

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Decision of November 30th, 2017 in which the ministry found the appellant ineligible for a reconsideration of the Ministry's decision that he is not eligible for Persons With Disabilities designation because the appellant did not provide the request for reconsideration within the twenty business day time limit; pursuant to Section 79(2) of the Employment and Assistance Regulation.

PART D – RELEVANT LEGISLATION

EAA – *Section 1, 4 & 17*

EAR – *Section 79*

PART E – SUMMARY OF FACTS

- 1) The information before the ministry at the time of reconsideration included the following:
The appellant is an applicant for persons with disabilities (PWD) designation.
- 2) **June 9th, 2017** – The ministry notes that on this day, the appellant was advised in writing that his request for PWD designation was denied. As the ministry notes that a review of the appellant's file history indicated that the appellant had not provided any information that he had not received the letter, the ministry deemed that the letter was received by the appellant on June 16, 2017, or 5 business days from the date of the letter.
- 3) **October 6th, 2017** - The ministry notes that on this day, the appellant submitted a Request for Reconsideration and requested an extension in order to provide additional medical information. The extension was approved by the ministry until December 5th, 2017.
- 4) **November 10th, 2017** – The ministry notes that the appellant provided additional medical information on this day, including; a physician letter dated November 5th, 2017, that the appellant stated had been prepared by an advocate. The letter is aimed at addressing the medical information gaps that existed in the denied PWD application.
- 5) **November 30th, 2017** – The ministry notes that on this day, the ministry completed its review of the appellant's Request for Reconsideration.

Additional Information

In his Notice of Appeal dated December 11, 2017, the appellant expressed his disagreement with the ministry's decision and wrote that his health conditions and the doctor's reports require him to have PWD. As the ministry has denied considering him as a PWD, he wants to communicate this personally to make things more clear and understandable.

At the hearing, the ministry relied on the original ministry record and did not introduce any new evidence. However, the ministry submitted on December 15th, 2017 the appellant's Request for Reconsideration package (63 pages) after the date of the appellant's *review* of his Request for Reconsideration – November 30th, 2017. Because this package was submitted to the Tribunal after the date of the reconsideration decision, the panel was required to determine its admissibility. Given that the information was before the ministry at the time the decision was made, the panel admitted the 63 pages of the appellant's Request for Reconsideration package; pursuant to section 22(4) of the Employment and Assistance Act.

In his Request for Reconsideration dated November 6, 2017, the appellant wrote that he satisfies the eligibility requirements for PWD designation and he requested an extension "to gather supporting documents." For the "relevant dates", the Request for Reconsideration indicated that the month the decision was effective is "June 9, 2017," the date the requestor was informed of the decision is "October 6, 2017," and the date the requestor must submit the form by is "November 6, 2017."

At the hearing, the appellant acknowledged receiving the June 9, 2017 letter "sometime in June 2017" and stated that he consulted with an advocate who agreed to help him get more information, although he does not remember when he met with the advocate.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "ministry") Decision - November 30th, 2017 in which the ministry found the appellant ineligible for a reconsideration decision because the appellant did not provide the request for reconsideration within the twenty business day time limit; pursuant to Section 79(2) of the Employment and Assistance Regulation.

The relevant sections of the legislation are as follows:

Employment and Assistance Act

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.

Employment and Assistance Regulation

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.

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for a reconsideration of the ministry decision denying the appellant's application for persons with disabilities (PWD) designation because the appellant provided the request for reconsideration outside of the legislated twenty business day period after being notified of the decision; pursuant to section 79(2) of the Employment and Assistance Regulation.

At the hearing, on January 5th, 2018, the appellant stated that he disagrees with the decision to deny the reconsideration. The appellant stated that he was provided an extension of time to submit additional medical information – by December 5th, 2017 and that he did provide the additional medical information by that time. The ministry maintains that the appellant submitted his original request for reconsideration nearly four months after being informed of the decision, which is well outside the twenty-business day period outlined in the legislation, and that the appellant did not provide further evidence to suggest that he did not receive the denial letter of June 9, 2017. At the hearing, it was clarified that the ministry did grant an extension of time to the appellant on October 6th, 2017 until December 5th, 2017, as the appellant had requested, for the purpose of the appellant providing further medical information to augment his original PWD application. The ministry confirms that the appellant did provide additional medical information on November 5th, 2017 – with the assistance of an advocate and prepared by the appellant's same physician that had completed the original PWD application.

Section 17(3) of the Employment and Assistance Act 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.

As per the Employment and Assistance Regulation, 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.

The panel finds that given the ministry acknowledged that the ministry indicated in the Request for Reconsideration package that the appellant was informed of the decision on October 6, 2017, that the appellant must submit the Request for Reconsideration form by November 6, 2017, and the ministry also admitted that the ministry had granted an extension to the appellant to December 5, 2017 to provide further medical information, it is unreasonable for the ministry to rely on June 16, 2017 as the date that the appellant was "notified" of the decision, being 5 business days after the date of the June 9, 2017 letter. The ministry confirmed that the purpose of granting the additional time to the appellant to provide his medical information was the only reason the time extension had been granted, and not for any other purpose – such as providing proof the PWD denial letter had not been received, the panel finds that the ministry was unreasonable in its determination to deny a reconsideration to the appellant due to the appellant requesting a reconsideration outside of the twenty business day time limit; pursuant to section 79(2) of the Employment and Assistance Regulation. The panel finds that the ministry was unreasonable to rely on the legislated twenty business day time period after having granted a time extension for the appellant to provide additional medical information to augment his PWD application. The panel finds that the appellant did provide his Request for Reconsideration by November 6, 2017, as indicated by the date stamp on the fax from the advocate's office, and he had also provided an additional letter from his doctor dated November 5, 2017 within the extended time.

Accordingly, the panel finds that the decision of the ministry to deem the appellant ineligible for a reconsideration of the PWD application decision - due to having submitted the request for reconsideration outside of the legislated twenty business day period, an unreasonable application of the applicable enactment in the circumstances of the appellant. Therefore, the panel rescinds the ministry's decision pursuant to section 24(1)(b) and section 24(2)(b) of the Employment and Assistance Act. It follows that the appellant is entitled to have the request for reconsideration proceed to reconsideration.