

**PART C – DECISION UNDER APPEAL**

(State the reconsideration decision)

The decision under appeal is the Ministry's Reconsideration Decision dated January 13, 2010, which:

- i) upheld Ministry's decision that the Appellant's Community Volunteer Supplement was terminated due to his failure to participate in a community volunteer program;
- ii) upheld Ministry's decision to place Appellant's name on wait list in response to his request to participate in the Community Volunteer program;
- iii) held that no reconsideration decision may be made with respect to termination of the Appellant's Community Volunteer Supplement (CVS) because the time limit to proceed to reconsideration or appeal had passed.

**PART D – RELEVANT LEGISLATION**

(State the relevant Legislation considered)

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Sections 1; 8; 16

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 47(1); 71; 73

**PART E – SUMMARY OF FACTS**

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision was being made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

Information before the Ministry at Reconsideration included:

- The Appellant's Request for Reconsideration dated December 22, 2009, with attachments
- A letter from the Appellant dated January 19, 2010

The Ministry and Appellant were not in attendance at the hearing. After confirming that the Ministry and Appellant were notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The Appellant, in the Request for Reconsideration, stated that he had been volunteering since April 1, 2008, a total of nine months, and he is entitled to be paid the CVS for that period. He also stated that the Ministry was aware that he was scheduled for surgery.

The Ministry, in the Summary of Facts in the Reconsideration Decision, stated that the Appellant entered into the Community Volunteer program in February, 2008, advising that he was to volunteer at a Vancouver agency. He was paid the CVS of \$100 per month from March to May, 2008, however in May, 2008 the Ministry was advised by the agency that the Appellant was not volunteering there. The Appellant was asked in June, 2008 to have an agency complete the volunteer form, however by August, 2008 the Appellant had not yet submitted it. The Ministry stated that in August, 2008 the Appellant acknowledged in an interview that he had not completed volunteer hours since May, 2008, and he did not identify a medical condition as a barrier to volunteering. The CVS was removed by the Ministry and the Appellant did not appeal this decision. In December, 2009 the Appellant submitted a letter from a different Vancouver agency indicating that he had volunteered there for nine months. The Ministry denied the Appellant access to the Community Volunteer program and advised him that he would be put on a waitlist because there were currently no spaces available.

The Ministry, in the Reconsideration Decision, stated that the decision to terminate the Appellant's CVS was made in August, 2008, and because no request for reconsideration or appeal was made within 20 business days, the time limit has passed and the Appellant is deemed to have accepted that decision. Further, the Ministry holds that because the Appellant was placed on a waitlist for the Community Volunteer Program he has not been denied access. Further, the Ministry holds that access to Ministry programs is not subject to appeal per Section 73(1)(d), EAPWDR.

**PART F – REASONS FOR PANEL DECISION**

(State the reasons for the panel decision)

The issue in this appeal is the reasonableness of the Ministry's decision that no reconsideration decision may be made with respect to termination of the Appellant's Community Volunteer Supplement (CVS) because the time limit to proceed to reconsideration or appeal had passed, and that the Appellant's Community Service Supplement was terminated due to his failure to participate in a community volunteer program.

**EAPWDA****Interpretation**

**1(1) "supplement"** means any form of assistance specified by regulation, other than disability assistance, hardship assistance or financial assistance provided under section 7 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act;

**8** The minister may establish or fund employment-related programs and other programs for applicants, recipients or dependent youths who have difficulty finding or maintaining employment.

**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.

**EAPWDR**

- 47 (1)** The minister may provide to or for a family unit that is eligible for disability assistance a supplement of up to \$100 for each calendar month for each recipient or dependent child who has reached 15 years of age for clothing, transportation or other expenses that are needed for that recipient or dependent child to participate in a community volunteer program.
- (2) Subsection (1) does not apply for a calendar month in which the minister provides the family unit with a supplement under
- (a) section 48 [*monthly incentive supplement*], for the use or benefit of that recipient or dependent child,
  - (b) section 49 [*training initiative supplement*], for the use or benefit of that recipient or dependent child, or
  - (c) section 54 (2) [*supplements related to employment plan*], for the use or benefit of that recipient or dependent child.
- 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.
- 73 (1)** The following categories of supplements may not be appealed to the tribunal:
- (a) Repealed. [B.C. Reg. 313/2007, s. 2 (f).]
  - (b) reconsideration and appeal supplements under section 52;
  - (c) supplements related to employment plans under section 54;
  - (d) access to a program established or funded under the Act;
  - (e) confirmed job supplements under section 54.1.

The Appellant's position is that he performed his volunteer hours for a nine month period in 2008 and is entitled to receive CVS payments for that period.

The Ministry's position is that they received information that the Appellant ceased to volunteer with the agency he had agreed in writing to volunteering with and, in any case, he did not request a reconsideration or appeal of their decision to terminate the CVS within the time period required in legislation. The Appellant has not been denied access to the Community Volunteer Program, as he has been placed on a waitlist, and, in any case, a decision regarding access to a Ministry program may not be appealed.

The Panel, in examining the evidence, finds that the Appellant and the Ministry agree that the time period in question refers to the year 2008. The Appellant did not request a reconsideration of the decision to terminate

the CVS until December, 2009. The Panel finds that the Ministry's decision that the time limit to request reconsideration of this decision had passed was reasonable as per Section 71(2) of the EAPWDR.

The Panel finds that Section 73(1)(d), EAPWDR states that access to a program established or funded under the EAPWDA may not be appealed to the tribunal. With respect to the termination of the Appellant's CVS, the Panel accepts the Ministry's evidence that the Appellant submitted an application to volunteer at an agency then failed to volunteer there as approved. The Panel finds that the Ministry's decision to terminate the Appellant's CVS in August 2008; and to place Appellant on wait list was reasonable.

The panel therefore finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision.