

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated August 14, 2012, in which the Ministry of Social Development ("Ministry") confirmed its decision to deny the Appellant income assistance. The Ministry denied income assistance on the basis that the Appellant was not in compliance with the terms and conditions of her Assignment of Maintenance Rights (AMR) as required by s. 24 of the Employment and Assistance Regulation (EAR). Specifically, the Ministry found that the Appellant had failed to attend a series of meetings with her Family Maintenance Worker (FMW).

PART D – Relevant Legislation

The relevant legislation is section 37 of the Employment and Assistance Act (EAA) and sections 24 and 25 of the EAR.

PART E – Summary of Facts

The Appellant began receiving income assistance in October 2011 as a single parent.

On October 12, 2011, the Appellant signed an AMR, one condition of which was that she would attend appointments and meetings relating to the AMR. She then failed to attend scheduled meetings with her FMW on November 21, November 30, February 2, 2012, February 28, March 27 and May 7.

On May 9, the Ministry found the Appellant ineligible for income assistance. On June 19, the Appellant discussed the matter with her FMW and it was agreed that her income assistance would be re-instated if she agreed to comply with the terms and conditions of her AMR. A new meeting was set for July 13, which the Appellant did not attend.

On her reasons for appeal the Appellant states that she honestly did not know of the first appointment. She states that as to the second and third meetings she did not have sufficient minutes on her cell phone to complete the meetings. She does not offer any explanation for missing the subsequent four meetings.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's decision to deny the Appellant income assistance.

The relevant legislation is section 37 of the EAA:

Regulations respecting eligibility and assignment of maintenance rights

37 (1) The Lieutenant Governor in Council may make regulations governing the assignment of maintenance rights and the recovery of the amount of income assistance and hardship assistance provided in place of maintenance, including the following regulations:

- (a) prescribing categories of persons whose family units are not eligible for income assistance or hardship assistance unless they and their dependants assign to the minister any maintenance rights that
 - (i) they have respecting maintenance for themselves or a dependent child, and
 - (ii) are specified under paragraph (b);
 - (b) specifying maintenance rights that are to be assigned to the minister, including, but not limited to, any of the following rights:
 - (i) to make an application under an enactment of British Columbia for a maintenance order;
 - (ii) to enter into a maintenance agreement;
 - (iii) to make or defend an application for variation of a maintenance order or maintenance agreement;
 - (iv) to receive payment under
 - (A) a maintenance order made under the *Divorce Act* (Canada) or otherwise, or
 - (B) a maintenance agreement;
 - (v) to enforce a maintenance order or maintenance agreement;
 - (vi) to file a maintenance order or maintenance agreement under the *Family Maintenance Enforcement Act*;
 - (c) governing how and to whom notice of an assignment of maintenance rights must be given;
 - (d) governing how long an assignment of maintenance rights remains in effect for different categories of maintenance rights;
 - (e) prescribing terms that are to be included in an assignment of maintenance rights and the consequences of failure to comply with those terms;
 - (f) determining the amounts that may
 - (i) be deducted from maintenance payments received under an assignment of maintenance rights, and
 - (ii) be retained by the government to recover the amount of income assistance or hardship assistance provided in place of maintenance while the assignment is in effect;
 - (g) respecting the method of accounting to a recipient for payments received under an assignment of maintenance rights and for deductions made from those payments.
- (2) A regulation under subsection (1) (b) (iv) may specify that the minister be assigned the right to receive arrears of maintenance that are paid while the assignment is in effect, even though the arrears accrued before
- (a) the regulation came into force, or
 - (b) income assistance or hardship assistance was provided to or for the family unit that becomes eligible as a result of the assignment.

(3) A regulation under subsection (1) (d) may provide that an assignment of maintenance rights remains in effect for a specified period after the family unit that became eligible for income assistance or hardship assistance as a result of the assignment ceases to receive either income assistance or hardship assistance.

(4) While an assignment of maintenance rights is in effect, the minister

(a) may make an application or bring a proceeding relating to the assigned rights in the name of the government or in the name of the person who made the assignment, and

(b) has the same right to be notified and to participate in any proceedings relating to the assigned rights that, but for that assignment, the person who made the assignment would have had.

(5) While an assignment of maintenance rights is in effect, the person who made the assignment is not entitled to exercise any of the assigned rights

(a) except to the extent authorized in writing by the minister, and

(b) subject to any terms or conditions specified in the authorization.

And section 24 and 25 of the EAR:

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,

(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;

(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;

(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.

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 Ministry's position is that the Appellant repeatedly failed to attend meetings that she was statutorily required to do without adequate excuse over a period of more than six months. The Ministry considers that it has provided the Appellant with ample opportunities to attend the meetings and it has no choice but to disqualify the Appellant from receiving income assistance as prescribed by the relevant legislation.

The Appellant's position is that she has made every effort to cooperate with the Ministry's request that she attend the meetings, but has been unable to do so due to issues with her cell phone and competing urgent responsibilities.

Paragraph 37(1)(e) of the EAA allows the Lieutenant Governor to make regulations prescribing terms that are to be included in an assignment of maintenance rights and the consequences of failure to comply with those terms. Subsection 24(c) of the EAR requires that a person who has signed an AMR cooperate with the Ministry by providing the information necessary for the Ministry to enforce

and collect on the assigned maintenance order. Section 25 allows the Ministry to declare an assignor who has not complied with section 24(c) ineligible for income assistance.

In the present case, the Appellant has repeatedly failed to comply with the terms of her AMR and to cooperate with the Ministry by appearing at scheduled meetings over a significant period of time. As well, the Ministry has made reasonable efforts to accommodate the Appellant, to the extent of withdrawing its initial suspension of her income assistance and scheduling another meeting – which the Appellant again failed to attend. The panel considers it reasonable in these circumstances for the Ministry to find the Appellant ineligible for income assistance as provided in the legislation.

Based on this analysis the Panel finds that the Ministry's Reconsideration Decision to deny the Appellant income assistance was a reasonable application of the applicable legislation.

Accordingly, the Panel confirms the Ministry's decision.