

Ministry Determination – No Right to Reconsideration:

When the ministry determines that there is no right of reconsideration, the panel has the jurisdiction to review the reasonableness of that decision provided the request is the type of decision described under subsection (1)(a) to (d) and unless any of the exceptions apply.

The panel does not have the jurisdiction to review the reasonableness of the original decision.

Background:

Section 17(3) of the *EA Act* (and section 16(3) of the *EAPWD Act*) provides that a person who is dissatisfied "with the outcome of a request for reconsideration under subsection (1)(a) to (d) may appeal the decision that is the outcome of the request" to the tribunal. It does not say that there is a right of appeal only from a reconsideration decision. The exceptionally broad language in section 17(3) of the *EA Act* (and section 16(3) of the *EAPWD Act*) supports the view that even if a reconsideration adjudicator determines there is no right to reconsideration, that "outcome" of the request for reconsideration is appealable to the Tribunal:

- provided it is the type of decision described under subsection (1)(a) to (d) and unless any of the exceptions in the section apply
- includes some cases where the ministry has determined that the request for reconsideration was delivered outside of the 20 business day limit.

Decision:

The appealable issue would be whether the denial of reconsideration was a "reasonable application of the applicable enactment in the circumstances of the person appealing the decision" and the panel would then either confirm or rescind pursuant to s.24 of the *EA Act*.

Implicit in such a panel decision would be the recognition that the ministry should then provide the appellant with a reconsideration process.

Wording for Decisions:

Section 17(3) of the *EA Act* (or 16 (3) of the *EAPWD Act*) provides that, subject to certain exceptions, a person who is dissatisfied with the "outcome of a request for reconsideration under subsection (1)(a) to (d) may appeal the decision that is the outcome of the request to the Tribunal". In this case, the ministry's determination that there is no right of reconsideration was the "outcome" of the appellant's request. The panel finds that the ministry's determination that the appellant did not have a right to reconsideration is (or is not) a reasonable application of the applicable enactment in the appellant's circumstances under s.24 (1)(b) of the Act for the reasons outlined above.

In view of this finding, the panel confirms (*or rescinds*) under s.24 (2) of the Act the ministry's decision that there is no right to reconsideration. It follows that the appellant is not (*or is*) entitled to have the request for reconsideration proceed to reconsideration.

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