

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of January 30, 2013 which discontinued the appellant's disability assistance as provided in s. 22 of the Employment and Assistance for Persons with Disabilities Regulation for failure to comply with the terms of an assignment of maintenance rights. In particular, the ministry found that the appellant had failed to submit documents to the Family Maintenance Enforcement Program (FMEP) on request and that this failure was not beyond the appellant's control.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) ss. 21 and 22

## PART E – Summary of Facts

The appellant had been a recipient of income assistance from September 1992 until she received designation as a person with disabilities (PWD) in January 2012, at which point she became a recipient of disability assistance. Her son, who is currently 18 years old, has been a dependent on her file since September 1994.

On February 20, 1998 the appellant signed an assignment of maintenance rights agreement (the Assignment) giving the ministry authority to pursue maintenance on her behalf for her son. The Assignment contained the mandatory terms set out in s. 21(c) of the EAPWDR. On March 19, 2007 the appellant signed an Employment and Assistance for Persons with Disabilities Review (the Review Document) in which she acknowledged, among other things, that she understood her responsibility to "...make every effort to pursue income or assets from other sources such as... Family Maintenance..." The appellant reported her family maintenance as required each month during the period 2007 to 2012.

On September 10, 2012 the FMEP sent the appellant a letter in respect of her son, asking her to complete and return the enclosed form, and explaining that FMEP required the information to determine whether to continue its role of monitoring and enforcing the maintenance agreement after the son reached the age of majority. On October 10, 2012 the FMEP left a telephone message for the appellant to advise her that it had not received a response and that the Request for Information form had to be completed and returned immediately or maintenance enforcement would be ended. The appellant spoke to a FMEP worker by telephone on October 15, 2012, acknowledging that she now understood the Request for Information form was required, explaining that she had lost the first form, and asking the ministry to send her a replacement copy of the form.

On November 15, 2012 the FMEP sent the appellant a letter (the November 15 Letter) stating that it had not received a response to its Request for Information form sent to the appellant on October 15, 2012 and advising that it would no longer be monitoring or enforcing ongoing child support for the appellant's son as of September 10, 2012 though it would continue to monitor and enforce any arrears the may be owed to the appellant. The November 15 Letter ended by saying "Also, if the child's circumstances change and you wish us to consider monitoring and enforcing child support again, please call or send us a letter."

On January 2, 2013 the FMEP sent a letter to the ministry advising that it had withdrawn the appellant's maintenance order or agreement from the FMEP effective January 2, 2013. On January 4, 2013 the ministry advised the appellant by letter that her next disability assistance cheque would be held at the ministry's office until the appellant contacted her Family Maintenance Worker. It also advised the appellant that she was non-compliant with the Assignment. On January 7, 2013 the ministry advised the appellant by letter that she was denied further assistance as she had "...not complied with the Act and Regulations of the Ministry..." The letter did not specify the legislative provisions with which the appellant had not complied, though it contained a reference to s. 17 of the EAPWDR which identifies categories of persons who must assign maintenance rights. Attached to the letter were copies of ss. 11 [*reporting obligations*], 13 [*consequences of not accepting or disposing of property*], and s. 14.1 [*consequences for providing inaccurate or incomplete information*] of the Employment and Assistance for Persons with Disabilities Act.

In her Request for Reconsideration dated January 23, 2013 the appellant wrote that she is easily

overwhelmed and confused by printed information, and that she didn't understand the severity of not filling out the form. In the reconsideration decision which is the subject of this appeal, the ministry held that the appellant was ineligible for February assistance due to non-compliance with the Assignment.

At the appeal hearing the ministry confirmed that the appellant submitted a subsequent Assignment of Maintenance Rights form to the ministry on January 23, 2013 but that the FMEP has not yet processed the form. The ministry explained that administratively FMEP manages the monitoring and enforcement of the maintenance obligation that is the subject of the Assignment, that a Family Maintenance worker in a central office of the ministry liaises with FMEP, and that a ministry worker in the appellant's local office deals directly with the appellant with respect to her disability assistance. In response to a question from the panel about the actual term of the termination of assistance set out in the reconsideration decision, the ministry clarified that the termination was in effect for February and for subsequent months until such time as the appellant was back in compliance. The ministry acknowledged that it had had to contact the reconsideration officer who had made the reconsideration decision in order to obtain that clarification, because noncompliance with assignments of maintenance doesn't happen very often.

In her Notice of Appeal and in her testimony at the appeal hearing the appellant said that she has a mental disability. At the hearing she said that the rules as to when her son would no longer be entitled to maintenance from his father were unclear to her. She said that she had lost the first Request for Information form sent to her by the FMEP, and that the second Request for Information – which the FMEP apparently sent to her on October 15, 2012 - never arrived. The appellant stated that the first she heard from the FMEP after her October 15 telephone conversation was the November 15 letter, which she interpreted as meaning that the FMEP had assessed her son's situation, determined that he was no longer entitled to maintenance from his father, and that FMEP required nothing more from her. It wasn't until she heard from the ministry early in January that her disability assistance cheque was being held that she realized that she was in noncompliance and that it would have consequences in respect of her eligibility for disability assistance. No one at FMEP or at the ministry had explained to her previously that failure to respond to FMEP's Request for Information would affect her receipt of disability assistance.

The appellant said that once she understood that she was in noncompliance, she immediately contacted FMEP and the ministry's Family Maintenance worker and explained to them that she had lost the first Request for Information and that she'd never received the second, and that she was taking immediate steps to get back into compliance.

In response to a question from the ministry as to why she hadn't contacted the FMEP or the ministry after receiving the November 15 Letter, the appellant said she didn't know – she didn't think it was important.

Both the ministry and the appellant provided new oral evidence on appeal which had not been before the minister at the time of reconsideration. In the panel's view the information about the administrative framework within which the Assignment was implemented provides important context to the timelines in which events occurred and the panel admits that information into evidence as being in information in support, as contemplated by s. 22(4) of the *Employment and Assistance Act* (EAA).

The information about the appellant's non-receipt of the second Request for Information is information that the appellant has raised for the first time on appeal. She did not provide that information at reconsideration, and it cannot fairly be said to be information in support of information that was before the ministry at the time of reconsideration. Accordingly, the panel has not admitted that information into evidence, in accordance with EAA s. 22(4). Even if this information were admissible, it would not be entitled to significant weight since it doesn't seem likely that the appellant wouldn't have provided that evidence at reconsideration or in her Notice of Appeal if she had, in fact, not received the second set of forms.

The panel notes that the appeal record does not contain a copy of any correspondence from FMEP to the appellant dated October 15, 2012 forwarding the second copy of the Request for Reconsideration. However the November 15 Letter does reference the second set of forms being sent on October 15, 2012. Based on the foregoing analysis, the panel finds on the balance of probabilities that the FMEP did mail the second Request for Information form to the appellant on October 15, 2012 and that she did receive it.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision of January 30, 2013 which discontinued the appellant's disability assistance as provided in s. 22 of the Employment and Assistance for Persons with Disabilities Regulation for failure to comply with the terms of an assignment of maintenance rights, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is as follows:

### EAPWDR

#### Terms to be included in the assignment

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

(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;...

#### Failure to comply with terms of assignment

22 (1) If an assignor who is receiving disability assistance or hardship assistance fails to comply with the terms of an assignment referred to in section 21 (c) [*terms to be included in the assignment*], the assignor's family unit may be declared ineligible for disability 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 Parties' Positions*

The ministry's position, as set out in its reconsideration decision, is that the appellant was given 4 months to comply with FMEP's request for information but that she failed to do so. The ministry argued that the failure to provide the requested information was not beyond the appellant's control, and that she is therefore ineligible for disability assistance.

The appellant's position, as expressed by her advocate, is that the entitlement to child maintenance between the ages of 18 and 19 is a gray area at the best of times, and more so for the appellant who has a mental disability and who is easily confused and overwhelmed by paper work. The appellant argued that she has been on assistance since 1992 and has always complied with all requirements, and in the circumstances of this case she thought she had done what was expected. Once she found

out what was really expected of her, the appellant took immediate steps to fulfill her obligations.

*Panel Decision*

The provisions of ss. 21 and 22 of the EAPWDR create a broad requirement that an assignor of maintenance rights who is receiving disability assistance is required to cooperate with the FMEP by providing information on request. It is clear in s. 22 that failure to cooperate may result in a declaration of ineligibility for disability assistance.

Section 22(2) of the EAPWDR does provide an exception in circumstances where the noncompliance is "...beyond the control of the assignor."

The onus is on the appellant to prove that she has satisfied the legislative criteria for maintaining eligibility for disability assistance. In the appellant's circumstances the FMEP was willing to accept her contention that she had lost the first Request for Information and sent her a second form.

On balance, the evidence indicates that the appellant received, but decided not to complete either the first or the second Request for Information forms sent to her by the FMEP. The appellant maintains that she did not understand the form, but the evidence indicates that she did speak with the FMEP on October 15, 2012 and understood that she was to complete and return the replacement Request for Information that was to be mailed to her that day. The primary reason given by the appellant in the Request for Reconsideration for failure to provide the information requested by the FMEP was that she didn't understand the severity of not filling out the form. The appellant has not provided persuasive evidence that her failure to provide the requested information was beyond her control.

Based on the foregoing, the panel finds that the ministry's conclusion that the appellant's failure to comply with the terms of the Assignment was not beyond her control, and its decision to declare her ineligible for disability assistance was a reasonable application of the legislation in the circumstances of the appellant.

Accordingly, the panel confirms the ministry's decision.