APPEAL #

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated May 2, 2012 which held that the appellant is not eligible for income assistance pursuant to section 9(1)(b) as he has not complied with the conditions of his employment plan (EP) because he failed to demonstrate reasonable efforts to participate in the program pursuant to section 9(4)(a) and has not provided medical reports to substantiate that he is unable to participate in the program pursuant to section 9(4)(b) of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9

PART E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming that the ministry was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of reconsideration included:

- Between April 21, 2011 and January 30, 2012 the appellant was referred to the BC Employment Plan (EP) 3 times. On all but one occasion, [the contractor] returned the appellant's file to the ministry as a "no show" because he did not complete the required intake appointment within their 21 day referral period.

- February 3, 2012 a note was submitted to the ministry by the appellant that refers to surgery he had on February 2, 2012. This note also refers to "receipts and Dr's order attached". A drug store receipt in the amount of $ 71.70 is included in the record, but a "Dr's order" is not.

- February 24, 2012 the appellant entered into a fourth opportunity to attend [the contractor] with requirements to attend an intake on February 24, 2012 at 9:30 a.m. and to fully participate in the programs with [the contractor] specified by the ministry beginning April 2, 2012 which is mandatory to be eligible for income assistance. By signing his EP, the appellant acknowledged that he read, understood and agreed to the requirements of attendance and compliance with the program as well as the consequences for non-compliance. At the time, the appellant further confirmed with his ministry worker that he understood the appointment and consequences of non-compliance with his employment plan.

- February 28, 2012 the ministry sent the appellant a letter reminding the appellant that as part of his EP he is required to meet with [the contractor] and that he had not complied with this requirement. In the letter he was asked to schedule an appointment which is required to maintain his eligibility in the program and that non-attendance may impact his eligibility to receive income assistance. The appellant acknowledged receipt of the letter, but advised the ministry the letter does not indicate he must contact the EP Service Provider within 21 days.

- March 15, 2012 [the contractor] returned the appellant's EP file with a reason of "No Show" because he did not complete an intake appointment within their 21 day referral period.

- March 20, 2012 the ministry sent the appellant a letter advising him that he has not followed through with the conditions of his employment plan by not attending an intake appointment with [the contractor] on February 24, 2012 or rebooking this within the 21 day period. It advised the appellant that as result he is not eligible for income assistance until he presents mitigating circumstances to a worker.

- March 21, 2012 the appellant stated he attended the ministry office and was advised he could contact [the contractor] any time up until April 14, 2012 and that his income assistance would be mailed to him.

- March 23, 2012 the appellant received the ministry letter dated March 20, 2012 denying him income assistance for failure to comply with the terms and conditions of his EP.

- April 12, 2012 the appellant attended the ministry office and was advised that he was in non-compliance with the terms and conditions of his employment plan and is denied income assistance.

- April 20, 2012, the appellant submitted a Request for Reconsideration. The appellant indicated he was denied by the ministry the recent costs of medication he required as result of surgery he had performed on February 2, 2012 and for which he used rent/bill money to pay. As a result, he was no longer able to use a phone for outgoing calls at his accommodation. The appellant stated he attended the ministry office on the cheque issuance day and was told he had until the first 2 weeks of April to attend the service provider and that his income assistance would be mailed to him. The appellant also stated in his Request that he had a job interview and could not attend the intake with [the contractor] on February 24, 2012.

In his Notice of Appeal (NOA) dated May 14, 2012, the appellant reports that the ministry was aware of the surgery he had on February 2, 2012 and had knowledge of an upcoming surgery by way of a doctor's note excusing him from regular job search activity for 4 months. He further indicates that he has proof that the ministry was aware that he attended [the contractor] before being denied income assistance.

The appellant's advocate submitted a "To Whom It May Concern" letter dated May 18, 2012 from [the contractor] regarding the appellant that confirms he attended their offices on April 4, 2012 and was provided a FOB to use its Resource Centre and was informed of the range of services provided by the Service Provider that included the Centre and workshops. At the hearing, the appellant submitted a photocopy of a document that was signed by [the contractor] confirming he attended an orientation with the service provider on May 30, 2012 and another indicating an intake appointment is established for June 6, 2012.

The panel finds that the information contained in the NOA, in the May 18, 2012 letter and in the subsequent documents admissible under section 22(4) of the EAA as being in support of the information that was before the ministry at the time of reconsideration as those two cards confirm both the intake and an orientation session with the contractor and the fact that the appellant is now enrolled in the program.

At the hearing, the appellant's advocate presented a submission. This submission referred to Section 9 (6) of the EAA and notes the ministry is empowered to amend an employment plan with no time restriction. Given the ministry's direction to the appellant on March 21, 2012 the appellant demonstrated compliance with his EP by contacting [the contractor] on April 4, 2012 which is confirmed in the letter provided by them dated May 18, 2012. The advocate also observes that the ministry does not dispute anywhere that the appellant's employment plan was given an amended timeline for compliance.

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PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant continued income assistance because the appellant failed to make a reasonable effort to comply with the conditions of his EP pursuant to section 9(4) (a) and has not provided medical reports to substantiate that he is unable to participate in the program pursuant to section 9(4) (b) of the EAA.

Section 9(1) of the EAA states that 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.

Section 9(3) states 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.

Section 9(4) states, 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.

Section 9(6) states the minister may amend suspend or cancel an employment plan.

Section 9(7) states 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]*.

Based on the appeal record, the ministry maintains that the appellant signed and had an active EP with conditions that must be met. By signing this plan, the appellant indicated he read, understood and agreed to the requirements of attendance and compliance with the program as well as the consequences for non-compliance. However, the appellant did not comply with the required activities of his EP to attend an intake with [the contractor] on February 24, 2012. Furthermore, the appellant did not advise or provide a medical reason for not participating in his EP. The ministry acknowledges and confirms its letter of February 28, 2012 does not advise the appellant he must contact [the contractor] within 21 days. It further argues that although the appellant states the ministry advised him he could contact [the contractor] up to April 14, 2012 and that his cheque would be mailed to him, his file closed with [the contractor] on March 15, 2012 and that he had opportunity to contact

[the contractor] to reschedule his intake within their 21 day referral period. It also argues that while the appellant stated he contacted [the contractor] during the first week of April 2012, it and the Service Provider have no record of this and, as a result of this, the appellant did not demonstrate reasonable efforts to comply with his EP.

The appellant argues he has demonstrated reasonable efforts to comply with the terms and conditions of his EP that was amended on March 21, 2012, giving him an extension until April 14, 2012 to contact [the contractor] by contacting [the contractor] on April 4, 2012.

In determining the reasonableness of the ministry's decision, the panel finds the appellant's argument that his EP was amended by the ministry on March 21, 2012 is a matter not subject to appeal under section 9(7) of the EAA. The panel finds that a condition of the appellant's EP is to attend an intake appointment which had been scheduled for February 24, 2012 and the appellant does not dispute that he did not attend the appointment as originally scheduled. The appellant states he had a job interview on that day and could not attend the intake assessment and also could not contact [the contractor] as he could not make outgoing calls from his residence. The panel further finds the letter from the ministry dated February 28, 2012 to the appellant requests that that he contact [the contractor], thereby providing the appellant with another opportunity to schedule the intake appointment and the ministry acknowledges this letter does not specify a time period for doing so. Although the ministry argues that [the contractor's] referral period is 21 days, the panel also finds that the ministry told the appellant on March 21, 2012 that he could contact [the contractor] any time up until April 14, 2012 to re-schedule the intake assessment. The panel finds the ministry's argument that neither they nor [the contractor] have any record of the appellant contacting [the contractor] within the first week of April 2012 is offset and outweighed by the letter from [the contractor] dated May 18, 2012 that confirms the appellant attended the offices of [the contractor] on April 4, 2012. As a result, the panel finds the appellant attended [the contractor's] offices on April 4, 2012 within the time period specified by the ministry and that the appellant has further re-scheduled the intake appointment with [the contractor] for June 6, 2012 as required by the conditions of his EP. The panel finds that the ministry was not reasonable in determining that the appellant failed to demonstrate reasonable efforts to comply with the conditions of his EP.

The panel, therefore, finds the ministry's reconsideration decision dated May 2, 2012 as an unreasonable application of the legislation in the circumstances of the appellant and rescinds the decision in favour of the appellant.