

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision dated December 19, 2011 whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the Employment and Assistance Act (EAA) for not complying with the conditions of her Employment Plan (EP), due to her failure to make reasonable efforts to participate in an employment-related program and with no medical reason for her non-participation.

**PART D – Relevant Legislation**

Employment and Assistance Act (EAA), Section 9

## PART E – Summary of Facts

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

- 1) Letter from the Ministry of Children and Family Development (MCFD) to the ministry dated April 8, 2011 stating in part that the appellant has been working with the MCFD on a plan to have her children returned to her, she is involved in parenting courses, access visits, and attending meetings;
- 2) Fax from a treatment clinic to the ministry dated April 14, 2011 requesting payment for a methadone treatment administrative fee;
- 3) Employment Plan (EP) signed by the appellant dated May 19, 2011. The terms of the EP include provisions requiring the appellant to: make sure her resume is updated, think of employment she could do, and inform the ministry of any changes to her circumstances;
- 4) Statement from a hospital indicating visits by the appellant on various dates in 2010 and in 2011 on July 22, September 2, November 7 ("body rash") and November 18 ("chin abscess");
- 5) Confirmation of admittance for a Treatment Centre with an admission date of August 29, 2011 and a discharge date of November 4, 2011;
- 6) Employment Plan (EP) signed by the appellant dated October 31, 2011. The terms of the EP include provisions requiring the appellant to: make an appointment with the service provider for an intake assessment visit, attend the intake assessment with the service provider, complete all tasks assigned by the service provider; work with the service provider to address issues that may be impacting her ability to secure and sustain employment; attend all review appointments as required; attend the scheduled appointment on November 2, 2011 at 11:15 a.m. and keep the ministry updated on any and all changes;
- 7) Service Provider's Client Search and Client Notes for the period October 31, 2011 through November 21, 2011 stating in part that the appellant was contacted on November 1, 2011 to confirm her attendance on November 2, 2011, the appellant did not attend on November 2, 2011 for intake appointment and the service provider left a voice message requesting a return call; November 2, 2011 a letter was sent to the appellant rescheduling the appointment for November 10, 2011 at 9:30 a.m.; November 8, 2011 a detailed voice message was left for the appellant regarding the upcoming appointment and requesting a return call to confirm; November 9, 2011 another attempt was made to contact the appellant but could not get through on her telephone number; November 10, 2011 the appellant did not attend the rescheduled appointment and voice message was left for the appellant to call; November 14, November 16, November 17 November 18, and November 21, 2011 attempts were made to contact the appellant and still could not get through on her telephone number; and entry states that the appellant did not attend 'letter appointment' on November 21, 2011 (however, no information is provided in the service provider's notes as to when or where a letter advising of the November 21, 2011 appointment was sent);
- 8) Letter from a treatment and recovery society 'To Whom It May Concern' dated November 30, 2011 and stating in part that the appellant has been involved in their treatment and recovery society;
- 9) Copy of the appellant's resume; and,
- 10) Request for Reconsideration- Reasons.

At the hearing, the appellant provided additional documents, namely:

- 1) Note from a physician dated February 3, 2012 stating in part that he saw the appellant on November 18, 2011 when she had a severe facial abscess and he sent her to the hospital; she was contagious; and,
- 2) Letter from the appellant's landlady dated February 21, 2012 'To Whom It May Concern' stating in part that the writer has been a nurse since 1981 and the appellant has been residing at her current address since November 1, 2011. On November 7, 2011, the appellant came to her door in pain due to her infection and asked for assistance and she drove the appellant to the hospital. About a week later, the infection and swelling seemed to have gotten worse and it did not heal until towards the end of the month.

The ministry did not object to the admissibility of these documents, with the exception of the reference in the February 21, 2012 letter to the date that the appellant moved to her current residence. The panel reviewed the documents and admitted them as being further information about an identified medical condition and relevant information regarding the appellant's place of residence, and being in support of the information and records

before the ministry on its reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act.

This hearing was rescheduled from the original date to allow time for the appellant to secure the assistance of an advocate to represent her, and the advocate was in attendance. The appellant had stated that she currently lives in the basement suite of a house and that her mail is delivered to her landlady, and that her mail is sometimes brought to her attention late.

In her Notice of appeal, the appellant states that she ran out of minutes on her telephone and had no money to get more minutes to call the service provider. The appellant states that the contagious disease she had kept getting worse and spreading through her body and the doctor at the methadone clinic sent her to emergency in an ambulance and she could have died. The appellant states that she needs assistance and a home to stay recovering. At the hearing, the appellant's mother clarified that she had completed the Notice of Appeal on behalf of the appellant but they were estranged at the time the appellant was sick and they did not reconcile until December 25, 2011. The appellant's mother stated that she had understood that the doctor at the methadone clinic had sent the appellant to the emergency department at the hospital by ambulance and that the appellant had almost died, but has since discovered that her conclusion was not correct and she wished to clarify this point for the panel, that this information in the Notice of Appeal was not correct due to her error.

The appellant's advocate stated that the appellant has had a history of keeping the ministry apprised of what she is doing, that she has been trying to get and stay clean and that she is working to get her children back. The advocate stated that part of getting clean has required that the appellant distance herself from her previous friends who may be a negative influence and that has left her somewhat isolated. The advocate also stated that the appellant's cell phone is 'pay-as-you-go' and that she never has many minutes, including for communicating with the advocate. The advocate stated that they had attempted to obtain the appellant's telephone records to show that she had no minutes during the relevant time period, but were advised that the 'pay-as-you-go' program does not provide records. The advocate stated that the appellant had tried to provide medical information to confirm her attendances at the hospital, giving the ministry a copy of the hospital records, and that the appellant did not know what type of verification the ministry was looking for.

The appellant acknowledged that she spoke with the service provider on November 1, 2011 and that she confirmed that she would attend the intake appointment the following day, but her phone ran out of minutes and 'died' at the end of that call. The appellant stated that the abscess on her inner thigh had started hurting but she thought that she could take Advil to control the pain and that it would be better the following day and that she should be able to attend the appointment. The appellant stated that the next morning her leg was so swollen that she could not walk, she could not pull her jeans on so she wore shorts, and she did not leave the house since the sore was seeping. The appellant stated that she could not call because her phone had run out of minutes and she could not go to the store to purchase more minutes as the nearest one is 15 minutes away. The appellant stated that she also could not check her messages during the time that the minutes on her phone had expired. In response to a question, the appellant stated that she did not want to bother her landlady to use her telephone as she had recently moved in, she likes the place and did not want the landlady to think she would be a problem tenant. The appellant stated that by November 7, 2011 her leg had not gotten better as she had hoped and she had used up all her Advil and bandages so she went to the landlady at that point. The appellant stated that her landlady drove her to the hospital and she went to the emergency department, that she was put on a heart monitor and then was left in a waiting room. The appellant stated that she arrived at around 6:00 p.m. and she waited until 1:00 a.m. and no one came back and when she went to ask they could not find any record of why she was there. The appellant stated that she went home because she did not want to wait any longer. The appellant stated that the abscess started to go down on her leg around November 12, 2011 and then she got one on her forehead that became so swollen that she got black eyes and one eye started to shut due to the pressure. The appellant stated that an abscess then started on her chin and it also was swollen and that it even made it difficult to talk. The appellant stated that she went to her family doctor on November 18, 2011 and he warned her about the seriousness of her condition due to the

proximity of the infection to her brain and he sent the appellant to the hospital. The appellant stated that her doctor said her condition was very contagious and he told her if anyone touched her they could also get the infection. The appellant explained that she was given antibiotics and that the condition started to clear up after that but she still has scars on her forehead and chin where the infection was. The appellant stated that she attended at the ministry office as soon as she was better and the infection was small enough to put a bandage on it, on November 25, 2011.

The appellant stated that she moved from her previous residence which was about a block away from her current residence on November 1, 2011. She stated that her leg was already starting to bother her and that some people she met through her landlady moved her belongings for her. The appellant explained that she was estranged from her mother at this time and she was not talking to her old friends and she was on her own. The appellant stated that she has sometimes received her mail late but she thinks she has been receiving it and that she did not get any letters from the service provider telling her about new appointment dates. In response to a question, the appellant explained that the letter from the recovery society was written by her landlady's daughter who works at a recovery house owned by her landlady and the appellant had hoped to be approved for treatment in this house, but the ministry said the facility was not licensed and did not qualify. In her Request for Reconsideration, the appellant states that she really needs money to live, eat and pay her landlord. The appellant admits that she missed appointments with the service provider but it was because of a medical reason. The appellant states that she had an abscess on her inner thigh and it was very painful and she did not know at the time what was wrong with her so she just stayed at home hoping it would go away but it got worse. The appellant states that it spread to her face, that it was contagious, that she was on antibiotics, and it left scars.

The ministry's evidence included that the appellant signed an Employment Plan (EP) on October 31, 2011 and that the terms of the EP included provisions requiring the appellant to: make an appointment with the service provider for an intake assessment visit, attend the intake assessment with the service provider, complete all tasks assigned by the service provider; work with the service provider to address issues that may be impacting her ability to secure and sustain employment; attend all review appointments as required; attend the scheduled appointment on November 2, 2011 at 11:15 a.m. and keep the ministry updated on any and all changes. The ministry states that by signing the EP the appellant indicated she had read, understood and agreed to the required activities of attendance and compliance with the program as well as the consequences for non-compliance.

On November 1, 2011, the service provider contacted the appellant to remind her of her required intake assessment the following day. On November 2, 2011, the appellant did not attend the scheduled intake assessment. Although the appellant states she did not have minutes on her cell phone, the ministry states that she also did not make efforts to use another phone to contact the service provider or ministry. The ministry had information that the appellant did not move to her new residence until November 11, 2011 and that the service provider's letter would have been sent to the address on file on November 2, 2011. The service provider notes indicate a "letter appointment" of November 21, 2011, but not when a letter was sent or to which address. The service provider's note for November 16, 2011 indicates the ministry provided a change of address for the appellant, effective November 1, 2011. On November 22, 2011, the service provider returned the appellant's file to the ministry with a reason of "no show" as the appellant had not attended the required intake assessment within the 21 day referral period. On November 30, 2011, the appellant submitted a letter from a recovery services society, but confirmation was not provided to establish the authenticity of the recovery services, and it does not appear to be a licensed treatment center. The appellant stated that she was unable to attend the required intake assessment as she had an abscess on her thigh which moved to her face, and she provided a statement from the hospital emergency department. The medical report indicates that the appellant attended the hospital on November 7, 2011 due to a "skin rash" and on November 18, 2011 due to a "chin abscess". The appellant did not contact the service provider or the ministry to indicate that she had a medical condition preventing her attendance until after she was found to be non-compliant.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant did not make reasonable efforts to comply with the conditions of her EP, through non-attendance and failure to participate in the service provider's programs, with no medical reason for her absences and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the Employment and Assistance Act (EAA).

Section 9(1) of the EAA provides that, when the ministry requires, a person must enter into an EP and comply with the conditions in the EP in order to be eligible for income assistance. Under Section 9(3) of the EAA, the ministry has the authority to specify conditions in an EP, including a requirement that the person participate in an employment-related program. Pursuant to Section 9(4) of the EAA, if an EP includes a condition requiring a person to participate in a specific employment-related program, that condition is not met if the person fails to demonstrate reasonable efforts to participate in the program or if the person ceases, except for medical reasons, to participate in the program.

The ministry's position is that the appellant entered into an EP dated October 31, 2011, that she was referred to an employment-related program in which she was required to participate, and that she did not comply with the conditions of the EP. The ministry points out that when the appellant signed her EP the ministry reviewed with the appellant that if she did not fully participate in the program she would be found ineligible for income assistance. The ministry argues that the appellant did not attend the required intake assessment appointment on November 2, 2011, despite being reminded by the service provider, and that she did not attend the re-scheduled appointments on November 10, 2011 or November 21, 2011. The ministry argues that although the appellant's medical records from the hospital have been submitted, it does not establish that she did not attend the required appointments due to a medical condition. The ministry points out that the hospital and doctor visits were for days other than the scheduled appointments with the service provider, and the physician does not comment on the appellant's ability to attend appointments or provide an opinion that she was too ill to attend the program. The ministry also argues that the appellant did not contact the service provider or the ministry to indicate that she had a medical condition preventing her attendance and, therefore, it cannot be determined that she demonstrated reasonable efforts to comply with the conditions of her EP.

The appellant acknowledges that she did not attend the appointments scheduled with the service provider on November 2, 2011 and November 10 and 21, 2011, but argues that she was too sick to attend on November 2, 2011 and that she did not know about the appointments on November 10, 2011 and 21, 2011 as she did not receive letters from the service provider advising her of the rescheduled days. The appellant points out that the abscess on her leg prevented her from attending the appointment on November 2, 2011 as she was unable to walk or put her jeans on and that she did not have minutes on her phone to call the service provider or the ministry. The appellant argues that she attended at the hospital on November 7, 2011 and again on November 18, 2011 on her doctor's direction since her condition was serious and contagious. The appellant points out that as soon as her condition improved and she believed it was no longer contagious she went in to the ministry office, and that she advised them of the situation as soon as reasonably possible.

The legislation requires that the appellant demonstrate reasonable efforts to participate in the program, or to provide a medical reason for ceasing to participate in the program, and the Panel finds that the ministry's conclusion that the requirements have not been met in this case was not reasonable.

The panel finds that the appellant ceased to participate in the service provider's program and that the issue is whether she did so for a medical reason. The ministry argues that although the physician's note confirms that the appellant had a facial abscess on November 18, 2011 for which she was sent to the hospital, it does not speak to the appellant's condition on the date of the service provider's appointment, or November 2, 2011. The appellant argues that she had already begun feeling the symptoms of this medical condition on November 1, 2011, that she was unable to walk or leave her house on November 2, 2011 and that this condition was not healed until the end of the month, after she was treated with antibiotics. The panel finds that the appellant's

evidence regarding her medical condition was consistent with the hospital records, indicating that she had attended the emergency department on November 7, 2011, and the letter from the appellant's landlady that she had driven the appellant to the hospital on this day, as well as with the physician's note that the infection had moved to her face, that it was 'severe' and contagious. The panel finds that the symptoms of the appellant's medical condition began on or about November 1, 2011 and that although it was not diagnosed until November 18, 2011, the evidence establishes that it was a contagious condition. The panel finds that the ministry's determination that the appellant's contagious medical condition did not prevent her from attending the service provider's program during this period was not reasonable.

The ministry also concluded that the appellant failed to demonstrate reasonable efforts to participate in her EP. The panel finds that the EP signed by the appellant dated October 31, 2011 requires the appellant to attend the intake assessment with the service provider on November 2, 2011 as well as to keep the ministry updated on any and all changes. The panel finds that it is not disputed that the appellant did not attend the intake assessment appointment with the service provider as scheduled for November 2, 2011. The panel finds that the appellant was aware of this appointment as the service provider had spoken with her the day before and reminder her of the appointment and the appellant had confirmed that she would attend. Regarding the subsequent re-scheduled appointments, the panel finds that the appellant did not receive notice of these appointments. The appellant denies receiving any letters from the service provider and the panel finds that the first letter advising of the November 10, 2011 appointment was sent to the appellant's previous address and the letter for the November 21, 2011 'letter appointment' is not referenced in the service provider notes, either with respect to where or when it was sent, and no copy of this letter was available. The panel finds that it was not disputed that the appellant did not contact the service provider or the ministry with respect to the one missed appointment for which the appellant had notice, on November 2, 2011, until she went into the ministry office on November 25, 2011. The panel finds that the appellant was given antibiotic treatment for her condition on November 18, 2011 and approximately a week later, after the abscesses had subsided and she believed she was no longer contagious, she attended at the ministry's office. The panel finds that the appellant ceased to participate in the program for a medical reason but contacted the ministry as soon as reasonably possible with an update, given her serious and contagious medical condition, the lack of minutes on her telephone, and her current relative isolation due to her recovery process. Therefore, the panel finds that the ministry's determination that the appellant failed to demonstrate reasonable efforts to participate in her EP was not reasonable.

The Panel finds that the ministry decision was not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the ministry's decision. Therefore, the decision is overturned in favour of the appellant.