

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”) dated July 21, 2023 (the “**Reconsideration Decision**”). The Ministry determined that the Appellant failed to deliver a completed Request for Reconsideration form to the Ministry within the 20 business days time limit as set out in Section 71(2) of the *Employment and Assistance for Persons with Disabilities Regulation*. As a result, the Ministry could not conduct a reconsideration.

Part D – Relevant Legislation

- *Employment and Assistance for Persons with Disabilities Act* (the “**Act**”) – sections 16 and 17
- *Employment and Assistance for Persons with Disabilities Regulation* (the “**Regulation**”) – section 71

Note: The full text is available after the Decision.

Part E – Summary of Facts**(a) Summary of Key Dates:**

- On March 1, 2023, the Ministry denied the Appellant’s request for a power lift recliner.
- On April 5, 2023, this Tribunal confirmed the Ministry’s decision to deny the Appellant’s request for power lift recliner pursuant to sections 57 and 62 to 70 of the *Regulation* in Appeal 2023-0074 (the “**Prior Appeal**”).
- On April 4, 2023, the Appellant reapplied for a power lift recliner and provided an assessment from an occupational therapist (the “**Further Request**”).
- On April 25, 2023, the Ministry denied the Further Request for the same reasons stated in the Prior Appeal (the “**Decision**”).
- On April 28, 2023, the Ministry advised the Appellant of the Decision.
- On May 10, 2023, the Appellant requested a reconsideration of the Decision.
- On May 11, 2023, the Ministry mailed the Appellant a Request for Reconsideration (“**RFR**”) package which stated that it had to be returned to the Ministry by June 8, 2023. A Reconsideration and Appeal brochure was included in the package mailed to the Appellant.
- The Ministry did not receive the Appellant’s completed RFR form by June 8th.
- On June 21, 2023, the Ministry closed the Appellant’s RFR as he did not submit his completed RFR form within legislated timelines.
- On July 10, 2023, the Appellant contacted the Ministry indicating he now wished to pursue a RFR.
- July 10, 2023, the Ministry received the Appellant’s completed RFR form which was signed and dated July 5, 2023.
- On July 21, 2023, the Ministry issued the Reconsideration Decision wherein it determined it could not reconsider the Decision given that the Appellant did not submit his completed RFR within the legislated timelines.

(b) The Appeal

On August 9, 2023, the Appellant filed a Notice of Appeal (the “**Appeal Notice**”). In the Appeal Notice, the Appellant wrote, “... *I disagreement with the decision and other reasons I will mention later in additional paper... For the delay, I submitted the reconsideration request at the Ministry office on the second day after the mail arrived at my residence address, where I filled out the appeal form, I went to the Ministry offices and handed over the request for reconsideration to the hand of the employee at the front desk he take copys (sic) of the documents*”

and gave me a copy of the request. This is not my fault..." The remainder of the Appellant's written statement contained in the Appeal Notice addressed matters pertaining to the merits of the Further Request and the Decision.

The Appellant's Appeal hearing was held on August 31, 2023 via videoconference.

Oral Submissions

At the Appeal hearing, the Appellant was assisted by an interpreter who helped overcome any language barriers experienced by the Appellant.

During oral submissions, the Appellant attempted to provide submissions relating to the merits of the Further Request and the Decision. As a result, the Appellant was reminded that the Appeal was limited to the matter of whether he submitted his completed RFR form in compliance with the legislated timelines.

The Appellant explained that he received a RFR package some time in June 2023 and that he submitted his completed RFR form within two (2) days of receiving it. Upon further questioning, the Appellant stated he could not remember the exact day he received and/or submitted his RFR form to the Ministry. After being directed to review the signed copy of his RFR form contained in the Appeal Record, which was dated July 5, 2023, the Appellant stated that he submitted his RFR form in either June or July 2023. While adamant that he submitted his completed RFR form to the Ministry within two (2) days of receiving it, the Appellant displayed uncertainty regarding the timeline of events surrounding his RFR form submission.

The Appellant also stated that he submitted his RFR form to a Ministry office where Ministry staff advised that he had already missed the RFR submission deadline. However, the Ministry staff stated they would still accept the RFR form pending the Ministry's decision.

The Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision. In response to questions from the Panel, the Ministry clarified the process it uses to issue RFR packages generally. In the case of the Appellant, the Ministry confirmed that its RFR process was followed which was confirmed by its records reflecting corresponding time stamps.

The Ministry had no objection to the Appellant's oral submissions. The Panel determined that the Appellant's submissions and evidence were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

Part F – Reasons for Panel Decision

The issue in this Appeal is whether the Ministry's Reconsideration Decision, in which the Ministry determined that the Appellant failed to submit a completed RFR form to the Ministry within the 20 business days time limit, is reasonably supported by the evidence or is a reasonable application of the legislation.

Appellant's Position

The Appellant states that he submitted his completed RFR form within the timelines established by the applicable legislation.

Ministry's Position

The Ministry maintains that it cannot reconsider the Decision given that the Appellant did not submit his completed RFR form within the timelines established by the applicable legislation.

Panel Decision

Section 71 of the *Regulation* sets out that a person who seeks a reconsideration must deliver a completed RFR form to the Ministry within 20 business days after that person is notified of the Ministry's decision.

On April 25, 2023, the Ministry denied the Further Request. On April 28, 2023, the Ministry advised the Appellant of the Decision. On May 11, 2023, the Ministry mailed the Appellant a RFR package so that he could have Ministry reconsider the Decision. The RFR package mailed to the Appellant clarified that the Appellant was required to submit a completed RFR form to the Ministry by June 8, 2023. On July 10, 2023, the Appellant submitted his completed RFR form to the Ministry, more than 20 business days after the June 8th RFR submission deadline.

The Panel finds that the Appellant's submission falls outside of the legislated requirement that a RFR form be submitted within 20 business days after being notified of the Decision. While the Appellant attempts to argue he submitted his completed RFR form with two (2) business days of receiving the RFR package, the Appellant's uncertainty regarding the dates and events surrounding his receipt and submission of the RFR form causes the Panel to question the accuracy of his recollection. While the Panel is empathetic to the Appellant, the Panel finds that he has failed to direct it to any fact or event that substantiates his receipt of the RFR package in either June or July 2023 as argued by him, not May 2023 as confirmed by

the Ministry's records. Therefore, the Panel finds the Ministry was reasonable to determine it could not reconsider its Decision of the Further Request related to the power lift recliner.

Conclusion

The Panel finds the Ministry's decision not to render a reconsideration decision was reasonably supported by the evidence and confirms the Ministry's decision.

The Appellant is not successful on appeal.

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.

No appeal from decision based on same circumstances

17 If a person reapplies for disability assistance, hardship assistance or a supplement after

(a) the eligibility of the person's family unit for the disability assistance, hardship assistance or supplement has been determined under this Act,

(b) a right of appeal under section 16 (3) has been exercised in respect of the determination referred to in paragraph (a), and

(c) the decision of the tribunal in respect of the appeal referred to in paragraph (b) has been implemented

no right of reconsideration or appeal exists in respect of the second or a subsequent application unless there has been a change in circumstances relevant to the determination referred to in paragraph (a).

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.

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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

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2023/09/07

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2023/09/07

Print Name

Linda Pierre

Signature of Member

Date (Year/Month/Day)

2023/09/07