

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) Reconsideration Decision dated May 4, 2012 which denied the appellant income assistance because of her failure to comply with the terms in her Family Maintenance Assignment. The ministry determined that the appellant did not comply with the terms of her assignment by not attending the court hearings and appointments with the ministry's legal counsel pursuant to sections 19, 20, 21, 22, 24, and 25 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Regulation EAR Sections 19;20(1), 21, 22 (1), 24, and 25 (1)

PART E – Summary of Facts

The evidence before the ministry at reconsideration includes:

- Assignment of Maintenance Rights signed by the appellant on November 9, 2009;
- Interim Consent Order of the Provincial Court dated July 11, 2011;
- A Court Order dated November 28, 2011;
- Letters from the lawyer appointed by the ministry to the appellant dated December 1 and 23, 2011 and January 24, 2012;
- Request for reconsideration dated April 17, 2012;
- A letter from the appellant's mother dated April 20, 2012;
- Two undated notes from a medical clinic indicating appointments for the appellant with a psychiatrist and a counsellor on April 23, 2012 and May 8, 2012.

The appellant in the request for reconsideration submitted that:

- The appellant never received information stating that she needed to attend the court hearing;
- The appellant did not receive any phone calls from the ministry;
- The appellant did not communicate with the ministry staff and as such she did not state that she was not willing to testify against her son's father;
- The appellant was never contacted by the lawyer;
- On February 10, the appellant contacted the lawyer's office to make an appointment as per the lawyer's direction;
- On February 10 the appellant contacted the ministry asking why she did not receive her income assistance;
- On February 22 the appellant attended the lawyer's office for her appointment;
- On March 7 the appellant contacted the lawyer's office informing them that she was not able to attend the court hearing due to medical problem and was told that she had to attend the hearing;
- On March 9 the appellant called the lawyer's office;
- On March 14 the appellant contacted the ministry asking when her file was closed.

The mother of the appellant in a letter dated April 20, 2012 submitted that the appellant was unable to attend her court hearing due to her emotional state of mind caused by her bi-polar, recent break up and problems with social assistance. The appellant's mother further submitted that close to the court date, the appellant was emotionally shut down and stayed in her room, crying and not eating. The appellant's mother stated that the appellant is attending counselling and hoping to recover fully from depression.

The ministry relies on the Reconsideration Decision and did not submit new evidence. The ministry in the reconsideration decision stated that the appellant signed an Assignment of Maintenance Rights form on November 9, 2009 which is a requirement to obtain income assistance. The ministry stated that the appellant had no intention of complying with the terms of her Assignment of Maintenance Rights and that she did understand the consequences of non-compliance with her assignment. The ministry further stated that the appellant stated that she would not attend court or appointments with the ministry's legal counsel to pursue her right to child support. The appellant missed her appointments with the lawyer and did not attend the court hearings which were required to pursue child support.

The ministry further stated that the appellant said that she did not receive any information about the hearings or the appointments; however, the appellant provided letters from the lawyer and a copy of the Court Order with her submission in request for reconsideration. The ministry further stated that the appellant did not attend court on March 12, 2012 stating that she had a medical problem; however, the appellant on December 1, 2011, told a ministry staff that she was not going to court to give evidence against her child's father. The

ministry further stated that on December 14, 2011, the appellant stated that she had no intention of cooperating; the appellant told the lawyer that she refuses to cooperate with him.

The ministry noted that on March 7, 2012 the appellant contacted the Family Maintenance Worker (FMW) and told her that she would not attend the court hearing on March 12, 2012 due to her medical condition. The ministry determined that it was unlikely that the appellant had awareness that her medical condition would prevent her from attending the court hearing when the date hadn't even arrived yet. Based on the appellant's statements to the ministry including that she would not cooperate to pursue the child support, the ministry determined the appellant's statement that she did not attend the hearing due to medical problem was not credible information and that the ministry could not rely on her statement. The ministry found that the appellant did not provide any reasonable explanation that failure to comply with the terms of her assignment was beyond her control. The ministry determined that the appellant failed to comply with the terms of her assignment and as such the ministry denies her income assistance under section 25 of the EAR.

The appellant submitted an undated letter from a physician to the Tribunal, stating that the appellant is a regular patient in the medical clinic, and that the appellant suffers from Bipolar disorder and that the appellant was unable to attend her court appointment because of severe emotional distress and depressive symptoms.

The panel accepts the letter from the doctor as being in support of the information before the ministry under section 22(4) of the *Employment and Assistance Act (EAA)* and therefore admits the physician note into evidence. The panel notes that the physician's report is undated and did not specify when the appellant was under severe emotional distress and depressive symptoms.

Information in the appeal package indicates that on July 11, 2011 the Court made an Interim Consent Order. The Order stated that as the Court was unable to determine the annual income of the child's father for the purpose of determining a table amount of child support, the Court Orders that the child's father must pay to the appellant for the support and maintenance of the child the sum of \$70 every second week, commencing August 12, 2011 as long as the child is a "child" as defined in the Family Relations Act and adjourned the case further to August 22, 2011.

The panel further notes that on November 28, 2011, the Court adjourned the hearing regarding child maintenance to March 12, 2012 at 9:30. The panel notes that a copy of the Order was mailed to the appellant on December 1, 2011 with a letter informing the appellant that a hearing was scheduled on March 12, 2012 at 1:30 pm in a Family Court and that the appellant must attend this hearing. The appellant was further informed to call the lawyer's office by February 6, 2012 to make an appointment to prepare for the hearing. The letter stated that the appellant was ordered by the court to file a financial statement and the lawyer requested that the appellant provides documents regarding her income assistance, paystub, Canada Child Tax Benefit and BC Family Bonus statements, income tax return and any other orders or written agreements to the lawyer's office. The panel notes that this letter and the Court Order were submitted by the appellant in her request for reconsideration.

The panel makes the following findings of fact:

- The appellant signed the Assignment of Maintenance Rights on November 9, 2009;
- The appellant was in receipt of income assistance under the EAA until March 2012;
- The appellant is under the care of a medical doctor for depression and Bi polar disorders;
- The appellant had two scheduled appointments with a counsellor and a physician on April 23, and May 8, 2012;
- The appellant received a letter dated December 1, 2011, from the ministry's legal counsel informing her that the court hearing was scheduled on March 12, 2012 and that she must attend the hearing on that day;
- The appellant received a copy of the Court Order dated November 28, 2011 ordering her to file with the

court a completed and sworn Financial Statement and that the hearing was adjourned to March 12, 2012;

- The appellant contacted the lawyer's office by phone informing one of the staff that she was not attending the hearing on March 12, 2012. The appellant was informed that she must attend the court hearing;
- The appellant did not attend the court hearing on March 12, 2012.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's determination denying the appellant income assistance due to non-compliance with the terms of her Family Maintenance Assignment was a reasonable application of the applicable enactment in the circumstances of the appellant or is reasonably supported by the evidence.

The ministry relies on the Reconsideration Decision and did not submit new evidence.

The appellant alleges that the reconsideration decision was not reasonable because it was based on narrow interpretation, ignored the evidence and contained the following errors:

- The appellant did not receive anything stating that she needed to attend court;
- The appellant did not receive calls from the ministry;
- The appellant did not say that she was not willing to testify against her son's father;
- The legal counsel for the ministry did not contact her;
- The appellant did attend the lawyer's office on February 22, 2012.

The appellant advances additional information, an undated note from a physician, in support of her position that she could not attend the court hearing. The physician stated that the appellant was not able to attend her court hearing because of severe emotional distress and depressive symptoms. The physician did not specify the date of the court hearing.

The ministry relies on the Reconsideration Decision. The ministry stated that the appellant made many statements to the ministry that she would not cooperate with the ministry and would not attend the court hearing.

Section 19 of the EAR deals with the definitions for division and states that "assignment" means an assignment of maintenance rights to the minister.

Section 20 of the EAR states that for a family unit to be eligible for income assistance the recipient must disclose and assign the maintenance right to the minister.

Pursuant to section 21 of the EAR the following rights must be assigned to the minister:

- (a) the right to make an application under an enactment of British Columbia for a maintenance order;
- (b) the right to enter into a maintenance agreement;
- (c) the right to make or defend an application for variation of a maintenance agreement or maintenance order;
- (d) the right to receive payment under
 - (i) a maintenance agreement or maintenance order, or
 - (ii) a maintenance order made under the *Divorce Act* (Canada) or otherwise;
- (e) the right to enforce a maintenance agreement or maintenance order;
- (f) the right to file a maintenance agreement with a court in British Columbia;
- (g) the right to file an extra-provincial maintenance order with a court in British Columbia;
- (h) the right to file or withdraw a maintenance order under the *Family Maintenance Enforcement Act*;
- (i) the right to make payment arrangements with the debtor for the recovery of arrears.

Section 22 (1) of the EAR states that the minister must give written notice of the assignment to the person against whom the minister intends to exercise the assigned maintenance rights.

Section 24 (c) and 24 (c) (iii) of the EAR deals with the terms to be included in the assignment as follows:

An assignment under this Division must include all of the following terms:

- (a) the assignment of the categories of maintenance rights set out in section 21 [*categories of maintenance rights*];

- (b) authorization by the assignor that
- (i) the minister may provide to the director of maintenance enforcement any information necessary for the filing, enforcement and monitoring of payments made under the assignor's maintenance order,
 - (ii) the director of maintenance enforcement may provide to the minister
 - (A) any information that affects eligibility for income assistance or hardship assistance, and
 - (B) information about the payment, monitoring or enforcement of the assignor's maintenance order,
 - (iii) the minister may obtain or search court documents required to exercise the rights assigned,
 - (iv) the minister may provide to the child support service any information necessary for the purpose of recalculating child support under a maintenance agreement or a maintenance order that is assigned to the minister, and
 - (v) the child support service may provide to the minister any information regarding the recalculation of child support under a maintenance agreement or maintenance order that is assigned to the minister;
- (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;

The appellant argues that she was not able to attend the court hearing due to her medical condition.

With respect to Section 24 (c) (iii), the appellant signed the assignment agreeing to cooperate with the minister and the director of maintenance enforcement as necessary to obtain maintenance agreement or order by attending at all appointments, meetings and court proceeding relating to the assigned rights when requested to do so. The panel notes that the appellant, on March 7, 2012 stated that she was not able to attend the court hearing due to her medical condition. The panel further notes that the appellant submitted an undated note from a physician supporting her position. The panel finds that the note from the physician falls short of establishing that the appellant was unable to attend prior court hearings and the scheduled appointments with the ministry's legal counsel. The panel accepts the fact that the appellant is suffering from bi-polar disorders and depression; however, the panel finds that the appellant, prior to the court hearing, stated that she would not attend the hearing and that she failed to attend meetings with the lawyer. The appellant was aware of the dates of her appointments and the court dates and she failed to provide reasonable explanation that her failure to comply with the terms of her assignment, including attending meetings with the legal counsel and providing requested information by the Court Order, was beyond her control.

Accordingly, the panel determines that the ministry's reconsideration decision dated May 4, 2012 was a reasonable application of the applicable legislation in the circumstances of the appellant and confirms the reconsideration decision under section 24(2)(a) of the Employment and Assistance Act.