

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) decision dated 30 July 2019, which denied the appellant's request for a reconsideration of the ministry's April 25, 2018 decision because he had not filed a request for reconsideration within 20 business days of being informed of the ministry's decision as set out in section 71(2) the *Employment and Assistance for Persons with Disabilities Regulation*.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 16*  
*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 71*

**PART E – SUMMARY OF FACTS**

Evidence before the ministry at reconsideration consisted of the following:

The appellant is a recipient of provincial disability assistance.

On April 25, 2018 the appellant requested a moving supplement to move his belonging into storage until he secured a new residence.

On April 25, 2018 the ministry reviewed the appellant's application and determined that he was not eligible for a moving supplement to move his belongings into storage.

On April 26, 2018 the ministry's decision was communicated to the appellant.

On April 27, 2018 the ministry mailed a Request for Reconsideration to the appellant.

On July 22, 2019 the appellant submitted a Request for Reconsideration.

On July 30, 2019 the ministry determined that a reconsideration could not be completed because the appellant had submitted his request for reconsideration outside of the applicable legislated timelines.

**Notice of Appeal**

In the Notice of Appeal dated 31 July 2019, the following reasons for appeal are provided: *my move was never completed so there was no appropriate time to continue reconsideration and appeals process. Costs incurred [illegible] stored possessions re run out of \$ for storage costs.*

**Appeal Submissions**

In submitting his Notice of Appeal, the appellant attached several letters he had written to the Employment and Assistance Appeal Tribunal (EAAT), including:

- A letter dated August 19, 2019 regarding food and utilities crisis supplements;
- A letter dated March 5, 2019 requesting a "review" of an EAAT panel decision arising from a hearing in February 2019 about an appeal of a utilities crisis supplement;
- A letter dated April 17, 2019 that was the appellant's written submission in an EAAT hearing about a food supplement.
- A letter dated April 29, 2019 explaining why the appellant's current crises were unexpected.

The ministry indicated in its submission that it would rely upon the reconsideration decision. The ministry also noted in its submission that the decision for which reconsideration had been refused was a 2018 denial of a moving supplement and that the appellant's written submission addressed denials for crisis food and crisis utilities supplements.

**Admissibility**

The panel finds that the information provided in the appellant's Notice of Appeal and appeal submissions goes to argument, which does not require an admissibility determination in accordance with section 22 (4)(b) of the *Employment and Assistance Act*. In addition, the panel finds that the ministry's submission, indicating reliance on the reconsideration decision, does not require an admissibility determination.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry decision that determined that the appellant did not meet statutory requirements of section 71(2) of the *EAPWDR*, for reconsideration of the ministry's April 2018 decision, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

### Applicable Legislation

#### Employment and Assistance for Persons with Disabilities 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;
- (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of disability 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*], 17 and 18 (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 the *Employment and Assistance Act* and the regulations under that Act.

(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 disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

#### Employment and Assistance for Persons with Disabilities 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.

#### **Time limit for reconsidering decision**

**72** The minister must reconsider a decision referred to in section 16 (1) of the Act, and mail a written determination on the reconsideration to the person who delivered the request under section 71 (1) [*how a request to reconsider a decision is made*],

- (a) within 10 business days after receiving the request, or

(b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request.

[en. B.C. Reg. 76/2008.]

### **Panel Decision**

EAPWDA Section 16(2) requires a person to request a reconsideration of a ministry decision that affects assistance or a supplement within the time limits and rules specified in the EAPWDR. Section 71(2) of the EAPWDR 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 ministry's position is that, pursuant to section 71 of the EAPWDR, a request for reconsideration must be delivered to the ministry within twenty business days after the date the person is notified of the ministry's decision, in this case twenty business days after April 26, 2018. The ministry argued that, while the due date for the appellant's request for reconsideration of its April 26, 2018 decision was May 24, 2018, it was not until July 22, 2019 that the appellant submitted a request for reconsideration. The ministry determined that reconsideration was not available to the appellant because he was out of time to request a reconsideration.

The appellant's appeal submissions present no argument in relation to the twenty business days timeframe for reconsideration set out in the EAPWDR. However, at reconsideration the appellant did argue that his request was late because he had intended to find a residence but had not, for reasons beyond his control.

The panel notes that the original Request for Reconsideration form indicates that the ministry informed the appellant of its decision on April 26, 2018 and that the requestor must submit the completed form by May 24, 2018. The appellant has made no submission regarding the accuracy of these dates. As such, the panel also finds that there is no dispute that the appellant spoke to ministry staff by telephone on April 26, 2018 as the ministry asserts. The panel notes that the appellant also does not dispute that he received a reconsideration package from the ministry. The appellant did not argue that a reconsideration package was not sent. The panel finds that the ministry did send a reconsideration package to the appellant by mail on April 27, 2018 after confirming the appellant's address, as the ministry asserts.

The panel notes there is nothing in the appeal record that indicates that the appellant made a request for reconsideration within twenty business days of the time the decision was made and communicated to him in April 2018. The panel finds that the information before it demonstrates that a request for reconsideration was not completed and submitted until July 2019, more than 14 months after the appellant was aware of the ministry decision to deny a moving supplement. The panel finds that the appellant did not meet the required timeline for filing a request for reconsideration within twenty business days; he was out of time well before his request for reconsideration was submitted to the ministry. 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 business days limit set out in EAPWDR Section 71(2).

### **Conclusion**

The panel finds that the ministry's decision, determining that the appellant had not met the legislated criteria for filing a request for reconsideration, was a reasonable application of the legislation in the

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circumstances of the appellant and was reasonably supported by the evidence. The panel confirms the ministry's decision. The appellant is not successful on appeal.

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**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

Jennifer Smith

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/09/11

PRINT NAME

Wesley Nelson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/11

PRINT NAME

Richard Roberts

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/11