

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated January 16, 2017, which found that the ministry was not able to reconsider the appellant's request for Persons with Disabilities (PWD) designation; as the Request for Reconsideration (RFR) dated January 9, 2017 was not submitted within 20 business days after the date the appellant was notified of the decision 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 *Employment and Assistance Act*, Section 17, 18
EAR *Employment and Assistance Regulation*, Section 79

PART E – Summary of Facts

Due to inclement weather, the hearing was changed from an oral in person hearing to an oral hearing via teleconference. All parties were given the opportunity to request an adjournment. None of the parties accepted the request. The hearing was postponed for 15 minutes to allow for the appellant to arrive at the originally scheduled location, and request an adjournment. It was confirmed that the appellant did not attend the scheduled location – not at the set time of the hearing, nor 15 minutes after the set time.

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- 1) The Appellant's application for PWD designation dated February 5, 2016.
- 2) A Ministry letter dated May 18, 2016 informing the Appellant that his application for Persons with Disabilities (PWD) designation was denied.
- 3) A Ministry PWD Designation Denial Decision Summary.
- 4) An unsigned copy of the Request for Reconsideration (RFR) dated November 4, 2016 - which includes a letter, a questionnaire completed by the Appellant's physician –dated January 18, 2016, and a typewritten self-report. The Appellant submitted a signed Request for Reconsideration (RFR) dated January 9, 2017. The submission included the same documents that had been submitted on November 4th, 2016.
- 5) A list of key dates from the ministry's files:

February 25, 2016:

The Appellant's application for Persons with Disabilities (PWD) was received by the Ministry.

May 18, 2016:

The Appellant's application for PWD was denied. Due to the address on the Appellant's file being listed as – "No Fixed Address" (NFA) at the time of the denial, the denial letter was held at the Ministry office for pick-up at next contact.

June 8, 2016:

The Ministry prepared a reconsideration package.

July 29, 2016:

The Appellant attended a Ministry office and spoke to an Employment and Assistance Worker (EAW). The EAW wrote a note regarding the topic of discussion. The note reads: *Had (client) in to check status of recon; review indicates no signed recon pkg rec'd. Had (client) complete for further review. Confirmed contact info.* It is noted that there was nothing submitted or signed on this day (July 29, 2016).

October 19, 2016:

The reconsideration Service Request was closed as abandoned due to no contact.

November 4, 2016:

The Appellant submitted an unsigned copy of the Request for Reconsideration - which includes a letter, a questionnaire completed by the Appellant's physician, and a typewritten self-report. At this time, a second request for reconsideration service was opened.

January 9, 2017:

The Appellant submitted a signed Request for Reconsideration. The submission included the same documents that had been submitted on November 4th, 2016.

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

The panel finds that the ministry notes indicate that the appellant was at least aware of the denied PWD application by July 29, 2016. The panel also finds that the appellant provided an unsigned Request for Reconsideration (RFR) on November 4, 2016 which included documents in support of that application. Further, the panel finds that the appellant provided a signed Request for Reconsideration (RFR) on January 9, 2017 with the same supporting documentation as the RFR submitted on November 4, 2016.

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 PWD designation, as the Request for Reconsideration (RFR) was not submitted within 20 business days after the date the appellant was notified of the decision 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

- (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.

Appellant

The appellant's position, stated in his Notice to Appeal – dated January 18, 2017 is that he was going through treatment and did not comprehend all the info and dates and stuff was very confusing.

Ministry

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 June 8, 2016. However, while the records do not establish when the Appellant was advised of the decision specifically which is in part, due to holding the denial letter at the ministry office, the Appellant was at least advised by July 29, 2016 (as per the ministry's record of the discussion between the Appellant and the EAW) and therefore, the request for reconsideration should have been submitted no later than August 26, 2016 – considering the 20 business day timeline.

The ministry's position is that the appellant received the reconsideration package advising him of the timeline requirements no later than July 29, 2016.

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 of his PWD designation, 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 that the ministry notes indicate that the appellant was at least aware of the denied PWD application by July 29, 2016. The panel also finds that the appellant provided an unsigned Request for Reconsideration (RFR) on November 4, 2016 which included documents in support of that application. Further, the panel finds that the appellant provided a signed Request for Reconsideration (RFR) on January 9, 2017 with the same supporting documentation as the RFR submitted on November 4, 2016.

The panel notes that regardless of the earlier (November 4, 2016) or later date (January 9, 2017) of the appellant's submission, both dates extend beyond 20 business days after the appellant was made aware of the denial of his PWD application on July 29, 2016.

Conclusion

The panel's position, subject to section 17(3) of the EA Act provides that, subject to certain exceptions, a person who is satisfied 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 there is no right of reconsideration was the "outcome" of the appellant's request. The panel finds that the ministry's determination that the appellant did not have a right to reconsideration is a reasonable application of the applicable enactment in the appellant's circumstances under s. 24 (1)(b) of the Act for the reasons outlined above.

In view of this finding, the panel confirms under section 24. (2) of the Act the ministry's decision that there is no right to reconsideration. It follows that the appellant is not entitled to have the request for reconsideration proceed to reconsideration.