

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision of February 09th, 2012, which denied further income assistance to the appellant. The ministry found that the appellant did not make a reasonable effort to participate in the employment program, nor did she provide verification to establish that mitigating circumstances prevented her from attending the appointments or participating in the program; therefore, the appellant was not eligible for further income assistance, per Section 9 of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) – Section 9

PART E – Summary of Facts

This hearing was rescheduled from the original date to allow time for the appellant to provide new documental evidence.

The evidence before the Ministry at the time of the reconsideration decision consisted of the following documents:

- 1) The Employment Plan (EP) signed by the appellant and dated November 18, 2011. The terms of the EP required the appellant to (1) attend the employment program with the service provider beginning with the date and time booked for her by the Ministry; (2) attend the intake assessment appointment as scheduled; (3) complete all tasks assigned by the service provider in accordance with her responsibilities as established with the contractor and/or in her participant plan; (4) work with the contractor to address issues that may have impacted her ability to secure and sustain employment.
- 2) Service Provider notes with entries from July 26, 2011 to January 6, 2012, as following:
 - July, 26, 2011 – the appellant signed a new EP
 - October 21, 2011 – Her file was returned to the Ministry for non-compliance
 - November 01, 2011 – Appellant requested her file to be re-opened
 - November 18, 2011 – She signed a new EP
 - November 18, 2012 (afternoon) – Appellant could not attend the appointment stating she need to change the summer tires of her car
 - November 25, 2011 – Appellant could not attend the appointment because she was moving to another place
 - November 28, 2011 (afternoon) – Appellant could not attend the afternoon appointment because she needed to move the rest of her belongings
 - December 05, 2011 – The appellant could not attend her appointment with the contractor because she need to catch a ferry to deal with her mother belongings
 - December 09, 2011 – She could not attend because she was still out of town
 - December 19, 2011 – She did not attend the scheduled appointment
 - December 28, 2011 – She did not attend the scheduled appointment
 - January 06, 2012 – She did not attend the scheduled appointment
- 3) Medical Report – Employability dated January 30, 2012, provided by the appellant's family doctor, who identified the appellant's primary medical condition as "arthritis right hand", onset date 2001; and as secondary medical condition "back pain and bronchitis", describing the overall medical condition as severe. The physician informed that the expected duration of the medical condition is more than 2 years, with additional comments "have had 6 surgeries on right wrist"; concerning the recurrence of the condition, the physician informed that the appellant has 2 – 3 pulmonary infections per year. With respect to restrictions, the medical practitioner indicated that the appellant has chronic wrist pain, recurrent bronchitis and requires daily narcotics.
- 4) The appellant's Request for Reconsideration dated January 25, 2012 with a statement she provided in which she stated that she did not receive any mail from the service provider since her mailing address has to include Unit "A" on it or it would be returned; that her health was not very good and that she had a "bad winter and been ill a lot"; that she was "under medical excuse" before and that when "it ran out" she wanted to try to go back to work; that she is heavily medicated daily due to pain; that she went back to her physician to discuss her situation and that her physician had agreed that she was not ready yet to pursue employment.

- 5) The appellant's Notice of Appeal, dated February 27, 2012 with a statement she provided in which she stated that her many medical reasons should be considered to justify her non-attendance in the program; that her physician can confirm her medical problems; that she asked to sign for an EP after her medical letter expired and she was hoping to be able to return to work.

As new evidence the appellant submitted the following documents:

- 1) A medical note dated April 04, 2012 informing that the appellant is unable to work due to health issues since August 2011 until the present date (04/04/12).
- 2) A medical note dated October 21, 2011 informing that the appellant had been ill and as a result was unable to attend the program with the service provider.
- 3) A medical note dated August 04, 2009 informing that the appellant was unable to work due to chronic pain; that she should be able to return to employment in two months.
- 4) Medical Report – Persons with Persistent Multiple Barriers - dated March 21, 2012, provided by the appellant's family doctor, who identified the appellant's primary medical condition as "chronic right pain", date of onset 2002; and as secondary medical condition "chronic bronchitis (COPD)" since 2007. The physician informed that the treatment the appellant has been receiving "keeps pain under control" and "keeps COPD stable"; and that the expected duration of the medical condition is more than 2 years. With respect to restrictions, the medical practitioner described the appellant's circumstance as "right hand dominant, unable to use without pain".
- 5) Medical Report – Persons with Persistent Multiple Barriers - dated May 13, 2010, provided by the appellant's family doctor, who identified the appellant's primary medical condition as "chronic anxiety/depression", date of onset 2008; and as secondary medical condition "chronic pain, right wrist" date of onset 2001. The physician informed that the treatment the appellant has been receiving presented "no change, must go for surgery on right wrist"; and that the expected duration of the medical condition is more than 2 years. With respect to restrictions, the medical practitioner indicated "dominant hand has chronic pain with limited ROM".
- 6) Medical Report – Employability dated May 27, 2009, provided by the appellant's family doctor, who identified the appellant's primary medical condition as "chronic pain right shoulder arm and wrist", date of onset 2001; and as secondary medical condition "COPD, asthma", describing the overall medical condition as severe. The physician informed that the expected duration of the medical condition is more than 2 years. With respect to restrictions, the medical practitioner indicated that the appellant was "unable to work".

The ministry did not object to admission of the above new evidence. The panel reviewed the submitted documents and held that documents # 2, 3, 5 and 6, as noted above, are in support of the appellant's past medical history but refer to a period of time previous to the EP in question – April/2009 to October/2011. As such, while the panel admits them, it puts no weight on the evidence they provide. Regarding documents # 2 and 4, the panel finds that these documents were in support of the information and records that were before the ministry when the reconsideration decision was made. As a result, and in accordance with the Employment and Assistance Act, section 22(4), the panel admitted the appellant's evidence # 1 and 4.

At the hearing, the appellant presented a submission that covered the following points:

- She accepted that the ministry's decisions was not a wrong decision, but that it was not the right time for her to be in an EP, although it was her desire to go back to work.
- She injured her arm in a car accident; she has had lung problems since 2006; she has had many surgeries and received benefits from Workers Compensation for 6 years.
- She has had problems with her medications for chronic pain and became depressed as well as suffering from anxiety; she is now "doing OK", although feeling anxious.
- She wanted to pursue employment again, but it was impossible because of the medication she takes for chronic pain; that she was classified as an impaired person when taking the medication.
- She has applied for PPMB designation in the past but had her three applications denied.
- She volunteered for the EP, but after she realized she was not fit for it; she still finished most of the program.
- She never told the ministry or the service provider about her health problems.
- The ministry "did not do anything wrong" and she made a mistake not telling the service provider of her medical conditions.

The ministry restated the position as it is set out in the reconsideration decision, reaffirming the appellant had not made a reasonable effort to comply with the conditions of her EP. The ministry informed that at the moment the appellant signed the EP, she affirmed that she had read, understood and agreed to follow the terms and conditions of the Plan and that she had clearly understood the consequences of not doing so; that she had signed a total of six Employment Plans since April 2009.

The ministry added that the appellant's mailing address in her file is the same one she has provided before. The ministry stated that being unable to work is not the same as being unable to attend the employment program and that the appellant never raised any medical condition to the ministry or the service provider that could have prevented her from attending the scheduled appointments. The ministry pointed out that the purpose of the Employment Plan was to help and assist the appellant with her barriers to get and sustain employment, but that this work could not be done because she did not follow its conditions. As a result, the ministry found the appellant non-compliant with the conditions of her EP and, therefore, ineligible for assistance, per Section 9 of the Employment and Assistance Act (EAA).

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's decision to deny the appellant income assistance because the appellant did not make reasonable efforts to comply with the conditions as set out in her EP, nor has she provided any verification to establish that a medical condition prevented her from participating in the employment program, pursuant Section 9 of the Employment and Assistance Act (EAA).

The Employment and Assistance Act, section 9, provides:

- (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.*
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- (3) *The ministry 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 a job*
 - (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*
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The ministry's position is that the appellant failed to comply with the EP she signed on November 18, 2011; that the consequences of non-compliance were explained to her, but in spite of that, she did not make reasonable efforts to comply with her EP. The ministry pointed out that the service provider, on numerous occasions, tried to accommodate the appellant's many requests to have her appointments rescheduled for many different reasons – weather conditions, moving her belongings to a different place, catching a ferry to deal with her mother's belongings, being out of town; that in all those occasions compliance was discussed with her and she was advised of the consequences of not attending the program; nevertheless, the appellant did not attend three consecutive appointments scheduled for her without providing any reason. As a result, her file was returned to the ministry by the service provider and later closed.

The ministry stated that the appellant never indicated she had any medical issues that would hinder her ability to participate in the program. The ministry submitted that the medical report dated January 30, 2012 does not indicate that the appellant has limitations or restrictions on her ability to work or that her participation in her EP would be hindered due to the medical conditions (chronic wrist pain and recurrent bronchitis) cited in the report. The ministry noted that the appellant had entered in a total of six employment plans since April 2009; also, that it was the appellant's responsibility to ensure that both the ministry and the service provider had her complete and accurate mailing address.

Finally, the ministry submitted that there was no evidence the appellant made any attempt to advise the ministry of her inability to satisfy the obligations of her EP or that she had any other mitigating circumstances that prevented her from following her EP, namely the medical issues. Therefore, as the appellant had not demonstrated reasonable efforts to comply with her EP, nor had she provided documentation confirming any mitigating circumstances that would prevent her from participating in her program, she ceased to be eligible for assistance, as per Section 9 of the EA Act.

The appellant argued that she could not attend the program because of health problems; that she was "under medical excuse" before and after the medical letter expired she wanted to pursue employment again and that it was then that she signed the EP; but that her health was not good and she had a "bad winter" and felt ill, a circumstance that prevent her from attending the program. The appellant stated that she is heavily medicated daily due to chronic pain; that she went back to her physician to discuss her situation and that her physician had agreed that she was not ready yet to go back to work. The appellant affirmed that she did not receive the letters from the service provider since the mailing address the provider had was incomplete. Finally, the appellant submitted that the ministry "did not do anything wrong", that she made a mistake not telling the service provider of her medical conditions, but asked that her medical conditions to be considered as the reasons for her non-attendance to the program.

The Employment and Assistance Act in Section 9 and sub-sections, as set out above, clearly gives the minister authority to prescribe conditions of an Employment Plan to maintain eligibility for income assistance. These conditions, acknowledged and agreed to by the appellant, include contacting the service provider, completing all tasks as assigned, making a series of appointments and attending them regularly, and, in case of not being able to do so, notifying the ministry's caseworker of her impediments.

The panel finds that the evidence demonstrates that after having a previous EP closed on October 21, 2011 due to non-compliance with its conditions, the appellant volunteered to sign a new EP; while attending the re-referral appointment with the service provider, on November 08, 2011, the appellant stated that she was feeling healthy and ready to work. On November 18, 2011 the appellant signed the new EP and was advised of the consequences of not complying with the conditions of her EP.

The service provider's notes demonstrates that later, on the same day the appellant signed the new EP, she would have her first appointment with the contractor; however, citing the need to change the car's summer tires, the appellant requested another date for her appointment; that on November 25 the appellant again asked for her appointment to be rescheduled because she was moving; the same for the next appointment on November 28 (afternoon), since she was still moving her belongings to another place; for the next appointment, December 05, the appellant again asked to reschedule because she needed to catch a ferry to deal with her mother's belongs; on December 09 the appellant asked for another reschedule since she was still out of town. During this time – November 18 to December 09, the appellant did not mention any medical condition that could have prevented her from attending the appointments, but only the reasons mentioned above.

The service provider's notes also demonstrates that on December 19, 28 and January 06/2012, the appellant neither attend the appointments nor called the contractor and/or the ministry to inform the reasons that were preventing her from attending the program. The service provider made many attempts to contact her during this period, with no success. The appellant's file then was returned to the ministry and closed.

The evidence demonstrates that it was only on the Reasons for Request for Reconsideration that the appellant mentioned to the ministry that she was dealing with health problems.

The panel finds that the evidence also demonstrates that the appellant has signed a total of six employment plans since April 2009 and therefore it is believed that she was aware of her obligations to comply with the EP's conditions and the consequences of not doing so; also, and in accordance with her EP's conditions, that she was expected to discuss and work with the service provider regarding the barriers that would prevent her from attending the program and, with the service provider, to look for ways to ensure her success with the program. Nonetheless, the appellant did not follow through with the EP conditions.

With respect to the appellant's medical condition, the panel finds that the evidence demonstrates that her health problems did not prevent the appellant from attending the appointments with the service provider. The panel cites the following pieces of evidence:

- Medical Report dated January 30, 2012 – The restrictions are related to chronic wrist pain, recurrent bronchitis and that she needs daily narcotics, but there is no mention of medical conditions that would prevent the appellant from attending the appointments with the service provider.
- Medical Report dated March 21, 2012 – the same restrictions as above, with the note that the medication and treatment were keeping the pain under control and the COPD stable. There is no mention of any medical condition that had prevented the appellant from attending the program in the months of December and January.
- Medical Report dated May 3, 2010 – This evidence refers to a period not related to the present EP and cannot be considered for this matter.
- Medical Report dated May 27, 2009 – the same as above
- Medical note dated April 8, 2009 – the same as above
- Medical note dated October 21, 2011 – the same as above
- Medical note dated April 04, 2012 – The appellant's physician informs that she is unable to work due to health issues since August 2011 to that date, but there is no mention to any medical restriction preventing the appellant from attending the scheduled appointments with the service provider.

It is relevant to refer here to the ministry's statement that being unable to work is not the same as being unable to attend the employment program. Further, the service provider notes clearly demonstrated that during the period of her EP, the appellant was capable of moving to another place, travelling, taking care of her mother's issues and dealing with other personal activities. The appellant self-reported that these activities (rather than medical issues) were the reasons she was not able to attend the employment program. In this regard, the panel concurs with the ministry's conclusion that the appellant's medical conditions, cited in the medical reports as reasons why she could not work, do not represent mitigating circumstances that prevented her from attending and participate in the employment program, as required for her to continue to receive income assistance.

According to Section 9 (1) of the Employment and Assistance Act, 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.

Where the employment plan requires an applicant to enter into an employment program, Section 9(4) of the Employment and Assistance Act says 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 ministry found, and the panel agrees, that the evidence demonstrates that the appellant did not make a reasonable effort to participate in the program to which she was assigned, nor did she demonstrate having a medical condition that prevented her from attending the program.

The panel finds that the ministry reasonably concluded that the appellant failed to demonstrated reasonable efforts to participate in her employment program and, it follows, to comply with the requirements of the EP. Given that the legislation stipulates the consequence of not complying with the EP is ineligibility for income assistance, the panel finds that the ministry's decision to deny income assistance to the appellant was reasonable, and confirms the decision of the ministry under Section 24 (1)(a) and (b) of the Employment and Assistance Act.