

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated 18<sup>th</sup> March 2012, which determined that the ministry is unable to conduct a reconsideration of an overpayment decision and a decision to apply a 3 month sanction for inaccurate reporting, on the grounds that the Request for Reconsideration (RFR) dated 27<sup>th</sup> March 2017 was not submitted within 20 business days after the appellant was notified of the ministry’s decisions, 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 - Employment and Assistance Act, Section 17

EAR – Employment and Assistance Regulation, Section 79

## PART E – Summary of Facts

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

1. A letter dated 22<sup>nd</sup> March 2012 from the ministry to the appellant, which amongst other matters, informs the appellant that (a) receipt of ineligible assistance is considered an overpayment and requires repayment; (b) the appellant was notified about an overpayment on 22<sup>nd</sup> March 2012 as a result of inaccurate or incomplete reporting; (d) the overpayment will result in a reduction of \$25.00 per month for the next three months effective from May 2012 in accordance with the provisions of section 32 of the EAR; and (e) the appellant could request a reconsideration of the ministry's said decision within 20 business days from the date of the notification and completion of a Request for Reconsideration to the ministry.
2. An Overpayment Chart dated 22<sup>nd</sup> March 2017 signed by the appellant in which the appellant acknowledges that he is aware of his right to request reconsideration of the ministry's decision dated 22<sup>nd</sup> March 2012.
3. A letter dated March 26<sup>th</sup> 2017 from two family friends of the appellant stating that the appellant did odd jobs for them from time to time for which he was paid small amounts of \$20.00 for a half a dozen times for the lawn in the summer and a one time cheque of hundred dollars for services rendered in connection with house renovation.
4. An undated letter from the appellant's mother that is date stamped by the ministry as being received on 30<sup>th</sup> March 2017 which, amongst other matters states that: (a) the appellant has learning disabilities and was assigned his own special needs learning assistant throughout his entire schooling; (b) that he graduated from high school on a modified program; (c) although the appellant signed the Overpayment Chart on 22<sup>nd</sup> March 2012, he did not understand what he was signing and that as he is "conflict-averse, he probably said or did whatever the ministry asked of him to complete his interview and obtain his assistance cheque; (d) although the appellant's mother is not his legal guardian, she has his permission to act on his behalf; (e) that the appellant was not employed or did not receive any payments between June 2009 and March 2012 (as listed in the Overpayment Chart) from the family friends referred to in paragraph 3 above, and this point has been confirmed through a letter from the said family friends (see paragraph 3 above); (f) the appellant does not have a pension, RRSP's or any assets and he has not been able to hold a full time job most of his adult life; (g) the appellant had stated to the ministry that his mother was helping him out and that he was having difficulty during the interview due to a recent demise in their family; (h) it was noted by the ministry in his file in June 2013 that the appellant was not job ready and that he had serious issues with literacy, memory and motivation; (i) the monthly reduction of \$20.00 occurred each month between April 2012 and July 2016 for a total of \$980.00 and \$240.00 for the month of April; and (j) the appellant is very stressed by the current situation, which could cause deterioration in his mental health and loss of his existing job. In such an event, the appellant would again require income assistance.
5. Request for Reconsideration Form, which amongst other matter states that:
  - The appellant was advised on 22<sup>nd</sup> March 2012 of the overpayment decision and a decision to apply a 3 month sanction for inaccurate reporting;
  - The appellant's mother contacted the ministry on 7<sup>th</sup> February 2017 to request a reconsideration (the said date is referred to as being 8<sup>th</sup> February 2012 in the Reconsideration Decision);
  - The ministry prepared a request for reconsideration package on 2<sup>nd</sup> March 2017, as per the

request of the appellant's mother and a voicemail message was left for her indicating that the package was ready for pick-up;

- The appellant's mother picked up the request for reconsideration package from the ministry on 16<sup>th</sup> March 2017;
- The appellant submitted a signed request for reconsideration on 30<sup>th</sup> March 2017.
- The appellant was a former recipient of assistance from June 2009 to July 2013 and again from September 2013 until August 2016;
- From the month of May, June and July 2012, the appellant's assistance was reduced by \$25.00 per month because of the sanction for inaccurate reporting; and
- As of August 2016, the appellant had repaid \$980.00 of the \$7680.00.

Notice of Appeal dated 27<sup>th</sup> April 2017, which amongst other matters states that:

- The ministry is overlooking the fact that there was no "employment and no income";
- Why would "they" expect the money to be repaid that wasn't paid; and
- Regardless of the dates and the signed papers, once the facts were known "they" should do the right thing.

#### New evidence on appeal

Prior to the hearing, the appellant's mother/representative submitted several documents, which included (i) a School Board Permanent Record Card for the period 1986 to 1997; (ii) a Special Needs Report 9<sup>th</sup> September 1986; (iii) a Hospital Report dated 25<sup>th</sup> October 1989; and (iv) a "History" of past contacts between the appellant and the ministry between 2<sup>nd</sup> September 2011 and 5<sup>th</sup> July 2013.

At the hearing, the appellant's mother/representative submitted (i) a copy of the School Board Permanent Record Card for the period 1986 to 1997 duly certified on 18<sup>th</sup> May 2017 as a "true copy" by the School District (document described in paragraph (i) in the immediately preceding paragraph; and (ii) a letter dated June 5<sup>th</sup> 2017 from the witness of the appellant, which provided additional information about the mental capacity of the appellant between 1992-1997.

The ministry representative objected to admission of all of the above-mentioned documents on the grounds that none of them were relevant for matter under consideration before the panel and nor were they in support of information in the records before the minister at reconsideration.

The panel finds that all of the said documents relate to the mental capacity of the appellant, which is relevant to an issue that was specifically raised before the ministry and is expressly referred to by the ministry in the reconsideration decision. It therefore relates to existing information before the minister at reconsideration and is therefore not new evidence that raises entirely new issues.

The panel determined that the additional documentary evidence was admissible under Section 22(4) of the Employment and Assistance Act, as it was in support of the records before the minister at reconsideration. However, the panel also finds that the said additional documentary evidence does not relate to the issue that the panel has to decide under this appeal, which is more particularly described in Part F of this decision, and therefore does not give any weight to it nor does it express any opinion as to its credibility or reliability.

The appellant was not in attendance at the hearing. According to the appellant's mother/representative, who was present at the hearing and represented the appellant in connection with the reconsideration request as well as this appeal, the appellant did not attend the hearing, as he would not have been able to cope with or bear the extra stress of the appeal hearing. After confirming

that the appellant was notified of the hearing and that the appellant's mother/representative had been duly designated by the appellant as his representatives to receive information and documents relating to the appeal, the hearing proceeded under Section 86 (b) of the Employment and Assistance Regulation.

### **Information provided at the hearing of the appeal**

At the hearing the appellant's mother acknowledged that the request for reconsideration of the ministry's decision dated 22<sup>nd</sup> March 2012 was, indeed, submitted outside the prescribed period of 20 business days from the date of the said decision. However, the new documentary evidence submitted on behalf of the appellant indicated that the appellant did not have the mental ability to process the documents he was signing on that date. The appellant's witness, who was the special education teacher, and the case manager for the appellant between 1992-1997, stated that, in her opinion, the appellant had significant learning disabilities and therefore was incapable of understanding the documents signed by him on 22<sup>nd</sup> March 2012. The witness acknowledged that she has not "professionally" assessed the mental capacity of the appellant since 1997, although she has seen him in the "community", and that it is unlikely that his mental condition would have changed significantly since 1997.

The ministry stated that: (a) the appellant was notified of the ministry's decision on 22<sup>nd</sup> March 2012 and his right to request a reconsideration thereof within 20 business days of that date; and (b) the appellant failed to submit a reconsideration request within the timeline prescribed by legislation and regulations i.e. by 20<sup>th</sup> April 2012. Therefore, the ministry's decision was reasonable.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably concluded that it is unable to conduct a reconsideration of an overpayment decision and a decision to apply a 3 month sanction for inaccurate reporting, on the grounds that the Request for Reconsideration (RFR) dated 27<sup>th</sup> March 2017 was not submitted within 20 business days after the appellant was notified of the ministry's decisions on 22<sup>nd</sup> March 2012, as is required by section 17 of the Employment and Assistance Act and section 79(2) of the Employment and Assistance Regulation (EAR).

The relevant sections of the legislation are as follows:

### ***EAA 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.*

### ***EAR***

### ***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 mother/representative argued that due to the diminished mental capacity of the appellant, he did not fully understand what he was signing; that the appellant had been struggling with the said challenge his whole life; that the system had let him down; and that it was unfair to hold him responsible for actions he was incapable of fully understanding.

### **Ministry's Position**

The ministry's position, as set out in the reconsideration decision, is that (a) a person must make a request for the minister to reconsider a decision within the time limits set out in section 17 of the EAA and section 79(2) of the EAR, which specifically require a person to submit a reconsideration request within 20 business days of being notified of the original ministry decision; (b) in this case, the appellant was notified of the original decision on 22<sup>nd</sup> March 2012 and he was advised to submit a Request for Reconsideration relating to that decision no later than 20<sup>th</sup> April 2012; and (c) the Request for Reconsideration was not received by the ministry until 30<sup>th</sup> March 2017 – approximately 5 years and 11 months after the time limit permitted under the Regulation.

### **Panel Decision**

The issue to be determined is whether the ministry reasonably concluded that it is unable to conduct a reconsideration of the original overpayment decision and a decision to apply a 3 month sanction for inaccurate reporting made on 22<sup>nd</sup> March 2012, as the Request for Reconsideration relating thereto was not submitted within 20 business days of the said date prescribed by section 79(2) EAR.

Based on the information in the reconsideration record, the panel finds that the appellant was notified of the original decision on 22<sup>nd</sup> March 2012 and that the timeline to submit a Request for Reconsideration of that decision was 20<sup>th</sup> April 2012. The panel also finds that the ministry reasonably determined that the appellant's Request for Reconsideration in respect of the original decision dated 22<sup>nd</sup> March 2012 was not received by the ministry within 20 business days of the said decision, as required by section 79(2) of the EAR.

The panel notes that the appellant has acknowledged receipt of the original decision and also signed the Overpayment Chart on March 22<sup>nd</sup> 2012, which includes an explanation of the reconsideration process and the prescribed time limits. In that context, the panel acknowledges the appellant's argument that he was not able to comprehend the consequences of signing the Overpayment Chart. However, that argument is not an issue that can be considered by the panel, as the only legitimate issue before the panel is whether the appellant had submitted his request for reconsideration of the March 22<sup>nd</sup> 2012 decision within 20 business days after the appellant was notified of the ministry's decisions on 22<sup>nd</sup> March 2012, as is required by section 17 of the Employment and Assistance Act and section 79(2) of the Employment and Assistance Regulation (EAR). The panel further finds that there is no discretion within the applicable legislation for the ministry to consider a request for reconsideration that is not received within the prescribed statutory time frame, nor is there authority to grant an extension of time after the prescribed timeline has passed.

## **Conclusion**

The panel finds that the ministry's decision that it was unable to render a reconsideration decision under section 17 of the EAA and section 79(2) of the EAR was reasonably supported by evidence and was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry's reconsideration decision.