

## 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 20, 2016 which found that the ministry is unable to conduct a reconsideration of the decision that the appellant was ineligible for, and must repay, the income assistance the appellant received while attending school full time from September 2012 to March 2013 as the Request for Reconsideration dated December 9, 2016 was not submitted within 20 business days as required by section 79(2) of the Employment and Assistance Regulation (EAR).

## PART D – Relevant Legislation

EAA section 17  
EAR section 79

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in his absence in accordance with section 86(b) of the Employment and Assistance Regulation.

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

- April 24, 2013 - The appellant was advised by the ministry of the decision that the appellant was ineligible for, and must repay, the assistance she received while attending school full time from September 2012 to March 2013. On that date, the ministry offered the appellant a reconsideration of the decision
- May 3, 2013 – the appellant signed an overpayment notification which includes an explanation of the reconsideration process and time limits. The appellant advised the ministry that she disagreed with the overpayment but would not appeal it.
- November 9, 2016 – the appellant contacted the ministry regarding a “debt to repay” letter for the overpayment of April 24, 2013.
- November 10, 2016 – the appellant contacted the ministry and requested a reconsideration of the decision to repay the assistance received while attending school from September 2012 to March 2013.
- December 9, 2016 – the minister received the appellant’s signed Request for Reconsideration where the appellant states:
  - She was never told how much money she owed until the bill was sent to her in September 2016, and
  - She includes arguments related to her disagreement with the overpayment.

### **Notice of Appeal dated December 29, 2016, the Appellant stated the following:**

- She disagrees with the ministry’s reconsideration refusal because she feels like there is no remorse at all in the ministry’s part.
- She does not remember several notifications both verbal and writing and does not remember stating that she would not appeal the decision despite her disagreement with it.
- She states that she was not aware of her rights to reconsideration and if she was well informed of the amounts of the bill and tools, why would she not reconsider, why.
- The appellant also includes additional argument related to her disagreement with the ministry decision that she is required to repay income assistance received from September

2012 to March 2013.

**At the hearing:**

The ministry relied on the reconsideration decision as summarized at the hearing. The appellant was notified of the ministry decision on April 24, 2013 and was notified on several occasions that she had until May 23, 2013 to file a Request for Reconsideration. On May 3, 2013 she attended at the ministry office and signed a repayment agreement. On December 9, 2016 the appellant signed her Request for Reconsideration, which is not within the 20 days as required in legislation.

## PART F – Reasons for Panel Decision

The issue to be determined is whether the ministry reasonably concluded that it is unable to conduct a reconsideration of the decision that the appellant was ineligible for, and must repay, the income assistance the appellant received while attending school full time from September 2012 to March 2013 as the Request for Reconsideration dated December 9, 2016 was not submitted within 20 business days as required by section 79(2) of the Employment and Assistance Regulation (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.*

The appellant's position, as set out in the Notice of Appeal is that she disagrees with the ministry's reconsideration refusal because she feels like there is no remorse at all in the ministry's part, and she does not remember several notifications both verbal and writing and does not remember stating that she would not appeal the decision despite her disagreement with it. She further states that she was not aware of her rights to reconsideration and if she was well informed of the amounts of the bill, why would she not reconsider.

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 April 24, 2013 and therefore, the request for reconsideration should have been submitted by May 23, 2013. The ministry also states that the appellant attended her local office on May 3, 2013 and signed an overpayment notification. The notification includes an explanation of the reconsideration process and time limits. The appellant advised the ministry of her disagreement with the overpayment but would not appeal it until December 9, 2016.

### **Panel Decision**

The issue to be determined is whether the ministry reasonably concluded that it is unable to conduct a reconsideration of the decision that the appellant was ineligible for, and must repay, the income assistance the appellant received while attending school full time from September 2012 to March 2013 as the Request for Reconsideration dated December 9, 2016 was not submitted within 20 business days as required by section 79(2) EAR.

The panel finds as fact (based on the information in the reconsideration record) that the appellant was notified of the reconsideration decision on April 24, 2013 and that the deadline to submit the Request for Reconsideration (RFR) was May 23, 2013. The appellant acknowledged receipt of the RFR on May 3, 2013 when she met with the ministry and signed an overpayment notification. The appellant did not sign the RFR until December 9, 2016.

The panel finds that the ministry reasonably concluded that the appellant's completed RFR was not delivered within the 20 business day time period as set out in Section 79 of the EAR, as it was not received by the ministry until December 9, 2016

### **Conclusion**

The panel finds that the ministry's decision that it was not able to reconsider the appellant's request under 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