

Part C – Decision Under Appeal

Under appeal is a decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”) dated January 22, 2024 to deny the appellant’s request for reconsideration for backdated assistance. The ministry stated that the legislation requires a request for reconsideration to be delivered to the ministry within 20 business days after the person is notified of the decision. The ministry found that the appellant submitted their request for reconsideration after the 20 business day requirement.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the “Act”) section 1, 5 and 16
Employment and Assistance for Persons with Disabilities Regulation (the “Regulation”) section 71

An attached copy of the relevant legislation is located in the appendix of this document.

Part E – Summary of Facts

Background and Relevant Evidence

On October 6, 2020, the Ministry sent the Appellant a letter requesting an enclosed consent to Deduction and Payment Form and Statement of Contributions from Service Canada.

The Ministry did not receive a response from the Appellant and sent five more letters requesting an enclosed consent to Deduction and Payment Form and Statement of Contributions from Service Canada. The letters were dated December 16, 2020, February 18, 2021, June 3, 2021, August 5, 2021 and October 7, 2021.

On February 2, 2022, the January assistance cheque was cancelled as unclaimed and cheque production was turned off.

The Ministry did not have contact with the Appellant until October 13, 2022.

On October 13, 2022, the Appellant contacted the Ministry and was advised that the cheque production was turned off as the required information and forms had not been submitted.

On November 24, 2022, the Appellant attended their local office and submitted the required forms.

On February 17, 2023 the Appellant received assistance cheques for November 2022, December 2022 and January 2023.

On March 14, 2023, the Appellant requested backdated assistance cheques for the period between February and October 2022.

On May 5, 2023, the Ministry reviewed the request and the request was denied. The request was denied because the required information was not submitted and there was not any contact made by the Appellant to the Ministry to advise on progress in submitting the required information.

On October 10, 2023, the Appellant was advised that his request for backdated assistance was denied and requested a reconsideration of the Ministry's decision.

On October 11, 2023, the Ministry called and left a message advising the Appellant that the Request for Reconsideration package was ready for pick up at the local office.

On November 8, 2023, the Appellant contacted the ministry office and the Appellant was advised that the Reconsideration package was ready for pick up at the local office. The Appellant said they would go to the local office the next day to submit it.

On November 14, 2023, the Appellant picked up the Reconsideration package at their local office.

On January 8, 2024, the Appellant submitted a Request for Reconsideration.

On January 22, 2024, the Ministry completed its review of the Request for Reconsideration and denied the Request for Reconsideration.

Appellant Submissions

The Appellant's Request for Reconsideration documentation included a doctor's note in which the doctor wrote:

"I wish to advocate that his health issues be taken into consideration, as there are cognitive symptoms associated with the condition that I am treating him for.

Therefore, he may be more forgetful, miss deadlines for document submission and have some difficulty in executive functioning (planning), all of which are reasons why he is on the disability in the first place".

In his Notice of Appeal, the Appellant stated that he had missed payments due to confusion.

During the hearing, the Appellant said that when the cheques were not coming in the mail he became confused. The Appellant spoke about struggling with mental health and that they kept hoping that the cheques would come. The Appellant said they did not receive any of the letters and eventually they reached out to the Ministry and found out that they had paperwork to do. The Appellant said that nobody else would have been picking up their mail.

The Appellant said they have support in the community and see a psychiatrist every couple of months as the Appellant struggles with bipolar, anxiety and schizophrenia. The Appellant spoke about being scared, worried and confused when the cheques stopped

coming and did not know who to turn to for help. The Appellant said they just hoped that the cheques would start coming again.

Ministry Submissions

The Ministry stated during the hearing that unfortunately because the Request for Reconsideration came in so late and did not meet the 20-day response deadline, the Ministry was unable to review the request for reconsideration.

The Ministry also reviewed the process including the number of letters sent out to the Appellant requesting the required information and completed forms prior to discontinuing cheques. The Ministry acknowledged that 2020 was a different year and a different process due to Covid requirements and there were no in person follow ups with clients. The Ministry said that none of the letters were returned so they felt that the letters had been delivered to the Appellant. The Ministry said that they do advise clients of resources and supports but the onus is on the client to access and request the assistance to complete the required forms.

The Ministry explained that they issued the cheques from the time of application in November of 2022 when the required documentation was submitted by the Appellant. The November application was considered a re-application as assistance had been discontinued in February.

Admissibility of New Evidence

The oral submissions of both parties and the appellant's Notice of Appeal did not include new evidence related to the issue on appeal.

Part F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the decision denying backdated disability assistance could not be reconsidered was reasonably supported by the evidence or a reasonable application of the applicable legislation.

Under section 71(2) of the Regulation, a request for reconsideration must be delivered to the Ministry within 20 business days after the date the person is notified of the decision to deny, discontinue or reduce disability assistance or a supplement to someone in the person's family unit.

The panel finds that the undisputed evidence shows that the appellant was notified of the ministry's decision to deny disability assistance on October 10, 2023. The Appellant submitted the request for reconsideration on January 8, 2024 which was 65 business days after the date they were notified of the decision. The panel acknowledges the medical information submitted by the appellant but notes that the legislation does not allow for exceptions to the 20-business day deadline for submitting a request for reconsideration.

Conclusion

The Panel finds however that the Ministry's decision to deny the Appellant's request for back dated assistance as set out in Section 71 of the Regulation was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the Appellant. The panel confirms the Ministry decision that it could not conduct a reconsideration, and the Appellant is not successful on the Appeal.

Appendix – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

Interpretation

1. (1) In this Act: "disability assistance" means an amount for shelter and support provided under section 5 [disability assistance and supplements]; Disability assistance and supplements

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

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 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

Mary Chell

Signature of Chair

Date (Year/Month/Day)

2024/03/01

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2024/03/01

Print Name

Jane Nielsen

Signature of Member

Date (Year/Month/Day)

2024/03/03