

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated December 8, 2016 which found that the ministry was not able to reconsider the appellant's request for a full shelter allowance for the month of October, 2016 as the Request for Reconsideration (RFR) dated October 21, 2016 was not submitted within 20 business days as is 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(2)

PART E – Summary of Facts

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

- RFR with the following relevant dates:
 - Month decision effective is October 21, 2016
 - Date requestor informed of decision is October 21, 2016
 - Date requestor must submit form by is November 18, 2016
 - Reason for request section signed by the appellant on November 17, 2016 indicating that she had been informed that her cheque would be held, that she had submitted the required proof and received no response to her question about how this would affect her cheque. She notes that she would have reapplied immediately and that the prorated amount is an error and she should receive the full month amount.
 - Date stamped by office November 28, 2016
 - Scanned and batched stamp dated November 29, 2016
- Notice from My Self Serve dated August 28, 2016.
- Typewritten note from a landlord to the appellant dated October 3, 2016 indicating that he had received \$1000 rent on October 3rd out of the agreed amount of \$1100, so a reminder to please pay the remaining \$100 at earliest convenience.

The appellant wrote on her Notice of Appeal on December 16, 2016 that she should never have needed to reapply in the first place, that this was a ministry error not hers. She notes that forms are difficult for her to do with mental health issues and that she is seeking help but psychiatrist and counselors are hard to come by.

At the hearing, the appellant stated that before she had been cut off she had spoken to a ministry representative about her claim and was told that her October cheque would be in pay as usual. She stated that if she had been told she needed to reapply she would have done so before the beginning of the month. The appellant stated that she was aware that her appeal form was late but that she suffers from mental health issues which she was seeking help for, and that she did eventually turn it in. She states she put it in the ministry drop box but does not recall the date she left it there. The appellant had with her a report from a Health Authority showing she had been referred for psychiatric services to treat anxiety, however they note that the appellant's anxiety comes about from pain and that other pain medications should be tried. The appellant was referred back to her medical practitioner and was not accepted for psychiatric services.

At the hearing, the ministry relied on its reconsideration decision and reviewed the dates on the request for reconsideration form which were that she had been informed of the decision on October 21, 2016, that it was mailed to her on October 27, 2016 and that the form must be submitted by November 18, 2016. The ministry noted that the appellant signed it on November 17, 2016 but that the ministry office did not receive it until November 28, 2016 as confirmed by the date stamp on the form. The ministry confirmed that their practice is to empty out their drop box 4 times daily and always at 4:30pm, date stamping all paperwork with the date it was received. The ministry reviewed the handouts attached to the request for reconsideration, specifically noting the timelines for submitting the form or for requesting an extension to the timelines and also the list of advocacy groups available to assist with a reconsideration request. The ministry asked if the appellant had accessed an advocacy group and the appellant replied that she had not.

Admissibility of New Evidence

The appellant wrote on her Notice of Appeal, and referenced a confirmation document from a Health Authority at the hearing, that she suffered with mental health issues and was seeking help for them. The ministry representative did not object to this information, however as this was not information in support of information and records that were before the ministry at the time of reconsideration, the panel does not admit this information in accordance with section 22(4) of the Employment and Assistance Act.

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 full shelter allowance for the month of October, 2016 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 legislation is as follows:

Reconsideration and appeal rights - EAA

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.

How a request to reconsider a decision is made - EAR

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.

Appellant's Position

The appellant's position is that the ministry had made an error when they told her that everything was okay with her October cheque and that if she had known sooner she would have applied in time to receive her full cheque. The appellant confirmed that she did sign the request for reconsideration form on November 17, 2016 but stated twice at the hearing that she knew she was late submitting it, but it was because of her mental health issues she did not. She did not know the exact date she dropped it in the ministry drop box.

Ministry's Position

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 decision on October 21, 2016 and therefore, the request for reconsideration form should have been submitted by November 18, 2016. The ministry acknowledges that it was signed on November 17, 2016 however it was received on November 28, 2016, which was outside the time limits permitted under regulation, and as the appellant did not provide any information to indicate that she was not able to submit the RFR within the timelines due to factors out of her control, the minister is not able to reconsider her request under section 17 of the EAA and section 79(2) of the EAR.

Panel Finding

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 original decision on October 21, 2016 and that the deadline to submit the RFR was November 18, 2016. The panel finds that the ministry reasonably determined that the RFR was not received by the ministry 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 regarding the amount of October assistance 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 regarding the amount of October assistance 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.