

### 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 due to failure to pursue income, child support, pursuant to section 14(1)(a) of the *Employment and Assistance Act (EAA)*. The ministry determined that the appellant did not cooperate with the ministry and failed to demonstrate reasonable efforts to pursue income, child support.

### PART D – Relevant Legislation

*Employment and Assistance Act, Section 14(1)(a)*

## 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 March 30, 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 that 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 not understand the consequences of non-compliance with her assignment. The ministry stated that the appellant failed to attend her scheduled court date for family maintenance and her scheduled appointments with the legal counsel. The ministry further stated that the appellant advised the Family Maintenance worker that she had no intention of cooperating with the ministry and the ministry's appointed legal counsel. The appellant did not attend the court hearing on March 12, 2012 and as a result the appellant was advised that she was not eligible for any further income assistance.

The ministry stated that the appellant did not attend court hearings because she did not want to testify against her child's father and told the ministry that she had no intention to cooperate with the ministry. As such, the ministry found that it was unlikely that the appellant had an awareness of her medical condition preventing her from attending the court hearing when the date had not arrived yet. The ministry determined that as the

appellant failed to demonstrate reasonable efforts to pursue income, child support, the ministry denies her income assistance pursuant to section 14(1)(a) of the EAA.

The appellant in the Notice of Appeal dated May 22, 2012 submitted that the ministry's decision is unreasonable because it is based on narrow interpretation and ignores the evidence.

The appellant submitted an undated letter from a physician 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 Court 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 in the possession of the appellant and were submitted by the appellant with her request for reconsideration.

The panel finds that:

- 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 the appellant 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 ministry 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 that the appellant is not eligible for income assistance because of her failure to pursue income, child support, was a reasonable application of the applicable enactment in the circumstances of the appellant or is reasonably supported by the 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 stating that the appellant was not able to attend her court hearing because of severe emotional distress and depressive symptoms, in support of her position that she did not attend court because of her medical condition.

The ministry relies on the Reconsideration Decision. The ministry stated that the appellant made many statements to the ministry that she would not cooperate to pursue child support and was not willing to testify against her child's father. The ministry found that the appellant failed to demonstrate reasonable efforts to pursue child support and as a result, the ministry denies income assistance under section 14 (1)(a) of the EAA.

Section 14 )1) (a) of the EAA deals with the consequences of not accepting or disposing of property and states:

(1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

(a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;

(b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.

(2) A family unit is not eligible for income assistance for the prescribed period if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

(a) disposed of real or personal property to reduce assets;

(b) [Not in force.]

(3) In the circumstances described in subsection (1), the minister may

(a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or

(b) declare the family unit of the person ineligible for income assistance or hardship assistance for the prescribed period.

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

The panel finds that the appellant had in her possession the Court Order and was informed of the date of the

hearing. The appellant was aware of the Court Order dated November 28, 2011 ordering her to file with the Court a completed and sworn Financial Statements and that the appellant was informed that the court hearing was adjourned to March 12, 2012. Furthermore, the panel finds that the appellant was notified to contact the lawyer's office in order to prepare for the court hearing. The panel accepts the fact that the appellant is suffering from bi-polar disorders and depression; however, the panel finds that the note from the physician falls short of establishing that the appellant was unable to attend the scheduled appointments with the ministry's legal counsel. The panel finds that the appellant was aware of the dates of her appointments and the court dates and by not attending the scheduled appointments with the lawyer and the court hearing failed to demonstrate reasonable efforts to pursue income, child support.

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.