

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of February 7, 2012 which resulted in the discontinuance of the appellant's income assistance. In particular, the ministry found that the appellant ceased to be eligible for income assistance as provided by section 9 of the *Employment and Assistance Act* since he had not demonstrated reasonable efforts to comply with his employment plan, and had not provided evidence confirming mitigating circumstances for his non-compliance.

**PART D – Relevant Legislation**

*Employment and Assistance Act* (EAA), section 9

## PART E – Summary of Facts

The evidence before the ministry at the reconsideration included:

- The EP signed by the appellant dated November 15, 2011 (the EP), though the date stamp beside the appellant's signature states November 14, 2011.
- The appellant's Request for Reconsideration, including his 8 page (7 pages plus a 1 page addendum) typewritten submission.
- Employment plans dated June 17, 2011 and September 1, 2011.
- The appellant's registration with the ministry's contractor, dated November 15, 2011.
- The appellant's Return to Work Action Plan (the action plan), dated November 18, 2011.
- A questionnaire for a self-employment program, dated November 20, 2011.
- An article on Attention Deficit and Disruptive Behaviour Disorders.
- Four prescription receipts for medication, the two most recent dated May 20, 2010.
- A character reference from the appellant's pastor dated January 25, 2012.
- A number of certificates of achievement, a diploma in business communications, the appellant's resume attached to a job application dated May 28, 2011.
- A repayment agreement dated December 12, 2011 wherein the appellant agreed to repay the ministry the sum of \$187.50.

The EP is a two page document. On the first page, in a section titled "A Note About Your Employment Plan", is the statement that "It is important that you follow through with the conditions of the EP. If you are unable to follow through please advise the ministry. If you fail to comply with your EP you will be ineligible for assistance."

In the section of the EP headed "Conditions of the Plan" is the statement "I will participate fully and to the best of my ability in the activities required by the ministry or contractor as set out in sections (a) to (f) below."

In section (d) of the list of "Required Activities", the EP requires the appellant to:

- contact [the contractor specified by the ministry] (the contractor) within 3 days of signing the EP to book an assessment appointment and complete an action plan;
- submit the action plan to the ministry within 30 days of the date of the EP;
- actively participate with the contractor, seeking any and all reachback funds available to the appellant;
- submit a worksearch including a minimum of 3 activities per day, Monday to Friday, with his stub each month;
- meet with a ministry worker each month to review the appellant's status with the contractor, as well as review and discuss his worksearch.

Section (d) contains another acknowledgement that "If my worksearch does not meet requirements, I will be deemed ineligible for further benefits." The appellant initialed the first page of the EP in three places, including beside section (d).

The second page of the EP also contains the following acknowledgement above the appellant's signature and date of November 14, 2011:

I acknowledge that it is a condition of eligibility that I sign this employment plan and that I comply with the conditions set out in this plan, including any condition to participate in a specific employment-related program...

I further acknowledge and understand that, if the ministry refers me to a specific employment-related program, I will participate fully and to the best of my ability in the activities required by the ministry contractor...

In the written submission accompanying the Request for Reconsideration, the appellant said that he signed the EP on November 15, 2011 and later that day attended the contractor's office for orientation. He entered into the action plan on November 18, 2011. As a result of assessments done with the contractor, the appellant decided to pursue self-employment, and he was referred to a federally-funded self-business startup course. He met with the proponent of the self-employment program and applied for admission. During a follow-up meeting with the self-employment plan proponent, the appellant decided to forego that delivery of the course and to reapply for the April 2012 delivery. On November 29 and December 1, 2011 the appellant attended two workshops provided by the contractor. He attended the ministry office on December 5, 2011 to fill out his monthly continued-assistance card, when he was asked for his worksearch information. The appellant stated that the request came as a surprise to him since "to the best of [his] ability" he didn't know he had to do a worksearch - he couldn't remember the ministry worker mentioning it before. He reported that the bottom line in section (d) of the EP - showing the contractor's address - was highlighted in yellow and that since he has Attention Deficit Disorder (ADD), he literally did not see anything else but the highlighted text, and so had been unaware of the requirement to do a job search. He also suggested that since the ministry worker had stamped an inconsistent date next to his signature (November 14), the ministry worker was prone to err and perhaps had forgotten to mention the worksearch requirement to the appellant. The appellant also stated that he had been advised that he had until January 5, 2012 to submit a worksearch, but didn't say who had conveyed that advice or when. The appellant referred to the stressful circumstances he has experienced over the past few years including a divorce, being unemployed and periods of homelessness since moving to the local community. He provided evidence of his past work experience, education, and volunteer activities.

In the reconsideration decision, the ministry stated that at the time of initiating the EP on November 15, the ministry worker would have orally gone over the terms and conditions of the EP, including the worksearch condition. On December 5, 2011 the appellant attended at the ministry's office and was advised again of the worksearch obligation. At the ministry's office again on January 5, 2012 the appellant stated that he had not completed his worksearch obligation. He stated that he had opted to take steps toward establishing his own business and indicated that seeking employment does not consist of completing 3 work search activities per day. The ministry worker reviewed the EP requirements with the appellant and reminded him of the consequences of non-compliance. The appellant stated that he had not read the EP. At that time (January 5, 2012) the ministry advised the appellant that he was not in compliance with the EP and offered him the opportunity for reconsideration. The reconsideration decision noted that the appellant had had a total of 5 employment plans since becoming a client of the ministry in June 2011, found the appellant to be non-compliant with the EP, and noted that the appellant had not submitted any supporting evidence confirming a medical reason for his non-compliance.

At the hearing before this panel the appellant stated that he is recovering from a cracked or broken rib resulting from a bicycle accident about 6 weeks ago. He said that he had worked hard on the reconsideration submissions and this appeal, and knows that much of the information he submitted isn't pertinent to the legislated requirements. The appellant opened the sealed envelope he had received back from the ministry containing his original submissions for the reconsideration determination. He showed the panel the highlighted line in section (d) of the EP and reiterated that because of ADD he didn't see the rest of the document or realize that doing a worksearch was a requirement.

The appellant acknowledged that a substantial part of his appeal is that he has ADD, and that he has failed to provide medical records to substantiate this claim. The appellant said that he had been on a "neuro-enhancer" medication for his ADD for over 10 years, that he had been diagnosed by his physician in his former community, but that he hasn't been diagnosed by a psychiatrist or psychologist. He has an appointment scheduled with the local mental health office later this week to go through the process to determine whether he actually does have ADD or any other mental condition. The appellant says once he knows for sure whether he has a condition he can "take action". In response to questions from the panel the appellant advised that he does not have a physician locally, that he has been in the local community since August 2010, that he hasn't filled a prescription for his medication since 2010, that he has about another month of medication left, and that he only takes the medication "as needed".

When asked by the panel what had kept him from fulfilling the worksearch requirements after his December 2011 appointment with the ministry worker, the appellant answered that he realized that he had already missed a month of worksearch by then, and that no one had told him that a partial worksearch would be acceptable.

The panel has concluded that the appellant's testimony relates to his claim that he should not be held ineligible for non-compliance with his EP, and in accordance with section 22(4) of the *Employment and Assistance Act* admits it as oral testimony in support of the information and records that were before the minister at the time of reconsideration.

The ministry representative substantially reiterated the findings of the reconsideration decision. She noted that the appellant had initialed the section of the EP identifying the worksearch requirements. When he attended at the ministry office in December, 2011 the appellant said that he hadn't conducted a worksearch and that he was taking steps to establish his own business. He was told then that failure to conduct a worksearch was noncompliance with the EP. The ministry confirmed that the appellant has not submitted any medical documents to substantiate his claim that he has ADD.

The panel makes the following findings of fact:

- The appellant entered into the EP on November 15, 2011.
- The appellant was made aware of the worksearch conditions of the EP on November 15, 2011 and again in December, 2011.
- The appellant did not submit worksearch results to the ministry as required.

## PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's reconsideration decision discontinuing the appellant's income assistance for non-compliance with his EP, as provided in section 9 of the *Employment and Assistance Act*.

The relevant legislative provision is as follows:

### *Employment and Assistance Act*,

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.

...

(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.

The appellant's position is that:

- He has a medical condition - ADD - that initially prevented him from realizing that he was required to search for work. After it was pointed out to him by the ministry worker on December 5, 2011 that failure to fulfill the worksearch requirements was noncompliance with the EP, he says he thought it was too late to comply and that no one told him that compliance after that date would be acceptable.
- Given his ADD, and the emotional stress he has endured including his divorce and his experiences with homelessness, he has complied with the EP to "the best of my ability", which is the standard required by the "Conditions of the Plan" section of the EP. The appellant says that his recent experience with the bicycle accident confirmed to him that there are times in everyone's life when there are some things you simply can't do. He argues that given his circumstances he made best efforts at compliance with the EP and shouldn't be deemed ineligible for income assistance.
- His purpose and his actions were in accord with the spirit of the legislation. His evidence demonstrates that he has a long employment record and that he is not the type of person who wants to be unemployed. He has been "learning on the job" throughout this process with the ministry, and one needs to consider an individual's specific circumstances in determining whether he or she has complied with the legislation.

The ministry says that the appellant was clearly advised of the worksearch requirements of the EP, he acknowledged those requirements with his initials and signature on the EP, he was given every opportunity to comply with the EP, he did not complete the worksearch requirement, and he has not provided proof of a medical condition that prevented him from complying with the requirement.

The reconsideration decision held that "As you have not demonstrated reasonable efforts to comply with your employment plan, nor have you provided documentation confirming you have mitigating circumstances that would have prevented you from participating in the plan, you ceased to be eligible for assistance, as per Section 9 of the Act."

The panel is satisfied that the language of the statute is clear. The worksearch requirement is an employment-related program that is specified in the EP. The appellant was aware of the requirement and did not fulfill it. Though relying on ADD as an excuse as to why he didn't search for work, the appellant himself expressed uncertainty as to whether he actually has ADD. He has provided insufficient supporting evidence to show that he has a medical reason not to fulfill the worksearch requirements. The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant.

Accordingly, the ministry's decision is confirmed.