

PART C – DECISION UNDER APPEAL

This is an appeal of a reconsideration decision ('the decision') issued by the Ministry of Social Development ('the Ministry') on January 31, 2012.

In the decision, the Ministry denied the Appellant income assistance on the basis that the Appellant failed to comply with the conditions of his Employment Plan by not demonstrating reasonable efforts to participate in his employment program as required under Section 9 of the Employment and Assistance Act, and that he did not have a medical condition that prevented his participation.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA), Section 9

PART E – SUMMARY OF FACTS

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

The evidence before the Ministry at reconsideration was as follows:

- The Appellant's Employment Plan, dated September 27, 2011, which the Appellant signed and states:
 "...I will participate fully and to the best of my ability in the activities required by the contractor.

 In accordance with the conditions of the Employment and Assistance Act ..., I understand that if I do not comply with the conditions of this employment plan, the assistance issued to me and/or my family will be discontinued."
- The computer record from the agency contracted to assist with retraining and obtaining employment for the Appellant ('the contractor'), covering the period from June 10, 2011 to January 6, 2012 (the relevant period being September 30, 2011 to January 6, 2012; the Appellant having been with the contractor previously.)
- The contractor's scheduling forms for the Appellant, which set out scheduled appointments for October 11, 12, 13, 14 and 21, 2011. A separate form lists November appointment dates as November 3, 4, 7, 8, and 9, 2011.
- The contractor's notes show that the Appellant missed appointments on:
 - October 11, 2011
 - November 22, 2011, although there are two entries for that day. The first shows a Coaching session was discussed on November 14, 2011 with a due date of November 22 and a 'No Show' under Completed/Incomplete. The second entry for that day shows a discussion date of November 22, 2011 and a due date of the same day, with a "Yes" under Completed/Incomplete.
 - November 30, 2011
 - December 16, 21 and 29, 2011
 - January 6, 2012
- The Appellant disputes this in his appeal documents. He states that:
 - He attended all appointments in October with the exception of the 12th, for resume preparation. He phoned the contractor to inform them he was sick for that day.
 - In November he states he attended most of his appointments except for Resume Preparation, due to chronic tooth pain.
 - He attended on November 22, 2011, but forgot to sign in.
 - He states he attended the group meeting on December 16, 2011.
 - Regarding subsequent December appointments he states that he was caught up in Christmas activities and neglected to inform the contractor.

As neither the Appellant nor the contractor were in attendance at the Hearing it was not possible to query them to attempt to reconcile their records.

The Panel notes that the Appellant's appointment schedule shows Resume Preparation for October 12, 2011 but the contractor has no record of him attending or not attending on that day. The topic for October 11, 2011 was not Resume Preparation but Understanding the Job Loss Rollercoaster and Coaching. The contractor recorded a 'No Show' for that date.

As the contractor did not record him as a 'No Show' for October 12, 2011, the Panel does not need to consider the Appellant's excuse for that day.

The Appellant states he missed Resume Preparation in November due to his tooth pain. His schedule of appointments shows this taking place on November 8, 2011, however the contractor does not show him as attending or not attending on that day. Again, as the Appellant was not recorded as absent, the Panel does not need to consider the validity of the Appellant's excuse for that day.

With respect to November 22, 2011, the Appellant states he attended but did not sign in. The contractor's notes have two entries: one showing him attending, the other as a 'No Show.' The Panel gives the benefit of the doubt to the Appellant and finds that he attended on that day.

Regarding December 16, 2011, the contractor records him as a 'No Show,' whereas the Appellant states he attended. Neither the contractor nor the Appellant were available for the Panel to question, so a finding must be made on the record. The Panel notes that the Appellant is listed as a 'No Show' for November 30, December 16, 21, 29, 2011 and January 6, 2012. The disputed appointment is bracketed by 'No Shows' that the Appellant does not contest his attendance. This lends credibility to the contractor's position that he did not attend.

As well, despite the lack of congruence between some of the scheduled appointments on the October and November appointment sheets and the contractor's attendance records, the Panel acknowledges that the contractor is tasked with recording the Appellant's attendance and therefore gives more weight to the contractor's record. Therefore, the Panel finds that the Appellant did not attend on December 16, 2011.

In sum, the Panel finds the Appellant was absent on:

- October 11, 2011
- November 30, 2011
- December 16, 21 and 29, 2011
- January 6, 2012

PART F – REASONS FOR PANEL DECISION

The issue to be decided is whether the Ministry's reconsideration decision, which denied the Appellant income assistance, was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision. The Ministry denied the Appellant on the basis that he failed to comply with the conditions of his Employment Plan by not demonstrating reasonable efforts to participate in his employment program as required under Section 9 of the Employment and Assistance Act, and that he did not have a medical condition that prevented his participation.

The legislation relevant to this appeal is found in the Employment and Assistance Act ("the EAA"). Section 9 (1) states:

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

The conditions of the employment plan are not met if the applicant:

- 9(4)(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 submits that the Appellant failed to comply with the conditions of his EP because of his lack of attendance as required by the contractor and the fact that he had no medical reason for non-compliance.

The Appellant made the following arguments in his submissions:

- He attended all appointments in October with the exception of the 12th, for resume preparation. He phoned the contractor to inform them he was sick for that day.
- In November he states attended most of his appointments except for Resume Preparation, due to chronic tooth pain.
- He attended on November 22, 2011, but forgot to sign in.
- He states he attended the group meeting on December 16, 2011.
- Regarding subsequent December appointments he states that he was caught up in Christmas activities and neglected to inform the contractor.
- As noted in the Findings of Fact, the Panel finds that the Appellant missed a total of six appointments with the contractor:
 - October 11, 2011
 - November 30, 2011
 - December 16, 21 and 29, 2011
 - January 6, 2012

Section 9(1) states that to be eligible for assistance the recipient must, when required by the Minister, enter into and comply with the conditions in an employment plan. Section 9(4) states that "[t]he conditions of the employment plan are not met if the applicant fails to demonstrate reasonable efforts to participate in the program, or ceases, except for medical reasons, to participate in the program."

As well, the employment plan made it clear to the Appellant the consequences of not participating in

the employment plan.

The Panel finds the Ministry was reasonable in finding that the Appellant was not complying with the conditions of the employment plan. By missing six appointments he was not demonstrating reasonable efforts to participate in the program. The Ministry reasonably found that the Appellant bore a responsibility to stay in touch with the contractor and make efforts to comply with his employment plan. Nor is there evidence of medical reasons which caused him to cease attending in the weeks prior to his being found non-participating.

Therefore, the panel finds that the Ministry reasonably determined that the Appellant was not eligible for income assistance because of his failure to comply with the conditions in his employment plan without medical reasons for doing so.

The panel finds that the Ministry's decision was reasonably supported by the evidence and confirms the reconsideration decision.