

**PART C – Decision under Appeal**

The decision under appeal is the April 25, 2012 reconsideration decision of the Ministry of Social Development (the ministry) in which the ministry found the appellant ineligible for income assistance for up to 36 months due to her being in receipt of income assistance for 24 months within the previous 60 months, as provided in section 27(1) of the Employment and Assistance Regulation.

**PART D – Relevant Legislation**

*Employment and Assistance Act* (EAA), section 9  
*Employment and Assistance Regulation* (EAR), sections 27 and 29

## PART E – Summary of Facts

The appellant's advocate attended the appeal hearing on behalf of the appellant. Notification of the hearing had been delivered to the address specified by the appellant – the advocate's address. The ministry had an observer attend along with the ministry representative. Having determined that the appellant had been notified of the hearing, and there being no objection raised to the attendance of the ministry's observer, the panel heard the appeal in accordance with ss. 86(a) and (b) of the EAR.

Until recently being declared ineligible, the appellant was a recipient of income assistance as a single employable person.

The information before the ministry at reconsideration included the following:

- The EP signed by the appellant on August 25, 2011;
- Two earlier EP's signed by the appellant on February 7, 2011 and May 12, 2011 respectively.
- A two-page printout from the ministry's computer system titled Time Limits Summary and dated November 25, 2011. The Time Limits Summary showed that the appellant had been in receipt of income assistance from July 2007 to November 2011. For 14 of the 18 months in the period July 2007 to December 2008 inclusive the appellant was exempted from time limits because of a "temporary medical condition". For 6 of the 7 months in the period January 2009 to July 2009 inclusive the appellant was exempted for a "mental health condition". For the period July 2011 to November 2011 the appellant was exempted from time limits because, as the ministry representative testified at the appeal hearing, there was no non-compliance with EPs. The month of January 2009 and the months August 2009 through June 2011 inclusive are the 24 months the ministry relies upon to impose the period of ineligibility on the appellant.
- A typewritten submission prepared by the appellant and dated November 24, 2011.
- An undated typewritten submission prepared by the appellant's advocate. At the appeal hearing the appellant's advocate advised the panel that the submission had been prepared for the reconsideration decision that is the subject of this appeal (the Advocate's Reconsideration Submission).
- A Medical Report in support of an application by the appellant for designation as a Person with Persistent Multiple Barriers to employment, signed by a physician on August 24, 2010 (the August 2010 PPMB Report). The physician described the appellant's primary medical condition as chronic major affective disorder/depression, with a secondary medical condition of chronic borderline personality disorder. The appellant is taking medication for her conditions and taking counselling for anger management. In the section of the form titled "Restrictions" the physician commented "Poor life skills and homelessness. Depressed mood and anxiety make employment difficult."
- A PPMB Report signed by a physician on November 15, 2011 (the November 2011 PPMB Report). The physician described the appellant's primary medical condition as "Axis I Anxiety NOS [Not Otherwise Specified] and chronic low mood". A secondary medical condition was described as "Axis II, Borderline personality features, chronic inability to cope with life

stressors". The conditions have existed for more than 8 years. The physician indicated the expected duration of the medical conditions as 2 years or more, and commented that the appellant was "stable presently" and the conditions are not episodic in nature. In the section of the form titled "Restrictions" the physician commented "Needs mechanisms to ensure daily stress reduction/stress avoidance including sustained stable establishment of housing. Previous employment has not been manageable – would need/benefit from retraining to enable more stable/gainful employment."

- A chronological record of the appellant's attendance with the ministry's Contractor, date stamped by the ministry on December 13, 2011 (the Attendance Record).
- Letters from the Contractor to the appellant dated September 9, September 19, and October 26, 2011 referencing the appellant's failure to attend scheduled appointments. The letters also advised the appellant that failure to schedule and attend future appointments may result in the appellant's file being returned to the ministry with potential financial consequences for the appellant.
- A letter from the ministry to the appellant dated October 27, 2010 advising the appellant that her application for designation as a person with disabilities (PWD) had been denied.
- A December 14, 2011 decision of the ministry declaring the appellant ineligible for income assistance due to non-compliance with the EP.
- A January 11, 2012 decision of the Employment and Assistance Appeal Tribunal (the Tribunal) confirming the ministry's decision of December 14, 2011.
- A letter from the ministry to the appellant dated February 7, 2012 advising the appellant of the ministry's decision that she had been declared ineligible for income assistance for up to 36 months due to non-compliance with her EP while having received income assistance for more than 24 of the previous 60 months.
- A Request for Reconsideration of the February 7, 2012 decision signed by the appellant April 10, 2012. Listed as an attachment to the Request for Reconsideration is a Medical Report – Persons with Persistent Multiple Barriers, submitted to Ministry May 14, 2012. There is no indication as to whether the attachment was the August 2010 PPMB report, the November 2011 PPMB report, or some other PPMB report. This panel has no record of another PPMB report.

The EP is a two page document. On the first page, in a section titled "A Note About Your Employment Plan", is the statement that "It is important that you follow through with the conditions of the EP. If you are unable to follow through please advise the ministry. If you fail to comply with your EP you will be ineligible for assistance."

In the section of the EP headed "Conditions of the Plan" is the statement "I will participate fully and to the best of my ability in the activities required by the ministry or contractor as set out in sections (a) to (f) below."

In section (d) of the list of "Required Activities", the EP requires the appellant to:

- Attend regularly as specified by the Contractor;
- Participate fully and to the best of her ability in the program;
- Notify the Contractor immediately if, for any reason, she is unable to attend;
- Attend review appointments as required with the ministry caseworker;
- Attend an intake appointment with the Contractor on August 31, 2011.

Section (d) contains another acknowledgement that "If I do not attend that I will be deemed ineligible for income assistance and have the right to appeal that decision."

The following provision also appears on page 1; "In addition, if you have received more than 24 months of Income Assistance within a 60 month period, failure to comply with the conditions of your Employment Plan will result with time limit sanctions being imposed on future eligibility." (hereinafter referred to as the "24 Months Addendum")

The appellant initialed the first page of the EP in four places, including beside section (d) and beside the 24 Months Addendum.

The second page of the EP also contains the following acknowledgement above the appellant's signature and date of August 25, 2011:

I acknowledge that it is a condition of eligibility that I sign this employment plan and that I comply with the conditions set out in this plan, including any condition to participate in a specific employment-related program...

I further acknowledge and understand that, if the ministry refers me to a specific employment-related program, I will participate fully and to the best of my ability in the activities required by the ministry contractor...

The Attendance Record shows that the appellant was accepted to the Contractor's program and intake was completed on August 31, 2011. The appellant failed to attend a scheduled appointment on September 9. The appellant called the Contractor on September 13 requesting an appointment. An appointment was scheduled for September 19 and the appellant again failed to show. The appellant also failed to attend the appointment that was subsequently scheduled for October 11. On October 25 the appellant attended the Contractor's office and confirmed that she would attend the appointment scheduled for the next day, October 26. The appellant failed to attend on October 26. On no occasion when the appellant failed to attend did she call the Contractor to advise that she would not be able to attend or to provide a reason for non-attendance. The Contractor closed the appellant's file on November 3, 2011 after the appellant failed to attend an appointment on November 1, 2011.

The evidence shows that the appellant was advised by the ministry on November 18, 2011 of its decision that she was no longer eligible for income assistance because of non-compliance with her EP. On December 14, 2011 that decision was confirmed on reconsideration, and the reconsideration decision was confirmed by a panel of the Tribunal on January 11, 2012. On February 7, 2012 the ministry advised the appellant by letter of its decision to declare her ineligible for income assistance

for up to the next 36 months in accordance with s. 27 of the EAR. On March 17, 2012 the appellant attended the ministry office and was advised of the decision in person. The February 7, 2012 decision was upheld by the April 25, 2012 reconsideration decision which is the subject of this appeal.

In her submission dated November 24, 2011 the appellant stated that she had been denied PWD status 3 times, and that she feels helpless regarding PWD because she has ongoing mental health issues. She advised that the Contractor's program was not suitable for her as she already has all the skills the Contractor's program provides. She wrote "I have made many positive changes to help myself, to get to where I am today in the last 15 months. I am unable to return back to my old career. I need to gain more skills, from programs, education, vocational training, and counselling funds to reach my career goal and return back to a contributing member of society."

At the hearing the appellant's advocate said that she had known the appellant for 5 ½ years. She pointed out the appellant's mental health conditions as diagnosed by the two physicians in the PPMB Reports, stating that these conditions make it difficult for the appellant to complete and follow through on commitments. The appellant performs better when she is stable, and tries to stay connected to her daughter. The advocate advised that the appellant keeps herself well groomed when she goes out and presents as being very intelligent, but the record shows that her mental conditions are long term. The appellant was in a stable housing situation for several months at a group lodging house, but since she is no longer receiving income assistance she is "couch surfing".

On questioning from the panel the advocate advised that the appellant's bad days occur when she can't understand something. The advocate believes this happens fairly regularly. For example, the appellant had a falling out with the landlady at her former residence, and is frequently identified on a "problem client" list at the local soup kitchen.

The ministry representative pointed out that the November 2011 PPMB Report indicates that the appellant will benefit from employment training. She stated that ministry staff have tried to work with the appellant regarding skills development and employment training, and have provided support but the appellant "blows it off", and has even confronted ministry staff in off hours out in public to the extent that the police had to be called. Nonetheless, the ministry representative said that she believes the appellant fully understands the requirements of the EP. The appellant signed and initialed the EP in multiple places. The ministry representative was present in the ministry office when the consequences of the 24 Months Addendum were described to the appellant, and she is convinced the appellant understood what she was being told. She believes the appellant is currently living with her boyfriend.

On questioning by the panel, the ministry representative said she did not know what medical evidence had been available to convince the ministry to recognize a mental health exemption for the period February 2009 to July 2009 inclusive. Both in the reconsideration decision and at the appeal hearing the ministry confirmed that the appellant can become eligible again for income assistance within the next 36 months if she provides evidence that one of the exemptions in EAR s. 27 applies to her.

The panel accepted the advocate's and ministry representative's information as oral testimony in support of information and records that were before the ministry at the time of reconsideration, and

admits it as evidence in accordance with EAA s. 22(4)(b).

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision to declare the appellant ineligible for income assistance for up to the next 36 months in accordance with s. 27 of the EAR.

The relevant legislation is as follows:

### EAR:

#### Time limits for income assistance

27 (1) The eligibility of a family unit for income assistance in any calendar month is subject to the following limitations:

(a) when income assistance has been provided to or for a family unit that includes only 1 person for a total of 24 of the previous 60 calendar months, the family unit is not eligible for income assistance;...

(3) For the purpose of calculating whether income assistance has been provided to or for a recipient for a total of 24 out of the previous 60 calendar months, the following calendar months must not be included as a month for which income assistance has been provided, but must be included for the purpose of calculating the previous 60 months, in relation to a recipient:

...

(b) each calendar month during which the recipient participates in the following portions of a training for jobs program approved by the minister:

- (i) acceptance into the program;
- (ii) training;
- (iii) job placement;

...

(f) each calendar month during which the recipient has

- (i) a drug or alcohol problem,
- (ii) a mental health condition, or
- (iii) a temporary medical condition

that, in the minister's opinion, interferes with the recipient's ability to search for, accept or continue in employment.

...

In the Advocate's Reconsideration Submission and at this hearing, the advocate argued that the evidence shows that the appellant has serious, long-term mental health conditions that preclude her from following through on the commitments she makes in EPs, and which provide the appellant with an exemption from the time limits in accordance with EAR s. 27(3)(f)(ii). The mental health conditions have been identified as persisting for at least 8 years and are termed "chronic" by the physicians. The advocate said that the appellant has little ability to manage her own stability, and that the best she can do is to attempt to maintain some semblance of stability in her place of residence. She

pointed out that both the medical opinions and the ministry's decisions seem to be premised on the proposition that the appellant is living in a stable housing situation, when the reality is that her stable housing situation at the group lodging house is now over and that instability causes the appellant's mental state to be even more chaotic.

The ministry's position is that it stands by its reconsideration decision. The ministry says that the appellant received assistance for 24 months of the last 60 – January 2009 and August 2009 to June 2011 inclusive – when none of the exemptions prescribed in EAR s. 27 applied. The appellant has been found noncompliant with her EP so the appellant can no longer rely on the exemption provided by EAR s. 27(3)(b) [enrollment in a job training program]. The ministry also says that the physician in the November 2011 PPMB Report says that the appellant would benefit from retraining to enable more stable/gainful employment. Accordingly, the ministry says the appellant cannot rely on the exemption provided by EAR s. 27(3)(f)(ii) [mental health condition].

No other potential exemption was raised by either party, nor does the evidence before the panel give rise to any question as to whether any other exemptions do apply in the appellant's case... they do not.

With respect to the exemption in EAR s. 27(3)(b) – that the appellant participates in a training for jobs program approved by the minister – it has already been determined in a previous process that the appellant was not in compliance with her EP. There is no evidence before this panel to suggest that the appellant is currently participating in any approved training for jobs program so this exemption cannot apply.

With respect to the exemption in EAR s. 27(3)(f)(ii), the panel notes that in its reconsideration decision the ministry only referenced the exemptions in EAR s. 27(3) in passing. It did not expressly analyze any of the potential exemptions. In particular, it appears not to have considered at all the evidence that the appellant suffers from at least two mental health conditions, and did not assess the applicability of the exemption from time limits provided by EAR. S. 27(3)(f)(ii). The question for the panel to answer is whether the ministry was reasonable in not finding that the appellant has a mental health condition that "interferes with [the appellant's] ability to search for, accept or continue in employment."

The advocate says that the appellant's long term mental health conditions are confirmed by two physicians and that the appellant's history is ample evidence that these conditions severely affect the appellant's ability to hold down a job. The ministry representative, on the contrary, says that the latest medical evidence – the November 2011 PPMB Report – confirms that even with her mental health conditions the appellant is capable of employment if she gets the retraining which the ministry tried to provide through its Contractor and which the appellant rejected.

The evidence is clear that the appellant suffers from long-term chronic mental health issues. The advocate stated it well when she observed in the Advocate's Reconsideration Submission "This could have all been avoided had the doctor in question been asked to submit a letter stating that during this twenty four month time frame [the appellant] was incapable of **searching for and sustaining ... employment – in which case those months would have been exempted from the twenty-four month count and the Ministry would have had no employment expectations of her.**" (emphasis included) The panel cannot, however, speculate as to what the physician's answer would be if that



proposition were to be put to him. The onus is on the appellant to provide evidence of grounds for an exemption. As it is, the physician's comments in the November 2011 PPMB Report indicate that with some retraining the appellant is capable of working. Despite the appellant's "problem client" status at the local soup kitchen, her confrontations with ministry staff, and the physician's statement in the August 2010 PPMB Report that the appellant's "depressed mood and anxiety make employment difficult", there is insufficient evidence on which the panel can conclude that her mental health conditions have interfered with her ability to search for, accept or continue employment to the extent necessary to satisfy the exemption provided by EAR s. 27(3)(f)(ii). Nor is there any evidence to suggest for what period – or periods - of time such interference may have existed during the past 24 months, if at all.

Accordingly, the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.