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PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated March 27, 2012 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

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PART E – Summary of Facts

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

1) Employment Plan (EP) signed by the appellant dated July 5, 2011. The terms of the EP include provisions requiring the appellant to: make an appointment with the contractor for an intake assessment visit, attend the intake assessment visit, complete all tasks assigned by the service provider, work with the contractor to address issues that may be impacting the ability to secure and sustain employment, declare all income and report any changes to the ministry, and attend all review appointments as required; and,
2) Note from a medical clinic dated February 1, 2012 for the appellant's sister which states in part that "burn at left hand 3/7 ago, PE/ big blisters at left hand, A/2nd degree burn with big blister, P/I& D done and debridement, dressing with Trelfa and Flamazine cream applied; and,
3) Request for Reconsideration- Reasons.

At the hearing, the appellant's advocate provided an additional document, namely a letter dated September 15, 2011 from a community education program stating in part that the appellant is registered in three courses including English from September 14, 2011 to November 10, 2011. The ministry did not object to the admissibility of this document. The panel reviewed the letter and admitted it as relating to the appellant's involvement in English classes 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.

In her Notice of Appeal, the appellant states that the ministry has not given her a second chance to redeem herself and her settlement challenges as a newcomer to the country were not taken into consideration. In her Request for Reconsideration, the appellant states that she should have contacted the service provider to discuss her sister's condition, suffering from second degree burn, and that she needed her assistance throughout the recovery period. The appellant states that she cannot communicate well in English and sometimes it is hard to pick up the phone and contact the service provider without an interpreter, but she takes full responsibility to ask for help. The appellant requests that she be given another chance with the service provider to see if she can follow through knowing what will happen if she fails this time. The appellant states that she is dealing with many settlement challenges that affect her thinking given what she has seen in her country of origin before coming to Canada. The appellant states that sometimes she has nightmares that continue to affect her daily activities, and she has not discussed this issue with anyone or any doctor. The appellant states that she made a mistake not informing the service provider about her situation and that of her sister.

At the hearing, the appellant had the assistance of a language interpreter and stated that she was not given a second chance by the ministry even though she was a newcomer to the country and was traumatized by events in her country of origin and experiencing culture shock. The appellant stated that she is not accustomed to the procedures and processes and the language barrier was an issue for her so she could not make contact in a timely manner. In response to a question, the appellant admitted that an interpreter was present when she signed the EP and that she understood the requirement to participate in the program. The appellant stated that she is the main person at her residence taking care of the rest of her family, including her aunt who is disabled and her mother who has been sick and her sister who had an accident and this occurred all at the same time. In response to a question, the appellant stated that her mother had an operation on July 14, 2011 and the surgery requires 6 months of healing and physiotherapy. The appellant stated she could not recall when she told the service provider about her mother's situation. The appellant stated that since she has been in a new environment and under the pressure of caring for her family with no help, her doctor has prescribed anti-depressants because of her symptoms. In response to a question, the appellant stated that she was given a prescription by the doctor about a month before she filled it on March 22, 2012. The appellant stated that she did not mention her symptoms to the ministry because she thought she could finish the program and that it would not be an issue.

The appellant stated that since signing the contract with the ministry she was in contact with the service provider until the beginning of November 2011 when she was told that her contract was terminated. The appellant stated that both she and her sister were taking care of their mother and aunt, that they would alternate, and that the appellant's sister has better English language facility so she would go to meet with the service provider to see what they wanted. The appellant stated that her sister also had an EP with the same service provider and that she completed the program successfully. The appellant stated that a copy of the letter date September 15, 2011 from the community education program confirming her registration in an English class was provided by her to the service provider some time before November 2011. In response to a question, the appellant stated that she could not recall how many classes she attended because she was still caring for her mother and aunt, but that she attended "mainly on a regular basis." The appellant acknowledged that she missed some deadlines but she wishes to have a second chance since she wants to work and study to learn but she believes she should be given some additional time. The appellant stated that her sister had a burn accident and was taken to the emergency department at the hospital and then she went to see her doctor 9-10 days later, at the time of the note from the medical clinic dated February 1, 2012. In response to a question, the appellant stated that the doctor would not give her a note stating that she needed to care for her sister. At the end of the hearing, the appellant remembered that she had spoken to a representative of the service provider and explained her situation and that he had assured her she could stay home and take care of her family and that it would not be a problem.

The ministry's evidence included that the appellant currently receives income assistance as a single employable person. The ministry clarified that the appellant did not identify any dependants when she applied for income assistance. The appellant signed an Employment Plan (EP) on July 5, 2011 agreeing to the conditions as set out, and she was referred by the ministry into an employment-related program with a service provider. The ministry clarified that the particular service provider to which the appellant was referred has the resources to accommodate immigrants to Canada, that they have interpreters available so that language barriers are not an issue and they are sensitive to cultural issues for newcomers. The terms of the EP included provisions requiring the appellant to: make an appointment with the contractor for an intake assessment visit, attend the intake assessment visit, complete all tasks assigned by the service provider, work with the contractor to address issues that may be impacting the ability to secure and sustain employment, declare all income and report any changes to the ministry, and attend all review appointments as required. The ministry clarified that at the time of signing the EP, the appellant would have been asked if there are any barriers preventing her from attending the program and the appellant did not identify a medical condition or other concerns.

An intake assessment was scheduled for July 14, 2011 at 10:00 a.m. and the appellant did not attend. The service provider re-scheduled the intake appointment for August 3, 2011 at 1:00 p.m. and the interpreter had confirmed with the appellant previously about the date and time of the appointment, but the appellant did not attend the appointment. The last contact the service provider had with the appellant was on November 1, 2011 when they asked the appellant to submit confirmation of her attendance at ESL classes and a copy of her resume but the appellant did not submit the requested documents. The ministry stated that the service provider had allowed the appellant many opportunities to comply with the program over the period of 4 months from July 5, 2011 until the beginning of November 2011. On January 19, 2012, the appellant's file with the service provider was closed for non-participation with the program. On February 3, 2012, the appellant stated to the ministry that she had been advised by the service provider to stay home for family matters and that she had been advised by a doctor to stay home to care for her sister and the ministry asked that the appellant provide confirmation by way of letters from the service provider and the doctor. On February 15, 2012, the appellant advised the ministry that her sister's doctor would not write a note for her and that the service provider had closed her file. The appellant stated that if she had understood that she did not have permission from the service provider to miss days, she would have attended.

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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 program, with no medical reason for her absence 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 July 5, 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 as she did not demonstrate reasonable efforts to participate in the program. The ministry points out that when the appellant signed her EP, she had the assistance of an interpreter and agreed to the requirements of attendance and compliance with the program as well as the consequences for non-compliance. The ministry points out that the appellant did not attend the required intake assessment appointment on July 14, 2011 and she did not attend the re-scheduled appointment on August 3, 2011 despite having the time and date confirmed with her through an interpreter. The ministry argues that the appellant did not identify either a medical condition or a need to be a caregiver to her family as barriers to her participation in the program, and the appellant did not provide confirmation that the service provider had agreed she could stay home, as had been requested by the ministry. The ministry argues that the appellant has also not provided a letter from her doctor identifying a medical issue that would prevent her from participating. The ministry points out that the appellant also did not participate in the service provider's program by attending ESL classes or by providing a resume, as requested, and, consequently, the appellant's file was closed on January 19, 2012. The ministry argues that the appellant was given opportunities to comply with the service provider's program over the period of 4 months and she did not comply.

The appellant argues that the ministry has not given her a second chance to redeem herself and her settlement challenges as a newcomer to the country were not taken into consideration. The appellant argues that she cannot communicate well in English and sometimes it is hard to pick up the phone and contact the service provider without an interpreter, but she takes full responsibility to ask for help. The appellant argues that she was required to act as a caregiver for her family, including a disabled aunt, her mother who had gone through surgery and her sister who had a burn accident and that the service provider had agreed that she could stay home to care for her family. The appellant argues that she also has medical issues that impact her ability to attend the program, that she is dealing with many settlement challenges that affect her thinking given what she has seen in her country of origin before coming to Canada, that sometimes she has nightmares, and her doctor has prescribed anti-depressants. The appellant also acknowledges that she made a mistake not informing the service provider about her situation and that of her sister and requests that she be given another chance.

The panel finds that the EP signed by the appellant dated July 5, 2011 requires the appellant to fully participate in the program as directed by the service provider and the appellant admits that she understood these requirements when she signed the EP. The panel finds that it is not disputed that the appellant did not attend the intake assessment appointment on July 14, 2011 or as re-scheduled on August 3, 2011, nor is it disputed that the appellant was aware of these appointments. The appellant argues that she was required to stay home to care for her family and she maintains both that the service provider had agreed that she could stay home to care for her family and that she made a mistake in not informing the service provider about her

situation. The panel finds that the appellant did not provide confirmation from the service provider that they had agreed that she could stay home, which confirmation had been requested by the ministry, and the appellant's position is inconsistent with the fact that the service provider proceeded to take the action of closing the appellant's file for non-compliance with its program. The panel also finds that the appellant admits that her sister was also available to care for their disabled aunt and their mother, that they alternated in the caregiver function, and that her sister's injury did not occur until the end of January 2012, after the appellant's file with the service provider had been closed.

The appellant provided a copy of a letter dated September 15, 2011 from a community education program confirming her registration in an English class from September 14 through November 10, 2011 which she states she had provided to the service provider prior to November 2011, but the appellant admits that she did not attend all of the classes and the panel finds that no confirmation of the appellant's attendance at these classes was provided, as requested by the service provider. Although the appellant argues that she cannot communicate well in English which makes it hard to contact the service provider, the panel finds that the service provider has made an interpreter available for the scheduled meetings with the appellant and that this particular service provider had been selected because of its ability to accommodate the language and cultural issues immigrants to Canada, such as the appellant, may face. The appellant also argues that she has medical issues that impact her ability to attend the program, and the panel finds that the appellant did not provide confirmation from her doctor that she has a medical condition that has prevented her from attending the program, and that her prescription for anti-depressants was not filled until March 22, 2012, two months after the appellant's file with the service provider had been closed. 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 reasonably concluded, pursuant to Section 9 of the EAA, that the requirements have not been met in this case.

The panel finds that the ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.