

**Part C – Decision Under Appeal**

The decision under appeal is the decision of the Ministry of Social Development and Poverty Reduction (“ministry”) not to give a reconsideration decision requested by the appellant.

The ministry had determined that the appellant was not eligible for disability assistance under the Employment and Assistance for Persons with Disabilities Act (“EAPWDA”) on December 20, 2007. In a decision dated October 6, 2022, the ministry determined that it could not provide a reconsideration decision on the issue of the ministry’s decision to deny the appellant backdated assistance because the appellant had not delivered a request for reconsideration within 20 business days of the date the ministry notified the appellant of that decision.

**Part D – Relevant Legislation**

EAPWDA, sections 1 - definition of “business day”, 5 and 16  
Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”), section 71

Full text of the legislation is provided in the Schedule of Legislation at the end of the decision.

**Part E – Summary of Facts**

The hearing took place by videoconference. The appellant attended with a support person.

Evidence before the Ministry:

The appellant submitted a request for reconsideration on August 4, 2022, asking for reconsideration of a ministry decision on December 20, 2007 that denied her disability assistance because her income and assets exceeded the amount allowed under the EAPWDA at that time.

According to ministry records:

- On March 31, 2006, the ministry approved Person with Disability (“PWD”) designation for the appellant.
- On November 16, 2007, the ministry closed the appellant’s file.
- On December 20, 2007, the ministry sent the appellant a letter at Address #1 telling her that they had denied her disability assistance because they determined that her income and assets exceeded the amounts allowed under the EAPWDA at the time.
  - The letter stated that the appellant had a right to reconsideration of the decision and enclosed a pamphlet with further information.
- The ministry had tried to contact the appellant by phone before sending the letter but was unsuccessful.
- The letter was not returned to the ministry as undeliverable.
- The appellant did not request reconsideration of that decision.
- On October 28, 2010, the appellant applied for disability assistance again, and was denied because of excess income and assets.
- The appellant did not request reconsideration of that decision.
- On January 11, 2011, the ministry closed the appellant’s file.
- On October 31, 2018, the appellant applied for assistance and the ministry determined the appellant was eligible for disability assistance effective November 1, 2018.
- On August 31, 2021, the appellant phoned the ministry and advised that she had been eligible for disability assistance under the EAPWDA “off and on” since 2006, and the ministry initiated a file review for underpayment.
- On November 9, 2021, the appellant provided the ministry with various income documents for the period between 2005 and 2020.
- On January 6, 2022, the ministry concluded the review and determined that the appellant was not eligible for backdated assistance because the appellant was not determined to be eligible for assistance until November 1, 2018.
- The appellant requested a reconsideration package, which the ministry prepared and provided to the appellant.
- In the Request for Reconsideration form, Section 2, Decision to Be Reconsidered, the ministry set out this series of events and stated:
  - “TIMELINE: You were originally notified of your denial on December 20, 2007 and you had 20 business days to request and return a reconsideration which would

have been January 22, 2018 [sic]. However, you did not request a reconsideration. Although it is now past the 20 business day timeline, the reconsideration package has been prepared as requested. Please return it as soon as possible to proceed with the reconsideration process and the Reconsideration Branch will decide if it can proceed.”

- “RETURN DATE: This Request for Reconsideration form must be signed and returned by the date in Section 2, “Date requestor must submit form by” [sic – no date is given]”.
- The form includes instructions about how to ask for an extension of time.
- “Month Decision Effective: December 2007.”
- “Date Requestor Informed of Decision: Thursday, December 20, 2007.”
- “Date Requestor Must Submit Form by: Tuesday, January 22, 2008.”

The appellant gave the ministry a written statement with a date stamp of August 3, 2022, in response to the ministry’s decision to deny backdated assistance, advising:

- She did not receive the December 20, 2007 letter telling her that the ministry had denied her disability assistance, and she denies that she ignored a call from the ministry.
- She was told by a social worker at a hospital that she had “slipped through the cracks.”
- In September 2021 the ministry asked her to provide records of employment, Notices of Assessment and T slips from 2006 through 2018/19.
- In 2007 the appellant moved out of her parent’s house, after her parent died, which may explain why she did not receive the letter.
- Another relative, to whom she was very close, and who helped her deal with administrative matters, suddenly died in 2008.
- When the deaths in the family happened, around the same time that she was told that she would no longer be receiving assistance, she was overwhelmed and began to use settlement funds from an accident claim to pay for necessities.
- Since then, she has depleted her financial resources and gone into debt, as she has been unable to pay for necessary medical equipment and supplies, home repairs and renovations.
- In January 2022, the ministry told her that she was not eligible for retroactive disability assistance because she missed a phone call in 2007 and a letter in 2010.

Additional Evidence at the Hearing:

At the hearing, the ministry referred to file notes as follows:

- “January 6, 2022: In 2007 and 2010 this client was denied assistance prior to her structured settlement trust receiving a legal opinion. The client was offered the right for reconsideration both times but did not exercise that right. At this late stage the ministry can reasonably conclude this client accepted the decision of ineligibility. In 2018 this client did not complete the intake process until November, at which time she was approved for assistance. At that time request denied according to [EAPWDA] section 16 and [EAPWDR] section 71. The client was offered reconsideration but did not pursue it. Phone call with client says she would definitely have pursued as she was in dire financial

need, lack of funds over the years has caused great distress, requested reconsideration, service created.”

- On March 30, 2022 the ministry phoned the appellant, who said that she did not receive the ministry’s denial of disability assistance, as she definitely would have pursued the matter. The appellant asked for a reconsideration of the 2007 decision.
- On May 26, 2022, the appellant phoned the ministry. She was very upset and said that she was still working on the request for reconsideration for services denied and had an advocate and the ombudsman working with her.
- “August 4, 2022: Phone call from client, advised the reconsideration package was due back on February 3, 2022. Client insisted she was not given a due date and was advised she could return it at her leisure. Advised client only two pages had been submitted and neither one of these included Section 4 Requestor’s Signature. Client will submit signed Section 4. Client advised will forward to the Reconsideration Branch however as it is past the due date, I cannot guarantee it will be adjudicated.”

In answer to questions from the panel, the ministry advised:

- Their system changed in 2012 and they could not access file notes before that date.
- They could not determine why the appellant’s file was closed on January 22, 2008, but they assume it was “auto-closed” by the system when there was no contact from the appellant for a period of time.
- Even though the ministry’s position was that the date for filing a request for reconsideration had passed, in the interest of administrative fairness the ministry sent the appellant a reconsideration package so that the issue could be reviewed.
- The asset limit for people with PWD designation changed in 2015, but the ministry did not go back and review files of people in the appellant’s situation, who did not have open files with the ministry and had been denied in the past because their assets exceeded the limit in the previous legislation.

At the hearing, the appellant stated:

- She had moved out of her parent’s home in March 2006.
- She cannot remember if she told the ministry about a new address after she moved.
- At that time, she qualified for disability assistance for one year and then was cut off.
- The funds on deposit in the bank were for home renovations required because of her disability, but she had not been able to carry out the renovations because she did not have funds from the ministry for necessary living and medical expenses.

#### Admissibility of Additional Evidence:

Neither party objected to the additional evidence presented by the other party at the hearing.

The evidence of the ministry file notes, and the additional oral evidence of the ministry and the appellant provide additional information about the communications between the ministry and the appellant, the effect of the ministry’s decisions and the appellant’s reasons for not requesting reconsideration at an earlier time. The panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters relating to the decision under appeal, and therefore it is admissible under Section 22(4) of the Employment and Assistance Act.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the decision that was the outcome of the appellant's request for reconsideration was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances. The ministry determined that it could not give the appellant a reconsideration decision because the request was delivered to the ministry more than 20 days after the appellant was notified of the original decision to deny the appellant disability assistance.

**Appellant's Position:**

The appellant maintains that she was not notified of the ministry's December 20, 2007 decision to deny her disability assistance under the EAPWDA. She says that she did not receive the ministry's letter of that date advising her of that decision, possibly because she moved, and it was delivered to a previous address. She is certain that, if she had received the letter, she would have pursued reconsideration of the decision. She insists that she would not have ignored a letter or a telephone call from the ministry.

The appellant points out that the ministry's communication in its reconsideration package is confusing, as it does not give a "return date" for the Request for Reconsideration form in Section 2, and in the space marked "Date Requestor Must Submit Form by", the date is January 22, 2008. The appellant maintains that the ministry told her on the phone on January 6, 2022 that she should submit the request as soon as possible and the ministry did not tell her that there was a 20 day time limit.

The appellant explains that, because the ministry did not provide her with financial assistance between 2007 and 2018, she had to use up most of her financial resources and she has been unable to afford necessities of life such as heat for her home and medical care. Her physical and mental health have suffered as a result.

**Ministry Position:**

The ministry maintains that it notified the appellant of the decision to deny disability benefits on December 20, 2007. They point out that the letter advising the appellant of the decision was sent to the address they had for the appellant at that time, and it was not returned to the ministry as undeliverable. Therefore, the ministry maintains that the appellant was notified on December 20, 2007, and under section 71 of the EAPWDR, she had 20 business days to request reconsideration of that decision. The ministry points out that the December 20, 2007 letter includes information about requesting reconsideration of the decision.

The ministry also says that it advised the appellant again on January 6, 2022, that her request for disability assistance from 2007 had been denied. The ministry points out that the appellant did not deliver a request for reconsideration until August 4, 2022, which was more than 20 days after she had been notified a second time.

Panel Decision:

Under section 16 of the EAPWDA, a person may request reconsideration of a decision of the ministry that results in a refusal to provide disability assistance. The person who wishes the ministry to reconsider a decision must deliver the request for reconsideration, by mail or in person, in the form specified by the ministry, within 20 business days after the date the person is notified of the decision.

The December 20, 2007 letter is addressed to the appellant at Address #1. The panel notes that Address #1 is the same address the appellant was using when she applied for disability assistance in 2010, and when she filed this appeal. The panel also finds that, as the letter was not returned to the ministry as undeliverable, it was delivered to the appellant's address. The panel finds that it was reasonable for the ministry to determine that the appellant had been notified of the decision to deny disability assistance.

The appellant may not have seen the letter then. The panel accepts the appellant's evidence that she was young and overwhelmed by a severe disability and difficult family circumstances. However, the panel also notes that the appellant would have been aware at that time, even without the letter, that she was no longer receiving funds from the ministry. The panel notes that the appellant re-applied for disability assistance in 2010, and again in 2018, which also indicates that she was aware that the ministry had denied her disability assistance previously.

The ministry says that it notified the appellant about the December 20, 2007 decision a second time, on January 6, 2022. It appears from the ministry's file note on August 4, 2022 that the ministry would have considered a request for reconsideration if it had been delivered within 20 business days of January 6, 2022, that is, by February 3, 2022. However, the appellant did not contact the ministry between January 6 and March 30, 2022 and did not deliver the Request for Reconsideration form until August 4, 2022.

The panel finds that it was reasonable for the ministry to conclude that the appellant had received notification of the December 20, 2007 denial of disability assistance when the letter of that date was not returned as undeliverable. The panel also finds that the appellant would have known of the denial when she stopped receiving disability assistance payments, but apparently did not contact the ministry again until she re-applied for disability assistance in 2010.

The appellant has argued that in 2007 she did not know about the possibility of requesting reconsideration of the decision to deny benefits. Similarly, she argues that she did not know that the Request for Reconsideration had to be delivered within 20 business days of being notified of the decision. She says that the ministry communication about the deadline was confusing, as she did not receive the Request for Reconsideration package from the ministry until 2022, but the date for delivering the Request for Reconsideration form to the ministry is blank in the "Return Date" paragraph and says "Tuesday, January 22, 2008" in the "Relevant Date" section. She could not understand why the ministry was giving her a Request for Reconsideration form in 2022 if it had to be completed and delivered in 2008.

The panel finds that the ministry provided the Request for Reconsideration form to the appellant at the appellant's request on January 6, 2022, and the ministry would provide a decision about

that request even if the Request for Reconsideration was delivered past the deadline in the legislation. However, the dates on the Request for Reconsideration form indicate that the ministry was maintaining its position that the appellant had been notified of the decision to deny benefits on December 20, 2007. The panel also finds that, while the ministry told the appellant to return the Request for Reconsideration as soon as possible, the ministry did not extend the time to return the request.

The panel recognizes that it can be difficult, especially for a young person dealing with a severe disability and other difficult life circumstances, to navigate the reconsideration and appeal process. However, the panel finds that it is reasonable for the ministry to rely on the requirement in the EAPWDA and EAPWDR that a request for reconsideration of a decision to deny disability assistance must be delivered to the ministry, in the form specified by the ministry, within 20 business days after the appellant is notified of the decision. The panel also notes that the ministry does consider requests for extension of that time if the request is made before the end of the 20 days. The appellant apparently did not know, in 2007 or 2010, about the possibility of requesting reconsideration of a decision denying benefits. In January 2022, she may not have known about, or appreciated the significance of, the requirement that she deliver the Request for Reconsideration form within 20 business days of being notified. Nevertheless, and unfortunately for the appellant, error or ignorance of the legislation does not stop the time from running or change the requirement in the legislation.

#### Comments:

The panel sympathizes with the appellant's situation, recognizing that, in 2007, she faced challenges as a young person with a severe disability, dealing with an unfamiliar system. The panel has also heard the consequences for the appellant, as a result of not receiving disability assistance until 2018. The panel would encourage the appellant and the ministry to explore whether some of her expenses (for example, wheelchair replacement, emergency heat and medical supplies) might be eligible for health or crisis supplements under the EAPWDR, although the panel makes no findings or determination about those expenses, which are not the subject of this appeal.

#### Conclusion:

The panel finds that the ministry's decision not to provide a reconsideration decision about eligibility for disability assistance backdated to December 20, 2007 was a reasonable application of the legislation in the appellant's circumstances. The panel confirms the ministry decision. The appellant is not successful in the appeal.

#### Schedule of Legislation

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

#### *Interpretation*

s. 1(1) In this Act:

"business day" means a day other than Saturday or a holiday;

*Disability assistance and supplements*

s. 5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

*Reconsideration and appeal rights*

s. 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.

*How a request to reconsider a decision is made*

s. 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.

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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

Signature of Chair

Date (Year/Month/Day)  
2022/12/23

Print Name  
Vivienne Chin

Signature of Member

Date (Year/Month/Day)  
2022/12/23

Print Name  
Corrie Campbell

Signature of Member

Date (Year/Month/Day)  
2022/12/23