

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the May 7, 2018 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) because the appellant’s request for reconsideration was not submitted within twenty 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 appellant therefore was not entitled to a reconsideration of the ministry’s decision that she incurred an overpayment of assistance.

**PART D – RELEVANT LEGISLATION**

EAA Section 17

EAR Section 79(2)

## **PART E – SUMMARY OF FACTS**

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The information before the ministry at reconsideration included:

- A letter dated February 17, 2014 from the ministry advising the appellant that a review of her assistance from October 2013 and February 2014 had been completed, including documentation regarding her schooling, and a determination made that she received income assistance for which she was not eligible.
- A letter dated February 17, 2014 from the ministry informing the appellant that she had received income assistance (IA) for which she was not eligible which would result in her monthly assistance being reduced and also that they had applied a sanction to her file that would further reduce her monthly assistance by \$25 for three months. Attached to this letter were the reconsideration and appeals brochure.
- A letter dated March 8, 2018 from a Senior Debt Analyst at the Financial and Administrative Services Branch of the ministry informing the appellant that they were attaching a reconsideration package as requested.
- The Request for Reconsideration form indicating that the Requestor had been informed of the decision on February 12, 2014 and that the Requestor must submit the completed form by March 12, 2014. The appellant signed this form on April 12, 2018 and wrote:
  - she received IA when she separated in September 2013 and that her student loan assistance was delayed and she did not receive it until November 2013;
  - she is on disability and struggles to make ends meet;
  - there had been major issues at the college and because of the mix up in the student loan she decided to withdraw, however because she did it one week too late they marked her responsible for the whole course, which she is disputing; and
  - that because of her low income and hardship she would like to have this debt, even though she does not agree with it, to be waived.
- An overpayment chart for period November 2013 to January 2014 showing a total overpayment amount of \$3,196.74 and a written comment that the appellant had been a full time student from October 21, 2013 to January 27, 2014 and was therefore not eligible for IA.
- An overpayment notification signed by the appellant on March 11, 2014 which acknowledges receipt of the notification of a debt in the amount of \$3,196.74 and that she was aware of her right to request a reconsideration of this decision.
- Bank statement printouts for period January 1, 2014 to February 28, 2014 with a written notation from the appellant that one of the deposits was from her brother who had sent her money due to her ex spouse not paying her rent or child support.

On the appellant's Notice of Appeal she wrote that she had spoken to a worker at BC Revenue Services and was informed that because she no longer resided at the address to which the reconsideration decision was mailed, she should do an appeal to ask that her debt be reconsidered and to request a hold on collections. The appellant also wrote she does not agree with this debt.

On her written submission dated November 7, 2018 the appellant wrote:

- she is requesting a hold on collection of this account and is requesting an appeal of the reconsideration decision as she had moved from the address it was mailed to, therefore missed the deadline for an appeal;
- she is disputing this debt as she explained the circumstances back in 2014 which was that the student loan was delayed in arriving which is why she had requested IA
- her health has taken a turn for the worse and is living cheque to cheque trying to support herself and her son; and
- she is asking to have this debt waived or at least reduced considerably.

The ministry's submission is the reconsideration summary provided in the Record of Ministry Decision.

### **Admissibility of Additional Information**

The panel admitted the appellant's written submission, in accordance with section 22(4) of the Employment and Assistance Act (EAA), because the information was in support of the records that were before the ministry at reconsideration.

## **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 that she incurred an overpayment of assistance because the appellant's request for reconsideration was not submitted within twenty 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 appellant there is not entitled to reconsideration of the ministry's decision.

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 had spoken to a worker at BC Revenue Services and was informed that because she no longer resided at the address to which the reconsideration decision was mailed, she should do an appeal to ask that her debt be reconsidered and to request a hold on collections. She does not agree with the debt because at the time she had separated from her spouse and needed the ministry's assistance until her student loan came in, which was late coming to her. The appellant argues that because her health has deteriorated and she is on disability that she is not in a financial position to repay this debt. She requests that the debt be waived or reduced considerably.

The ministry's position is that, pursuant to section 79(2) EAR, a request for reconsideration must be delivered to the ministry within twenty business days after the date the person is notified of the decision to deny, discontinue or reduce IA and because the appellant submitted her request for reconsideration on April 24, 2018 and the ministry advised her of the denial on February 12, 2014, that the reconsideration was delivered after the legislated twenty business days from the date of the denial, therefore the ministry was unable to conduct a reconsideration decision in this matter.

## **Panel Decision**

EAA Section 17(2) requires a person to request a 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 twenty business days after the date on which the person is notified of the decision.

The panel notes that the original Request for Reconsideration form indicates that the ministry informed the appellant on February 12, 2014 and that the Requestor must submit the completed form by March 12, 2014. The ministry forward two letters dated February 17, 2014 advising that there had been an overpayment. The appellant argued that she was informed by BC Revenue Services that, because she no longer resided at the address to which the reconsideration decision was mailed, she should do an appeal to ask that her debt be reconsidered. However, the change in the appellant's address related to her receipt of the reconsideration decision dated May 7, 2018 and she was provided an appeal of the May 7, 2018 decision. There had been no prior information provided by the appellant disputing her receipt in the mail of the original decision dated February 12, 2014. As well, the appellant signed an overpayment notification on March 11, 2014, which included an acknowledgement that she had received the notification of decision and that she was aware of her right to request a reconsideration of the February 12, 2014 decision.

The overpayment notification indicated that the appellant had received \$3,196.74 for which she was not eligible and that this debt must be recovered from her monthly assistance at a rate of \$10 per month, and that the terms of repayment of this debt are subject to periodic review and revision at the sole discretion of the Minister. The appellant argued that, back in 2014, the student loan was delayed and therefore she requested IA. She also argued that her health has taken a turn for the worse and is living cheque to cheque trying to support herself and her son. She asked to have this debt waived or at least reduced considerably. The panel cannot make a decision regarding the overpayment itself or its terms of repayment. As set out in the letter to the appellant dated February 17, 2014, the ministry's decision about the amount a person is liable to repay is not appealable to the tribunal [Section 27(2) of the EAA]. The overpayment notification also noted that if the appellant disagreed with this 2014 decision that she may request a reconsideration of the decision and that it must be delivered within twenty business days after the date she was notified of the decision, or by March 12, 2014.

The panel notes there is nothing in the appeal record that indicates that the appellant made a request for reconsideration at the time the decision was made in February 2014. The appellant requested a reconsideration of the overpayment decision on April 12, 2018, which is four years later and well over the legislated twenty business days therefore the panel finds that the ministry reasonably determined that the appellant did not submit a request for reconsideration of the ministry decision within the twenty day time limit set out in EAR Section 79(2).

## **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 7, 2018 because the twenty-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.

**PART G – ORDER**

**THE PANEL DECISION IS: (Check one)**

**UNANIMOUS**

**BY MAJORITY**

**THE PANEL**

**CONFIRMS THE MINISTRY DECISION**

**RESCINDS THE MINISTRY DECISION**

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?  Yes  No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

**Janet Ward**

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

**Susan Johnston**

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

**Sandra Walters**

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)