015 letter from the ministry advising him of the denial of PWD designation.

The appellant stated that his medical specialist visited the town to see patients only once every three months. The appellant had to wait until 30 March 2016 for an appointment to see the specialist so as to obtain updated information that he could provide to the ministry on his health condition.

The appellant's advocate explained that she is the sole service provider assisting clients in dealing with the ministry in her local health authority office. When she is away, there is no one else to help her clients. She stated that she had to be away from the office from mid-December 2015 to the end of February 2016.

The advocate stated that when she contacted the ministry on the appellant's behalf on 10 March 2016, she did so realizing that the deadline for submitting a Request for Reconsideration had passed, but after talking with the ministry worker she was under the impression that a reconsideration would be considered in spite of the deadline having passed.

The balance of the appellant's submission and that of his advocate went to argument (see Part F, Reasons for Panel Decision, below).

The ministry stood by its position at reconsideration. The ministry representative stated that a ministry worker, either at a local office or at the call-centre, would never advise a client that it was too late to submit a Request for Reconsideration – that is a decision to be made by the Reconsideration Branch when it considers a signed Request for Reconsideration. Further, an extension may only be granted if requested in writing and submitted with a signed copy of the Request for Reconsideration.

Admissibility of new information

The panel accepts the testimony of the appellant and his advocate as background to the position of the appellant described in Part F, Reasons for Panel Decision, below.

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 advised of the decision on 02 December 2015. The original decision is not open to reconsideration as per section 79 of the Employment and Assistance Regulation as the appellant did not deliver his Request for Reconsideration within 20 business days of being informed of the decision. His deadline to submit the request for reconsideration was 04 January 2016. His Request for Reconsideration was not received by the ministry until 27th of April 2016. This exceeds the time limit permitted under this Regulation.

The ministry notes that on the Request for Reconsideration form the ministry incorrectly recorded 10 March 2016 as the date he was informed of the ministry decision. This appeared to be based on a call from his social worker. There is no information provided to support that he did not receive the 02 December 2015 written decision that was mailed to him, there is no record of his mail being returned to the ministry, and he has remained at the same address; therefore it is unclear why he waited three months before contacting the ministry to request a reconsideration. It is expected that the decision was delivered to him within 3-5 business days. He has provided no evidence to support that there were factors beyond his control that prevented him from submitting a Request for Reconsideration within 20 business days of the 02 December 2015 decision. As such the ministry is unable to provide him with the right to reconsideration of that decision because he missed the legislative deadline.

The appellant's position is that, under the circumstances he and his advocate described at the hearing (see Part E above), it was unreasonable for the ministry not to conduct a reconsideration of the original decision. The appellant argues that the panel give due consideration to his difficulties in accessing his mailbox, to his advocate's absence from her office during the crucial time after he received the original decision, and to the wait-time before he could see his medical specialist in order to put before the ministry new information regarding his health condition relevant to the requested PWD designation.

Panel decision

When a decision is made respecting a benefit that is refused, discontinued or reduced, the legislation provides a strict timeframe: section 16 (2) of the *EAPWDA* directs that a request for reconsideration of the decision “**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* states that a completed and signed Request for Reconsideration form “**must** be delivered within 20 business days after the date the person is notified of the decision.”

From the Record of the Ministry Decision, the ministry made its decision and mailed it to the appellant on 02 December 2015. Allowing 3 days for mail delivery, the letter would have arrived at the appellant's mailbox on or about 07 December 2015. There is no evidence that would suggest otherwise. The panel finds that it is reasonable for the ministry to consider this delivery date as that the appellant was notified of the decision. The use of any other date, such as when requestors claimed they accessed their mailbox, opened their mail or actually read the decision, would not be verifiable by the ministry and could result in the inconsistent application of legislation.

Pursuant to section 71(2) of the *EAPWDR*, this means that the appellant would have 20 business

days, until early January 2016, to request a Request for Reconsideration form from the ministry, complete and sign it and deliver it to, or have it received through the mail at, his local office. In the event, the panel finds that some 3 months passed before the appellant attended to the matter and sought the assistance of his advocate in pursuing a reconsideration of the original decision.

The panel has reviewed the *EAPWDA* and the Regulation and finds the legislation is directive: the minister has no discretion to consider any extenuating circumstances and reconsider the original decision when the Request for Reconsideration is delivered to a ministry office outside the prescribed 20 business days timeframe.

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.