

Appeal Number 2025-0271

### **Part C - Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction ("the Ministry") decision dated August 1, 2025, which denies the Appellant's request for a reconsideration of the decision that his case be administered through a third party, because that is not a decision that may be reconsidered or appealed, under section 16 of the *Employment and Assistance for Persons with Disabilities Act*.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act ("the Act")*, sections 5 and 16

Full text of the applicable legislation is found in Appendix A.

## Part E – Summary of Facts

The hearing took place on August 26, 2025, by a video conference. The hearing was recessed by the Panel Chair from 9:35 a.m. to 10:00 a.m., when the Ministry representative advised that he had not received the Appellant's second submission made on August 25, 2025. The hearing reconvened at 10:00 a.m. and the Ministry representative reported that the Tribunal had sent him the missing submission.

## Information Before the Ministry at Reconsideration

- On June 5, 2025, the Appellant was advised that his request to remove the third-party administration ("the *TPA*") was denied.
- On July 4, 2025, the Appellant submitted a Request for Reconsideration. His request for an extension was approved until August 1, 2025.
- On August 1, 2025, the Ministry completed its review of the Request for Reconsideration and denied the requested reconsideration of the Ministry's decision that the Appellant's case is to be administered through a third party.

## Additional Information Submitted after the Reconsideration Decision

### Notice of Appeal dated August 19, 2025

- The following reasons for the Appellant's appeal were noted as follows:
  - "Ministry decision based on false claims, specifically those of May 12. I was not in the office that day and these events did not occur.
  - Reconsideration Team did not consider my submissions on July 31, as they are not included in the Appeal Record.
  - Ministry did not follow its own policy/procedures, no warning, no progressive steps prior to decision.
  - Ministry did not consider my disability, and made no effort to accommodate me, before decision.
  - I have not been given access to my personal information regarding events leading up to decision."

### Appellant Submission

- On August 15, 2025, the Appellant submitted the following:

- Memo dated Aug 7, 2025, indicating the Appellant attached a completed Release of Information form and the response he provided to the Reconsideration Team, containing submissions they received on 31 July, along with a printout from MySelfServe showing his submissions were sent.
- Other file related correspondence between the Ministry and the Appellant.
- On August 25, 2025, the Appellant submitted the following:
  - MSDPR Worker Notes (excerpted), Telephone interactions,
  - Reconsideration Communications, re Extension request,
  - Reconsideration Questions,
  - TPA Referral Review correspondence,
  - Various Requests to TPA to follow correct process, and for updates/replies from Ministry,
  - Response from Ministry representative,
  - Transcribed in-person discussion with TPA.

### **Ministry Submission**

- The Ministry did not submit any additional information after the Reconsideration Decision.

### **Evidence Provided at the Hearing**

#### **Appellant's Evidence**

At the hearing the Appellant stated the following:

- He had received assistance and support for this appeal and said that he had a clear understanding of the issue, the relevant legislation, and of the policies and how they apply.
- He understands that some decisions may not be reconsidered, however he wishes to exhaust the appeal process before he pursues other remedies if he is unsuccessful in this appeal.
- The Appellant's main concern is that the decision appointing the TPA, was based on false facts and it was not a fair decision.
- He stated that the Act was applied without consideration given to his particular circumstances, and administrative/procedural fairness was lacking.

- He added that the reconsideration package was prepared by a different person who appeared to be biased, and there was contradictory information used in the decision.
- When asked by the Panel to explain what he meant by “his particular circumstances”, he explained that the Community Relations and Service Quality department (“CRSQ”) provides no effective path to address errors of fact, and this creates administrative unfairness.

The Appellant made a detailed closing statement as follows:

- The Ministry has failed at every stage, including the Managerial Review, to provide administrative fairness, as is required by their policy.
- CRSQ went through their process without taking the simple step of verifying the truth of the facts upon which they relied.
- The Appellant in his letter of May 30, 2025, stated that the Ministry complained of his “recent behaviour when interacting with the ministry on May 12, 2025” and states that “due to this behavior and constant undermining Ministry staff you are not allowed to visit the local office.” However, the Appellant stated that he did not interact with anyone at the local office on May 12. He did not attend the office on that date, nor did he speak with anyone in that office directly in any way.
- This false information was relied upon by the Ministry as fact to justify their decision, and no effort was made by the CRSQ to reconsider the original decision to establish TPA or the flawed process. Facts were not verified.
- He understands the limits of the legislation on reconsiderations, but the Tribunal should have discretion to review the fairness of the decisions reached by the Ministry even if section 16 of the *Act* does not apply.
- He re-iterated that he appealed in order to exhaust all remedies before proceeding further.

## **Ministry's Evidence**

At the hearing the Ministry representative stated the following:

- The decision to establish a TPA is not a decision that can be reconsidered under the legislation; it is an administrative decision that falls outside of section 16 of the *Act*.
- The CRSQ decision to proceed with a TRA is also an administrative decision.
- The only decisions subject to reconsideration are those which deny a benefit or service to the Appellant and hence fall under section 16 of the *Act*. The original TPA decision which was made by the Ministry and subsequently upheld by the CRSQ did

not deny any benefit or service to the Appellant but merely decided how to administer the Appellant's benefit/service through a third party.

- The CRSQ needs to make fair decisions and to do that, the department of CRSQ is removed organizationally from the Ministry's front-line workers to maintain objectivity and fairness. When necessary, the CRSQ would contact the Ministry's front-line workers who have contact with the client to obtain the relevant background of the case and any information relevant to the decision to be made. When necessary, the CRSQ will contact the complainant to obtain necessary information.
- In response to a question from the Panel, the Ministry representative stated that the CRSQ would normally seek feedback from the client during the process, however, the TPA would not be overturned, solely based on the client's feedback. The Ministry representative stated that he was unable to comment on the reason why the CRSQ did not contact the Appellant to obtain his feedback in this case.
- In response to a question from the Panel, the Ministry representative stated that the "*TPA reconsideration*" mentioned in the document titled "TPA Referral Review" is not a separate reconsideration process; it is the Request for Reconsideration which the Appellant submitted in this case. The Ministry representative referred to the TPA Referral Review and stated that the CRSQ has reviewed the case notes, spoken to the Office Supervisor regarding the Appellant's past behaviour leading up to the TPA referral, and the TPA Case Manager regarding the current behaviour of the Appellant since referral, and concluded that the TPA will remain in place. The Appellant has a letter regarding the TPA advising that a review can be conducted in 1 year.

## **Admissibility of New Evidence**

The Panel finds the Appellant's and Ministry representative's testimony during the hearing, along with their written evidence provided on appeal, to be reasonably required for a full and fair disclosure of matters related to the decision under appeal. The Panel admits this evidence under Section 22 (4) of the *Employment and Assistance Act* as it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

## Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision on August 1, 2025, to deny the Appellant's request for a reconsideration of the decision requiring his file to be administered through a third party is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the Appellant.

In other words, was the decision that no reconsideration is allowed under section 16(1) of the *Act* reasonable, considering the previous evidence and any new evidence not previously available to the Ministry?

### Appellant's Position

The Appellant stated that:

- The Ministry's decision to refer him to TPA is based on false claims, specifically those of May 12, 2025. He was not in the office that day and these events did not occur.
- The Appellant has made known to the Ministry that he has a language-processing disorder; however, the Ministry made no accommodation for his disability whatsoever.
- The Reconsideration Team did not consider his submissions on July 31, 2025, as they are not included in the Appeal Record.
- The Ministry did not follow its own policy/procedures, with no warning, and no progressive steps implemented prior to decision.
- He was not given access to his personal information regarding events leading up to the TPA decision.
- The Ministry has failed at every stage of the decision-making process to adhere to the principles of administrative fairness; and the CRSQ went through their review process without verifying the truth of the facts upon which they relied.
- The Appellant understands the limits of the legislation on reconsiderations, but he submits the Tribunal should have discretion to review the fairness of the decisions reached by the Ministry, even if section 16 of the *Act* does not apply.

### Ministry's Position

The Ministry states it is unable to conduct a reconsideration of this matter. Under section 16(1)(a) of the *Act*, a person may request the Ministry to reconsider "*a decision that results in a refusal, discontinuance, or reduction of disability assistance*," ...made under the *Act*. The Ministry has provided the full rate of disability assistance that the Appellant is eligible to

receive, and no portion of his monthly disability assistance has been denied, discontinued or reduced, due to the Ministry's decision. As the legislative requirements under section 16(1) of the *Act* have not been met, no reconsideration is available to the Appellant.

### **Panel Decision**

The Appellant is seeking a reconsideration of the Ministry's decision that his case is administered through a third party. The Ministry denied the Appellant a reconsideration under section 16 (1) of the *Act*. The section provides that a person may request the Ministry to reconsider a decision that results in a denial, discontinuance, or reduction of disability assistance, hardship assistance or a supplement provided under the *Act*.

While the Appellant requested a reconsideration of the decision to administer his case through a third party, the evidence before the Panel shows that despite his case being administered by a third party, the Ministry has provided the full rate of disability assistance the Appellant is eligible to receive, and no portion of the Appellant's disability assistance has been denied, discontinued or reduced due to the decision to administer the case through a third-party administrator. Therefore, the Panel finds that the Ministry's decision not to reconsider its decision about third party administration is a reasonable application of the legislation in the Appellant's circumstances. A reconsideration is not an available remedy to the Appellant where the legislative requirements under section 16 (1) of the *Act* have not been met.

Before reaching the conclusion of this appeal, the Panel would like to comment on some of the issues raised by the Appellant:

- the Appellant was not given any prior notice or warning that TPA referral was being considered, he was only informed of the change to TPA after it was already in effect;
- the decision appointing the TPA was based on false facts and CRSQ provides no effective path to address errors of fact, thereby creating administrative unfairness;
- the Tribunal should have discretion to review the fairness of the decisions reached by the Ministry even if section 16 of the *Act* does not apply.

### **Panel's jurisdiction**

The Panel's jurisdiction is explicitly defined by the legislation. Under section 16(3) of the *Act*, the Tribunal's jurisdiction is limited to determining only appeals of decisions that are appealable by a person who is dissatisfied with the outcome of a request for a reconsideration under section 16 (1) (a) to (d) of the *Act*. Unlike a superior court, the

Tribunal has no discretion, provided for outside of the legislation. Specifically, the Panel can only determine whether the Ministry's Reconsideration Decision is reasonably supported by the evidence of the case or is a reasonable application of the legislation. In this case, the Ministry's decision to refer the Appellant to TPA is a policy decision which does not result in a denial, discontinuance, or reduction of disability assistance and hence it falls outside the scope of section 16(1) of the *Act* and no reconsideration can be made. Consequently, it is not a decision that is appealable under section 16(1) of the *Employment and Assistance Act*, and the Panel has no jurisdiction or discretion to determine an appeal of the Ministry's decision to refer the Appellant to TPA.

### **Duty of Fairness**

While it is outside the mandate of the Panel to determine the merit of the TPA decision, the Panel is entitled to consider the evidence submitted by the parties in this appeal.

In essence, the Appellant submitted that:

- He did not receive any prior notice or warning, either verbally or in writing, that TPA was being considered as an administrative option;
- He was only informed of the TPA decision after it was already in effect.
- The "facts" relied on by the Ministry in making the TPA decision were false,
- He was not given an opportunity to challenge the "facts" or respond to the allegations made against him.

It is a well-established legal principle that a decision-maker has a duty of procedural fairness when making a decision that affects the rights, privileges, or interests of an individual: *Canada (Attorney General) v. Mavi*, 2011 SCC 30 at para 38. In the present case, the Appellant's rights, privileges, or interests may have been affected as he was prevented by the Ministry from dealing with the Ministry staff directly and he must now communicate with the Ministry through a TPA, causing delays and inconvenience. The duty of procedural fairness applies in the Appellant's case.

While the substance of procedural fairness may vary depending on the context of the case, the core principles require that the person affected by the decision must be given reasonable notice before a decision is made and an opportunity to be heard. This appears not to have happened in the Appellant's case. The Appellant submitted that he was not given any prior notice that a TPA decision was going to be made against him, and he was not given an opportunity to present his case, or to challenge or correct the "facts" relied on by the Ministry in making the TPA decision. The Panel notes that there may have been a

lack of procedural fairness in the decision-making process. As was suggested by the Appellant himself in the hearing, he may wish to pursue his concerns with the Office of the Ombudsperson of British Columbia.

### **Conclusion**

As mentioned above, the Ministry's decision to refer the Appellant to TPA is a decision which falls outside the scope of section 16(1) of the Act. The Ministry's decision not to conduct a reconsideration of the TPA decision is a reasonable application of the legislation. The Panel confirms the Ministry's Reconsideration Decision, and the Appellant is not successful in his appeal.

## Appendix A

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

#### **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.

#### **Part 3 — Appeals**

##### **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 Act,***

22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

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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

Bill Farr

Signature of Chair

Date (Year/Month/Day)

2025/08/26

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2025/09/02

Print Name

Kamal Gill

Signature of Member

Date (Year/Month/Day)

2025/09/03