

Part C – Decision Under Appeal

The decision under appeal is the ministry's decision not to give a reconsideration decision requested by the appellant.

The ministry had decided that the appellant was not eligible for disability assistance because of a failure to deliver documents the ministry required for a review of the appellant's eligibility under section 10 of the Employment and Assistance for Persons with Disabilities Act ("EAPWDA"). The appellant requested a reconsideration of that decision.

The ministry declined to give a reconsideration decision, on the basis that the appellant had delivered the request for reconsideration more than 20 business days after being notified of the decision that she was not eligible, and therefore the ministry was not authorized to give a reconsideration decision under section 16 of the EAPWDA.

Part D – Relevant Legislation

Section 22(3) of the Employment and Assistance Act ("EAA")

Sections 79(2) and 85(1) of the Employment and Assistance Regulation ("EAR")

Sections 10 and 16 of the EAPWDA

Section 71 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR")

Part E – Summary of Facts

The appeal was first set for hearing by video-conference on December 15, 2021.

The video-conference hearing was adjourned twice at the appellant's request, so that she could receive the results of a Freedom of Information request. The hearing was re-scheduled twice, first for February 15 and then for March 8, 2022.

On March 2, 2022, the appellant requested a further adjournment for the same reason. Under Section 85(1) of the Employment and Assistance Regulation the Tribunal must hear appeals within 15 business days after the appeal form is delivered to the Tribunal Chair, unless the Tribunal Chair and the parties consent to an adjournment. Under the Tribunal Practices and Procedures, if the Tribunal Chair does not consent to the request for an adjournment, the hearing will not be adjourned. The Tribunal Chair did not consent to the third adjournment request because there had been 2 previous adjournments for the same reason, and, given the intent of the legislation that hearings should take place within 15 days, the hearing must take place without further delay.

Evidence before the Ministry at the Request for Reconsideration:

The appellant had been a recipient of disability benefits up to December 2018. She voluntarily discontinued benefits then because she had received an inheritance in an amount that exceeded the maximum assets allowed for disability benefit recipients. At that time, the ministry was in the process of reviewing her eligibility considering the inheritance, but the review was suspended when her file was closed at her request in April 2019.

In March 2020, the appellant applied for disability benefits again. The ministry resumed its review.

There was a reconsideration decision in September 2020 about inclusion of CERB benefits in calculation of the appellant's net income. As a result of that decision, the ministry paid disability benefits to the appellant for September and October 2020. However, the review continued for determination of eligibility for benefits from March to August 2020, and then from November 2020.

On May 4, 2022, the ministry sent the appellant a letter stating that the ministry had sent letters to the appellant on December 17, 2020, January 21, 2021 and February 11, 2021, asking for information. The ministry listed the information it needed for its review under section 10 of the EAPWDA.

The letter went on to state:

“You did not provide the information the ministry asked for.

This means you are no longer eligible for assistance.

The ministry will close your file on **June 8, 2021**. [emphasis in the original] You may still be required to provide the information at a later date, in the event you re-apply for assistance. If you can provide the required documents, or to avoid your file being closed, contact [toll-free

number] or my direct line....”

The letter goes on to set out the process for requesting a review of the decision, and states “You must submit or return your completed form within 20 business days after the ministry notified you of the decision.” It encloses a checklist of the information requested and not yet provided, including “Provide copy of will disbursement of estate [sic] and where your inheritance was spent or invested.”

On May 13, 2021, the ministry sent the appellant a letter stating that “a full and complete review of your file has been completed” and confirming that CERB benefits the appellant had received would not be included in her net income calculation. The ministry then asked for bank statements from 4 accounts at 2 financial institutions, for the period January 2020 to June 2020, and September 2020.

On June 23, 2021, the appellant replied to the May 13th letter, stating “everything you requested on [sic] your May 13, 2021 letter is included in this package to complete your full review as stated.”

On July 6, 2021, a ministry worker spoke to the appellant on the telephone and told her that there had been an underpayment of benefits, and that the appellant was not eligible for further benefits because she had not complied with the Prevention and Loss Management System (“PLMS”) review. The ministry followed up with a letter on that date, thanking the appellant for the required bank statements, advising that funds had been issued by direct deposit and a letter of explanation had been sent to the appellant. The ministry also advised that a PLMS review was still in progress and “compliance for this review is still required for your case to be in good standings [sic]. Further Disability Assistance payment [sic] cannot be issued to you until this occurs....If you do not comply with this review, your case will be closed.” The letter enclosed “HR3198 Notice of Decision Section 10 Denial originally mailed May 4, 2021.”

On July 13, 2021, the ministry closed the appellant’s file.

On July 20, 2021, the appellant sent a letter to the ministry advising that she had not received a letter about the underpayment and deposit of funds, nor had she received a Request for Reconsideration form she had requested.

On July 21, 2021, the ministry sent a letter to the appellant stating “The Ministry of Social Development and Poverty Reduction discovered that you were not issued or under issued [sic] assistance for support. These funds have been issued direct deposit in the amount of \$16,257.24, which is the assistance you were eligible for and had not been issued.” The ministry enclosed a list of payments showing eligible and paid benefit amounts and net underpayment from April 2020 to May 2021.

The ministry sent an undated letter to the appellant, in an envelope postmarked August 30, 2021, asking for “information to confirm eligibility.” The ministry stated that the appellant needed to apply for assistance and provide the following documents relating to the inheritance: a copy of the will, disbursement of the estate and where the inheritance was spent or invested.

On September 3, 2021, the appellant delivered to the ministry a copy of the Grant of Probate, Will and statement of accounts of the Estate, in relation to the inheritance.

The appellant sent a letter to the ministry dated September 5, 2021, stating "Please consider this an application for an extension".

On September 7, 2021, the ministry provided the appellant with a Request for Reconsideration form in relation to the decision that she was not eligible for disability benefits. The form gives the date of decision as May 4, 2021, and states that the form must be submitted by June 1, 2021. In the section of the form titled "Decision to be Reconsidered", the ministry states "The ministry has information that you have been notified of the decision on multiple occasions, including: On May 13, 2021, you called the ministry and stated that you did not have to submit confirmation of your inheritance."

In the Summary of Facts in the ministry's "Reconsideration Decision" document dated November 10, 2021, the ministry states "On October 12, 2021 you submitted a Request for Reconsideration and you were approved an extension to November 10, 2021."

Additional Evidence:

Appellant's Evidence:

At the hearing, the appellant stated that she did not receive the May 4, 2021 letter from the Ministry, advising her that she was no longer eligible for assistance, until the ministry sent her a copy of that letter at her request, enclosed with theirs of July 6, 2021. She said she provided more than 40 documents in response to the May 13, 2021 letter, and she thought that those documents were all that were necessary. When the ministry made a back payment in July 2021, she thought that the ministry had decided she was eligible after all. She thought that the statements in the May 4, 2021 letter about closing her file were superseded by the activity on her file after June 8, 2021 and the subsequent letters requesting more documents to place her file in good standing.

The appellant was told by an advocacy organization that, during the time she was not asking for disability benefits, between January 2019 and March 2020, she had "private citizen status" and therefore she did not have to provide the ministry with any documents about her finances during that time. Based on that advice, the appellant consistently refused to give the ministry documents to show how she had invested or spent the money she received as an inheritance.

Regarding the timing of delivery of the Request for Reconsideration form to the ministry, the appellant said that in her September 5, 2021 letter she was asking for an extension of the June 1, 2021 date in the Request for Reconsideration form. It was her understanding that she had been given that extension. She did not know when the 20-business-day time period began to run because of all the correspondence and communication with the ministry between May and September 2021.

Ministry's Evidence:

In response to questions from the panel, the ministry advised that sometimes it does give extensions of the time to deliver a request for reconsideration, if there is an extension request in writing. The ministry confirmed that no one had told the appellant when the 20-business-day period would start or end, other than as set out in the Reconsideration Decision document. The "extension to November 10, 2021" noted in the Reconsideration Decision document was an extension of the time for the appellant to submit a reply to the original decision.

While the May 4, 2021 letter said that the file would be closed on June 8, 2021, the ministry would not close the appellant's file while it was still being reviewed for the underpayment of benefits up to May 2021.

The panel determined that the additional evidence was admissible under section 22(4) of the EAA because it provides further detail about the timing and nature of the notification to the appellant of the ministry decision about eligibility for benefits, and the appellant's actions in response, and therefore is reasonably required for the full and fair disclosure of all matters relating to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in its decision that it could not provide the appellant with a reconsideration decision because the appellant delivered the request for reconsideration more than 20 business days after the ministry notified her of the decision that she was not eligible for disability benefits.

Legislation:

Under section 16(4) of the EAPWDA and section 79(2) of the EAR, a person who wishes the minister to reconsider a decision about eligibility for disability assistance must deliver a request for reconsideration in the prescribed form within 20 business days after the person is notified of the decision.

Under section 79(2) of the EAAR, the minister must reconsider the decision within, at most, 20 business days after receiving a request delivered under section 79(1) of the EAR.

Appellant's Position:

The appellant says that she did not receive the May 4, 2020 letter saying that she was no longer eligible for disability benefits, until the ministry sent her a copy with its letter of July 6, 2021. At that point, she understood that the decision was no longer in effect because:

1. the May 13, 2021 letter said that “a complete and full review of your file has been completed”;
2. she provided all the documents she believed she was required to provide in response to the May 13, 2021 letter;
3. the June 8, 2021 date had passed and her file had not been closed;
4. the ministry paid her benefits in July 2021, which indicated to her that she was eligible to receive benefits, and she did not know what the lump sum payment represented;
5. based on the May 13, 2021 letter, the ministry was continuing to ask her for bank statements to confirm eligibility, which was not consistent with having been found to be ineligible on May 4, 2021.

The appellant maintains that it is not reasonable for the ministry to require her to meet rigid deadlines when the ministry does not observe its own deadlines, such as the June 8, 2021 file closing date. The appellant says that she has submitted requests for reconsideration before, on other matters, and is aware of the requirement to deliver the request within 20-business-days, but in this case she did not know when the 20 days would begin to run.

Ministry Position:

In the Request for Reconsideration form, and again at the hearing, the ministry relied on the

May 4, 2021 letter as notification of its decision that the appellant was not eligible for disability benefits, and the date from which the 20-business-day period would begin to run. In that event, the appellant needed to deliver a request for reconsideration by June 1, 2021.

In its decision in response to the request for reconsideration, the ministry says that it notified the appellant on May 4, July 6 and September 3, 2021, that she was no longer eligible for assistance. The appellant had 20 business days to deliver a request for reconsideration, and did not do so until October 12, 2021, which is more than 20 business days after any of those dates. Therefore, the ministry could not provide the appellant with a reconsideration decision.

The ministry did not dispute the appellant's evidence that she did not receive the May 4, 2021 letter until she received a copy with the July 6, 2021 letter.

Panel Decision:

While the ministry takes the position that the appellant was notified of its decision about eligibility on May 4, 2021, the panel accepts the appellant's evidence that she did not receive the May 4, 2021 letter until the ministry forwarded a copy with its July 6, 2021 letter.

At that point, the June 8, 2021 deadline for closing the file, set out in the May 4 letter, had passed. In the meantime, the appellant had received the May 13, 2021 letter asking for additional bank statements to determine eligibility for benefits for March to August and then for November 2020. On June 23, 2021, the appellant had provided additional documents, including bank statements. In its letter of July 6, 2021, the ministry thanked her for providing the requested bank statements, told her the PLMS review was still in progress, and that she must comply with that review for her case to be in good standing.

The panel finds it was reasonable for the appellant to conclude that her file was still being reviewed, her eligibility was still being considered, and the decision in the May 4, 2021 letter had been superseded by the subsequent correspondence.

The July 21, 2021 letter includes an accounting of the amount of the lump sum payment of \$16,257.24, and the panel does not accept the appellant's contention that the ministry did not explain what the payment represented. However, that accounting does not establish that the ministry had decided that the appellant was ineligible to receive disability assistance after May 2021.

At the hearing, the ministry acknowledged that it may have been confusing for the appellant to have 2 reviews taking place at the same time. The panel notes that some of the responsibility for the confusion rests with the appellant and her refusal to provide all requested documents from the period between January 2019 and May 2020 to show how the inheritance was invested or spent. The appellant says that during that time she had "private citizen status" and asserts that "the ministry can't even question what we tell them we did with the money."

As the ministry pointed out at the hearing, during the period in question, when the appellant was not claiming disability benefits, the ministry had no authority to request those documents. However, once the appellant reapplied for disability benefits in May 2020, under section 10 of

the EAPWDA the ministry can require an applicant to supply verification of information relating to their eligibility for disability assistance, including disposition of assets in the intervening months. The ministry was not limited to accepting the appellant's verbal assertion without question.

However, the panel finds that the communications from the ministry, taken as a whole, were unclear as to whether the appellant was no longer eligible for disability benefits, or whether she was in the midst of a review to determine eligibility. The panel finds that it was not reasonable, when the appellant delivered the request for reconsideration, for the ministry to rely on the May 4, 2021 letter as notification of a decision that the appellant was not eligible for disability benefits, particularly because the appellant told the ministry in July that she had not received the May 4 letter. Further, considering all the written and verbal communications in the months after May 4, 2021, the panel finds that the ministry did not communicate to the appellant, clearly and consistently, that she had been deemed ineligible, so as to trigger the 20-business-day period for delivering a request for reconsideration.

The panel notes that the appellant was aware at least on September 3, 2021 that the ministry had decided that she was ineligible to receive disability benefits. She asked for a reconsideration package, which she received on September 7, 2021. She did not deliver the request for reconsideration until October 12, 2021, which is 25 business days later.

However, the panel finds that the appellant asked for "an extension" and the ministry apparently agreed to give her an extension, although it is unclear exactly what that meant, or how long the extension would be. In the document titled "Reconsideration Decision" the ministry says, "you were approved an extension to November 10, 2021," but that is the date of the decision, so unlikely to be the date for delivery of the request for reconsideration.

The appellant apparently thought she had a blanket extension to put together what she saw as a complex and lengthy argument challenging ministry decisions going back to her first application for disability benefits in 2018. The ministry indicated that sometimes it does agree to extensions of time for applicants to prepare what it described as "replies to the decision," if the request is in writing. The applicant did make a written request for an extension, in her letter dated September 5, 2021. The appellant has also had experience with delivering requests for reconsideration of previous decisions and was aware of the 20-business-day time limit which the panel finds would make her unlikely to choose to ignore that requirement.

Therefore, the panel finds it is likely that the ministry's communications led the appellant to believe that she had an extended time to deliver the request for reconsideration. In that circumstance, it is not reasonable for the ministry then to refuse to give a reconsideration decision because the request for reconsideration was delivered more than 20 business days after September 3, 2021.

The panel finds that the ministry's decision not to provide a reconsideration decision about the appellant's eligibility for disability benefits for failing to provide information, on the basis that the appellant delivered the request for reconsideration more than 20 business days after being notified of the decision, was not a reasonable application of the legislation in the appellant's circumstances. The appellant is successful in the appeal.

Legislation:

Appeal Hearing Adjournments:

Employment and Assistance Act

Section 22 (3) A panel must conduct a hearing into the decision being appealed within the prescribed period either

- (a) orally, or
- (b) with the consent of the parties, in writing.

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.

Section 85 (1) A hearing must be held within 15 business days after the appeal form is delivered under section 84, unless the chair of the tribunal and the parties consent to a later date.

Time for Delivering a Request for Reconsideration

Employment and Assistance for Persons With Disabilities Act

Section 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.

Employment and Assistance for Persons With Disabilities Regulation

Section 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.

Review of Eligibility for Disability Benefits:

Employment and Assistance for Persons With Disabilities Act

Section 10 (1) For the purposes of

- (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,
- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
- (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a),

an applicant or a recipient;

(g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

(3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).

(4) If an applicant or a recipient fails to comply with a direction under this section, the minister may

(a) reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or

(b) declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.

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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) ☒

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

Part H – Signatures

Print Name

Susan Ferguson

Date (Year/Month/Day)

2022/03/13

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2022/03/13

Print Name

Edward Wong

Signature of Member

Date (Year/Month/Day)

2022/03/13