APPEAL #

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision of January 11, 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 (EP); 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

APPEAL #

PART E – Summary of Facts

The evidence before the Panel was provided in part in the appeal record and in part through oral evidence submitted at the hearing. 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 September 1, 2011. The terms of the contract required the appellant to (1) contact the service provider within three business days of signing the Plan; (2) attend the service provider resources program orientation and registration as scheduled by the provider; (3) attend weekly pre-program sessions at 3:00 pm every Wednesday and any other appointments booked for him by the program; (4) provide to the ministry office written confirmation of acceptance into the next program by the 15th of following month; (5) submit verification he was connected with the program by Sep. 9.

2) A copy of a letter from the service provider addressed to the ministry dated November 18, 2011 reporting that the appellant was not participating in the program and had missed 5 days to that date.

3) The appellant's Request for Reconsideration dated December 22, 2011 with a statement he provided in which he stated that on Nov. 8, 2011 he called the ministry office and asked to be enrolled in an alternative program since the one he was attending required eight hours/daily and he needed more time to prepare and send resumes and cover letters to job openings; that he had no experience dealing with computers and because of that, these activities demanded more time to be completed; that the ministry worker then informed him the service provider was offering a different program where he could also practice working with computers; that he went to the service provider and was told he could sign up for the new program in early December 2011; that while waiting for the new program to start, he worked on the computers at the local Employment Services preparing resumes and cover letters; that he thought he was doing everything he was supposed to do; that the service provider never called him while he was not attending the previous program; that he missed the ministry's call on Nov. 24, 2011, but that when he got the message - on Dec. 05, 2011 - he immediately called the ministry office and told them about the alternative program that he was waiting for; that he never said to the ministry worker that he had taken the previous program 20 years ago at the service provider, but that he had taken part of that same program 20 years ago when his sister was teaching the program; that the program he took from April 17 to Oct. 31, 2011 did not give him enough training with computers, since it had only two computers available but most of the time they were being used by the other clients; and that it was only at the end of the program that he had a one hour of computer training. Finally, that he did not deliberately miss the service provider program and that he is very serious about finding a job and that without the social assistance he will be out on the street.

4) The appellant's Notice of Appeal, dated January 23, 2012 with a statement he provided in which he stated the ministry reconsideration decision did not express the reality of the facts; that he never said he had taken the service provider program 20 years ago; that the pertinent legislation does not say that the program is mandatory, since it allows amendments, suspension or cancellation of an EP; that it was the ministry worker that informed him about an alternative program available at the service provider; that when asked by the ministry worker, he did provide the reasons why he was not attending the program; that he complied with all of the EP's requirements except that he registered with the service provider on Sep. 12, 2011 instead of Sep. 9, 2011 because they were not in the office that day. Finally, that if the service provider had reported to the ministry right away that he was not attending the program he would have know that there was a misunderstanding, but because such a report was not sent to the ministry he was unable to correct the mix up.

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

- He has been working full-time since he was 17 years old and never had been on social assistance.
- He has being sending resumes to job openings in the area.
- The program in which he was enrolled with the service provider was 6 weeks long and he could not afford to spend such a period of time taking daily classes since he needed to find a job.
- He never said that he had taken the same course 20 years ago from the service provider, but that he took part of this course when his sister was teaching it 20 years ago.
- He asked the ministry worker if there was an alternative program he could attend and she informed him that the service provider offered one; he went to the provider and enquired about this alternative program; the provider put his name down and asked him to return in early December when he could sign up for the program.
- When he asked the ministry worker for a different program, she did not advise him that he would be considered non-compliant with the original program if he stopped attending it because he was waiting to enrol in an alternative program, nor the consequences of non-compliance.
- He thought that once she referred him to this new program the ministry worker would know that he would not be complying with the original program; he did not go back to the ministry to inform that he was waiting to enrol in a different program and as such he was not going to continue attending the 6 week program.
- He had signed for a different EP with a different service provider before. The program in which he was enrolled from April 17 to Oct. 31, 2011 did not give him any training with computers until October and it was just a one hour course.
- He did not know the program due to start on Nov. 14, 2011 was a 6 week daily program until a few days before it was due to start; then he asked for an amendment to his EP but the worker did not inform him of the proper procedure and only suggested the alternative program.
- From Nov. 8 to Dec. 05, 2011 he used the computer at the local Employment Services office; the service provider sent him there while he was waiting for the new program to start; he did this and found it to be very helpful; the staff there helped him to set up an e-mail account and to prepare resumes and cover letters.
- He missed the ministry call on Nov. 24, 2011, but as soon as he picked up the message on Dec. 5, 2011 he called the ministry office.
- He had "definitely, obviously", explained to the ministry worker the reasons why he was not attending the service provider program.
- He reiterated that he went right away to the service provider to be registered in the original program, but he could not do so because the service provider's employees were in a meeting; he confirmed this fact to the ministry immediately; he was registered on the program a couple of days later.
- He attended all the program orientation and registration appointments; he also attended the weekly sessions for the pre-program.
- He always tried to do everything properly and the only time he did not attend was because he thought the 6 week program was not appropriate for his needs and, thus, he wanted an alternative program.

The ministry restated the position as it is set out in the reconsideration decision, reaffirming the appellant had not made a reasonable effort to comply with the conditions of his EP. The ministry informed that at the moment the appellant signed the EP, he affirmed that he had read, understood and agreed to follow the terms and conditions of the Plan and that he had clearly understood the consequences of not doing so; that it is the service provider that selects and decides which kind of program the clients will be attending and that the ministry does not have control over these activities.

The ministry stated that it had no evidence the appellant had gone to another program; that the service provider would have had to communicate to the ministry about this new program but that this was not done. The ministry added that when a client changes programs the ministry amends the EP. Finally, the ministry pointed out that because the information the ministry had from the service provider was that the appellant was not attending the program, the ministry found him ineligible for assistance, per Section 9 of the Employment and Assistance Act (EAA).

APPEAL #

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 to 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 September 01, 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 failed to attend the program set out for him by the service provider; that the ministry had called him on November 24, 2011 to discuss his non-attendance at the program, but the appellant did not answer and only called the office back on Dec. 5, 2011; that the appellant, at that moment, could not explain why he was not attending the program. 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 did not attend the program because he thought the program was not suitable for his needs; that it was a 6 week program that he had to attend daily, and that he could not afford to spend such an amount of time taking daily classes since he needed to find a job; that he requested the ministry worker refer him to an alternative program, which she did; that he went to the service provider and applied for a different program; that this new program would start in early December; that he thought the ministry would know that he was waiting to start a different program and therefore not attending the 6 week program anymore; that neither the ministry worker nor the service provider advised him about the consequences of not attending the program; that if he had been advised he would have gone back and attend the 6 week program. The appellant added that he missed the ministry's call on Nov. 24, 2011 but that when he saw the message on his phone, he called the ministry immediately; that this contact happened on Dec. 05, 2011. Finally, that he did not deliberately miss the service provider program and that he is very serious about finding a job and that without social assistance he will be out on the street.

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 contacting the service provider, 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 signed an EP dated Sep. 1, 2011 and after attending the intake appointment with the service provider, as well as the following weekly pre-program sessions, he was accepted to participate in a specific employment-related program, starting on Nov. 14, 2011; that before the program started the appellant understood that it was not suitable for his needs, since it was a 6 week program with daily classes and he wanted to start looking for jobs immediately; also, that the appellant had no experience with computers and needed training in this skill. The appellant provided evidence that he then called the ministry office and expressed his opinion about the program to the worker, stating that he would receive more benefit from a course in computers, whereupon, the appellant states, that the ministry worker referred him back to the service provider to explore an alternative program.

The appellant informed that after going back to the service provider and confirming that there was an alternative program, he put his name down for this new program and was requested to return at the beginning of December 2011 to register. The panel finds that the appellant then stopped attending the 6 week program. While waiting for the new program to start, the appellant went to the local Employment Service and received assistance in setting up an e-mail account, writing resume and cover letter and applying for jobs.

The evidence demonstrates that the appellant did not go back to the ministry office to report about the new program in which he intend to enroll in early December/11, nor did he communicate to the ministry that he would stop attending the 6 week program because of his intention to attend this alternative program. The evidence demonstrated that it was the appellant's understanding that once the ministry worker had informed him about the new program and had sent him back to the service provider, his EP would be amended and the ministry would know that he would not attend the previous program anymore and that he would be waiting for the new program to start in December. Here the information provided by the appellant and the ministry conflicts, with the appellant stating that he had asked the worker for an alternative program and that the worker informed him about a different program with the same service provider, sending him back to the contractor without advising him that he had to continue attending his existing program; in the Reconsideration Decision the ministry did not mention a referral to a different program for the appellant, only that the appellant was reminded that attendance at the existing program was mandatory. In resolving this conflict, the panel finds that the ministry's reaction upon receiving notification from the service provider of the appellant's non-attendance at the program, that is, to call the appellant on that same day to determine reasons for his non-attendance, confirms that it was the ministry's expectation that he continue to attend his existing program.

The panel finds that the evidence also demonstrates that the ministry only determined that the appellant was not attending the program on Nov. 24, 2011, when the service provider sent a letter informing that the appellant had missed 5 days of classes. The panel concludes on the evidence that the appellant did not tell the ministry that he was not attending the program. The evidence shows that on the same day the ministry tried to contact the appellant by telephone to discuss his non-attendance, without success; that the ministry left a message on his cell phone; and that the appellant only returned the ministry's call on December 5, 2011. The evidence here is conflicting, with the ministry stating that at that moment the appellant did not present any reason to justify his non-compliance with the program, and the appellant stating that he "definitively, obviously" told the ministry the reasons since he had reasons for not attending the program.

The evidence demonstrates that this conflict does not need to be resolved in terms of the ministry's reasons for denying the appellant income assistance due to non-compliance with the conditions of his EP because the evidence shows that at this moment the appellant was already non-compliant by virtue of not attending the program and not communicating this fact to the ministry.

It is evident that the appellant had made efforts to ensure that he was taking a program that would better meet his needs and was making other proactive efforts to gain the computer skills he sought, all in the interests of finding employment. However, in spite of the appellant's belief that he was proceeding in an appropriate manner, the panel finds that the evidence demonstrates that the appellant did not comply with the ministry's requirements for attending his program. The ministry's evidence was that the appellant failed to disclose that he had stopped attending the program because he was waiting to apply for a new, more suitable program starting at the beginning of December 2011; also, that he waited ten days to return the ministry's call to discuss his non-attendance, citing a failure with his cell phone, upon which the ministry had left a message on Nov. 24, 2011.

According to Section 9 (1) of the Employment and Assistance Act, 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.

Where the employment plan requires an applicant to enter into an employment program, Section 9(4) of the Employment and Assistance Act says 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 panel finds the evidence demonstrates that although the appellant showed good intentions, he did not make a reasonable effort to participate in the program to which he was assigned, nor did he demonstrate having a medical condition that prevented him from attending the program.

As such, the panel finds that the ministry reasonably concluded that the appellant failed to meet the conditions of his employment program and, it follows, to comply with the requirements of the EP. Given that the legislation sets the consequence of not complying with the EP is ineligibility for income assistance, the panel finds that the ministry's decision to deny income assistance to the appellant was reasonable, and confirms the decision of the ministry under Section 24 (1)(a) and (b) of the Employment and Assistance Act.