

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated December 21, 2012 which held that the appellant was not eligible for income assistance because he had not entered into an employment plan as required under the *Employment and Assistance Act*, Section 9, Employment plan.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA) Section 9, Employment Plan

PART E – SUMMARY OF FACTS

Prior to the commencement of the hearing, the appellant's sister who was in attendance along with the appellant, stated a completed Release of Information (ROI) had been faxed to the Tribunal office. The Panel Chair contacted the Tribunal office and confirmed that the ROI had been received designating the sister to attend the hearing, to act as the appellant's representative and to make decisions on his behalf.

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the minister at reconsideration was the record of dates setting out contact information between the ministry and the appellant as follows.

- The appellant has been receiving regular income assistance since March 2008.
- October 17, 2012; a telephone message from the ministry to the appellant asking him to attend the local Employment and Assistance office to complete a new Employment Plan.
- October 26, 2012; the appellant attended the office and informed the ministry he had broken steel pins in his foot and had surgery pending, the appellant was given a medical form to take to his doctor to be completed.
- November 14, 2012; the ministry mailed a letter advising the appellant that he was required to attend a group employment planning session on November 20th and if unable to attend to contact the Assistant Supervisor (the first letter). A copy was included in the reconsideration file documents.
- November 20, 2012; the appellant did not attend the session, nor did he contact the Assistant Supervisor. The ministry mailed a letter advising the appellant that he was required to attend a group employment planning session on November 27th and if unable to attend to contact the Assistant Supervisor (the second letter). A copy was included in the reconsideration file documents.
- November 27, 2012; the appellant did not attend the session, nor did he contact the Assistant Supervisor. The ministry mailed a letter advising the appellant that because he did not attend the required group employment sessions, he was now ineligible for further assistance. A copy was included in the reconsideration file documents.
- November 29, 2012; the appellant attended the ministry office and he requested another medical report. The appellant was informed that his income assistance was being discontinued. The appellant advised he had a doctor's appointment and would attend the office the next day to discuss the denial of income assistance.
- December 3, 2012; the appellant advised the ministry office that his doctor had been sick so he was unable to get the report completed. The appellant was again informed that his income assistance was being discontinued.

Additionally, the reconsideration decision states the appellant provided the ministry with a medical report completed by his doctor on December 7, 2012. This is the same date the appellant submitted a Request for Reconsideration. The ministry's Reconsideration Decision date was December 21, 2012. The Reconsideration Decision did not reference the medical report other than stating the date it was received.

The medical report provided was a ministry form headed: Medical Report – Employability. In that report the medical condition is set out as *severe R (right) foot fracture (calcaneus #), fracture complications*. The expected duration of the medical condition is marked as 3-6 months. The restrictions listed are *unable to focus due to pain meds and difficulty in walking or (illegible) due to foot pain*. The doctor marked on the form that she has been the appellant's medical practitioner for over six months and had examined previous medical records. This medical form and two other documents attached were all dated December 4, 2012. The other two documents were an X-ray requisition for 3 views of bilateral foot and ankle images required by specialist; and a prescription for Novamoxin, a penicillin-like medication.

In the request for reconsideration the appellant states that his foot was broken in a motor vehicle accident. He underwent surgery but the screws the put in his foot have broken. He is waiting to see a surgeon later in

December, 2012. The appellant states he takes a significant amount of pain killers each day which makes it impossible for him to focus and that he is unable to work until he gets his foot fixed and gets off the medication. He misunderstood what he was told and thought he did not need to attend (the local Employment and Assistance office to complete a new Employment Plan).

In the appellant's Notice of Appeal submitted on January 11, 2013 the appellant states he had a severe break in his foot in a motor vehicle accident in 2005. Due to complications he has been on pain medications. The medication he is taking affects his ability to do day to day tasks on his own. He is scheduled for surgery to have a right heel fusion to alleviate the pain. The surgery is scheduled for February 16, 2013. The appellant's recovery is expected to be 6 weeks, no weight bearing, followed by 6 weeks in a cast and rehabilitation.

Attached to the Notice of Appeal is a surgery information sheet dated January 8, 2013 with the appellant's name and the upcoming surgery listed as "iliac crest bone graft + fixation calcaneus fracture". The form provides pre-op and post op information including that the appellant will be going home in a cast and will be non-weight bearing for 6 weeks followed by a further 6 weeks in a cast.

At the hearing the appellant's sister acting as his representative stated that the appellant has been unemployed since the motor vehicle accident in 2005. There have been a multiple of affects from that accident, which was described as having destroyed his life. In that accident, his foot was shattered, he has had two previous surgeries that have been unsuccessful, the pins used to hold the bones together dislodge, this complication and the injury itself puts the appellant in considerable pain. He has been on prescription pain medications for 7 years which has gradually increased over time. The pain medication he is taking is Oxycocet, a combination of oxycodone and acetaminophen used as a morphine alternative. The appellant has a number of side-affects from the medication including not functioning well, mood changes, confusion, and nightmares. He is currently prescribed 245 pills a month and takes the medication every 4 hours. He is also taking a medication to assist with circulation. Before his scheduled surgery he will have to reduce the amount of medication he is taking and in doing so he is expected to experience withdrawal symptoms. The panel asked why copies of the prescription Oxycocet and other drug were not included in the reconsideration documents; the appellant's representative responded that she did not know why because all three prescriptions were given to the ministry.

The appellant's representative stated that because of the medications he is on, the appellant's doctor has determined he is unemployable. The appellant is undergoing a third surgery to have his heel fused in the hope that it will relieve his ongoing pain, this procedure will leave the appellant with a permanent disability. The appellant has been told there is a 60% chance of success with the surgery. This surgery is now scheduled for March 6, 2013.

The appellant's representative stated that the appellant has a job to go back to when he is able to work. The appellant's representative, who also is the appellant's Power of Attorney, has attended the ministry office with the appellant and been given conflicting information. She stated that they were told the appellant would be entered into the system as ETW-MD for a period of 6-12 months, while they are not clear on precisely what this meant, they believed it meant he did not have to submit an employment plan. They have an appointment on February 1, 2013 to attend the ministry office, the purpose of the meeting they believe is to sign-off medical forms so the appellant can have 6-12 months to concentrate on his upcoming surgery and recovery.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's decision that the appellant was not eligible for income assistance because he had not entered into an employment plan as required under the *Employment and Assistance Act*, Section 9, Employment plan is a reasonable application of the applicable legislation in the circumstances.

The applicable legislation is set out below.

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.
- (5) If a dependent youth fails to comply with subsection (2), the minister may reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.
- (6) The minister may amend, suspend or cancel an employment plan.
- (7) A decision under this section
- (a) requiring a person to enter into an employment plan,
 - (b) amending, suspending or canceling an employment plan, or
 - (c) specifying the conditions of an employment plan
- is final and conclusive and is not open to review by a court on any ground or to appeal under section 17 (3) [*reconsideration and appeal rights*].

In the Reconsideration Decision, the ministry argues the appellant was made aware that he was required to enter into an employment plan and was given a reasonable amount of time to provide a medical report for the purposes of establishing an employment plan that would be appropriate for the appellant's circumstances. The ministry argues the appellant did not attend the two sessions as he was directed to by the letters dated November 14th and 20th respectively. While the ministry noted that the appellant had provided a medical report on December 7, 2012, he had not entered into an employment plan as required and was therefore not eligible for income assistance.

The appellant argues that he and his representative were under the belief that he did not have to submit a medical report because the ministry had noted in his file that he was not able to work. They admit that this belief was in error. Once they understood what was required, the Appellant

provided the medical report and the ministry marked his file as that he is not medically fit to work at this time; this is supported by medical records which have been provided to the Ministry. The appellant's representative points to the medical report dated December 4th wherein the doctor states the appellant has a severe right foot fracture with complications; the expected duration of the medical condition is marked as 3-6 months and the restrictions state he is unable to focus due to pain meds and difficulty walking due to foot pain. The appellant argues that the additional documentation provided for this hearing regarding the appellant's upcoming surgery demonstrates that the appellant was not medically fit to attend the employment plan sessions. The appellant's representative argued that as soon he understood what was required of him the appellant complied with the ministry's requests. The appellant's representative argues that he should have his income assistance reinstated.

Both parties made submissions as to the reasonableness of the ministry's denial of income assistance on the basis that the appellant did not comply with section 9(1) of the EAA which requires that an applicant enter into an employment plan when so directed by the minister. Section 9(7) specifically states that a decision under section 9 requiring a person to enter into an employment plan is final and conclusive and is not open to appeal under s. 17(3) of the EAA. Therefore, pursuant to section 9(7) of the EAA, the panel is without jurisdiction to make a determination on whether the ministry's decision is reasonable and either confirm or rescind the ministry's reconsideration decision.