



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated October 20, 2016, which held that the Appellant is not entitled to reconsideration of the Ministry decision of February 3, 2015 which determined that the Appellant had received an overpayment of assistance. The Ministry found that the Appellant did not deliver his Request for Reconsideration within the legislated time limit of 20 business days as set out in section 16(2) of the Employment and Assistance for Persons with Disabilities Act and section 71(2) of the Employment and Assistance for Persons with Disabilities Regulation.

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

Information before the minister at reconsideration included:

- The Appellant's Request for Reconsideration, with attachments, signed October 4, 2016. In his attached note, the Appellant wrote that his mental health was very dire; he had a major depressive episode and was hospitalized in 2014. He wrote that he was barely functional for the better part of two years. The remainder of the Appellant's submission dealt with the matter on which the Ministry refused to provide reconsideration due to the legislative time limit.
- A letter from the Ministry to the Appellant, dated February 3, 2015, advising him that there appears to have been an overpayment of disability assistance, with an overpayment chart and information about reconsideration..
- A letter from the Appellant to the Ministry, dated January 19, 2015.
- A letter from the Appellant to the Ministry, dated January 21, 2015.

At the hearing, the Appellant stated that he had just been released from hospital in February, 2015 when the Ministry's letter arrived advising him of their decision that he had received an overpayment of disability assistance. He stated that he was hospitalized in November and December, 2014 for severe depression, then hospitalized again in December, 2014 after being released for 10 days, and discharged on December 30, 2014.

The Appellant's representative, who is his case manager with a mental health agency, stated that the Appellant's mood was not stable and he had poor concentration with difficulty keeping focus for several months, with February and March, 2015 being difficult. She stated that the Appellant had a long recovery. In response to questions from the Panel, the Appellant stated that he has no memory of any interaction with the Ministry after his release from hospital, and does not recall writing to the Ministry.

The Ministry stated that they rely on the legislative time limit to request reconsideration. In response to questions from the Panel, the Ministry stated that Reconsideration Branch determines compliance with the time limits, and that the Appellant is currently in receipt of disability assistance, with the overpayment being deducted monthly.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision that the Appellant is not entitled to reconsideration of the Ministry decision of February 3, 2015 which determined that the Appellant had received an overpayment of assistance. The Ministry found that the Appellant did not deliver his Request for Reconsideration within the legislated time limit of 20 business days as set out in section 16(2) of the Employment and Assistance for Persons with Disabilities Act and section 71(2) of the Employment and Assistance for Persons with Disabilities Regulation.

Legislation

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.

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.

The Appellant's position is that due to his mental health he was unable to pursue the reconsideration process within the 20 day limit.

The Ministry's position is that the 20 day limit to request reconsideration is a legislated requirement and the

Appellant was notified of the Ministry's decision in February, 2015, but did not submit a request for reconsideration until October, 2016.

The Panel accepts the Appellant's oral evidence about his hospitalization and subsequent recovery; however the elapsed time from notification of an overpayment of assistance by the Ministry to the Appellant's submission of a Request for Reconsideration was 20 months. In addition, the Panel notes that the Appellant wrote the Ministry two letters about the matter in late January, 2015, indicating that he was capable of addressing the issue at that time.

The Appellant was notified on February 3, 2015 that he had received an overpayment of disability assistance but did not submit a request for reconsideration until October 5, 2016. The Panel finds that the Ministry reasonably applied the time limit for reconsideration set out in section 16, EAPWDRA and section 71, EAPWDR. The Panel finds that the Ministry reasonably refused to provide reconsideration of the original decision after expiry of the legislated time limit.

The Panel therefore confirms the Ministry decision, The Appellant is not successful on appeal.