

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision of 21 March 2012 which held that the appellant was not eligible for income assistance under the Employment and Assistance Act as the ministry had determined he had not demonstrated reasonable efforts to comply with his employment plan as provided under section 9 of the Act.

**PART D – Relevant Legislation**

Employment and Assistance Act (EAA), section 9.

## PART E – Summary of Facts

The evidence before the ministry at reconsideration includes the following:

1. The appellant's Employment Plan (EP) signed by him on 26 October 2011. The EP refers him to a BC Employment Program (BCEP) contractor (telephone number provided) and under required activities he is to attend an intake appointment with the contractor, complete all tasks assigned by the BC Employment Program in accordance with his responsibilities as established with the contractor, work with the contractor to address issues that may be impacting his ability to secure and sustain employment, report any changes to his ministry caseworker and attend all review appointments as required. The EP includes an Acknowledgement section which contains the statement: "...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."
2. A print-out of the appellant's BCEP CMS file, showing the appellant attended the contractor's office on 08 and 21 November 2011, 14 December 2011, and 12 January 2012, completing 2 one hour career path/action plan counseling and 2 one hour one-on-one coaching sessions. The last 6 entries as are as follows:
  - 11 Nov 2011: Action plan: [Appellant] will engage in active job search (applying for entry level and accessible employment), attend all workshops, participate in drop-in and submit completed job search sheets.
  - 14 Dec 2011: Drop-in. In Person. Appellant came for drop-in and did not provide a job search sheet. He is busy preparing for his immigration hearing in February 2012.
  - 12 Jan 2012: Drop-in. In person. Appellant did not submit a job search because he is stressed for his hearing in early February 2012. CSA has advised him that he is still expected to do some job search.
  - 24 Jan 2012: Note to File: Appellant no-show to drop in, unable to contact him.
  - 03 Feb 2012: Note to File: contractor unable to contact appellant to reconnect.
  - 13 Feb 2012: Note to File: Appellant has made no effort to reconnect, file flagged to return for non-participation.
3. The appellant's Request for Reconsideration dated 24 February 2012. In the space completed by the ministry, a worker writes that on 22 February the appellant attended the ministry office. At this time the worker informed him that his cheque was held because his EP file was returned to the ministry because he did not follow through with the conditions set out in the EP or those assigned to him by the contractor. The appellant stated to the worker that he stopped attending because a person had told him that the contractor was closing and he did not attend for that reason. He stated that he was willing for them to contact him. The worker asked what he was doing instead of attending the contractor. He stated he had been looking for work. Asked if his work search was through a computer or in person; he stated it was in person. Asked if he had kept a record of your work search, he replied he did sometimes. Asked if he had this work search records on him, he stated no. Asked if he had work search records at home, he stated he did not, that he had submitted them. At this point the worker contacted the contractor and spoke with the appellant's worker there. That worker advised that the appellant's file was closed because he was consistently not participating or submitting his work search documents. The contractor worker advised that they had

attempted to contact the appellant on 24 January and on 03 February, as you were a no-show on 24 January, but they could not contact him.

The worker went on to write that the appellant was advised that he was not eligible for his March 2012 income assistance cheque, and denied him income assistance under section 9 of the EAA. The appellant then stated to the worker that he had an immigration hearing on February 3 and that the reason he could not participate in his EP was because he had been too busy preparing for that hearing.

4. In his Request for Reconsideration, under Reasons, the appellant writes:

"I am hereby requesting for reconsideration for the following reasons. The entire months of January and February 2012 have been busy, stressful and emotionally draining on my person. February 03 2012 was my immigration court date which is life and death for me, as an asylum seeker from the troubled nation of [country] and having been denied settlement in [another country], this was a big deal for me. Several other days of January, including the 24th, were appointment dates with my lawyer and other supporters in my immigration case. I understand my obligations towards the ministry and the only due to the stressful situation that I missed my appointments and I am truly sorry. I am humbly requesting for reconsideration as I have no home or money and at risk of losing my apartment. My financial situation is pretty bad in terms of food and other necessities please reconsider it reconsider on this grounds for you."

In his Notice of Appeal dated 23 March 2012, the appellant writes:

"I was unable to attend the appointments due to immigration hearings. I am requesting that 'reasonable efforts' be interpreted broadly and liberally."

Attached to his Notice of Appeal are copies of the following:

- A letter to the appellant from his lawyer dated 01 September 2011 setting out a list of documents the appellant will require for his immigration hearing.
- A Notice to Appear from the Immigration and Refugee Board of Canada (IRBC) dated 09 November 2011 setting the date of refugee protection hearing as 03 February 2012.
- The IRBC Notice of Decision dated 05 March 2012 that determined that the appellant is a Convention refugee and therefore the Refugee Protection Division accepts his claim.

Following reconsideration but before the hearing, the appellant's advocate forwarded to the Tribunal a Submission, attached to which was a letter from the appellant's immigration lawyer, who stated that the appellant attended his office to prepare for his refugee case on the following dates: 07, 22, 28 and 30 January 2012 and 02 February 2012. The balance of the Submission goes to argument.

The ministry emailed the Tribunal on 18 April 2012 stating that its submission on this appeal is the reconsideration summary.

The panel finds that the new information provided by the appellant, his advocate and his immigration lawyer is in support of the information and records that were before the ministry at the time of reconsideration. The information about the appellant's appointments with his lawyer and lawyer's instructions regarding required documentation clarifies the appellant's statement in his Request for Reconsideration concerning how he was busy in preparing for the IRBC hearing. The panel therefore admits the new information as evidence pursuant to section 22(4) of the EAA.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision, pursuant to section 9 of the EAA, that the appellant was not eligible for income assistance because he had not demonstrated reasonable efforts to comply with his EP, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is set out in the EAA, section 9:

### Employment plan

- 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.
- (2) A dependent youth, 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.
- (5) If a dependent youth fails to comply with subsection (2), the minister may reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.
- (6) The minister may amend, suspend or cancel an employment plan.
- (7) A decision under this section
- (a) requiring a person to enter into an employment plan,
  - (b) amending, suspending or cancelling an employment plan, or
  - (c) specifying the conditions of an employment plan

is final and conclusive and is not open to review by a court on any ground or to appeal under section 17 (3) [reconsideration and appeal rights].

The position of the ministry is that it was made clear to the appellant when he signed his EP that if he did not fully participate in the BCEP with the contractor, he would be found ineligible for income assistance. The ministry acknowledged that he had an immigration court date in February; the ministry, however, maintained that this did not negate his responsibility to comply with his EP or advise the ministry of his situation before ceasing to participate with the contractor.

The position of the appellant, as set out in his advocate's submission, is that he has made reasonable efforts, to the best of his ability and circumstances, to comply with his EP. He was further hindered by his limited English comprehension in both reading and writing. The advocate submits the appellant failed to submit job search sheets as he does not understand how to do a job search on-line and is unfamiliar with how to find job banks. He was not able to attend his appointment on 24 January 2012 because he was focused on his refugee hearing and could not attend to the 03 February phone call because he was at the hearing. The advocate submits that the appellant's limited English limited his ability to make reasonable efforts; however he should not be punished for his limited English comprehension. The advocate also submits that it is unreasonable for the ministry to deny the claimant benefits because he does not have the skills that are required of him in the EP that he will fail. The advocate asks for a liberal interpretation of the words "reasonable" and "efforts."

The evidence shows that the appellant signed an EP on 26 October 2012. In doing so, he acknowledged that if he did not comply with the conditions of his employment plan, the assistance issued to him would be discontinued. In reviewing the appellant's efforts in complying with his EP, there is no evidence that he followed through with the job searches expected of him in accordance with the 21 November action plan worked out with the BCEP contractor, with no job search sheets submitted. Nor is there any evidence that he was in contact with the BCEP contractor or the ministry between 12 January and 22 February 2012. While the panel considers it understandable that the appellant might not be able to participate in his EP in the week or so preceding his 03 February IRBC hearing, there is no evidence that he contacted the ministry or the contractor to explain his situation and the reason why he could not attend as scheduled on 24 January and there is no evidence that immediately after the hearing he made any effort to reapply himself to his EP. The EP also requires him to work with the contractor to address issues that may be impacting his ability to secure and sustain employment. With respect to the submission by his advocate that he does not have the ability to do a job search on-line or find job banks, there is no evidence that he attempted to seek more assistance, over that already provided in the four sessions at the contractor's office, to gain the practice and familiarity with these job search tools. While recognizing the appellant's limited English reading and writing comprehension and his focus on preparing for and attending his IRBC hearing on 03 February, the panel finds that the ministry reasonably concluded, on the basis of this evidence, that the appellant failed to demonstrate reasonable efforts to participate in the program.

Accordingly the panel finds that the ministry decision that the appellant was not eligible for income assistance, because he had not demonstrated reasonable efforts to comply with his EP, was reasonably supported by the evidence. The panel therefore confirms the ministry decision.