

PART C – Decision under Appeal

The Decision under appeal is the Ministry's Reconsideration Decision, dated March 9, 2012, which denied the Appellant Income Assistance (IA), as the Ministry determined that the Appellant was non-compliant with the conditions of his employment plan, (EP), contrary to Sec. 9(1)(b) of the Employment Assistance Act.

PART D – Relevant Legislation

EAA Employment and Assistance Act – Section 9

PART E – Summary of Facts

A summary of the evidence before the Ministry at the time of the reconsideration is as follows:

1-A two page letter from a work program (WP) dated Feb. 23, 2012 setting out the history of dealings with the appellant. Among other things the letter notes the following:

Dec 29/11 client has not made contact within the office since initial intake Dec 20;

Jan 3/12 client contacted and confirmed enrollment attendance for Jan 4;

Jan 4 client did not attend;

Jan 6 message left for client on phone number provided with a message to call;

Jan 6 call returned and client advised due to probation workshops, appointments and methadone pick-up client will need to miss Thurs and Fri of the program. Team discussed and client better served working one-to-one rather than group. First one-to-one appointment Jan 10;

Jan 10 client no shows, no call or follow up from client;

Jan 11 client calls to advise missed appointment. Client advised counselor would call back and phone number is confirmed. WP returns call and message left to call back;

Jan 16 message left for client to call;

Jan 27-file returned for non-participation and referred back to another service provider (SP). File closed for non-participation.

2-A one page computer printout from the SP, with a print date of 21/02/2012, showing activities for the appellant, including attendances on five occasions from Jan 31 to Feb 21.

3-A one page screen printout from the sent folder of an email account with sent dates from April 2011 to Jan 19, 2012.

4-A one page document "Record of Job Search" with 12 entries.

5-Five pages from the sent folder of an email account showing emails sent from April 27, 2011 to Feb 17, 2012.

6-A two-page employment plan signed by the appellant on Oct 3, 2011.

7-A two-page "Medical Report-Persons with Persistent Multiple Barriers," from Feb 2011, which states the appellant has Hep C, Depression and is on Methadone.

8-A two page letter from the Ministry, dated Feb 8, 2011, denying the appellant's application for PPMB

9-A one page document from the WP, signed by the appellant, confirming he registered for the program on Dec 20, 2011, the program would run Jan 9 – Feb 17, 2012, with an enrollment session for Jan 4, 2012. Document confirms the client is aware failure to attend the program may result in withdrawal from the program, and that classes are Mon to Fri unless otherwise arranged.

10- One page copy of an email from Feb 8, 2012 confirming completion of job application for major food retailer.

11-One page copy resume of appellant.

12-One page copy of an "Action Plan" dated Jan 19, 2012 with a copy of a business card attached from the SP showing appointment Feb 24th.

13-Two pages containing copy of emails between ministry worker and probation office.

14-One page "Medical Report-Employability" dated Dec 16, 2011 confirming the appellant could not be involved in heavy lifting or labour due to Hep C, not that he was precluded from work or work programs.

15-A two page Employment Plan (EP) signed by the appellant on Dec 16, 2011. The appellant acknowledges and agrees to attend the WP, attend all pre and post program appointments, and attend as required. It is agreed the appellant will immediately notify the WP and the ministry if he cannot attend.

16- Four page "Employment and Assistance Request for Reconsideration" which sets out the initial denial for non-compliance, (3 pages) and the appellant's reasons for requesting reconsideration. Of note the material sets out that on Dec 19 the appellant attended at the ministry and provided the Dec 16 medical report, (#14 above) and was advised that the material was not sufficient to preclude the appellant from employment or EPs. It was confirmed the appellant must continue in the WP and eligibility for IA was dependent on compliance with the program. The appellant's January IA was held pending confirmation of the Dec 20 intake appointment. On Dec 21 IA was released after the appellant confirmed attendance at the Dec 20 intake meeting. On Feb 6 the appellant advised the ministry that he was attending his one-on-one appointments and also going to the SP for job search. The ministry followed up with the WP who confirmed the appellant had not been to his one-to-one appointments and their last contact had been Jan 12. On Feb 7 the appellant was asked why he was not going to his one-to-one appointments and said the WP had referred him to the SP. The appellant was asked to provide verification from the WP. The appellant advised he was searching for work, and attending the SP. The appellant was advised that he was non-compliant with the EP but was told that if he could verify regular attendance at the SP and submit an adequate work search, the ministry may consider a new EP. The ministry was not satisfied with the information provided, and did not amend, suspend or cancel the EP. In his request for reconsideration the appellant advised he was trying his best to get off IA and has only been able to get some of his papers to prove he was searching for jobs. Further, medical and addiction issues interfere with such searches.

The Reconsideration Decision, dated March 9, 2012, found that the appellant had not made reasonable efforts to comply with the EP. "You did not attend the ... [WP]... stating you were required to attend meetings... on Thursdays and Fridays when you were actually was only required to attend on Thursdays, you did not attend the one-to-one ... sessions after Jan 11th, you state you are not able to provide confirmation you attended the ... [SP]... every other day and your job search confirmations only on Jan 9, 17, 19, and 31 and February 6, 8, and 17. Had you provided accurate information to the ... [WP]... they could have accommodated your schedule. In the opinion of the minister you have not made a reasonable effort to comply with the conditions of your Employment Plan.

The appellant in his Notice of Appeal, dated May 9, 2012, advised that he has been looking for employment, that he did not go to the WP because of probation conditions and he has documents from probation to confirm.

The Appellant did not attend at the hearing. After confirming that the Appellant was properly notified of the hearing, the matter proceeded under section 86(b) of the Employment and Assistance Regulation.

At the hearing the ministry reiterated that the appellant had not been compliant with the EP. He had signed and acknowledged his required attendance but had failed to attend. The ministry advised that this WP was set up to help participants overcome barriers to finding employment. They are liberal with compliance by the participants and do not immediately report all failures to attend. The appellant had advised he had probation appointments two days a week but probation advised it was only one. The WP had allowed the appellant to

change his requirements to attend only once a week for one-to one, but he failed to do even that.

When asked, the ministry confirmed that they will give an opportunity for people to show they are making an effort to search for work and participate in programming, but the appellant could not confirm to the ministry that he had done so, further the appellant seemed to make other excuses he could not verify and as such, the ministry did not agree to enter into a new EP.

PART F – Reasons for Panel Decision

The issue to be determined is whether the Ministry reasonably denied the Appellant IA, as the Ministry determined that the Appellant was non-compliant with the conditions of his EP, contrary to Sec. 9(1)(b) of the Employment Assistance Act.

The Legislation states the following;

Employment and Assistance Act

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].

Under Sec 9(1), to be eligible for IA, the recipient, when required to do so by the minister, must enter into an employment plan, and comply with the conditions in the employment plan. Under ss. 4, if an employment plan includes a condition requiring the recipient to participate in a specific employment-related program, that condition is not met if the person fails to demonstrate reasonable efforts to participate in the program, or ceases, except for medical reasons, to participate in the program.

The issue here is whether the Appellant was properly denied IA as being non-compliant with the conditions of his EP, contrary to Sec. 9(1)(b) of the Employment Assistance Act. There is no medical evidence that the appellant ceased to participate due to medical reasons, the only medical evidence showed that the appellant simply could not participate in heavy lifting or labour, something which did not occur in the WP.

The appellant's position appears to be he was actively seeking work. The ministry argues that the appellant was aware of the conditions of the EP and his responsibilities. Further, although the appellant claimed he was actively seeking work, he did not provide the material necessary to satisfy the ministry his EP should be amended or changed. The ministry questions the legitimacy of this claim. Based on all the evidence the ministry maintains the decision is reasonable.

It is clear on the material, and there is no evidence from the appellant otherwise, that he signed the EP acknowledging he was required to attend all meetings set out by the WP and to advise if he could not make any meetings, and he was aware of he did not comply he could be terminated from IA. The panel finds that the appellant was aware of the consequences of non-compliance with his EP.

On Jan 3, the WP phoned the appellant and confirmed with him his appointment for the next day, a Wednesday. The appellant did not attend. When phoned two days later, Jan 6, he advised that due to probation workshops, appointments and methadone pick up, he could not attend Thursdays or Fridays. The appellant said nothing about Wednesdays causing problems for him and there is no evidence he offered an excuse for failing to attend Jan 4. To accommodate the appellant, it was agreed by the WP he could attend one-to-one meetings on Wednesdays, commencing Jan 10. The appellant never attended any of those meeting, just as he did not attend Wednesday Jan 3rd. The appellant phoned the WP on Jan 11 and was advised he would be called back. He was called back and a message was left for him to return the call. There is no note that he returned this call. Another message was left Jan 16 and he did not return that call. There is no evidence that the appellant offered any excuse for missing the meeting Jan 10 or failing to return the call of the WP. It was not until Jan 27 that his file was closed by the WP and he had made no contact with them by that date. The panel finds that the appellant did not attend on the Jan 4 and Jan 10th dates, offered no excuse for those missed dates and did not advise the ministry or WP of his inability to attend, contrary to his EP.

On Feb 6 when the appellant spoke to the ministry, he advised he was attending his one-to-one appointments, and also going to the SP for job searches. On Feb 7 the appellant advised the ministry that the WP had referred him to the SP and the appellant was asked to provide a confirmation letter from the WP. This never occurred. The evidence is clear, and the panel finds, that the appellant never attended the one-to-one meeting(s). It was a requirement of his EP that he attends at all meetings, and advises if he could not attend. Notwithstanding that the WP accommodated his needs, by arranging one-to-one meetings for one day a week when he advised he was available, he still did not attend. As such, the panel finds the appellant did not demonstrate reasonable efforts to comply with the conditions of his EP.

Therefore the panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and is a reasonable application of the legislation based on the circumstances of the Appellant and confirms the Decision.