

PART C – DECISION UNDER APPEAL

The decision under appeal is the October 30, 2017 reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “ministry”) which denied the appellant’s request for reconsideration of a ministry decision to require repayment of an overpayment of income assistance (IA) received by the appellant in March, April and May, 2017 because the appellant’s request for reconsideration was not submitted within 20 business days of notification of the ministry decision as required by Section 17 of the Employment and Assistance Act (EAA) and Section 79 of the Employment and Assistance Regulation (EAR) and the ministry therefore lacked jurisdiction to consider the appellant’s request for reconsideration.

PART D – RELEVANT LEGISLATION

EAA Section 17
EAR Section 79

PART E – SUMMARY OF FACTS

The appellant was a recipient of IA with one dependent during the period February 2013 – May 2017.

Information before the ministry at reconsideration included:

- May 25, 2017 letter from the ministry informing the appellant that she may have received an overpayment of IA in the amount of \$1,878.33 for which she was not eligible and informing the appellant that she had the right to request reconsideration of the ministry's decision within 20 business days of receiving notice in writing of the ministry's final decision. Below the ministry worker's signature the letter indicated the following enclosures:
 - an overpayment chart compiled by the ministry;
 - Reconsideration and Appeals brochure to assist the appellant with the steps that need to be taken to request reconsideration.
- letter from the ministry to the appellant also dated May 25, 2017 confirming that the appellant had received IA for which she was ineligible because of inaccurate or incomplete reporting of other income and informing the appellant of her right to request reconsideration of the ministry's decision by submitting a completed request for reconsideration form within 20 business days from the date she was notified of the decision. The letter provided a telephone number for use by the appellant to ask for a request for reconsideration form or seek additional information and enclosed a Reconsideration and Appeals brochure.
- appellant's employment earnings and deductions statements for the months of January, March and April 2107;
- appellant's request for reconsideration received by the ministry on October 16, 2017 with attached letter from the appellant, summarized as follows:
 - she is a single mother working for a minimal salary;
 - she contacted a ministry worker to advise that she was starting a job and to seek information on filling out her monthly ministry stub. The ministry worker told her she would call back with the information but did not do so;
 - she spoke to a different ministry worker who advised her that although she was paid twice per month she needed to report only the semi-monthly payment that was closest to the date of stub remittance.

INFORMATION RECEIVED AFTER RECONSIDERATION

In her Notice of Appeal dated November 6, 2017 the appellant resubmitted the letter she had attached to her request for reconsideration.

At the hearing the appellant admitted that she had received the two letters from the ministry dated May 25, 2017 but claimed that no reconsideration and appeal brochure was enclosed with either letter. She made attempts to contact the ministry in her city of residence but was informed that her file had been transferred to Victoria for management of debt repayment. On or about September 20, 2017 she received a letter from provincial revenue services demanding repayment of the debt within six months. On or about September 22, 2017 she contacted the ministry to ask for reconsideration of the ministry's decision.

The ministry representative did not object to admission of the appellant's oral evidence. The panel considered the oral information provided by the appellant at the hearing and admitted it under EAA Section 22(4) as evidence in support of the information that was before the ministry at reconsideration because it provided additional detail to the information that had been considered by the ministry.

The ministry relied on its October 30, 2017 decision to deny reconsideration of its May 25, 2017 IA overpayment decision.

PART F – REASONS FOR PANEL DECISION

The issue to be determined on appeal is the reasonableness of the ministry's decision that denied the appellant's request for reconsideration of a ministry decision to require repayment of IA received by the appellant in March, April and May, 2017 because the appellant's request for reconsideration was not submitted within 20 business days of notification of the ministry decision as required by Section 17 of the Employment and Assistance Act (EAA) and Section 79(2) of the Employment and Assistance Regulation (EAR) and the ministry therefore lacked jurisdiction to consider the appellant's request.

Relevant legislation:

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*].

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 argues that she did not receive a reconsideration and appeal brochure with either of the May 25, 2017 IA overpayment letters sent to her by the ministry and was not verbally informed of her right to request reconsideration by a ministry worker until September 2017.

The ministry's position is that it lacks jurisdiction to reconsider the IA overpayment decision assessed against the appellant because she did not seek reconsideration of the overpayment decision by June 21, 2017, which is date on which the 20 day time limit set out in EAR Section 79 expired.

PANEL DECISION

EAA Section 17(2) requires a person to request reconsideration of a ministry decision that affects assistance within the time limits and rules specified in the EAR. Section 79 of the EAR requires a person who wishes reconsideration of a ministry decision to deliver the request in the form specified by the minister, either by leaving it with an employee at the office where the person is applying for or receiving assistance or by mailing it to that office within 20 business days after the date on which the person is notified of the decision.

The appellant admits that she received both letters from the ministry dated May 25, 2017 relating to overpayment of IA, but denies receiving a Reconsideration and Appeals brochure despite notification on each letter that the brochure had been enclosed. It is possible that the brochure was inadvertently not included in the letters. However each of the letters explicitly stated that the appellant had the right to request reconsideration of the overpayment decision within 20 days of receiving notification of the ministry's decision. In the second letter of May 25th the ministry worker also included a telephone number by which the appellant could request a reconsideration form or discuss the overpayment decision.

Based on the information provided in the appeal record and the appellant's admission that she received the letter notifying her of the overpayment decision the panel finds that the appellant was notified of the ministry decision on or about May 25, 2017 and the time limit to request reconsideration of the decision expired on June 21, 2017. The panel also finds that the ministry reasonably determined that the appellant did not submit a request for reconsideration of the ministry decision within the 20 day time limit set out in EAR Section 79. The panel further finds that the ministry reasonably determined that there is no legislative authority for the Ministry to extend the statutory time period for an appellant to submit a request for reconsideration..

CONCLUSION

In conclusion the panel finds that the ministry's determination that it was not able to conduct a reconsideration of its decision of May 25, 2017 because the 20 day statutory time limit for requesting reconsideration had expired was a reasonable application of the applicable legislation in the circumstances of the appellant and confirms the decision. The appellant is not successful in her appeal.