

#### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) decision to deny the appellant reconsideration of a previous Ministry decision on the basis that there is no legislative jurisdiction to reconsider the decision. The denial of reconsideration related to the Ministry’s July 21, 2016 decision which reduced the appellant’s income assistance on the basis that the appellant was required to repay assistance that she was not originally eligible to receive. The Ministry found that the appellant’s 20-day time limit to request reconsideration expired on August 19, 2016, being prior to the appellant’s request for reconsideration which was submitted on July 21, 2017.

#### PART D – Relevant Legislation

s. 17, s.27 Employment and Assistance Act (“EAA”)  
s.79 Employment and Assistance Regulation (“EAR”)

## PART E – Summary of Facts

### **The evidence before the Ministry at Reconsideration was:**

- The appellant was in receipt of income assistance from December 2015 to September 2016.
- On July 21, 2016 the appellant was advised that an overpayment of assistance had been identified due to the receipt of assistance she was not eligible to receive and that she was required to repay the funds. The reason that the Ministry requested repayment was that the appellant received shelter funds after she moved out of the residence.
- On July 4, 2017 the appellant advised the Ministry that she would like to dispute the debt added to her file due to an overpayment of assistance as a result of receiving assistance she was not eligible to receive.
- On July 21, 2017 the appellant requested the Ministry to reconsider its decision of July 21, 2016.

### **Evidence from the Ministry:**

- A Letter dated August 2, 2017 from the Ministry to the appellant advising the appellant that reconsideration is not available because the request for reconsideration is not related to a decision of the minister under section 17 of the EAA.

### **Notice of Appeal:**

- A Notice of Appeal dated August 11, 2017 provided argument which stated: "ministry has come to a decision based on inaccurate information provided. Have explained in detail the situation and am unsatisfied with the status of my situation."

### **At the hearing:**

- The appellant re-stated her reasons for appeal and restated the confusion that she faced when was originally applying for shelter allowance with the Ministry.
- The Ministry representative relied on the Ministry's reconsideration and reiterated that the appellant did not request reconsideration within the s.79 EAR time limit of 20 business days. The Ministry did not rely on the statements in their letter dated August 2, 2017.

## PART F – Reasons for Panel Decision

The issue before the tribunal is if it was reasonable for the Ministry to deny the appellant reconsideration of a previous Ministry decision on the basis that there is no legislative jurisdiction to reconsider the decision. The denial of reconsideration related to the Ministry's July 21, 2016 decision which reduced the appellant's income assistance on the basis that the appellant was required to repay assistance that she was not originally eligible to receive. The panel must determine if it was reasonable for the Ministry to determine that the appellant's 20 business day time limit to request reconsideration expired on August 19, 2016, being prior to the appellant's request for reconsideration which was submitted on July 21, 2017.

### **The legislation provides:**

#### 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.

#### Overpayments

27 (1) If income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3) [reconsideration and appeal rights].

#### 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 panel finds:**

The additional oral and documentary evidence was admissible pursuant s.22(4) of the EAA as it was in support of the records before the Ministry at reconsideration or was simply argument in support of evidence before the Ministry at reconsideration.

Although the Ministry's letter of August 2, 2017 advised the appellant that reconsideration was not available to her because the July 21, 2016 decision was not a decision that fell under s.17 of the EAA, the Ministry did not rely on this letter at the hearing and instead relied on their original reconsideration decision of August 2, 2017. The panel finds that although the appellant was entitled to reconsideration of the July 21, 2016 decision, she did not request reconsideration of the July 21, 2016 decision within the s.79 EAR time period of 20 business days, which would have been by August 19, 2016. Instead, the appellant submitted her request for reconsideration on July 21, 2017, well after the 20 business day time line. The panel finds that it was therefore reasonable for the Ministry to deny the appellant reconsideration of the original July 21, 2016 decision on the basis that the appellant failed to request reconsideration during the legislated time period. The panel therefore confirms the Ministry's decision.