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PART C – Decision under Appeal

The Decision under appeal is the Ministry's Reconsideration Decision, dated April 3, 2012, which denied the Appellant Income Assistance (IA), as the Ministry determined that the Appellant was non-compliant with the conditions of his employment plan, (EP), contrary to Sec. 9(1)(b) of the Employment Assistance Act.

PART D – Relevant Legislation

EAA	Employment and Assistance Act – Section 9

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PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration was as follows:

1-Two page Employment Plan signed by the appellant on Jan. 24, 2012. Among other things, the appellant acknowledges on this document he will participate fully and to the best of his abilities. Further, to be eligible for Income Assistance (IA) he is required to fully participate in his program and advise the program if he is unable to attend. He will meet with the program contractor when provided an appointment to be assessed. He understands that participation in the program is mandatory to be eligible for IA. A handwritten notation on the form, with the Appellant's initials, says he will attend the program on Jan 26 at 10:45.

2-The Employment and Assistance Request for Reconsideration signed by the appellant on March 6, 2012, which included the reasons of the ministry and reason of the appellant for reconsideration. The decision noted that the appellant did not attend his intake assessment on Jan 26, as the appellant had cancelled and re-booked. This 2nd appointment was also cancelled and a 3rd intake appointment set for Feb. 1. The appellant did not attend and the decision notes the program had no record of the appellant calling to inform he could not be there for the appointment. On Feb 10 a ministry worker left a message for the appellant to contact the ministry to discuss non-compliance. The appellant attended the ministry office on Feb 23 and did not advise of any mitigating circumstances for his non-compliance. On Feb 24 the appellant contacted the ministry to advise he had cancelled the first two appointments, and it was fine with the program. He advised his contact number was different and this was why he did not get the message for re-scheduling. The ministry advised the appellant it was his responsibility to inform the program and the ministry of this change. The appellant wrote on the reconsideration request of March 6 that he was not aware of the severity of the actions and also unaware of some medical issues that were not addressed when he applied for IA. He further advised his advocate would explain in great detail the issues the ministry was unaware of.

3-The Reconsideration Decision, dated April 3, 2012, noted that the appellant, on March 20, had been granted an extension to allow time to file further information regarding his medical condition. No further information had been provided by April 3rd. The reconsideration decision noted that the appellant was aware of the consequences of non-compliance and that the ministry's position was it was the appellant's responsibility to advise his phone number had changed. The ministry was not satisfied the appellant had demonstrated reasonable efforts to comply with the EP. As he had not demonstrated reasonable efforts to comply and had not confirmed any medical reasons preventing him from participating in the program he was not eligible for IA.

The appellant in his Notice of Appeal, dated April 11, 2012, advised he was relying on someone else's phone and was not able to contact the program. He contacted the ministry before April 2nd and there was a miscommunication about what he needed to do. He further advised he was dealing with an active drug addiction that made it difficult to make appointments. He did not advise the ministry of the addiction as he was embarrassed.

At the hearing the appellant provided evidence that he had phoned the ministry on April 2nd, before the reconsideration decision, and told the ministry he needed more time to get the medical information. He was told he had until April 18th to provide the medical information from his doctor. He thought that he had a further three weeks until this material needed to be provided. Also he had no phone at this time, so the ministry could not contact him. He did not tell the ministry of his drug addiction as he was embarrassed.

At the time of the appointments for his work program, (WP), he was using a friend for phone messages and was never told of any messages that may have been left for him. He advised that he missed the Feb 1st meeting as he had recently started the methadone program. He was aware of the Feb 1st meeting, but on Feb 1st he was sick in bed suffering from drug withdrawal and could not attend. He did not have a phone and could not phone the WP. The appellant stated he had been misdiagnosed 15 years ago from a medical condition which ultimately

resulted in him becoming addicted to drugs.

The appellant advised he had missed the first two appointments as a brochure he read said if you were more than 5 minutes late there was no point in attending. He was going to be a few minutes late for the first two meetings so he did not go and he phoned to reschedule those meetings. He thought the WP would call him to reschedule but he was never given any message they had called. On Feb 23 he went to the Ministry office to find out why his cheque had not been issued.

The appellant had a friend with him at the hearing location and initially indicated he may call that person to give evidence. Before the hearing ended the appellant was asked if he wished to call any evidence from this person and he specifically declined.

The appellant advised he did not get a doctor's note or letter and provide to the ministry after the reconsideration decision, as he did not think he could do so and someone at the ministry told him he had no chance to win. He was initially involved with an advocate on the appeal, she wrote out the appeal grounds for him on the Notice of Appeal, but he lost her phone number and so could not follow up with her. He did not bring any medical documentation to the hearing as he did not realize he could, although he remembered reading something about that. This material was easily available and could be obtained within a day or two.

The ministry advised, and the appellant confirmed, that he was asked at his initial intake for IA, whether he had any problems which would preclude him from a job program and he advised the ministry he had no such problems. If such information had been provided he would have been streamed differently and not into a WP. The ministry confirmed that the cheque issuing date for March of 2012 was Feb 22. The Ministry confirmed that the facts contained in the original decision would have been taken from the ministry file from emails or from phone calls with the service provider. There may not have been any notes from the WP or the ministry workers, as are usually contained in the appeal record, unless the reconsideration officer requested them. Also, the WP program notes may not have been available, as the WP was no longer being used by the ministry.

After hearing from all the parties, the panel asked if the parties had any further applications, request or further evidence to call. This was also declined.

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PART F – Reasons for Panel Decision

The issue to be determined is whether the Ministry reasonably denied the Appellant IA, as the Ministry determined that the Appellant was non-compliant with the conditions of his EP, contrary to Sec. 9(1)(b) of the Employment Assistance Act.

The Legislation states the following;

Employment and Assistance Act

Employment plan

9 (1) For a family unit to be eligible for income assistance or hardship assistance, each applicant or recipient in the family unit, when required to do so by the minister, must

(a) enter into an employment plan, and

(b) comply with the conditions in the employment plan.

(2) A dependent youth, when required to do so by the minister, must

(a) enter into an employment plan, and

(b) comply with the conditions in the employment plan.

(3) The minister may specify the conditions in an employment plan including, without limitation, a condition requiring the applicant, recipient or dependent youth to participate in a specific employment-related program that, in the minister's opinion, will assist the applicant, recipient or dependent youth to

(a) find employment, or

(b) become more employable.

(4) If an employment plan includes a condition requiring an applicant, a recipient or a dependent youth to participate in a specific employment-related program, that condition is not met if the person

(a) fails to demonstrate reasonable efforts to participate in the program, or

(b) ceases, except for medical reasons, to participate in the program.

(5) If a dependent youth fails to comply with subsection (2), the minister may reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

(6) The minister may amend, suspend or cancel an employment plan.

(7) A decision under this section

(a) requiring a person to enter into an employment plan,

(b) amending, suspending or cancelling an employment plan, or

(c) specifying the conditions of an employment plan

is final and conclusive and is not open to review by a court on any ground or to appeal under section 17 (3) [reconsideration and appeal rights].

Under Sec 9(1), to be eligible for IA, the recipient, when required to do so by the minister, must enter into an employment plan, and comply with the conditions in the employment plan. Under ss. 4, if an employment plan includes a condition requiring the recipient 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 ceases, except for medical reasons, to participate in the program.

The issue here is whether the Appellant was properly denied IA as being non-compliant with the conditions of his EP, contrary to Sec. 9(1)(b) and 9(4) of the Employment Assistance Act.

The appellant argues that his medical condition resulted in his not being able to participate in the program. Also, as he had problems with getting phone messages he could not properly communicate with the WP and the ministry, resulting in problems participating in the WP.

The ministry argues that the appellant was aware of the conditions of the EP and his responsibilities. Further, although the appellant claims he has medical issues, and claims he can easily provide this medical information, he has still not done so to this day. The ministry questions the legitimacy of this claim. Based on all the evidence the ministry maintains the decision is reasonable.

The panel finds that it is not disputed the appellant missed his first two intake appointments at the WP and that he rescheduled those appointments himself. It is also not disputed the appellant did not attend the 3rd scheduled meeting with the WP and that he never phoned to reschedule that meeting, as he did with the first two meetings. The EP that was signed by the appellant made it clear that he must comply with the plan to be eligible for IA. The plan also stated, and the appellant signed acknowledging, that he "[w]ill advise the contractor any time he is unable to attend." He did not do so on his third missed appointment.

The appellant advises that he did not get any message from the WP about a new appointment. It is noted that he was to advise the WP of any absence and he had previously rescheduled two other appointments. As such, it is not surprising they did not contact him. Further, the appellant had changed his contact number so that he could not be reached.

It is also noteworthy that the third appointment was scheduled for Feb 1st. The appellant did not make any attempt to even contact the WP up to Feb 23rd. It was only when the appellant did not get his IA cheque that he attended to the ministry office. The appellant did not give evidence to say he was too sick to attend the WP up to Feb 23rd, only that he was too sick on Feb 1st. No effort was made in the intervening three weeks to comply. In the circumstances, it was not unreasonable for the ministry to conclude that the appellant had the obligation to contact the WP, as he had agreed to do in his EP, and as such had not demonstrated reasonable efforts to comply with his EP.

The appellant argues that he had a medical condition, drug addiction/withdrawal, which did not allow him to participate on the Feb 1st meeting. The first time that the appellant advised medical issues may be in play was on March 6 when the appellant filed his reconsideration request. He did not advise the ministry of this on Feb 23 when he attended to inquire about his cheque, nor the next day when he advised the ministry he had phone issues. On March 20 the appellant was specifically granted an extension to file medical information for the reconsideration. This was not done by the time set for the decision. In fact, notwithstanding the appellant's evidence that this information could be provided within 1 or 2 days, it was not provided even by the time of this appeal.

The panel finds that the appellant did not provide such evidence from his doctor confirming that he was not able to participate in the WP from Feb 1-23, due to drug addiction/withdrawal. Even in his own evidence, the appellant did not say he could not participate in the WP later in the month of Feb, he only stated he was sick on Feb 1st. As such, there was no evidence that any medical condition continued up until Feb 23 when he attended the ministry office. As pointed out by the ministry, the appellant has claimed to have this medical issue since the reconsideration request, and has advised he can easily provide medical confirmation of this problem, yet he still has not provided it. Although the appellant stated he did not think he could provide this information now, and someone at the ministry told him he had no chance to win, the panel finds the appellant, who had the assistance of an advocate preparing the Notice of Appeal, could have clarified this issue with the advocate. Further, the appellant read prior to the appeal that he could supply further evidence at the appeal. The panel

finds that the ministry's determination that the appellant did not have a confirmed medical condition that prevented him from participating in the plan, was reasonable in the circumstances.

Therefore the panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and is a reasonable application of the legislation based on the circumstances of the Appellant and confirms the Decision.