

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) decision dated 10 July 2019, which denied the appellant's request for a reconsideration of the ministry's January 15, 2019 decision because she 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 had been a recipient of provincial disability (PWD) benefits until November 2017, when the ministry discontinued her benefits because she had failed to submit a CPP (Canada Pension Plan) application as required and the ministry being unable to reach her.

In August 2018 the appellant contacted the ministry and was advised that she must complete the CPP application.

In September 2018 the appellant's eligibility for provincial disability benefits was re-established.

On January 9, 2019, the appellant contacted the ministry to request backdated assistance for the time she had not received assistance (October 2017 to August 2018).

On January 15, 2019 the ministry contacted the appellant to advise her that she was ineligible for retroactive disability benefits.

On January 17, 2019 the ministry prepared a reconsideration package at the appellant's request, the due date for which was February 12, 2019.

On February 28, 2019 the ministry closed the reconsideration file. It was deemed abandoned because the appellant had not submitted a request for reconsideration.

On June 18, 2019 the appellant contacted the ministry to request a review of her eligibility for benefits.

On June 25, 2019 the appellant was advised of her rights in relation to the January 2019 decision and a request for reconsideration was sent to her via MySS (the ministry portal for client services).

On June 26, 2019 the appellant submitted a request for reconsideration.

Notice of Appeal

In the Notice of Appeal dated 25 July 2019, the following reasons for appeal are provided: they are saying I don't qualify for reconsideration because I did not submit the forms sent to me in January within the timeframe. I never received any forms in January. When I phoned back to find out what was happening with my reconsideration in February, I kept getting the "run around" over and over. No one even seemed to know what was going on. I never even knew I was supposed to get forms in the first place.

With the Notice of Appeal, the appellant submitted a letter from Service Canada indicating that she is not eligible for CPP disability and a 2-page written submission outlining the appellant's position regarding the period for which the ministry had determined she was ineligible for PWD benefits.

Appeal Submissions

At the hearing, the appellant argued that the ministry did not inform her that any paperwork was required for a reconsideration and that she had not received any such paperwork. Instead, she was expecting a phone call, as she believed that this was how a reconsideration would be conducted. She explained that 6-8 weeks went by and she hadn't heard from anyone, so she called the ministry and did not get any

clear answers. She eventually found out that she should have gotten some paperwork that she did not receive and asked for someone to call her back but this did not happen. She phoned again several weeks later and was told that her time had run out. Several months passed, during which time she was in and out of the ministry office on multiple occasions, until she was informed in June that she should reapply for a reconsideration package. The appellant stated that she completed and submitted this package, which she had received online, on about June 26, 2019. The appellant explained that she is extremely frustrated with this process and feels that she is being sent back to square one.

The ministry relied on the reconsideration decision.

Admissibility

The panel finds that the information provided in the appellant's Notice of Appeal and Appeal Submissions consists of argument, which does not require an admissibility determination in accordance with section 22 (4)(b) of the *Employment and Assistance Act*.

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 January 15, 2019 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.]

The appellant argues that she did not receive a reconsideration package following the January 2019 decision. The appellant stated that she had always updated her address with the ministry and was certain they had her correct address. She suggested that perhaps the mail was not delivered to her as the mail person for her building was notorious for delivering mail to the wrong address. She suspected someone who had erroneously received her reconsideration package might have thrown it in the garbage. The appellant argued that it was not made clear to her in January that any paperwork was required for a reconsideration and that she had never received any documents. Further, she argued that if she had received any documents, she would have completed them. She stated that she had believed that reconsideration would have consisted of a conversation by phone.

The ministry's position is that, pursuant to section 71 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. The ministry argued that there was a note on the appellant's file indicating that the reconsideration process was explained to her on January 15, 2019 and she was notified of the associated timelines. The due date for any request for reconsideration was February 12, 2019 and the ministry closed the request for reconsideration on February 27, 2019 because it had not received a request for reconsideration. The ministry argued that it was not until June 18, 2019 that the appellant requested another review of her eligibility for retroactive benefits. The ministry submitted that it is standard for ministry staff to explain the reconsideration process, including the 20 days timeline and the possibility of requesting an extension of time.

Panel Decision

EAPWDA Section 16(2) requires a person to request a reconsideration of a ministry decision that affects assistance 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 panel notes that the original Request for Reconsideration form indicates that the ministry informed the appellant of its decision on January 15, 2019 and that the Requestor must submit the completed form by February 12, 2019. The appellant does not dispute the applicable dates as articulated by the ministry. The panel also finds that there is no dispute that the appellant spoke to ministry staff by telephone on January 15, 2019. The appellant argues that she was not informed during this call of any requirement to complete and file documents. The ministry argues that the notes on the appellant's file indicate that the reconsideration process was explained in detail to the appellant, that she was advised of time frames and had requested reconsideration. The panel is unable to make a finding based on the record before it as to what exactly was said to the appellant during the telephone conversation with ministry staff on January 15, 2019. The panel does note that ministry clients rely on ministry staff to provide them with information regarding ministry requirements and timeframes. The panel finds that the appellant did not understand from this telephone call that she would be required to file a request for reconsideration. However, in making this finding the panel notes that there is no provision in the applicable legislation or regulations that would require ministry staff to ensure that this information was provided, nor that the

appellant understood it.

The panel notes that the appellant also disputes that she ever received a reconsideration package from the ministry. The appellant did not argue that a reconsideration package was not sent. Instead, she argued that perhaps the mail was delivered incorrectly and thrown away by another person. The ministry's submission in this regard is that, unless a client requests otherwise, the standard is for documents to be sent by mail. The ministry submitted that there is no record of the appellant's reconsideration package having been returned as undeliverable. The ministry also explained that if the client had requested that the reconsideration package be delivered by any means other than by mail, there would be a note on that client's file to indicate that they had requested delivery by MySS or in person pick up for documents. The ministry argued that there is no such note on the appellant's file. The panel finds that the ministry did send a reconsideration package to the appellant by mail as the ministry asserts, but is unable to make any finding on the information before it as to what happened to that reconsideration package.

The panel notes there is nothing in the appeal record that indicates that the appellant made a request for reconsideration within 20 business days of the time the decision was made and communicated to the appellant in January 2019. The panel finds that the information before it demonstrates that a request for reconsideration was not completed and submitted until June 2019. The panel finds that the appellant did not meet the required timeline for filing a request for reconsideration within 20 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 business days time limit set out in EAPWDR Section 71(2).

Conclusion

The panel finds that the ministry's reconsideration 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 circumstances of the appellant and was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. 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 decisions 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

PRINTNAME

Jennifer Smith

SIGNATURE OF CHAIR

DATE(YEAR/MONTH/DAY)

2019/08/019

PRINTNAME

Inge Morrissey

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2019/08/019

PRINTNAME

Marnee Pearce

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2019/08/019