

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated February 13, 2012 wherein the ministry found the appellant ceased to be eligible for disability assistance in accordance with section 30(4)(a) of the Employment and Assistance for Persons with Disabilities Regulation. The basis for the declaration was that the appellant failed to attend an annual eligibility audit appointment as required under section 30(1)(a) of the Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 30

PART E – Summary of Facts

The appellant did not attend the appeal hearing. After confirming that the appellant had been notified of the hearing, the panel proceeded with the hearing in accordance with section 86(b) of the Employment and Assistance Regulation.

The information before the ministry at the time of the reconsideration decision that is the subject of this appeal included the following:

- Letters from the ministry to the appellant dated October 19, November 1, and November 15, 2011, advising the appellant to attend appointments that had been scheduled with her to conduct an annual review of her file, and directing the appellant to provide specified information. An appointment had originally been scheduled for October 27, 2011, then subsequently rescheduled for November 16 and then December 6, 2011.
- The original decision of the ministry, in the form of a letter dated December 12, 2011 advising the appellant that she was no longer eligible for assistance for failing to attend in person on the date, and at the ministry office, specified by the minister (the Original Decision).
- A Request for Reconsideration form with information from a ministry worker;
- A type-written submission from the appellant dated February 1, 2012.

In the Request for Reconsideration form, the ministry worker wrote that the appellant had failed to attend the October 27 appointment (which had been scheduled in the ministry's letter of October 19), and then telephoned the ministry on November 14 to request that the November 15 appointment be rescheduled to December 6, 2011. The appointment was rescheduled as requested by the appellant, but the appellant failed to attend on December 6. On December 7 the appellant telephoned the ministry and the ministry offered the appellant the opportunity for a telephone appointment or for her to pick any convenient location of her choice to conduct the eligibility review. The ministry worker advised that the appellant swore at her and hung up on the ministry worker. On December 12, 2011, two ineligibility letters with Reconsideration brochures were mailed to the appellant – one to her declared living address in community A, and one to her mailing address in nearby community B. On January 9, 2012 the appellant approached the ministry office in community C and attempted to have her file transferred there. She was advised she would have to follow through with the Reconsideration process with the ministry's Prevention and Loss Management Services. On January 10, 2012 the appellant contacted the ministry and requested the Reconsideration process.

In the appellant's submission of February 1, 2012 she acknowledged that she had not attended her [scheduled annual review] appointments due to illness but says that she provided the ministry with all the information it had requested.

According to the reconsideration decision, the appellant called the ministry on October 26, 2011 to state that the ministry's investigation officer was harassing her and requested that further contact be with either her advocate or her lawyer. On November 15, 2011 the appellant telephoned to say she had a conflicting appointment with her physician the next day and asked for the November 15 meeting to be rescheduled to December 6, 2011. The appellant did not attend on December 6 and did not advise that she would not be able to attend. On December 7 the appellant stated she would be receiving medical treatments for leukemia starting with 2 treatments before Christmas and then 4 treatments per week. When she was advised that the audit meeting was mandatory and she was offered the choice of conducting the meeting over the phone or at a location of her choice, the

appellant's response was such that the investigating officer discontinued the phone call. On December 12, 2011 the Original Decision was sent to the appellant at her addresses in both community A and community B advising of her ineligibility for disability assistance.

In her Notice of Appeal, dated February 16, 2012 the appellant wrote that she had previously explained to the ministry that she had missed her eligibility review appointment because she been very ill in December 2011, having been in hospital 7 times on IV with suspected Norwalk virus. The appellant advised that she has proof of all dates she was in hospital on IV. She was in hospital on IV again on December 21, 2011 when she was advised she was 10 weeks 6 days pregnant. The pregnancy in conjunction with her other medical conditions was causing her to be very sick.

The information provided by the appellant in the Notice of Appeal is directly related to the reconsideration decision, and accordingly the panel has admitted it as written testimony in support of the records and information that were before the ministry at the time of the decision under appeal, in accordance with section 22(4) of the *Employment and Assistance Act*.

At the hearing before this panel, the ministry representative stated that the appellant was advised by letter of the October 27 and November 15 appointments, and that the appellant had received those letters as she called to reschedule. He pointed out that each letter identified the basis for the appointments and spelled out the potential consequence of a declaration of ineligibility for failure to attend. The ministry representative said that the ministry usually only provides 2 opportunities for a recipient to attend an audit appointment, and stated that the supervisor had gone to extraordinary lengths in providing the appellant with 2 additional opportunities to attend, the first being December 6, 2011. Then on December 7 the supervisor even went so far as to offer the appellant an appointment by telephone or at a time and location of the appellant's choice. That call was discontinued by the ministry because of the appellant's behaviour and profanity. The ministry stated to the panel that the appointments were necessary for an audit review because of contradictory evidence with respect to the appellant's eligibility status for disability assistance. With respect to the appellant's claim of December 7, 2011 that she was undergoing treatment for leukemia, the ministry representative advised the panel that the appellant has not provided the name of a specialist or any other verification of a diagnosis of leukemia.

The panel finds that the ministry representative's oral testimony is related to information which the ministry had at the time of reconsideration and therefore admits that testimony as being in support of the information and records that were before the ministry pursuant to section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue for the panel to decide is the reasonableness of the ministry's reconsideration decision that the appellant ceased to be eligible for disability assistance on the basis that the appellant had failed to attend a scheduled eligibility audit in accordance with section 30 of the EAPWDR.

The relevant legislative provision is as follows:

Requirement for eligibility audit

30 (1) For the purposes of auditing eligibility for assistance or ensuring a recipient's continuing compliance with the Act and the regulations, the minister may do either or both of the following:

(a) require the recipient to attend in person on the date, and at the ministry office, specified by the minister;

(b) require the recipient to complete a form prescribed by the minister for use under this section and deliver the form to a ministry office specified by the minister.

(2) A recipient who is required under subsection (1) (b) to complete a form but who is not required to attend in person at a ministry office must deliver that form to the specified ministry office within 20 business days after being notified of the requirement to complete the form.

(3) Delivery of the form under subsection (2) may be made by

(a) leaving it with an employee in the ministry office, or

(b) mailing it to that office.

(4) A family unit ceases to be eligible for assistance if

(a) a recipient in the family unit fails to attend in person at the ministry office when required to do so by the minister under subsection (1) (a),
or

(b) a recipient in the family unit fails to complete and deliver the form when required to do so by the minister under subsection (1) (b).

The appellant's position, as expressed in her February 1, 2012 submission and her Notice of Appeal is that she was in and out of hospital in December and so couldn't attend the eligibility audit. She says she has proof of the all the dates she was in hospital.

The ministry's position is that despite the ministry going to extraordinary lengths to accommodate the appellant's ability to attend the eligibility audit, the appellant failed to attend and provided no verification as to why she could not attend.

The October 1, 2011 and November 1, 2011 ministry letters were before the panel. Each letter specified the date and time of the appointment, and the location of the ministry office where the appointment was scheduled to occur. Each also contained a copy of section 30(1) of the EAPWDR

identifying the ministry's authority for scheduling the meeting, and showing that ineligibility was a consequence of failure to attend.

The evidence is that the ministry properly exercised its power to require the appellant to attend an eligibility audit. The ministry made several attempts to schedule the audit appointment at a time, and eventually even a location, suitable for the appellant. The appellant was advised of the purpose of the appointment and of the potential consequences for non-attendance. The appellant failed to attend each scheduled appointment.

In her Notice of Appeal the appellant acknowledges that she failed to attend the scheduled meetings, but she says she was sick in the hospital. She explains that her illness was due to suspected Norwalk virus. She wrote that she has proof of all dates that she was in the hospital. The panel notes, however, that the appellant has not provided sufficient other evidence, documentary or otherwise, to support her claim of being too ill to attend the scheduled appointments.

Based upon a consideration of all the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision that the appellant ceased to be eligible for disability assistance for failure to attend a scheduled eligibility audit was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant.

Accordingly, the panel confirms the ministry's decision.