

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision of January 23, 2012, which denied further income assistance to the appellant. The ministry maintains that the appellant did not make a reasonable effort to comply with the conditions of his Employment Plan and, therefore, the appellant was not eligible for further income assistance, per Section 9 of the Employment and Assistance Act.

**PART D – Relevant Legislation**

Employment and Assistance Act (EAA) – Section 9

## PART E – Summary of Facts

Although notified in the prescribed manner on February 08, 2012 of the place, date and time of the hearing, the ministry was not present at the hearing. Therefore, as allowed by Section 86, (b), of the Employment and Assistance Regulation, the panel proceeded with the hearing in the absence of the ministry.

The evidence before the panel was provided in part in the appeal record and in part through oral evidence submitted at the hearing by the appellant. In the appeal record, as part of the evidence, were copies of the following documents:

- 1) The Employment Plan (EP) signed by the appellant and dated November 24, 2011. The terms of the contract required the appellant to (1) participate in employment programming with the contractor specified by the ministry; (2) fully participate as directed by the contractor; (3) advise the contractor any time he was unable to attend; (4) meet with the service provider to be assessed for employment services; (5) participate in the new employment program starting on April 2, 2012. The terms of the contract also stipulated that it was mandatory for the appellant to participate in the program to be eligible for income assistance.
- 2) The appellant's Request for Reconsideration dated February 18, 2012 stating that he was never late for the service provider; that he arrived there at 8:25 am but waited in a different room for the interview to start; that because of this misunderstanding, his appointment was rebooked for another day; that he missed this new appointment and tried to rebook again but the service provider staff was very rude and did not rebook it. The appellant stated that he has major broken bones and has to go for surgery again; that he was told not to work; finally, that he is one month behind on rent.
- 3) The appellant's Notice of Appeal, dated January 25, 2012 with the appellant stating that he is willing to attend the service provider so he can change his line of work; that he has no money and needs to pay two months of rent; that he needs a new surgery in his finger and that this medical procedure cannot be done because he has no medical coverage.
- 4) A medical note, dated November 23, 2011, informing that the appellant was disabled from doing his usual job due to an injury in one finger; that he was under the care of a plastic surgeon and that the recovery was still some months away.
- 5) A note from the appellant's plastic surgeon, dated Jan. 18, 2012, stating that the appellant was under that physician's care, that he likely would need surgery, and that he was unable to work for one/two months (or more).

At the hearing, the appellant presented a submission that covered the following points:

- He broke his finger in April 10, 2011; his finger is still broken and needs another surgery, although he had gone through two others previously.
- He missed the first assessment appointment with the service provider – he forgot about the appointment and apologizes for that.

- His appointment was re-scheduled and for this one he arrived 5 minutes earlier; that this was the first time he was enrolled in an EP and he thought the program would be in a classroom setting with others, and he ended up mistakenly following a group into a classroom, believing that would be the location of his intake assessment.
- After speaking with the service provider's staff member about the misunderstanding about the rooms, his appointment was again rescheduled.
- He was late 15 minutes for the new assessment appointment.
- He feels himself in a very difficult situation because of the problem with his finger, his inability to work because of this problem and the lack of money to pay his bills.

The panel notes that the evidence provided by the appellant at the hearing contradicts the appellant's submission on his Reasons for Reconsideration. The panel also notes that the evidence given by the ministry in the Reconsideration Decision does not conflict with the evidence reported by the appellant on his Request for Reconsideration. Therefore, the panel concludes that the ministry's account of the events is accurate and will be used to inform the panel's decision.

## PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's decision to deny the appellant income assistance because the appellant did not make reasonable efforts to comply with the conditions as set out in his EP, pursuant Section 9 of the Employment and Assistance Act (EAA).

The Employment and Assistance Act, section 9, provides:

- (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.*
- .....
- (3) *The ministry 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 a job*
  - (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*
- .....

The ministry's position is that the appellant failed to comply with the EP he signed on November 24, 2011; that the consequences of non-compliance were explained to him, but in spite of that, he did not make reasonable efforts to comply with his EP. The ministry informed that the appellant was late for the initial assessment appointment as previously scheduled; that his appointment was rescheduled but the appellant did not attend the new appointment with the service provider. The ministry added that since the appellant was not complying with the terms of his EP, his file was closed and the appellant considered ineligible for Income Assistance.

The appellant argued that he was earlier for the first appointment, but was in a different room and had to reschedule his assessment appointment; that he missed the rescheduled appointment. The appellant submitted that his finger is still broken and needs another surgery; that he is in a hardship situation and has no resources to pay his rent.

The Employment and Assistance Act in Section 9 and sub-sections, as set out above, clearly gives the minister authority to prescribe conditions of an Employment Plan to maintain eligibility for income assistance. These conditions, acknowledged and agreed to by the appellant, include completing all tasks as assigned, making a series of appointments and attending them regularly, and, in case of not being able to do so, notifying the ministry's caseworker of his impediments.

The panel finds that the evidence demonstrates that the appellant was aware of the requirements of attending the appointments and fully participating in the program, and the need to advise the service provider if not able to attend; that he was aware of the consequences of not doing so (his EP stipulated that it was mandatory for the appellant to participate in the program to be eligible for income assistance and, also, the ministry worker discussed this condition with the appellant when he signed his EP on November 24, 2011); nevertheless, the appellant did not follow through on the EP's conditions. The panel finds that the evidence demonstrates that the appellant was late for the first assessment appointment scheduled for him; that the service provider rescheduled this appointment and that he missed this new appointment.

The panel finds that the evidence demonstrates that the appellant has been prevented by a health issue (a broken bone on one finger) to conduct his usual job, but that this condition did not prevent him from attending and fully participating in his employment program.

The Employment and Assistance Act, section 9, requires that the participant demonstrates reasonable efforts to participate in the program or to provide a medical reason for ceasing to participate in the program. As such, the panel finds that the evidence demonstrated that the appellant did not make a reasonable effort to participate in the program. Given that the consequence of not complying with the conditions of the EP is ineligibility for income assistance, the panel finds that the ministry reasonable concluded that the requirements, as prescribed in Section 9 of the EAA, were not met.

Therefore, the panel finds that the ministry's decision to deny income assistance to the appellant was reasonably supported by the evidence and the applicable legislation, and therefore, confirms the decision of the ministry under Section 24 (1)(a)(b) and 24(2)(a) of the Employment and Assistance Act.