

PART C – Decision under Appeal

The appellant appeals the ministry's reconsideration decision of February 14, 2012 in which the ministry determined that the appellant was not eligible for income assistance as a result of his non-compliance with the terms and conditions of an employment plan required by section 9 of the *Employment and Assistance Act*.

PART D – Relevant Legislation

Employment and Assistance Act, section 9 ("EAA").

PART E – Summary of Facts

The evidence before the ministry at the reconsideration was an employment plan signed and dated by the appellant on November 25, 2011, and the appellant's request for reconsideration with his handwritten submission dated February 8, 2012.

On November 25, 2011, the appellant entered into an employment plan ("EP") for a two-year term from November 24, 2011 through November 23, 2013. The panel noted that in the reconsideration decision, it stated that the appellant entered into the EP on November 24, 2011, but the EP is signed and dated by the appellant on November 25, 2011. The section on the first page of the EP (which is a 2-page document), "A note about your employment plan", states: "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 list of "required activities", the EP requires that the appellant:

- Participate in employment programming with the contractor specified by the ministry;
- Fully participate as directed by the contractor and advise the contractor any time the appellant was unable to attend;
- Meet with the contractor on November 29, 2011 to be assessed for employment services; and
- Beginning in April 2012, participate in the new employment program of BC, to which the appellant will be directed prior to April 2012 by the current contractor or the ministry.

The appellant's required activities listed in the EP include the following statement, "I understand that my participation in these programs is mandatory to be eligible for income assistance." The appellant initialed the first page of the EP.

The second page of the appellant's EP also contains the following acknowledgement above the appellant's signature and date of November 25, 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. ...

As stated in the reconsideration decision, on December 6, 2011, the ministry confirmed with the contractor that the appellant had missed the intake assessment appointment of November 29, 2011, although the appellant had confirmed his attendance before November 29 with a ministry worker. The reconsideration decision states that on December 21, 2011, the appellant attended at the ministry office and advised the ministry that he had missed the November 29, 2011 appointment due to illness, "but failed to advise either [the contractor] or the ministry." On December 21, 2011, as stated in the reconsideration decision, an appointment for the appellant with the contractor was rescheduled for January 4, 5 or 6, 2012 and the appellant was "again reminded of [his] responsibilities and consequences of non-compliance." The contractor advised the ministry on January 12, 2012 that the appellant had missed all of the rescheduled appointments due to illness, including a rescheduled appointment on January 9, 2012.

The reconsideration decision states that the appellant called the ministry on February 6, 2012 and advised the ministry that he missed the appointments with the contractor "due to employment"

In the reconsideration decision, the ministry's evidence was that the appellant stated that his "health is not good" but that the appellant had failed to provide any information to substantiate this information, "simply that your health will hinder your ability to participate in the program developed for you by [the contractor]."

The reconsideration decision stated that this was the second time that the contractor had reported the appellant as non-compliant for not participating in the program with the contractor under an EP. The reconsideration decision also states that the appellant had "a total of 8 employment plans since November 2008."

In his submissions on the request for reconsideration, the appellant wrote,

"I believe my denial for benefits was because my file was closed at the ministry and told to apply for benefits under appeal as my file at [the contractor] is still open. I was told by more than one lady at [the contractor] that if there is an interview for work – they said to go as that is the point of the program. I informed [the contractor] of the interview and was there in first week of Jan. I was told to do this process by a work (woman) at phone in service on the 6th of Jan. 2012. Papers would be ready for pick up on Wed. the 8th. [The contractor] file stays open for 3 months if help is needed."

The ministry representative at the hearing confirmed that the appellant's ministry file was closed in error and that it was reopened for the purposes of the reconsideration and this appeal.

The panel makes the following findings of fact:

- The appellant entered into an EP on November 25, 2011;
- The appellant agreed to the conditions of the November 25, 2011 EP which required him to attend a specific employment-related program with the contractor;
- The appellant did not attend the EP required intake assessment with the contractor on November 29, 2011;
- The appellant did not attend rescheduled appointments with the contractor on January 4, 5, 6 or 9, 2012;
- The appellant advised the ministry on February 6, 2012 that he missed his appointments with the contractor as he had obtained employment.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's reconsideration decision of February 14, 2012, denying the appellant income assistance for non-compliance with an employment plan, as required by section 9 of the *Employment and Assistance Act* ("EAA").

Section 9(1) of the EAA states that in order for a family unit to be eligible for income assistance, each applicant, when required to do so by the minister, must (a) enter into an employment plan, and (b) comply with the conditions of the employment plan. Subsection 9(3) provides that the minister may specify the conditions in an employment plan including, without limitation, participation in a specific employment-related program that will assist the applicant in finding employment or becoming more employable. Subsection 9(4) of the EAA also requires that if an employment plan includes a condition requiring an applicant 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 did not attend the hearing. The panel received confirmation from the Tribunal that the appellant had been notified of the date, time and location of the hearing. Accordingly, under s. 86(b) of the *Employment Assistance Regulation*, the panel heard the appeal in the appellant's absence.

In his notice of appeal, the appellant states that he disagreed with the reconsideration decision for the following reasons:

I understand it was due to attendance I verbally notified 3 different instructors of all interviews, should this have been in writing I should have been notified so that this information could have been documented and signed, but was not told this needed to be done avoiding all confusion.

The ministry's position is that the denial of income assistance was reasonable. The ministry says that the appellant entered into and signed an employment plan on November 25, 2011 and agreed to the conditions in the employment plan, which included attending at the contractor's office as required, and that he knew he was obliged to comply with the conditions of the employment plan in order to receive income assistance. The ministry says that the appellant failed to comply with the terms of the employment plan for the following reasons: lack of attendance at the contractor as required by the EP; lack of communication with the contractor and with the ministry regarding his failure to attend the scheduled and rescheduled appointments; and lack of documentation to confirm the reasons for his non-attendance.

The ministry says that the appellant did not provide to the ministry or the contractor confirmation (such as a doctor's note) that illness caused him to miss a scheduled appointment on November 29, 2011. The ministry also says that the appellant did not provide to the ministry or the contractor confirmation that illness caused him to miss all the rescheduled appointments set for January 4, 5, 6, or 9, 2012. The ministry says further that the appellant did not provide to the ministry any confirmation of the employment (such as the name of the employer, the date he started work, the hours he was working) he claimed on February 6, 2012 caused him to miss the November 2011 and January 2012 appointments with the contractor.

In response to the appellant's submission on the notice of appeal, the ministry says that the appellant did not provide any information to the ministry, such as the names of the people he spoke to at the

contractor about his job interviews, the dates of the interviews and so forth, and that there is no confirmation of this from the contractor.

The ministry submits that the appellant is well aware of the requirement to comply with the conditions of the EP, as the appellant has had several employment plans (as noted in the reconsideration decision, 8 since November 2008). The ministry says that the appellant failed to demonstrate reasonable efforts to participate in the program and did not provide confirmation of medical reasons that caused him to cease participating in the program, as required by the legislation.

The panel finds that the appellant was aware of the terms and conditions of his employment plan, including that he was required to contact the contractor and attend scheduled appointments with the contractor. The panel finds that the appellant did not provide any evidence that illness caused him to miss appointments with the contractor on November 29, 2011, and rescheduled appointments on January 4, 5, 6 or 9, 2012. The panel also finds that the appellant did not provide any evidence that employment caused him to miss appointments with the contractor on November 29, 2011, and rescheduled appointments on January 4, 5, 6 or 9, 2012. The panel finds that there is no evidence that the appellant ceased to participate in the employment plan for medical reasons. The panel finds further that there is no evidence that the appellant made reasonable efforts to comply with the requirements of the employment plan. The panel finds that the ministry's decision to deny the appellant income assistance for failing to comply with the terms of the employment plan as per section 9 of the EAA is reasonably supported by the evidence. The panel confirms the reconsideration decision.