

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry's) reconsideration decision dated August 21, 2013 which held that the appellant is not eligible for income assistance pursuant to Section 25 of the Employment and Assistance Regulation (EAR) for not complying with the terms of the Assignment of Maintenance Rights (AMR) entered into under Section 24 of the EAR.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 37.
Employment and Assistance Regulation (EAR), Sections 24 and 25.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration included: (a) a Court Order for Child Support for the appellant's children dated July 15, 2005; (b) an Assignment of Maintenance Rights (AMR) signed by the appellant and dated February 21, 2013; (c) a Consent Order dated July 9, 2013 and signed by the appellant; and (d) the appellant's Request for Reconsideration dated August 8, 2013 with a 4 page statement written by the appellant.

On, February 21, 2013, the appellant entered into an AMR with conditions that in return for receiving assistance paid by the Minister, she would assign to the Minister any maintenance right she may have as set out in the Regulations including the right to:

- Make an application under an enactment of BC for a maintenance order;
- Enter into a maintenance agreement;
- Make or defend an application for variance of a maintenance order or agreement, including any orders or agreements that are registered with the Child Support Recalculation Service;
- Receive payment under a maintenance order or agreement and/or one made under the Divorce Act or otherwise;
- Enforce a maintenance order or agreement;
- File a maintenance agreement with a court in BC;
- File a maintenance order in another province with a court in BC;
- File or withdraw a maintenance order under the Family Maintenance Enforcement Act; and
- Make payment arrangements with the debtor for recovery of arrears including Crown Arrears.

By signing the AMR, the appellant acknowledged that she had read the Terms of Assignment and that the Assignment ceases to have effect when Assistance is no longer provided to her family unit and there are no Crown Arrears unrecovered by the government, and a written notice of Termination of the Assignment is sent to the Appellant at her last known address.

The appellant is authorized to receive the current payment due under a maintenance order directly from the respondent or when the order is enrolled with the Family Maintenance Enforcement Program (FMEP) through FMEP.

In a Court Order for Child Support for the appellant's children dated July 15, 2005, the appellant's ex-husband is required to pay \$345 per month based on his taxable income of \$23,122.17 and the Federal Child Support Guidelines.

In a Consent Order dated July 9, 2013 and signed by the appellant, the Court orders that by consent and pursuant to the Divorce Act the child support arrangements as set out in the Order dated July 15, 2005 be cancelled effective December 1, 2012.

Included with the appellant's Request for Reconsideration, the appellant provided her evidence as follows:

- Her actions have not deprived the ministry, government, FMEP or any other program and/or her children of any income as the appellant's ex-husband was not making guideline or table levels of income and therefore, did not have to pay child support. He was making only \$9000 and was advised by legal aid in front of the appellant that he shouldn't be paying anything and that she could consent to the order saying that she understood that he is not able to make these obligations at this time and that she was willing to change the court order;
- She understood that the court would not have consented to the order if her ex-husband had been making table levels of income;

- She left a message for her case worker advising of the outcome of the court order;
- The appellant did not attend court on the date the judge made the decision;
- She was not aware that she was not allowed to give her consent and finds this very confusing and unfair;
- She has made efforts to upgrade her food safe knowledge and her resume, and is trying to get back into the work force; and
- Her family unit has no other income at this time.

On appeal, the appellant submitted a document entitled, "Schedule A" dated August 27, 2013 which indicated that:

- She did not agree that the assignment of maintenance rights to the ministry were explained to her;
- She understands that the issue concerns \$1380 in child support arrears;
- She has not had any discussions with the ministry about any breaches or failures to pursue income;
- She does not agree that she has failed to comply with the assignment;
- She was not told that the ministry would defend any application by her ex-husband to cancel arrears;
- She was told how her ex-husband could get the alleged arrears cancelled;
- She has always acted in good faith; and
- She is able to provide evidence of her job search.

At the hearing, the appellant testified that if she had breached the ministry's Terms of Assignment, it was based on what she had understood to be the ministry's advice. The appellant states her family maintenance worker and FMEP both advised her that the court order for maintenance rights could be changed. The appellant said that she had told her case worker from the beginning that her ex-husband would be unable to pay. Her case worker had made it clear to her that she was working in the interests of the appellant, not of her ex-husband. The appellant emphasized that her ex-husband was living in difficult circumstances but continued to help out "in kind", by buying groceries and providing transportation.

The appellant says that after FMEP told her that her ex-husband could request a change in the court order, the appellant and her ex-husband consulted Legal Aid and learned that due to the fact that his 2012 income totaled only \$9000, he should not be paying child support at all. The appellant was advised by Legal Aid that she needed to consent in order to have the court order changed. Her understanding was that all of the actions she had taken were on the advice of the authorities and stated that had she known this would be the outcome, she would never have given her consent.

In response to a question by the panel, the appellant said that when her assistance cheques stopped coming, she went to a ministry office, which, in turn, sent her to the downtown location. There after waiting a long time before seeing a case worker, she was asked to initial and sign the Assignment of Maintenance Rights document, without being told exactly what it meant or understanding its significance. After signing the document, the appellant was given her assistance cheque.

The ministry stood by the record, emphasizing that any changes to court orders would need to involve the ministry. Even if the ministry advised an individual to change a court order, it would ensure that it was on hand to represent the interests of the client.

The ministry representative pointed out that when the appellant signed the Assignment of Maintenance Rights document, it was understood that she had read and understood the document. The ministry said that the AMR was a legal document and it would not be consistent with policy for the Family Maintenance Worker (FMW) not

to explain the details and ramifications of the AMR with the appellant. The ministry stated that it is clear from the document that the actions undertaken by the appellant were in direct violation of the agreement. There is a difference, the ministry pointed out, between being advised to change the order, and believing that you can do it without the involvement of the ministry.

Findings of Fact

The appellant is a single, employable recipient with two dependants.

On February 21, 2013, the appellant signed an Assignment of Maintenance Rights Form with the ministry.

On July 9, 2013 the appellant signed a Consent Order with her ex-husband to cancel the child support arrangements described in the Order dated July 15, 2005, as of December 1, 2012.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant assistance pursuant to Section 25 of the EAR because the appellant failed to comply with the terms of the Assignment of Maintenance Rights entered into under Section 24 of the EAR.

Relevant Legislation

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.

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, guardianship 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 it would not be consistent with policy for a ministry employee to not explain the details and ramifications of a legal document that they are requesting a client sign. Based on the appeal record, the ministry maintains that having signed the AMR, the appellant acknowledged that she had read the Terms of Assignment which state that she is not authorized to enter into any agreements regarding maintenance without the written authorization of the ministry. Therefore, although the appellant indicated that her ex-husband was not making guideline levels of income and she felt she was not forgoing income because he was unable to make the maintenance payments, she did not have the authority to make that decision because she had assigned her maintenance rights to the ministry. Additionally, by consenting to cancel the July 2005 maintenance order, the appellant made the decision to forgo \$1380 in maintenance arrears which she did not have authority to do.

The appellant's position is that if she had breached the ministry's Terms of Assignment, it was based on what she had understood to be the ministry's advice. The appellant states her family maintenance worker and FMEP both advised her that the court order for maintenance rights could be changed.

After the appellant and her ex-husband consulted Legal Aid, they learned that due to the fact that his 2012 income totaled only \$9000, he should not be paying child support at all. The appellant was then advised by Legal Aid that she needed to give consent in order to have the court maintenance order cancelled. Her understanding was that all of the actions she had taken were on the advice of the authorities and she stated that had she known this would be the outcome, she would never have given her consent. Also, the appellant argues that Section 25 indicates that failure to comply with an assignment may declare the appellant ineligible and she feels it is not merited in her case.

In determining the reasonableness of the ministry's decision, the panel finds that the appellant entered into an AMR on February 21, 2013 which required her to relinquish any maintenance right she may have as set out in the regulation. The panel notes that while the appellant was informed by the ministry that the maintenance order for child support could be changed, she was also told by the ministry that the Minister was looking out for her and her children's best interest but not that of the appellant's ex-husband. The panel recognizes that the appellant took advice from Legal Aid, which said that since her ex-husband's 2012 income totaled only \$9000, he was not required to pay child support. The panel finds that the appellant's evidence did not establish any benefit to herself or her children by providing consent to cancel the July 2005 maintenance order for child support. The panel finds that by initialing and signing the AMR, the appellant acknowledged that she had read the terms as set out and agreed to them. Therefore, the panel finds that the ministry reasonably determined that the appellant had not made a reasonable effort to comply with terms of her Assignment of Maintenance Rights pursuant to Section 24 of the EAR, to be eligible for Income assistance pursuant to Section 25.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.