

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) June 20, 2017 determination that a Reconsideration under section 17(1) of the *Employment and Assistance Act* (EAA) is not available to the appellant because the appellant did not deliver a completed request for reconsideration of the ministry’s decision of February 29, 2016 to the ministry within the legislated 20 business day limit as stated under section 79(2) of the *Employment and Assistance Regulation* (EAR).

## PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 17  
Employment and Assistance Regulation (EAR), section 79

## PART E – Summary of Facts

This is a Written Hearing.

The evidence before the ministry at the time of reconsideration:

- Letter dated February 12, 2016 from ministry to appellant advising him that he may have received income assistance of \$610.00 that he was not entitled to receive which may have resulted in an overpayment of assistance;
- Letter dated February 29, 2016 from the ministry to the appellant advising him of the file review conducted to determine his eligibility for assistance and an overpayment of \$610.00 has been recorded on his file. An overpayment chart was attached to the letter to demonstrate how the overpayment was calculated. The letter also states that he has a right to request a Reconsideration of this decision and that he must submit a completed Request for Reconsideration form to the ministry office within 20 business days from the date he is notified of the ministry's decision. The appellant was directed to refer to the Reconsideration and Appeals brochure that was enclosed for further details;
- Overpayment Chart for the month of October 2015;
- Request for Reconsideration dated June 6, 2017 with two-page attachment.

A ministry (IO) file review of the appellant's assistance between June 1, 2015 and December 31, 2015 revealed that employment income and student financial assistance that the appellant had received and had not been properly reported resulted in the appellant receiving income assistance (overpayment) for October 2015 which he was not eligible to receive. The appellant did not have a telephone or email and his file was closed on December 11, 2015 due to inactivity. On December 22, 2015, the appellant contacted the IO and was advised of his file closure, the process to reapply and the probable ineligible income assistance he had received in October 2015. The appellant was requested to submit any documents relating to the review. On January 6, 2016, the appellant submitted documents to the IO (in person). At this same time, the appellant was also advised that after his file was reopened he could expect a letter regarding file review and the income assistance he received in October 2015. The appellant's file was reopened on January 29, 2016. On February 12, 2016, the IO mailed the appellant a letter advising him on the results of the file review. In the letter, the IO advised him an appointment was scheduled for February 25, 2016 and requested he call and discuss the review. The appellant did not call. On February 29, 2016, the ministry (IO) mailed their decision to the appellant and enclosed a Reconsideration and Appeals brochure. The ministry did not apply a sanction to the appellant's file due to his health at the time.

On March 18, 2016, the appellant called the IO to discuss his ineligibility of assistance (overpayment) in October 2015 and the repayment terms. The appellant told the IO he understood how the IO made the determination and requested that the repayment be suspended while he was in a residential facility. The appellant was advised the security deposit repayment (\$20) could not be suspended. The ministry was satisfied the appellant had received their letter of February 29, 2016.

On May 18, 2017, the appellant called the IO and requested a Reconsideration of the ministry's decision of February 29, 2016.

The panel notes that its jurisdiction in this appeal is limited to determining whether the ministry decision that they could not provide a reconsideration was reasonable and does not include a review of the evidence with respect to the appellant receiving income assistance in October 2015.

The ministry's submission in this matter "is the reconsideration summary provided in the Record of the Ministry's decision".

In the appellant's written submission, the appellant stated that during the period in question he was suffering from either active alcoholism or post-acute withdrawal syndrome. He stated that from October 2015 to March 2016, he was admitted to hospital on several occasions due to health complications related to alcohol abuse and in March 2016 he went to a treatment center. He stated that while not actively alcoholic during this time, he began to experience the debilitating symptoms of post-acute withdrawal syndrome - confusion, depression, anger, sleep disorder, memory loss, eating disorders and delusions. In his submission, he also provided an overview of his life's activities from June 2016 to August 2016. He stated he has been sober since August 2016.

He submitted, "given the events outlined above and the factors as they relate to his issue, it seems clear I was not capable of responding to any degree of efficacy to the reconsideration process within the given time frame". The panel will consider this statement as argument.

The panel finds the appellant's statements that he was in a residential facility in March 2016 and had post-acute withdrawal syndrome is information that further explains the appellant's health which was information that was before the ministry at Reconsideration and is admissible under Section 22(4) of the EAA.

The panel finds the information regarding his life history between June 2016 and August 2016 is new information that was not before the ministry when the reconsideration decision was made and therefore is not admissible as new evidence under section 22(4) of the EAA.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's determination that a reconsideration under section 17(1) EAA is not available to the appellant because the appellant did not deliver a completed Request for Reconsideration on the ministry's decision of February 29, 2016 within the 20-business day time limit set out in section 79(2) EAR.

### The legislation considered:

#### EAA

#### Reconsideration and appeal rights

##### Section 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

##### Section 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.

### Ministry's Position

The ministry's position is that the appellant's request for reconsideration was not submitted until June 6, 2017 well after the legislated 20 business day time limit as stated in section 79(2) EAR. The ministry argued they are satisfied the appellant received the ministry's decision of February 29, 2016 when he called the IO on March 18, 2016 to ask if the repayment could be suspended while he was in a facility. The ministry argued that since the appellant's request did not meet the legislated requirements the ministry is unable to conduct a reconsideration of the matter.

### Appellant's Position

The appellant's position is that in March 2016 he was accepted into a treatment facility and while not actively alcoholic at that time he began to experience the debilitating symptoms of post-acute withdrawal syndrome, among which were confusion, depression, anger, sleep disorder, memory loss, eating disorders and delusions. He argued "given the events around that time, and the factors related to the issue, it seems clear he was not capable of responding with any degree of efficacy, to the reconsideration process within the given time frame.

**Panel Decision**

Section 79(2) EAR states, 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 evidence is the IO mailed the appellant the ministry's decision on February 29, 2016 and enclosed a Reconsideration and Appeals brochure. The evidence is the appellant did not have a phone or email. The evidence from the appellant was that he was in a treatment center in March 2016 suffering from post-acute withdrawal syndrome and unable to comprehend the process. After leaving this facility he then went to another facility and was finally "released from stabilization in August 2016 and has remained sober since that time". The panel accepted that the appellant was in a treatment facility in March 2016 but does not accept that he unable to respond to the requirements of section 79(2) of the EAR as he spoke to the IO on March 18, 2016, discussed his ineligibility for assistance and told the IO he understood how he (the IO) made his determination of how he was ineligible to receive income assistance in October 2015. He did not ask for a Reconsideration of the decision. The panel finds the appellant's phone call to the IO and his discussions with him satisfies the requirements of section 79(1) EAR, however, this phone call does not support the appellant's position that he was not capable of understanding the reconsideration process and complying with the requirements of section 79(2) of the EAR.

The appellant stated that, for personal reasons, he had not retained any of the documentation relevant to this period and he did not wish to revisit any of the professionals with that request. The panel respects the appellant's position. However, the panel finds that without independent and corroborative information from a prescribed professional or counsellor from the facility where he was in March 2015, there is insufficient information to support that the appellant was not capable of complying with the legislative requirements of section 79(2) of the EAR.

The panel finds the evidence supports that the appellant received the ministry's decision of February 29, 2016 and that he did not comply with the legislated requirements in section 79(2) of the EAR. The panel finds his Request for Reconsideration should have been received by the ministry on or before March 28, 2016, however, his request was not received until June 6, 2017.

**Conclusion**

The panel finds the ministry's outcome that the ministry is unable to conduct a reconsideration of the matter is a reasonable application of the legislation based on the evidence and confirms the ministry's decision.

The appellant has been unsuccessful in his appeal.