

## PART C – Decision under Appeal

The outcome under appeal is the Ministry of Social Development and Social Innovation's (the ministry) decision of March 27, 2017 wherein the ministry determined that a reconsideration is not available to the appellant because the appellant did not deliver a completed Request for Reconsideration on the ministry's reconsideration decision of November 22, 2016 to the ministry within the 20-business day time limit as stated under section 71(2) Employment for Persons with Disabilities Regulation (EAPWDR). The request for reconsideration had to be submitted by December 23, 2016. The Request for Reconsideration was not submitted until March 15, 2017

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 16(1)(b) & (c), 16(2), 16(3)*

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 71*

## PART E – Summary of Facts

### **Nature of the Appellant's Application**

The Appellant, who has Persons with Disabilities status, operates a small business. As a result of an eligibility review at the middle of November 2016, the ministry determined that the Appellant received assistance for which he was not eligible due to the fact that he earned more than his yearly exemption allowed. He also applied for a crisis grant. He applied for Reconsideration of the decision dealing with his earnings being deducted from his disability payments, but not for the crisis grant. The ministry was not able to consider the Appellant's request for Reconsideration because he filed his request too late. The Appellant now appeals.

### **Evidence at the Time of Reconsideration**

1. The Appellant has Persons with Disabilities status.
2. The Appellant may earn \$9,600 per year before his disabilities assistance is reduced, dollar for dollar for what he earns over and above the \$9,600 per year.
3. As a result of the ministry reviewing the Appellant's assistance payments from March 1, 2016 to November 17, 2016, the ministry determined that the Appellant had received disability assistance which he was not entitled to receive.
4. The ministry, by letter of November 17, 2016, advised the Appellant that he had received disability assistance which he was not entitled to receive, and the Appellant received that letter on November 22, 2016.
5. On November 22, 2016 after receiving the letter the Appellant telephoned the ministry twice and then visited a ministry office on an unspecified date requesting a meeting to discuss the letter of November 17, 2016
6. The Appellant spoke with the ministry investigative officer (IO) who explained the decision dated November 17, 2016 and told the Appellant that he had 20 business days to request a reconsideration, but the Appellant did not request reconsideration at that time
7. During another meeting the IO gave the Appellant another letter explaining that the Appellant had been overpaid, because the Appellant had exceeded his annual earnings exemption and that the Appellant must repay that amount. The letter also advised the Appellant of his right to a reconsideration.
8. On December 1, 2016 the Appellant spoke with a ministry worker and requested a reconsideration.
9. On December 2, 2016 the Appellant spoke with a ministry worker and told the ministry worker that he would not pursue reconsideration or a self-employment program application
10. On December 9, 2016 the Appellant requested a crisis supplement and spoke with ministry workers regarding ineligibility for disability assistance because he had exceeded his annual earnings exemption
11. On January 18, 2017 the Appellant spoke with a ministry worker and requested reconsideration for both decisions
12. January 27, 2017 the Appellant spoke with a ministry worker and asked about the status of his reconsiderations
13. On January 30, 2017 the Appellant spoke with an investigative officer who mailed the Request for Reconsideration forms
14. On February 20<sup>th</sup> 2017 a ministry worker spoke with the Appellant and confirmed he had received the Request for reconsideration forms and would be pursuing a reconsideration(s) with an advocate
15. On March 15, 2017 the ministry received a signed Request for Reconsideration of the decision dealing with deduction of the Appellant's earnings from his disability payments
17. On March 27, 2017 the ministry reviewed the Request for Reconsideration

## PART F – Reasons for Panel Decision

### Issue

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) decision of March 27, 2017 wherein the ministry determined that a reconsideration is not available to the appellant because the appellant did not deliver a completed Request for Reconsideration on the ministry's reconsideration decision of November 22, 2016 to the ministry within the 20-business day time limit as stated under section 71(2) Employment for Persons with Disabilities Regulation (EAPWDR). The request for reconsideration had to be submitted by December 23, 2016. The Request for Reconsideration was not submitted until March 15, 2017. The issue is whether the ministry decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

### Relevant Legislation

#### 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:
- (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;
- (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.

#### 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.

### General Scheme of the Legislation

The general scheme of the legislation is that if someone is dissatisfied with the decision of the ministry that results in a discontinuance or reduction of disability assistance, then that person may request a Reconsideration, provided he does so within 20 business days after being notified of the decision.

### Analysis

The panel notes that the issue under appeal is not whether or not the Appellant should or should not have had his disability assistance discontinued or reduced, but whether or not the appellant delivered his Request for Reconsideration within the statutory time period.

### Appellant's Position

The appellant agreed that the amount of disability assistance that the Appellant received, which he was not entitled to receive as set out in the reconsideration decision were correct, but the appellant wished to argue that he should be allowed a recalculation due to business expenses and thus to show that he had not exceeded his annual earnings exemption. He stated he understood when told that the issue was not recalculation of his earnings or annual earnings exemption but whether or not he had made a request for reconsideration within the time period allowed. The Appellant's position was that he was aware of the 20 business day time period within which to make a request for

reconsideration. He said that although he received the decision denying his request for recalculation of his earnings on November 22, 2016, the package he received informed him that his disability income would be stopped for three months and that he could ask for reconsideration. He said that he spoke to and met with various ministry representatives between November 22, 2016 and the date he delivered a request for reconsideration to the ministry. He said he did not make a reconsideration request within the time period allowed due to his “terrible addiction problems” with drugs and alcohol and his mental issues. He made his request for reconsideration about the middle of January 2017.

### **Ministry Position**

The ministry relied on the legislated criteria of section 71(2) *EAPWD*. Ministry maintained that the Appellant did not submit a request for reconsideration of the ministry’s decision of November 22, 2016 until March 15, 2017, 61 days past the legislated to deadline of December 22, 2016.

### **Panel Finding**

The panel notes that there was no information from the advocate as to why the request for reconsideration had not been prepared earlier, and no information from a physician confirming the Appellant’s mental health or substance abuse issue or how they may have prevented the Appellant from making a request for reconsideration.

The panel finds that the Appellant was aware on November 22, 2016 that his original request had been denied and that he was aware of his right to request reconsideration. The panel further finds that there is no exemption in the legislation which would extend the time period within which reconsideration may be requested, due to incapacity of any sort. The panel finds that although the ministry may be permissive in some circumstances, the legislation is clear that a request for reconsideration must be delivered to the ministry, in the form specified by the ministry, within 20 business days after the date the appellant was notified of the decision to reduce his disability assistance. The panel finds that by not providing his request for reconsideration to the ministry until March 15, 2017, the Appellant exceeded the 20 business day period by approximately 61 business days.

The panel finds that the Appellant did not meet the criteria within section 71(2) *EAPWDR* and therefore the ministry’s decision to deny the appellant he reconsideration was a reasonable application of the applicable enactment in the circumstances of the Appellant.

Section 16(3) *EAPWDA* 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 there is no right of reconsideration was the “outcome” of the appellant’s request.

### **Conclusion**

In view of this finding, our jurisdiction is limited to confirming or rescinding the ministry’s decision. The panel finds that the ministry’s decision dated March 27, 2017 that denied the appellant’s request for Reconsideration was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the Appellant.

The panel confirms the ministry’s decision and the Appellant is not successful in his appeal.