

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

Under appeal is the September 27, 2019 Ministry of Social Development and Poverty Reduction (the ministry) decision that the appellant was not entitled to reconsideration of a decision denying a dental supplement because the request for reconsideration was not delivered within 20 business days of being notified of the denial as required by section 71 of the Employment and Assistance for Persons with Disabilities Regulation (“the Regulation”).

PART D – RELEVANT LEGISLATION

Section 16 of the *Employment and Assistance for Persons with Disabilities Act* (“the Act”)

Section 71 of the Regulation

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration

The panel notes that the appeal record includes substantial information respecting dental services for which the appellant requested coverage by the ministry. This information is not summarized below because eligibility for the dental services is not the issue of this appeal.

August 23, 2017 - the appellant's dentist submitted a "Standard Dental Request" to Pacific Blue Cross (PBC). [Under section 25 of the Act, the minister's powers, duties or functions under the Act regarding dental supplements are delegated to PBC].

September 15, 2017 – PBC sent a letter to the appellant's dentist requesting additional information.

October 2, 2017 - the appellant's dentist submitted additional information to PBC.

November 9, 2017 – PBC denied the request for the dental services.

March 16, 2018 – the appellant contacted the ministry to request reconsideration of the denial. The date on which the dentist informed the appellant of the denial is unknown. Absent this information, the ministry accepted March 16, 2018 as the date the appellant was informed.

March 19, 2018 – the ministry prepared and mailed a reconsideration package to the appellant.

April 19, 2018 – the reconsideration service request was closed as abandoned. [The panel notes that the ministry decision incorrectly identified this date as April 13, 2019. The correct date was provided by the ministry at the hearing].

September 13, 2019 – the appellant submitted a request for reconsideration of the decision to deny the dental services. In a letter of the same date, the appellant explains that at the time the ministry denied dental coverage family members passed away unexpectedly, the appellant fell into a dark depression and had a serious fall due to exhaustion and the dark depression. As a result, the appellant is now playing catch-up and is re-submitting the reconsideration request.

September 27, 2019 – the ministry reviewed the appellant's request for reconsideration.

Information provided on appeal

Prior to the hearing, the following submissions were received by the Tribunal.

- An undated letter written by the appellant stating that the appellant takes responsibility for not meeting the deadline for requesting reconsideration. Due to the extreme stress of losing family members, the appellant got a virus resulting in vertigo, fell into a deep depression, had acute anxiety, and sleep was greatly affected. Together with other health challenges, the appellant has "barely come up for air in the past two years", completely forgot about the appeal [to the ministry], having been only focused on coping, mental/physical health, as well as grieving huge losses. It wasn't until the appellant was moving that the appellant came across the reconsideration package envelope and is therefore now requesting reconsideration.
- A letter from the appellant's general practitioner (GP) dated October 8, 2019, stating that the appellant suffers from chronic depression and significant anxiety as well as a number of physical health issues. The GP requests that reconsideration be allowed for compassionate reasons, commenting that the additional stress of being unable to appropriately care for teeth and dealing with excessive

applications/appeals/paperwork is exacerbating the anxiety and this is likely to be detrimental to the appellant's health.

- A letter from a psychiatrist stating that the appellant has attended a mental health centre for support since August 2018, has a diagnosis of Depression and Anxiety and receives ongoing treatment.

At the hearing, the appellant stated that the timeline of events as set out in the ministry's decision is correct and that the reasons for requesting reconsideration on September 13, 2019 are those set out in the letters submitted with the request for reconsideration and on appeal.

Admissibility of information provided on appeal

Noting that the ministry did not object to the admission of the appellant's appeal submissions, the panel determined that the information in the three letters and the oral statements of the appellant confirmed information previously provided by the appellant and was therefore admitted in accordance with section 22(4)(b) of the Employment and Assistance Act.

At the hearing, the ministry explained the reconsideration decision but did not provide additional evidence. The ministry also confirmed that the appellant's dentist could make a new request for dental services.

The arguments of both parties are set out in Part F of this decision.

PART F – REASONS FOR PANEL DECISION**Issue on Appeal**

The issue on appeal is whether the ministry's decision was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the appellant is not entitled to have the ministry decision denying coverage for dental services reconsidered because the request for reconsideration was not delivered within 20 business days of the appellant being notified of the denial?

Relevant Legislation**Section 16 of the Act****Reconsideration and appeal rights**

16 (1) Subject to section 17, 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 disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;

(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.

Section 71 of the Regulation**How a request to reconsider a decision is made**

71 (1) A person who wishes the minister to reconsider a decision referred to in section 16(1) [*reconsideration and appeal rights*] 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 16 (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.

Positions of the Parties

The appellant's position is that although the ministry acted according to its guidelines and rules, the circumstances the appellant was facing at the time the request for reconsideration was due should be considered on compassionate grounds.

The ministry's position is that a request for reconsideration must be delivered within the time limit mandated by the Regulation and because this requirement was not met, the ministry cannot reconsider the denial of the dental services.

Panel Decision

The panel is limited to determining whether the ministry has reasonably applied the evidence and the legislation in making its decision. The applicable legislation in this case is section 16 of the Act which requires that a request for reconsideration must meet the requirements specified in the Regulation. Section 71 of the Regulation sets out those requirements: a request for reconsideration in the form specified [the ministry's Request for Reconsideration form] must be delivered within 20 business days after notification of the denial decision.

In this case, the date on which the appellant was first informed of the November 9, 2017 denial of dental services is unknown; however, as it was clear that the appellant knew that the dental services had been denied as of March 16, 2018, when the appellant contacted the ministry to request reconsideration, the ministry accepted this as the date from which the 20 business day period began. The appellant acknowledges that the request for reconsideration form was submitted on September 13, 2019, and that this date is well beyond the 20 business day timeframe.

Noting that the legislation does not allow for any discretion, because the appellant's request for reconsideration was not delivered within 20 business days after notification of the denial of dental coverage, the ministry was reasonable in determining that the appellant is not entitled to reconsideration of the denial of dental coverage.

The ministry's decision is confirmed and the appellant is not successful on appeal.

APPEAL NUMBER

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

Jane Nielsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/25

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/25

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/28