APPEAL #

PART C – Decision under Appeal

The Decision under Appeal is the Ministry's Reconsideration Decision, dated October 26, 2012, which denied the Appellant Income Assistance (IA), as the Ministry determined that the Appellant failed to demonstrate reasonable efforts to participate in her employment plan, (EP), contrary to Sec. 9(4)(a) of the Employment and Assistance Act.

PART D – Relevant Legislation

EAA Employment and Assistance Act – Section 9

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PART E – Summary of Facts

A summary of the evidence before the Ministry at the time of the reconsideration is as follows:

1-Two page EP, signed by the Appellant on Apr. 5, 2012, where she acknowledges she must comply with the conditions of the plan and participate in the program or will be ineligible for IA. The plan sets out the following as required activities; attend the office of an EP contractor within 5 business days for an assessment; participate in programming as directed by the contractor; work with the contractor to address any issues that impact employability and complete all assigned tasks and activities; and, notify the contractor if unable to attend any session or when starting or ending any employment. The plan states the client has reporting requirements monthly. Further, in the portion of the EP, where the appellant agrees to notify the contractor if she is unable to attend, that there is a portion for the name and phone number for the contractor, but it has not been filled out. It also states on the form that the EP will have specific timelines for activities, although none seem to be present.

2-Four pages of medical records, including a Consultation Report, a Discharge Summary and a History Report. The History Report shows a hospital assessment on Aug 18, 2012 regarding a flare of ulcerative colitis over the previous three weeks, noting a loss of 20 pounds over the last three months. This report also notes use of recreational drugs regularly including cocaine and heroin. The Discharge Summary indicates she was discharged in stable condition. The Consultation Report indicates the appellant was then seen in the emergency of a hospital on Sept. 19. 2012, with no improvement over the last 3 weeks, relating to an exacerbation of ulcerative colitis. The report indicates that she will be discharged, trying a new course of medication, after she remains in hospital a couple of days.

3-The original ministry decision, which had an effective date of Sept. 1 2012, signed by the appellant on Oct. 17, 2012, requesting a reconsideration. It notes, among other things, the following: on Apr. 5 the appellant signed the EP acknowledging understanding the requirements of the EP; on May 8 the Ministry was informed appellant had not made an appointment with contractor; on May 24 when appellant contacted the Ministry she advises she had forgotten she had to contact the program as she was dealing with family issues and had been in jail a couple of days-she was reminded of her obligations and the effect of non-compliance- she was requested to contact the program before receiving her June cheque; she connected with the program May 25, with an appointment for May 28; on Aug. 10, the program advised the ministry that they had called and left messages for the appellant on June 13, 28 and July 17 and had no response- the last contact had been that on May 25; the file was signaled and a letter was mailed requesting the appellant contact the ministry about her compliance; Aug 29 appellant spoke with the ministry and advised she was unable to attend as she was in hospital and the ministry requested confirmation to see if the information confirmed inability to attend; and, as of Sept. 17 the ministry had received no such confirmation. The Reason for Reconsideration, filled out by the appellant, stated; she had a really rough time being in the hospital with ulcerative colitis and being on drugs; she was now clean and in recovery; she did not have a cell or house phone; and, as she was in a recovery house that did not allow work for 30 days she had no funds and could not pay for room and board and food.

The Reconsideration Decision found that the appellant started receiving IA on Nov. 2011. She had attended her initial orientation session on May 25 and the appellant had no further contact with the contractor up to Aug. 9. On Aug. 29 the Appellant advised she could not attend as she had been in hospital, but as of Sept. 12 no medical material had been received. On Sept. 17 the Appellant was advised she was no longer eligible for IA and on Sept 26 the ministry received the initial records in support of her hospital stay. The Decision found that the appellant had failed to comply with the conditions of the EP. It noted the hospital records showed admission on Aug 20 and discharge on Aug 22, which would preclude participation in that timeframe, but did not explain the time period of May 25 to Aug 20. It also noted this did not explain what happened after Aug. 20 and up to the time she was denied IA, (Sept. 1). The Decision found that in relation to the unspecified time in

the recovery house, no evidence had been provided that she could not participate in the EP at that time, or could not contact the provider between orientation and denial. (The Decision also noted addictions services can be provided within an EP.) The ministry concluded there had been a failure to demonstrate reasonable efforts to participate in the program and there was insufficient evidence to prove she had ceased due to medical reasons.

The appellant stated in her Notice of Appeal that she was unable to comply with the EP due to her depression, anxiety and substance abuse. She states she previously told a ministry worker she could not attend due to her colitis and substance abuse.

For the Appeal, the Appellant provided further medical records. A Dr's note dated Nov.27, that showed the appellant was on the methadone program, suffering from anxiety-depression and presently unfit to work. Four pages of records, from the "Department of Pathology and Laboratory Medicine, which indicate blood samples taken on May 2, 2012. An "Emergency, Accident or Short Stay" record showing admission and discharge on May 2 with a Diagnosis of "Drug Withdrawal" and "Ulcerative ? Colitis". A Stool Chart showing records of stools from Sept 23-25, as part of her colitis treatment. A note on a History and Progress Report, confirming hospital stays on Aug 18-20 and Sept 18-20. A Discharge Checklist from Sept. 20. A letter from a health authority confirming the appellant received red blood cells Aug 18-25. A Discharge Summary from another hospital indicating that on Oct. 24 the appellant was anemic, an IV drug user, and suffered depression. What appears to be a computer screen printout, "View Patient" showing admission on Oct 24 and discharge on Oct 26, with Anemia and Colitis noted.

Section 22(4)(b) of the *Employment and Assistance Act* states that a panel may admit as evidence only the information and records that were before the minister when the decision being appealed was made, and oral or written testimony in support of the information and records that were before the minister when the decision was appealed. The ministry did not object to the admissibility of the new records. As the information in the records is in support of the appellant's Reasons for Reconsideration and her explanation of what was causing her difficulties with the EP, the panel finds it is admissible as evidence before the tribunal.

At the hearing the appellant attended with a support person. Initially, the appellant had signed a Release of Information for another person to attend the hearing with her, but that person was ill on the hearing date and could not attend. The ministry did not object to the attendance of a new support person and this person remained with appellant through the hearing.

At the hearing the Appellant testified that she was not aware that there was advocacy support available for these matters until she got to the final appeal stage which is why there was late production of the medical documents. She is still in recovery and will be kicked out if she cannot pay her rent if she is cut off assistance. She is clean now, but at the time of initially entering the EP she was in full addiction. She did not get any messages that the contractor was trying to get a hold of her as she had no phone number and simply used her mother's phone as a contact number. She did speak with the ministry worker in this time frame and explained her situation. She was in hospital on and off as her mother would make her go. She was still on methadone and still suffering depression.

When asked by the tribunal she indicated that her first meeting with the contractor did not result in the setting of a subsequent meeting and she did not follow up with them. The initial meeting was 20-30 minutes long. She had no understanding of what she was to do next. She did not get any messages that they were trying to contact her. In June and July she was playing phone tag with her ministry worker, but as she had no phone she would use her Mom's cell phone.

When asked by the ministry she confirmed she understood she was to comply with the EP conditions but she was in full blown addiction. The contractor did not set a follow up appointment after their first meeting and she did not know the contractor could deal with addiction issues; that was not told to her by the contractor. This was the first time she had been on an EP and had only recently been put on IA for her first time.

The Ministry stated this is a cut and dry situation where the person knew they had to attend and did not do so. It was explained that a worker would typically go thru an EP and explain the rights and responsibilities of the person in detail and explain the consequences. The timeline in the original decision was reviewed and it was stated that the appellant had been provided ample time to become compliant with the plan. Based on all the material the ministry had to deny her IA.

When asked by the tribunal the ministry explained that the monthly reporting on the EP would require her to report to the contractor not the ministry office. When it comes to reports from the contractor to the ministry it is only a negative reporting system. (Presumably this means the contractor will report to the ministry if there is something negative.)

The appellant responded by advising the contractor did not set a second appointment and further that she never went to collect her July and Aug cheques due to her addiction. She advises when she went to the ministry at the end of Aug. her file had been closed. The ministry confirmed that a file is automatically closed after two months, as happened here.

PART F – Reasons for Panel Decision

The issue to be determined is whether the Ministry reasonably denied the Appellant IA, as the Ministry determined that the Appellant was non-compliant with the conditions of her EP, contrary to Sec. 9(1)(b) of the Employment Assistance Act.

The Legislation states the following;

Employment and Assistance Act

Employment plan

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.

(2) A dependent youth, 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.

...

Under Sec 9(1), to be eligible for IA, the recipient, when required to do so by the minister, must enter into an employment plan, and comply with the conditions in the employment plan. Under ss. 4, if an employment plan includes a condition requiring the recipient to participate in a specific employment-related program, that condition is not met if the person fails to demonstrate reasonable efforts to participate in the program, or ceases, except for medical reasons, to participate in the program.

The issue here is whether the Appellant was properly denied IA as being non-compliant with the conditions of her EP, contrary to Sec. 9(4)(a) of the Employment Assistance Act, by failing to demonstrate reasonable efforts to participate or that she ceased to participate due to medical reasons.

The appellant's position was that she could not participate due to her conditions of substance abuse, colitis and anxiety depression. In relation to attending the EP and complying with that aspect of the EP, the appellant states she was not given a follow up appointment with the contractor and her addiction was so bad she wasn't able to follow-up. Later, she was unable to participate because of the medical conditions as confirmed in the records. The ministry argues that the appellant was aware of the conditions of the EP and her responsibilities and did not follow through with those.

The panel finds there are two separate time frames to deal with in this matter. The first is from the end of May

until the August hospitalization and the second is post August hospitalization.

In the first time frame the panel notes that the EP here is vague. The EP states it will have specific timelines for activities, yet it does not. It simply says to contact the program and participate in the program. The evidence from the appellant is uncontroverted; she was not given a follow-up appointment. (Previous practice on these types of appeals included notes in the appeal package from the program providers. The practice now seems to have developed that, as in this case, no such notes are provided.) The panel accepts the evidence of the appellant on this point. It is noted the appellant's evidence was corroborated on several points, such as her file being closed when she did not pick up her July and August cheques, and that she was struggling significantly with drug addiction, as noted in the medical reports.

Further, the EP only had her reporting monthly to the contractor and the name of the contractor and the phone number was not included on the EP. The EP calls for monthly reporting but she was not instructed how to report and no confirmation of monthly reporting was apparently conveyed to her; the ministry representative says that she was not actually required to report to the ministry office and that the only report it expected to receive was from its own contractor.

It is noted this appellant is receiving IA for the first time and this is her first EP. She is not in the category of experienced IA recipients with experience in multiple EP's, as many of the appellants in these types of cases are. The panel finds that in the case of this EP, there was no concrete plan and it was not made clear to the appellant what she must do besides contact the contractor and report monthly. After the first meeting with the contractor she was not directed to another specific date.

The ministry argues that messages were left but we do not know who they were left with, or even what they said. For instance, did the message say simply to call or did it say you have an appointment on a specific date that you are required to attend. Again, as the program notes are not attached, which might set out the nature of the message, the panel does not know what was said in these messages. The appellant stated she did not receive any messages. However, when the ministry sent a letter Aug. 10, within a couple of weeks the appellant had contacted the ministry. The panel finds that during this first time-frame the appellant was making reasonable efforts to comply with the EP, taking into account the vagueness of the EP and the appellant's addiction. As such the ministry's determination for this first time-frame is not reasonable in all the circumstances.

In relation to the second time-frame, the medical material clearly shows that from Aug. through Oct., the appellant had serious problems with her colitis. The medical records show that on May 2, 2012 the appellant was in the hospital emergency department, not only for drug withdrawal, but for colitis. She was in hospital from Aug 18-20 for her colitis. She was readmitted Sept 18 for an exacerbation of her colitis. These records note she had no response to the medication provided in Aug. and that a new type of medication would be tried. She is in this, according to the records, until at least Sept. 20. Further records show that she was readmitted in Oct. 24-26 for anemia and colitis. Finally, she has provided a Dr.'s note indicating that as of Nov 27 she is unable to work as she is on methadone and suffering from anxiety and depression. It is clear from all these records that she was not able to continue in the EP in this second time-frame due to her medical conditions. As such, the panel finds she had ceased to participate for medical reasons under sec. 9(4)(b) in this second time-frame.

The panel finds that based on all of the evidence that the ministry decision was not reasonable based on all of the facts and the panel rescinds the reconsideration decision.

The appellant is successful in her appeal.