

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated May 23, 2012 which found that the appellant is ineligible for income assistance pursuant to Section 25 of the Employment and Assistance Regulation (EAR) for not complying with the terms of the Assignment of Maintenance Rights (AOMR) entered into under Section 24 of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Sections 24 and 25

PART E – Summary of Facts

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

- 1) Assignment of Maintenance Rights (AOMR) signed by the appellant dated January 5, 2012. The terms of the AOMR include provisions requiring the appellant to: cooperate with the ministry, the Director of Maintenance Enforcement and the Provincial Director, Family Justice Services, as asked, to obtain, vary, enforce or recalculate the appellant's maintenance agreement or order, including attending all appointments, meetings and court proceedings as well as completing and returning required documents relating to the assigned rights when asked to do so by the Minister, Director of Maintenance Enforcement or Provincial Director, Family Justice Services Division;
- 2) Letter dated February 3, 2012 from the ministry to the appellant stating in part that the appellant must attend appointments and submit documentation to the ministry when she is requested to do so in order to continue to receive assistance, that this requirement is set out in the terms of the AOMR which she signed. The appellant did not complete her appointment on February 3, 2011 (sic) at 8:45 a.m. and an appointment has been rebooked for March 8, 2012 at 8:45 a.m.; these appointments are mandatory and failure to attend will result in ineligibility for income assistance;
- 3) Letter dated March 8, 2012 from the ministry to the appellant stating in part that she did not complete her appointment on March 8, 2012 and her next assistance cheque may be delayed; and,
- 4) Request for Reconsideration- Reasons.

In her Notice of Appeal, the appellant states that she is a young mother living in a remote area with no other income and that she believes as a Canadian citizen she has the right to government assistance while she is below the poverty line with a 5-month-old baby. In her Request for Reconsideration, that appellant adds that her baby keeps her up at night and the phone she uses is across the property she lives on. The appellant states that she just turned 19 years of age and she is learning how to be responsible and to live on her own. The appellant states that she is in desperate need of diapers and formula as she does not get the child tax yet.

At the hearing, the appellant stated that she knows she missed the appointments but she has to go to her mother's house to use the phone. The appellant explained that they live on the same property which is very large, approximately 60 acres, and she has to walk over to her mother's house which takes 8 to 10 minutes. The appellant stated that she does not have enough money to afford her own telephone so she uses the one at her mother's. The appellant stated that her baby has colic and that she is trying to take care of herself and her baby and she did not receive any cheques for 3 months. The appellant stated that she has gone into debt borrowing money from people to be able to get what she needs. The appellant stated that she is in desperate need of diapers and formula for her baby and it took so long for the ministry to make a decision. The appellant stated that she is trying to look after her baby by herself and is kept up during the night and slept through at least one of the early morning appointments with the ministry. For another appointment, the appellant stated that she missed it by about 15 minutes and did not realize that she cannot call in later for the appointment. The appellant stated that she also has to walk to the post office to get letters, or her mother will drive her, but it can take an extra day or two to receive letters.

The appellant's representative, who is the appellant's mother, added that the appellant has learned some lessons from decisions she has made, but the ministry took 13 days to make its decision and that the appellant went without support for a long time which seems harsh. The appellant's mother explained that they reside approximately 100 km. from the nearest town, which is where the appellant has to go to get diapers and formula for her baby. The appellant's mother stated that she, as the parent, should be teaching her daughter lessons, not the ministry. The appellant's mother stated that the appellant tried to get help from the ministry after she submitted her Request for Reconsideration but she was repeatedly told that there was nothing that could be done for her. The appellant's mother stated that she called their MLA because they were in a bind since she cannot afford to help the appellant, given her own personal circumstances. The panel accepted the mother's oral testimony as further information regarding the appellant's circumstances 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.

The ministry's evidence is that the appellant has been in receipt of income assistance as a single parent with one dependent child since June 2011. On January 5, 2012, the appellant signed a AOMR agreeing to comply with the terms of the agreement. The terms of the AOMR included the requirement to cooperate with the ministry to obtain, vary, enforce or recalculate a maintenance agreement or order including attending all meetings, court proceedings when requested. A phone meeting with the ministry was booked for the appellant for February 3, 2012. The appellant missed the appointment on February 3, 2012. On February 3, 2012, the ministry sent the appellant a letter reminding the appellant of her requirement to comply with the AOMR, that she must attend all meeting and appointments to be eligible for income assistance, and advising that a meeting had been scheduled on March 8, 2012. The appellant did not attend the meeting or make contact with the ministry to advise that she was not able to attend. The ministry sent another letter to the appellant on March 8, 2012 confirming that she had missed the appointment. On April 3, 2012, the ministry advised the appellant in a telephone discussion that an appointment had been scheduled for April 23, 2012 at 8:45 a.m. The appellant missed the appointment on April 23, 2012. The appellant called the ministry later that day, at approximately 12:00 p.m. and stated that she missed the appointment because her baby was colicky. The ministry added at the hearing that there is an attempt to be flexible with times scheduled for these appointments, but it also depends on how many other appointments are having to be scheduled with other parents.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant is not eligible for income assistance pursuant to Section 25 of the Employment and Assistance Regulation (EAR) for not complying with the terms of the Assignment of Maintenance Rights (AOMR), as required, pursuant to Section 24 of the EAR.

Section 24 of the EAR provides:

Terms to be included in the assignment

24 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;

...

Section 25 of the EAR provides:

Failure to comply with terms of assignment

- 25** (1) If an assignor who is receiving income assistance or hardship assistance fails to comply with the terms of an assignment as prescribed in section 24 (c) [*terms to be included in the assignment*], the assignor's family unit may be declared ineligible for income 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.

The ministry's position is that the appellant entered into a AOMR dated January 5, 2012, that the terms of the assignment included the requirement to cooperate with the ministry to obtain, vary, enforce, or recalculate a maintenance agreement or order, including attending all appointments, meetings and court proceedings. The ministry points out that the appellant did not attend the telephone meetings scheduled for February 3, 2012, March 8, 2012, or April 23, 2012 as she was requested to do. The ministry also points out that the appointments were by telephone because it recognizes the appellant lives in a remote area. The ministry argues that the appellant did not advise the ministry with respect to any of the appointments that she was unable to attend. The ministry argues that the telephone being located across the property from where the appellant resides does not negate the appellant's requirement to comply with the conditions of her AOMR or to at least advise the ministry of her situation in a timely manner. The ministry argues that there is insufficient information to support that the appellant missed all three appointments and did not contact the ministry to advise that she was unable to attend for reasons beyond her control.

The appellant acknowledges that she missed the appointments as scheduled but that, at least on one occasion, she only missed the appointment by 15 minutes and that she did not realize that she could not call in later for the appointment. The appellant adds that the phone she uses is across the property she lives on, that it takes her about 10 minutes to walk to the telephone, and that she cannot afford her own telephone. The appellant argues that her baby is colicky and keeps her up at night and that, at least on one occasion, she slept through the early morning appointment. The appellant argues that she just turned 19 years of age and

she is learning how to be responsible, that she is alone to look after her baby, and that she is in desperate need of diapers and formula for her baby. The appellant argues that she has no other income and that she believes as a Canadian citizen she has the right to government assistance while she is below the poverty line with a 5-month-old baby.

The panel finds that the appellant signed an AOMR which included a term that requires the appellant to cooperate with the ministry to obtain, vary, enforce or recalculate the appellant's maintenance agreement or order, including attending all appointments, meetings and court proceedings when requested to do so. The panel finds that the ministry reasonably determined that the appellant failed to comply with this term of the AOMR, pursuant to Section 25(1) of the EAR, as the appellant admits that she did not attend the appointments with the ministry as scheduled on February 3, 2012, March 8, 2012, and April 23, 2012. Under Section 25(2), the section will not apply if the failure of the assignor (the appellant) to comply with the terms of the AOMR is beyond the appellant's control. The appellant argues that she is a young mother, that her baby is colicky and keeps her up at night and that she either slept through the early morning appointment, or missed it by about 15 minutes, and she did not realize that she could not call in later for the appointment. The appellant argues that she must walk 10 minutes across her property to use her mother's telephone because she cannot afford her own telephone. The panel finds that although the appellant faces challenges as a young mother, the issues of sleeping in and either missing or being late for appointments are within the appellant's ability and power to control, and that walking 10 minutes to access a telephone is not a barrier to the appellant participating in telephone appointments with the ministry.

The panel finds that the term of the AOMR requires the appellant to "cooperate" with the ministry which, according to the ordinary meaning, is to work together towards a common end or purpose. The panel finds that the letter from the ministry to the appellant dated February 3, 2012 sets out the date and time of the next appointment on March 8, 2012 and also states that if the appellant is unable to attend the appointment on the scheduled day or time to contact the ministry, giving her several weeks to do so. The panel finds that the appellant did not contact the ministry to explore the possibility of a more convenient time later in the day for the appointments, in a spirit of cooperation, although this was well within her control. The legislation requires the appellant to comply with the terms of the AOMR which she entered into unless she fails to comply with the terms as a result of circumstance beyond her control, and the panel finds that the ministry reasonably concluded, pursuant to Section 25 of the EAR, that the appellant failed to comply with the terms of her AOMR, that this failure was not beyond the appellant's control and that, therefore, the appellant is not eligible for income assistance during the period of non-compliance.

The panel finds that the ministry decision was reasonably supported by the evidence and the panel therefore confirms the decision.