

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision dated January 13, 2012 that determined the appellant was ineligible for disability assistance pursuant to Section 25 of the EAR as she had not complied with the terms of her Agreement of Maintenance Rights (AOMR) entered under Section 24 of the EAR.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulations (EAPWDR), Sections 21 and 22

## PART E – Summary of Facts

There was an advocate trainee/observer at the hearing. As there was no objection to her presence and the hearing proceeded.

The evidence before the ministry at the time of reconsideration consisted of the following:

- The appellant has Persons with Disabilities designation and receives disability assistance as a single parent with one dependent child.
- May 13, 2009 the appellant entered into and signed an Assignment of Maintenance Rights (AOMR). A condition of the AOMR was the requirement of the appellant to attend all appointments, meetings and court proceedings when asked to do so by the minister.
- October 7, 2011 the ministry was advised by legal counsel that the appellant missed an appointment on this date to go over information for a court proceeding scheduled October 19, 2011. Several attempts were made to contact the appellant by telephone on October 7, 2011 and after. The ministry sent a letter to the appellant regarding the missed appointment.
- October 18, 2011 the appellant was reminded of her required court appearance the following day on October 19, 2011 by the legal counsel's office.
- October 19, 2011 the appellant failed to attend court appearance or contact the ministry to reschedule. A letter was mailed to the appellant to advise her that another court date was scheduled on December 14, 2011.
- October 20, 2011 the appellant contacted legal counsel and an appointment was rebooked for November 23, 2011.
- October 25, 2011 a letter from legal counsel to the ministry that reports the appellant had left a message that she had been very sick on the day of her previous appointment with legal counsel and that was why she had not attended. In the message the appellant left a telephone number and asked that she be contacted to set up an appointment. An appointment was set up with the appellant for November 23, 2011.
- November 23, 2011 the appellant fails to attend appointment with legal counsel or contact the ministry to reschedule.
- November 29, 2011 the ministry determined the appellant ineligible for disability assistance due to being non-compliant with her AOMR.
- December 14, 2011 the appellant failed to attend her court appearance.
- December 19, 2011 a signed and completed Request for Reconsideration is submitted by the appellant and includes a support letter from her advocate. The letter reports that the appellant has been non-compliant with her AOMR because of her severe mental impairment that makes it very difficult for her to remember any appointments or dates. This letter also attaches a letter from a Social Worker dated December 15, 2011 to confirm she suffers from this medical condition. The letter from the Social Worker states "As [the appellant] has explained to me, in addition to on-going mobility issues, she struggles with memory loss due to cognitive difficulties related to her disabilities. As a result of these challenges, [the appellant] often has trouble remembering and attending medical and other appointments."

At the hearing, other documentation was admitted into evidence by the panel under Section 22(4) of the Employment and Assistance Act as written testimony in support of the information and records before the ministry at reconsideration. This documentation includes the following:

1. The appellant's Notice of Appeal (NOA) dated January 23, 2012 the appellant states "Due to my medical conditions, I have a very difficult time remembering or attending my appointments. In addition, why did I have to go thru the court system? Why didn't MSD family maintenance worker take care of this?"
2. A letter dated February 10, 2012 from a Registered Nurse at a Health Centre that provides further detail regarding the appellant's health conditions as reported by a Social Worker December 15, 2011 and on the record at reconsideration. The letter indicates that the nurse has known the appellant as a patient for 8 years. The letter states "Patient has been struggling with mental health issues mainly caused by childhood trauma with residual depression, generalized anxiety and mostly severe social agoraphobia." It reports that that the patient suffers severe panic attacks in public places, especially when using public transit. It further reports that the appellant suffers from lupus, fibromyalgia, chronic fatigue syndrome and active, chronic hepatitis causing major fatigue and a limited ability to do daily living activities. It also reports the appellant has struggled with addictions, but is currently on a methadone program. The letter states the appellant "has major problems with memory and understanding issues, as mental health has declined over past eight years. We help remind patient of her appointments a prior to her appointments as indeed she would otherwise forget." The nurse notes that she or their physicians can be contacted with any questions.

Prior to the commencement of the hearing, the ministry indicated that the reconsideration decision had improperly referred to legislation concerning AOMR in sections 24 and 25 of the Employment and Assistance Regulation (EAR) as opposed to sections 21 and 22 of the Employment and Assistance with Disabilities Regulation (EAPWDR) given the appellant's Persons with Disabilities (PWD) designation. The parties agreed that the legislative intent was identical and applicable in this appeal.

At the hearing, the appellant's advocate and the appellant presented the recent letter dated February 10, 2012 from a Registered Nurse that was written on behalf of the appellant's physician. This medical evidence outlines the appellant's numerous medical conditions that impair her ability to meet the ministry's requirements of remembering and attending appointments. The appellant notes that she signed the AOMR in 2009 and had received her PWD designation in 2003. The advocate outlined the numerous medications the appellant consumes daily and is dependent on to function for her depression, anxiety, addictions and pain. The advocate reports that this combined with the appellant's agoraphobia creates side effects and cognitive impediments for the appellant to remember and attend appointments. The advocate acknowledges that the appellant bears some responsibility for her appointments, but in light of the collective impact of her impairments and medication a newer approach and better way should be found by the ministry to help the appellant meet her obligations. The appellant testified that she was quite sick on October 7, 2011 the day of her first appointment with legal counsel and called and left her phone number and had confused her court appearance October 19, 2011 with what she thought was a further meeting with legal counsel. The appellant reports she has tried many methods to try and help her remember and attend appointments, but with no success. The appellant reports that she depends on her children to remind her of schedules, but often forgets to tell them and that sometimes if they attend meetings with her they can help remind her of schedules. More recently her daughter has helped her set up a reminder system on her cell phone

that may help her. Finally the appellant's advocate argues that the ministry has some discretion pursuant to section 22(1) of the EAPWDR with regard to the appellant's failure to comply with her AOMR and refers to the legislative language that states " may be declared ineligible for disability assistance...". The advocate also argues the appellant's medical conditions under section 22 (2) should apply as evidence that the failure to comply with the terms of the assignment are beyond the appellant's control.

The ministry stood by the record. The ministry reports that the appellant as noted on the record signed her AOMR form on May 13, 2009. The ministry referenced a ministry log note dated May 26, 2009 that indicates a worker explained the form to the appellant, who understood it. The ministry further pointed out that the appellant missed two appointments with legal counsel and a scheduled court appearance on October 19, 2011. It referred to the legal consul's letter of October 25, 2011 shows that there was communication reminding the appellant of her initial court appearance on October 19, 2011.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonable concluded that the appellant was not eligible for disability assistance pursuant to Section 22 of the EAPWDR because the appellant had not complied with the terms of the Assignment of Maintenance rights entered into under Section 21 of the EAPWDR.

Section 21 and 22 of the EAPWDR provides:

### **Terms to be included in the assignment**

**21** An assignment under this Division must include all of the following terms:

- (c) agreement by the assignor to cooperate with the minister and the director of maintenance enforcement as necessary to obtain, vary or enforce the assignor's maintenance agreement or maintenance order including
  - (i) providing any information and verifications relating to the debtor's name, address, employer and salary,
  - (ii) providing the names, ages and custody or residency arrangements of all children of the union,
  - (iii) attending at all appointments, meetings and court proceedings relating to the assigned rights when requested to do so by the minister or the director of maintenance enforcement, and
  - (iv) providing the court file number and style of proceeding of any maintenance orders in existence;

### **Failure to comply with terms of assignment**

**22 (1)** If an assignor who is receiving disability assistance or hardship assistance fails to comply with the terms of an assignment referred to in section 21 (c) [*terms to be included in the assignment*], the assignor's family unit may be declared ineligible for disability assistance or hardship assistance.

(2) This section does not apply if the minister is satisfied that the failure of the assignor to comply with the terms of the assignment is beyond the control of the assignor.

Because the appellant has Persons with Disabilities designation the panel has made reference above to the provisions of the EAPWDR which applies in this appeal. The legislative provisions and purpose in the EAPWDR are identical to the EAR which the ministry referenced in its reconsideration decision.

The ministry's position is that the appellant entered into and understood an AOMR dated May 13, 2009 and that the terms of the assignment require the appellant to attend all meetings and court proceedings. The appellant failed to attend several meetings with legal counsel and court appearances and attempts to contact her regarding her first meeting with legal counsel on October 7, 2011 were unsuccessful. The appellant also been provided with a letter regarding her first missed appointment with legal counsel and a reminder of her court appearance on October 19, 2011. Because the appellant failed to attend a second appointment with legal counsel on November 23, 2011. It states in all cases the appellant provided no reasons why she was unable to attend her

appointments. It further argues that although the appellant submits she has a medical condition that makes it difficult for her to remember any appointment dates and supplied a letter from a Social Worker to this effect, it did not find the information explains why she was unable to attend her appointments. Further, that there was insufficient evidence to confirm that she did so due to reasons beyond her control.

The appellant argues the ministry has not recognized her medical impairments that impede her ability to remember and attend appointments and, therefore, to comply with their requests. The appellant suffers from several severe impairments and together with the multiple medications consumed by her she struggles with coping, has limited ability and major problems with memory and understanding issues. All of this is confirmed in a letter of February 12, 2012 written by a Registered Nurse on behalf of the appellant's physicians. The appellant also argues the legislation under section 22 (1) of the EAPWDR and the language "may be" allows the ministry discretion and that the ministry should consider the appellant's impairments, medications and associated cognitive difficulties in its decision denying the appellant disability assistance for failing to comply with the conditions of her AOMR. It also argues the language in section 22(2) of the EAPWDR provides for ministry consideration that the appellant's impairments, medications and associated cognitive difficulties are "beyond the control of the appellant" and contribute to her failure in complying with the terms of the assignment.

The panel finds that the legislative language "may be" under section 22 (1) of the EAPWDR as authorizing and enabling the ministry authority. The panel does not find it discretionary language as argued by the appellant. The panel, however, finds that section 22(2) of the EAPWDR does allow a range of factors to be considered by the ministry in determining that the failure of the appellant to comply with the terms of the assignment is beyond her control. The panel finds the appellant's cognitive difficulties are beyond her control which contributed to her failure to comply with the terms of the AOMR. In this respect, the panel assigns significant weight to the more recent letter of February 12, 2012 from a Registered Nurse on behalf of the appellant's physician. The letter provides sufficient evidence regarding the appellant's medical conditions and major problems with memory and understanding issues and together with the testimony concerning her daily intake of multiple drugs to establish a severe restriction in her ability to comply with appointment and court appearance requirements of the AOMR. Despite this the appellant did provide reasons of sickness for her failure to attend her appointment of April 7, 2011 with legal counsel. Outside and further to this, the ministry was aware of or should have been aware of the appellant's impairments as a PWD designate. The letter dated December 15, 2011 from a Social Worker reports the appellant's struggles with memory loss due to cognitive difficulties related to her disabilities and her trouble remembering and attending medical and other appointments. This letter should have alerted a need for a more complete follow-up by the ministry. A follow up that would determine the most appropriate accommodation was provided to the appellant in order to help her comply with the requirements of the AOMR prior to denying her eligibility due to subsequent failures to attend appointments. The panel is persuaded that the medical conditions of the appellant indicates that she requires more accommodation by the ministry and could have moderated their approach in consideration of the appellant's cognitive problems.

The panel finds, therefore, it was not reasonable for the ministry to find the appellant ineligible for disability assistance and that her failure to comply with the terms of the assignment was beyond her control. Therefore, the panel rescinds the decision in favour of the appellant.