

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision of 12 April 2012 which held that the appellant was not eligible under section 9 of the Employment and Assistance Act for income assistance as the ministry had determined that she had not demonstrated reasonable efforts to comply with her employment plan, nor had it been established that she had not participated in the program for medical reasons.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9.

PART E – Summary of Facts

The ministry failed to appear at the hearing at the scheduled time and date. After verifying that the ministry had received notification of the hearing at least 2 business days before the hearing date by examining the Notice of Hearing fax transmit confirmation report, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration includes the following:

1. The appellant's Employment Plan (EP) signed by her on 02 February 2012. The EP refers her to a BC Employment Program (BCEP) contractor (telephone number provided). Under required activities, she understands that to be eligible for income assistance she is to attend an intake appointment with the contractor on 10 February 2012 to be assessed for employment services, to fully participate as directed by the contractor and to advise the contractor any time she is unable to attend. Beginning 2 April she agrees to participate in the new employment program of BC (BCEP). 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. From the ministry's files:
 - The appellant is a sole recipient with 4 dependents
 - The appellant did not attend the required intake appointment at the contractor's office on 10 February 2012. On 27 February, her BCEP file was closed by the contractor as she had not attended her intake appointment within the 21 day referral period. The ministry mailed her a letter advising her that she was non-compliant with her EP and requesting her to provide any mitigating reasons.
 - On 22 February 2012 the appellant called the ministry to advise that she might be taking a trades course at the community college. She stated grant money would pay for tuition and books only. The ministry worker advised her to submit paperwork first before stating the course.
 - On 13 March 2012 the appellant called the ministry office regarding her EP non-compliance. She said her plan was to attend the women's course at the college. The ministry advised her that she should have discussed her plan with the BCEP contractor or at least attended her required intake appointment. The appellant stated that she was expecting to be accepted into the course on 16 March 2012 and that the college was looking into her eligibility for funding.
3. The appellant's Request for Reconsideration dated 26 March 2012. Under Reasons, the appellant writes that since her separation from her spouse, life has been a roller-coaster of emotions. She lives everyday in depression, awful anxiety attacks, crying, sleep problems and feelings that she can't breathe. She's never had these problems before and did not know how to deal with them. She rarely leaves home because she is scared of panic attacks. She describes how when she does leave home she never leaves without her "safety needs," items which she knows "sound stupid." She is embarrassed to let people know how weak she has allowed herself to become. It was only in the past week that she opened up to friends and family back home, and for the first time in months it feels like there might be a light at the end of the tunnel. She thinks depression or any kind of mental illness can't be ignored or

invalidated and believes that this is a mitigation reason.

At the hearing, the appellant referred to her statement in her Request for Reconsideration, elaborating on her mental condition arising from a traumatic separation from her spouse and how this was a terrifying experience for her, considering that mental illness ran in her family. During February and into March her depression also led to confused thinking and a lack of energy to deal properly with issues. She went to her physician, who gave her an anti-depressant sample, but she decided not to take it because she feared the side-effects. She found a "healthy living" group in mid-March and by "opening up" with others in that context, and later with her family, especially her mother, she now feels that things are getting better, though she does not yet feel completely healed.

The appellant stated that she phoned the BCEP contractor on 10 February to cancel the initial appointment as she also had a job interview that day at a store run by a charity. She did not get that job. On the next day, she went to the community college for an interview and states she was given a verbal acceptance into a 12 week trades course. The beginning date of the course was uncertain, either starting in May, June or September, depending on when and if the college obtained provincial funding for the course. On 22 February she phoned the ministry about receiving income assistance while attending the course. She said she was advised to submit paperwork, but could not as the timing of the course was uncertain. She stated that no mention was made at this time to attend at the BCEP contractor. During this time she also continued to search for work on her own and submit resumes. By 13 March she had received formal acceptance into the course, but the timing of the course start (September) was not clarified until later. By that time she had been advised of her ineligibility for income assistance because of her EP non-compliance.

The appellant stated that the month of February and into mid-March was the worst period of her mental condition. She described this as a "very dark time when she was experiencing scary thoughts." She stated that she was not capable of thinking clearly nor did she have the energy to ask the right questions to deal with her obligations to her EP. She believed she was doing the right thing by applying for jobs (though she acknowledges she really would not have then been up to any work if offered) and by applying to the college to upgrade her skills. She fully acknowledges now that she did not comply with her EP, but stated that her thinking and judgment were so confused by her mental condition that she wrongly assumed that what she was doing was what was expected of her. She stated that at no time had she been contacted by the contractor. In answer to a question, the appellant said that she did not think now that she would have been up to participating in the contractor's program at that time.

The panel finds that the new information provided by the appellant is in support of the information and records that were before the ministry at the time of reconsideration. The appellant's testimony regarding her mental condition elaborates on her statement in her Request for Reconsideration and clarifies the material from the ministry's files concerning the trades course at the community college. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that, pursuant to section 9 of the EAA, the appellant was not eligible for income assistance because she had not demonstrated reasonable efforts to comply with her EP, nor had it been established that she had not participated in the program for medical reasons.

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].

In its decision, the ministry noted the appellant's statement that since separating from her spouse she has been suffering from depression, anxiety attacks, crying, sleep problems and feelings of inability to breath. The ministry also noted the appellant's position that "any kind of depression or mental illness can't be ignored or invalidated and believe this is a mitigating reason." The ministry commented that "The minister is unclear how your medical conditions may affect your ability to make contact with [the BCEP contractor] or attend their programs but not affect your ability to attend the [trades] program."

The ministry also stated that while the appellant had stated she was suffering from medical conditions, she had stated her plan, as of 13 March, was to attend the 12 week trades program at the community college. The ministry points out that she had not submitted the necessary paperwork regarding this course, as advised by the ministry worker on 22 February. The ministry therefore concluded that information has not been provided to establish mitigating reasons for not attending the contractor as required. The ministry refers to discussions with the appellant on 02 February when she signed her EP concerning the consequences of non-compliance, when she advised she understood. The ministry believes that by understanding the conditions of her EP, it was her responsibility to contact the contractor to advise them of her plan to attend the trades program in order for the contractor to assess her ability to continue in their program. As such, the ministry found it could not be determined that she had demonstrated reasonable efforts to comply with the conditions of her EP, and as she does not have a confirmed medical condition that prevented her from participating in the EP, she ceased to be eligible for income assistance.

The position of the appellant is that during the period beginning with the traumatic separation from her spouse until when she began to heal in mid-March, including the time from when she signed her EP until the ministry found her in non-compliance, she was suffering from a mental illness that precluded her from any active participation with the contractor's program. Her mental condition also confused her thinking and judgment, leading her to assume that arranging to attend a community college trades program, the start-date of which was then uncertain, would somehow be in compliance with her EP. She argues that her mental health issues prevented her from asking the right questions and getting the proper advice as to pursuing her plan to attend the trades program.

The panel's mandate is strictly limited to the reasonableness of the ministry's decision. The panel notes that the ministry at reconsideration was presented with an inconsistent account of the appellant's circumstances and behavior. On the one hand, the ministry had a description from the appellant of how she was going through some understandable mental and emotional distress during the February to mid-March period in question. On the other hand, there was also her account that she was attending at the college to seek acceptance in and arrange funding for a trades course to be scheduled for an unspecified future date. In addition, she went to a job interview instead of attending her intake appointment with the contractor. Further, she admits to making no effort to contact the contractor to make another appointment.

The panel notes that the ministry raised the question of how her medical conditions may affect her ability to make contact with [the BCEP contractor] or attend their programs but not affect her ability to attend the [trades] program. The appellant's response at the hearing was that her mental condition confused her thinking and judgment, leading her to assume that arranging to attend a community college trades program would somehow be in compliance with her EP and that her mental health issues prevented her from asking the right questions and getting the proper advice as to pursuing her plan to attend the trades program. However, this explanation was not available to the ministry at reconsideration and, in the panel's view, does not fully explain why she did not contact either the BCEP contractor or the ministry, at least to request to excuse herself from her EP obligations while trying to deal with her mental and emotional issues.

Unlike elsewhere in the legislation, (such as section 2 relating to persons with persistent multiple barriers to employment), section 9 does not explicitly require the "medical reasons" or a medical condition to be confirmed by a medical practitioner. However, the panel is mindful of the general rule

that the burden rests with the applicant/recipient of public benefits to provide the information necessary to qualify for or to continue to receive such benefits. In this case, while the appellant did visit her physician, she did not seek a letter from the physician confirming her mental condition. The panel finds that in the absence of such supporting information before or at the time of reconsideration, and faced with the contradictory evidence before it, the ministry was reasonable in determining that the appellant failed to demonstrate reasonable efforts to comply with her EP, including advising the contractor any time she was unable to attend, and did not have medical reasons that prevented her from participating in her EP.

Accordingly, the panel finds the ministry decision is reasonably supported by the evidence and therefore confirms the ministry's decision.