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PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of June 12, 2012 which resulted in the discontinuance of the appellant's income assistance. In particular, the ministry found that the appellant ceased to be eligible for income assistance as provided by sections 9(1) and 9(4) of the *Employment and Assistance Act* since she had not demonstrated reasonable efforts to comply with her employment plan, and had not provided evidence confirming mitigating circumstances.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9

PART E – Summary of Facts

With the consent of the parties, the hearing was held as a written hearing in accordance with EAA s. 22(4)(b).

The evidence before the ministry at the time of reconsideration included the following:

- The employment plan signed by the appellant dated November 25, 2011(the EP).
- The appellant's Request for Reconsideration, dated May 16, 2012. The Request for Information contained information from a ministry worker and the following handwritten submission from the appellant: "Requesting reconsideration because the Minister has narrowly interpreted reasonable efforts. Requesting additional time to submit medical information to exempt myself from the employment plan."
- An e-mail dated May 16, 2012 from a case manager for the Employment Program of BC to the ministry advising that a client identified only by a client number was telephoned by the case worker on April 30th, 2012. The case worker left a voice mail message asking the client to return the call and informing the client that the caller was her new case manager. On May 2 the case manager e-mailed the client. The case manager subsequently advised the ministry of her inability to contact the client. From the context, it is apparent that the referenced client is the appellant.

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:

- contact [the contractor specified by the ministry] (the contractor) within 3 days of signing the EP to book an assessment appointment and complete an action plan;
- submit the action plan to the ministry by December 15, 2011;
- attend the contractor's offices at minimum once per week and follow through on all recommended programs/job search assistance;
- advise the ministry and contractor of any reason the appellant is not able to continue in the program.

The appellant initialed the first page of the EP.

The second page of the EP also contains the following acknowledgement above the appellant's signature and date of November 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 ...I understand that if I do not comply with the conditions of this employment plan, the assistance issued to me and/or my family will be discontinued...

Included in the appeal record is a copy of the appellant's action plan, signed by her on January 30, 2012. The action plan purports to "...outline the interventions and activities that were developed to help you reach your goal." The specified "Interventions/Activities" consisted of counselling from January 23, 2012 to February 29, 2012 and resume preparation due February 8, 2012. On the action plan a ministry worker has hand written "Not part of the reconsideration package."

Also in the appeal record is a copy of a Medical Report – Employability completed by the appellant's physician on January 9, 2012. The physician diagnosed the appellant with Irritable Bowel Syndrome (IBS), describing the overall medical condition as "moderate". Restrictions are described as "diarrhea and abdominal cramping." On this report a ministry worker has hand written "Not part of the reconsideration package."

Despite the handwritten notations on the action plan and the Medical Report – Employability, both of these documents are referenced in the Request for Reconsideration, so in the panel's view they constitute information or records that were before the ministry at the time of the reconsideration decision.

The appellant's submissions for this appeal hearing included the following:

- A statement signed by the appellant's physician on July 18, 2012 providing more detail of the appellant's medical condition and expressing the opinion that the appellant's medical condition precludes her from searching for, accepting or continuing in employment, and that the appellant is currently unemployable and unable to participate in any employment related activities.

- A receipt made out by the physician in the appellant's name for the $20.00 fee for the foregoing statement.

- An internet printout of an apparent job fair schedule for February 8 to 10, 2012 in the community where the appellant resides.

- A copy of the appellant's resume.

- A three-page handwritten submission by the appellant in which she describes her history on income assistance, her diagnosis of IBS, and how recent problems with her ex-boyfriend necessitating that she change residences has exacerbated her illness. She wrote that she has an appointment scheduled with a specialist for her IBS.

The ministry did not object to the admission of any of the foregoing submissions. In the panel's view each of these documents provides further details on the appellant's medical condition or on her efforts to comply with the EP. Accordingly, the panel considers the appellant's submissions as written testimony in support of the information and records that were before the ministry at the time of reconsideration and admits them as evidence in accordance with EAA s. 22(4).

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The ministry's evidence, as set out in the reconsideration decision, is that the appellant did not submit the action plan by December 15, 2011 as required by the EP. The appellant only submitted the action plan on January 31, 2012 because the ministry would not otherwise release her income assistance cheque. On May 7th the ministry said it received a report from the Employment Program of BC, stating that they had tried to contact the appellant on three separate occasions – April 30, May 2 (twice) and by email May 2nd. The appellant failed to contact the Employment Program of BC. The ministry accordingly closed the appellant's file on May 7th. The ministry subsequently tried unsuccessfully to contact the appellant. The ministry then sent a letter to the appellant asking her to contact the ministry as soon as possible.

On May 15th the appellant contacted the ministry's office advising that she was intending to relocate to an adjacent community. The appellant alleged that she had contacted the ministry a week prior to May 15th and was advised by a ministry worker that her EP was "fine". The ministry has no record of that alleged conversation.

The ministry noted in the reconsideration decision that the appellant had had a total of 5 employment plans since May 2007.

The ministry relied on its reconsideration decision and submitted no additional evidence.

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PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision of June 12, 2012 which resulted in the discontinuance of the appellant's income assistance. In particular, the ministry found that the appellant ceased to be eligible for income assistance as provided by sections 9(1) and 9(4) of the *Employment and Assistance Act* since she had not demonstrated reasonable efforts to comply with her employment plan, and had not provided evidence confirming mitigating circumstances.

The relevant legislation is as follows:

Employment and Assistance Act,

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.

...

(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...

(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]*.

The appellant's position as expressed in written argument prepared by her advocate is that "Simply the legislation requires medical reasons to exist for the employment plan to cease." The appellant says that the medical evidence shows she has a medical condition that precludes her from searching for work and that it is therefore unreasonable for the ministry not to "cease the employment plan due to medical reasons." Secondly, the appellant also argued that given her medical condition, the appellant did make reasonable efforts to comply with her EP to the best of her ability. Thirdly, the appellant says she was "...unable to continue searching, accepting and partaking in any employment due to her severe mental health conditions." Finally, the appellant says that it was inappropriate, illogical and unreasonable for the ministry to consider the fact that the appellant had had a total of 5

employment plans since May 2007. The appellant does not specify why it was inappropriate, illogical and unreasonable, but says that the appellant's child was born January 30, 2007 and that the appellant was exempt from an employment plan until the child turned 3 years old.

The ministry's position, as set out in its reconsideration decision, is simply that the appellant did not demonstrate reasonable efforts to comply with her EP. While the Medical Report – Employability diagnosed IBS, it did not identify any restrictions or limitations with respect to the appellant's ability to comply with the EP.

The panel considers the submission of the appellant's advocate that the medical information provided is sufficient to have excused the appellant from an EP constitutes an attempt to appeal the decision by the ministry to require the appellant to enter into an EP, and as an attempt to appeal the ministry's decision not to suspend or cancel the EP. Under section 9(7) of the EAR, such decisions are not appealable.

Ultimately the panel's decision in this matter turns on the limitations of the evidence provided by the ministry. The panel is not convinced by the ministry's evidence that the appellant did not make reasonable efforts to comply with her EP. The panel acknowledges that the appellant did not produce her action plan by December 15, 2011 as required by the EP and in fact did not produce it until January 31, 2012. However, the ministry has provided no other evidence of non-compliance until the ministry says the appellant failed to maintain contact during the week of April 30, 2012. Given the lack of evidence of non-compliance during this three-month period the panel must conclude that the appellant was in compliance. Given the conclusion that the appellant actually was in compliance during the three months between January 31 and April 30, it would not appear reasonable to close her file simply for a failure to communicate for a three day period. The ministry's position is further weakened by an inconsistency in its evidence regarding the efforts that the Employment Program of BC made to contact the appellant during the week of April 30. The ministry says that a phone call was placed to the appellant on April 30th, and that two phone calls and an e-mail were tried on May 2nd. However, the May 16 e-mail from the Employment Program of BC only references a phone call on April 30 and an e-mail on May 2. In the absence of any evidence of non-compliance during the three months prior to the week of April 30, the panel believes it was not reasonable for the ministry to close the appellant's file in these circumstances.

Accordingly, the ministry's decision is rescinded.