

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated April 11, 2012 which denied the appellant's request for income assistance for failure to comply with the terms and conditions of his employment plan as required by section 9(1)(b) of the *Employment and Assistance Act (EA Act)*. The Reconsideration Decision also states that the appellant failed to demonstrate reasonable efforts to participate in an employment related program as required by section 9(4) of the EA Act.

PART D – Relevant Legislation

Employment and Assistance Act Section 9

PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- 1) Employment Plan signed by the appellant on January 27, 2012 (the "Employment Plan") indicating that the appellant understood that he was required to fully participate in employment programming with the contractor specified by the ministry as directed. The Employment Plan also indicates that the appellant understood that beginning April 2, 2012 he agreed to participate in the new employment program of BC (EPBC) and that he would be directed to EPBC prior to April 2, 2012;
- 2) Business card of an employment contractor noting appointments on February 28 and March 8; and
- 3) Reconsideration Request dated March 28, 2012 in which the appellant states that he was referred to an employment program and attended one workshop on February 28, 2012 and was scheduled to attend a second workshop for March 8, 2012. The appellant states that a few days before the second workshop he called the contractor and was advised that the contract was going to be replaced by another program on April 2, 2012 and that the contractor had "stopped such services". The appellant states that he forgot to attend the workshop on March 8, 2012, apologized for forgetting to attend and stated that he did not intentionally miss the workshop. The appellant states that he is willing to comply with the employment program as it will benefit him. The appellant requested that the ministry's decision to discontinue his income assistance be reconsidered.

In the Reconsideration Decision, the ministry states that the appellant attended the intake appointment with the employment contractor on February 10, 2012 but failed to attend the subsequent workshop on March 8, 2012 after which time his file was closed by the contractor and returned to the ministry. The Reconsideration Decision states that the appellant attended the ministry office on March 26, 2012, advised that he had attended his first three appointments before missing the March 8, 2012 workshop and that the appellant advised that he did not know anything about the March 8, 2012 workshop until the contractor called that day to ask why he had not attended the workshop. The Reconsideration Decision also states that the appellant advised the ministry that he had been given an appointment card by the contractor that was two days after his actual appointment but the appointment card provided by the contractor listed the two appointment dates of February 28, 2012 and March 8, 2012.

The Reconsideration Decision states that when the appellant signed the Employment Plan on January 27, 2012, he confirmed that he understood the consequences of non-compliance with the Employment Plan and as the appellant had not demonstrated reasonable efforts to comply with the Employment Plan and did not have a confirmed medical condition that prevented him from participating in the Employment Plan, he ceased being eligible for income assistance pursuant to Section 9 of the EA Act.

In his Notice of Appeal dated May 1, 2012 the appellant states that he disagrees with the ministry's Reconsideration Decision because missing one workshop should not be found to constitute failure to demonstrate reasonable efforts to participate in the Employment Plan.

The appeal proceeded by way of a written hearing. The ministry relied on the Reconsideration Decision.

The appellant provided written submissions dated May 16, 2012 (the "Submissions") confirming that he signed the Employment Plan on January 27, 2012 and attended one workshop with the employment contractor on February 28, 2012. The appellant states that after the February 28, 2012 he inquired what other steps he should take before the March 8, 2012 workshop and was advised to continue his job search efforts which he says he did. The appellant also states that he was interested in applying for a Security Guard job so he asked the contractor if they could help him to pay for the training. The appellant states that the contractor advised him that they were no longer paying for training because they were going to close.

The Submissions also state that on March 7, 2012 the appellant received a letter from the contractor advising that they were going to be replaced by the EPBC and that he would be transferred to EPBC on April 2, 2012 and have a new employment program service provider. In the Submissions, the appellant states that on March 8, 2012 he received a call from the contractor advising him that he had missed the workshop. The appellant states that he wondered why the workshop was held when the contractor had advised that they were closing and were going to be replaced by a new program.

In the Submissions, the appellant states that he wanted to participate in the employment program as it was beneficial to him, but he was misled by the letter from the contractor advising that their program was to be closed and that it would be replaced by EPBC. The appellant states that as he was misled, the ministry should not find that failed to comply with the terms and conditions of the Employment Plan.

Based on the evidence, the panel's finding of facts are as follows:

- The appellant signed an Employment Plan on January 27, 2012;
- The appellant attended a workshop with an employment contractor on February 28, 2012; and
- The appellant knew that he was required to attend a second workshop with the employment contractor on March 8, 2012 but did not attend as required.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry reasonably concluded that the appellant did not comply with the terms and conditions of his employment plan as required by section 9 of the EA Act.

The relevant sections of the EA Act, provide as follows:

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.

(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.

(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 appellant's evidence indicates that he attended the initial appointment on February 28, 2012 but forgot to attend the second appointment scheduled for March 8, 2012. In the Submissions, the appellant states that as the initial employment service provider had sent him a letter indicating that they were closing and that his file would be transferred to EPBC effective April 1, 2012, he was misled and did not understand why the workshop scheduled for March 8, 2012 had taken place if the contractor was closing.

The ministry argues that the appellant did not fully participate in the employment-related program as required by his employment plan as he failed to attend the appointment on March 8, 2012 and as he did not comply with the terms and conditions of his employment plan the ministry determined that the appellant was not eligible for income assistance.

The panel finds that the appellant was aware of the conditions of his Employment Plan and that he was required to attend programs as directed by the employment service provider. The Employment Plan also clearly states that the new EPBC would commence on April 2, 2012. The evidence establishes that the appellant knew he was to attend two appointments, the first on February 28, 2012 and the second on March 8, 2012 and that he failed to attend the second appointment on March 8, 2012. There is no evidence to indicate that the appellant made efforts to reschedule the missed workshop.

The appellant's evidence regarding the reason he did not attend the March 8, 2012 workshop is inconsistent. On the one hand he states that he did not attend the workshop because he forgot about it, but in the Submissions he states that he did not attend because he was misled by the letter from the contractor advising that their program would be closing and he did not understand why the workshop would have gone ahead if they were closing. In addition, although the appellant indicates that he has continued his job search efforts, he did not provide any evidence as to any specific efforts such as copies of job applications, names of employers that he contacted for employment opportunities, or provide any indication if he attended any employment interviews.

As the appellant initially stated that he forgot about the workshop of March 8, 2012, the panel does not accept the appellant's explanation contained in the Submissions that he was misled between the transition from the initial employment service provider to EPBC. There is no evidence indicating that the appellant had ever been advised that the March 8, 2012 workshop would not proceed as scheduled and he knew that EPBC would take effect as of April 2, 2012 at the time he signed the Employment Plan.

The appellant's position is that missing one workshop should not be sufficient to find that he has failed to make reasonable efforts to comply with the terms and conditions of his Employment Plan. However, the panel finds that the evidence is clear that he was aware of the requirements of the Employment Plan including the appointment of March 8, 2012 and has not provided a reasonable explanation for failing to attend as required. In addition, there is no evidence that the appellant has a medical condition that prevented him from attending the March 8, 2012 workshop.

The panel finds that the ministry's decision to deny the appellant income assistance for failing to comply with the terms and conditions of his Employment Plan as required by Section 9 of the EA Act was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's decision.