

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the “Ministry”)’s Reconsideration Decision dated July 23, 2012 which found the appellant ineligible for income assistance pursuant to Section 25 of the *Employment and Assistance Regulation* (EAR) for failing to comply with the terms of her Assignment of Maintenance Rights (AOMR) as required by Section 24 of the EAR. In particular, the Ministry found that the appellant missed her scheduled appointments with a Family Maintenance Worker (FMW) that were required pursuant to Section 24(c) (iii) of the EAR.

PART D – Relevant Legislation

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

PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- 1) Ministry of Housing and Social Development Assignment of Maintenance Rights (AOMR) signed by the appellant on March 27, 2012. The AOMR includes a term that the appellant attend at all appointments and meetings when requested to do so by the minister or the director of maintenance enforcement; and
- 2) Request for Reconsideration dated July 13, 2012 in which the appellant states that she spoke to a FMW on her first scheduled appointment but was cut off when her phone ran out of minutes. The appellant states that she made numerous attempts on several days to speak to the FMW again without success until she was able to reach a FMW and her second appointment was scheduled. The appellant states that she missed her second appointment because she and her children were sick. A third appointment was scheduled and the appellant states that she missed the third appointment due to miscommunication with the Ministry as she understood that the third appointment was for July 28, 2012 not June 28, 2012.

In her Notice of Appeal dated August 17, 2012, the appellant states that although she is in agreement with the understanding of missing three appointments she believes her first appointment was not missed because she was cut off and the third appointment was missed due to miscommunication from the worker telling her that there were no available appointments for three weeks then booking her appointment for three days later.

The appeal proceeded by way of tele-conference. At the outset of the appeal the appellant stated that she had been trying to request records from her doctor and the hospital to confirm her and her children's illnesses but that she had not yet obtained those records. The panel asked whether the appellant wanted to request an adjournment of the hearing in order to obtain those documents and have them submitted for consideration at the appeal but the appellant stated that she wanted to proceed with the hearing.

At the appeal, the appellant stated that her first appointment of April 26, 2012 should not be considered a missed appointment as she spoke to the FMW and had provided details of her child's father and had been asked to come into the office to sign a paper. The appellant's evidence is that she was almost finished the phone call when her cellular telephone ran out of minutes and she was cut off. The appellant states that she drove to the Ministry office and used the telephone there to try and call the FMW but was unsuccessful in reaching the FMW. The appellant states that she called and was on hold and then it sounded like someone answered and then she was cut off. She called back but was unable to get through to a FMW. The appellant did not know the name of the FMW that she had spoken to and when she went to the Ministry office she did not request the assistance of the receptionist to try and reach the FMW. The appellant stated that after several attempts she left.

After several days the appellant was successful in obtaining a second appointment for June 21, 2012 but she reports that she missed the second appointment because she and her children were sick. The appellant stated that she had her phone plugged in so that she would be ready for the appointment but then she and her children were both sick and in bed and she missed the second appointment. The appellant contacted the Ministry a few days later to reschedule her appointment

and was advised that missing her appointments was a "bad thing", and that no appointments were available for three weeks. The appellant's evidence is that she and the FMW started discussing other items such as her income assistance cheque that had been held, her recent trip to see her family, and the FMW advised her that her income assistance cheque would be available for pick-up. The appellant's evidence is that the FMW advised her that her next appointment would be on the 28th and the appellant understood that to be July 28, 2012.

The appellant's evidence is that she went to the Ministry to pick up her income assistance cheque on June 29, 2012, was advised that she had missed her appointment of June 28, 2012, that she was ineligible for income assistance, and that she could not pick up her income assistance cheque. The appellant stated that her "heart sank" as she did not know what she was going to do to pay rent and feed her children. A week later, the appellant states that she received a call from the Ministry regarding a security deposit which confused her as she understood she was ineligible.

The appellant's evidence is that June and July 2012 were very difficult for her as she had to deal with sick children, an eviction notice, not knowing where they were going to stay, whether she would move to another city, and trying to sell many household items to raise money to feed her family. The appellant's evidence is that the call from the Ministry worker about a security deposit added to her confusion and seemed very inconsistent with the previous advice that she was ineligible for income assistance.

The Ministry's evidence was that the FMW was unable to make contact with the appellant at her first scheduled appointment on April 26, 2012 and that there was no phone call that took place between the appellant and the FMW. The Ministry's evidence is that the appellant had communication with the Ministry on April 27, May 2 and May 11, 2012 to discuss other items and it was not until May 29, 2012 that the appellant contacted the Ministry to schedule a new appointment with a FMW.

The Ministry's evidence is that they reviewed their file for notes of any contact with respect to the first scheduled appointment but the records indicate that the FMW was unable to make contact with the appellant. The Ministry representative advised the appellant that she could make a Freedom of Information Act request if she wanted to review the Ministry records regarding her missed appointments.

On June 1, 2012 a new appointment was scheduled for June 21, 2012 and the FMW was unable to reach the appellant. The Ministry states that on June 25, 2012 the appellant contacted the Ministry, advised that her child had been ill and she had missed her appointment. The Ministry's evidence is that if an income assistance recipient misses two appointments they are usually found ineligible for income assistance but given the appellant's extenuating circumstances they scheduled a third appointment for her on June 28, 2012.

The Ministry's evidence is that the appellant missed the third appointment and as she was given multiple opportunities to comply with the terms of her AOMR but that she missed all appointments so she was found to be ineligible for income assistance.

The Ministry representative also stated that the ineligibility remains in place until the appellant complies with her AOMR. The Ministry stated that the appellant needs to make an appointment with the FMW and comply with the AOMR and then she can start the process over to become eligible for

income assistance benefits again.

Based on the evidence, the panel's finding of facts are as follows:

- The appellant is a single parent with four dependent children;
- The appellant signed an AOMR on March 27, 2012 agreeing to attend all appointments as requested by the Ministry; and
- The Ministry scheduled appointments for the appellant on April 26, June 21 and June 28, 2012 but the appellant did not attend all the appointments.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision to deny the appellant income assistance for failing to comply with the terms of her AOMR as required by Section 25 of the EAR, on the basis that she did not attend all appointment with a FMW as required by Section 24(c)(iii) was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant sections of the EAR are as follows:

(A) Terms to be included in the assignment

24 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, and
- (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; (B.C. Reg. 313/2006)
- (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; (B.C. Reg. 147/2010)
- (c.1) agreement by the assignor to cooperate with the minister and the child support service as necessary for the purpose of recalculating child support; (B.C. Reg. 313/2006)
- (d) acknowledgment by the assignor that

- (i) he or she cannot take any of the actions or enter any agreements related to maintenance that are set out in the assignment as long as the assignment to the minister is in effect, unless authorized in writing by the minister, and that to do so without authorization will affect the assignor's eligibility for income assistance or hardship assistance,
- (ii) if legal counsel for the government has brought or is defending a proceeding on the assignor's behalf, the legal counsel is solely counsel for the government and there is no solicitor-client relationship between that counsel and the assignor,
- (iii) only the minister can forgive, reduce or otherwise vary arrears of maintenance owed to the government, and
- (iv) no agreement to cancel or reduce arrears owed to the assignor under the assignor's maintenance agreement or maintenance order will be made by the government without the assignor's consent;
- (e) the assignment will continue in effect after the assignor no longer receives income assistance or hardship assistance if there are still arrears of maintenance unrecovered by the government and, so long as there are arrears, the assignor acknowledges that only the government is entitled to
 - (i) withdraw a maintenance order under the *Family Maintenance Enforcement Act*,
 - (ii) receive payment of maintenance arrears that are owed to the government under an assignment,
 - (iii) defend an application to reduce or cancel arrears of maintenance owed to the government,
 - (iv) make arrangements with the debtor for payment of arrears of maintenance owed to the government, and
 - (v) enforce the maintenance order with respect to arrears owed to the government;
- (f) the assignment ceases to have effect when
 - (i) income assistance and hardship assistance are no longer provided to the assignor's family unit and there are no arrears unrecovered by the government, and
 - (ii) a written notice of termination of the assignment is sent to the assignor at the last known address of the assignor shown on record with the ministry.

(B) 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 appellant argues that she did not really miss her first appointment and that although she missed her second and third appointments; the third appointment was missed due to miscommunication with the Ministry and should not be held against her to find her ineligible for income assistance.

The Ministry relied on its Reconsideration Decision. The Ministry argued that the appellant signed the AOMR, was aware that she had to attend scheduled appointments, but missed her appointments. The Ministry argues that the appellant missed her scheduled appointments, was given multiple opportunities to comply with the terms of her AOMR but failed to do so.

The panel notes that the evidence between the appellant and the Ministry with respect to the first appointment is completely contradictory in that the appellant's position is that the appointment took place and was almost over when her phone ran out of minutes, whereas the Ministry's evidence is that the FMW was not able to contact the appellant. The panel is unable to reconcile the difference in this evidence.

Although it is understandable that the appellant missed her second appointment because she and her children were ill, the Ministry scheduled a third appointment for her, which she also missed. Although the appellant states that she missed the third appointment due to miscommunication with the Ministry, the panel finds that the appellant knew that it was important for her to attend the meetings with the FMW as it was a term of her AOMR but she did not do so or take sufficient steps to ensure that she had noted her scheduled appointment properly.

As the appellant missed at least two out of three scheduled appointments with her FMW, the panel finds that the Ministry's decision that the appellant did not comply with the terms of the AOMR was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant.

Therefore, the panel confirms the Ministry's decision.