

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated April 4, 2012 which held that the appellant is not eligible for income assistance pursuant to s. 9 of the Employment and Assistance Act because he did not make reasonable efforts to comply with the conditions of his employment plan and does not have a confirmed medical condition that prevented him from participating in his employment plan.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), s. 9

PART E – Summary of Facts

The evidence before the ministry at reconsideration is that the appellant entered into and signed an employment plan on February 22, 2012 which listed the following required activities:

- I understand that to be eligible for income assistance I am required to participate in employment programming with the contractor specified by the ministry.
- I also understand that I must fully participate as directed by the contractor and will advise the contractor any time I am unable to attend.
- I will meet with *** contractor name, phone number, date & time of appointment *** to be assessed for employment services.
- Beginning April 2, 2012, I agree to participate in the new employment program of BC...
- I understand that my participation in these programs is mandatory to be eligible for income assistance.

Information relevant to the time period in issue documented in the employment program service provider's (SP) Client Notes for the appellant includes:

- 2/23/2012 Client is re-referred to the SP. Following two attempts to contact the appellant to schedule intake appointment with no answer and no voicemail, a letter was sent for client to attend intake appointment on Feb 28 @ 11am. Attempt to confirm letter was sent with client unsuccessful (no answer, no voicemail);
- 2/27/2012 Attempt to confirm Feb 28 intake appointment; message left with 3rd party female for client to call SP.
- 2/28/2012 Client did not attend intake appointment. SP telephoned client to find out why he did not attend and left message with 3rd party female for client to call SP. Letter sent for client to attend intake appointment on March 2 @ 3pm.
- 2/29/2012 SP telephoned client twice to find out why client did not attend Feb 28 intake appointment and to advise of letter about March 2 appointment (no answer, no voice mail).
- 3/1/2012 Client called and left message that he is starting a new job at the end of the month and will not be attending the employment program as he will not be on income assistance. SP called client four (4) times to follow up with his message and advice of requirements to remain eligible for income assistance and remind client of March 2 intake appointment (no answer, no voicemail).
- 3/2/2012 SP attempted to call client two (2) times to remind him of his 3pm appointment at 8:56 am. Client did not attend 3pm appointment.
- 3/5/2012 SP attempted to call client (no answer, no voicemail) to advice of requirements to remain eligible for income assistance and schedule intake appointment. Letter sent for client to attend intake appointment on March 8 @ 8:30am. SP contacted ministry to enquire if client is employed. Ministry advised that client is supposed to be attending with the SP and will flag client's ministry file.
- 3/6/2012 SP attempted to contact client to advise of requirements to remain eligible for income assistance and that letter was mailed for March 8 appointment (no answer, no voicemail).
- 3/7/2012 SP attempted to contact client to confirm intake appointment for March 8 @ 8:30am (no answer, no voicemail).
- 3/8/2012 Client did not attend intake appointment. SP attempted to contact client (no answer, no voicemail). Letter sent to attend intake appointment on March 12 @ 8:30am followed with a phone call (no answer, no voicemail).

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- 3/12/2012 Client did not attend intake appointment. SP attempted to contact (no answer, no voicemail).

Additional evidence before the ministry at reconsideration comprised:

- A February 8, 2012 referral for spirometry testing;
- An undated note to the ministry (showing fax transmittal information for 02/09/2012) from the appellant stating that his file was returned from the SP and that the appellant is undergoing various medical tests for weakness and fatigue on February 10 and 14;
- Appointment cards for Feb 8 and Feb 17th appointments with the appellant's family physician;
- A lab requisition form dated 2012-02-08 for the appellant;
- An undated Monthly Report on which the following handwritten note appears: "I'm starting a new job in early April, off welfare in April";
- December 2, 2011 and January 13, 2012 employment plans for the appellant;
- Request for Reconsideration in which the appellant writes that he is starting work in April and did not receive "the letter for appt." until he found a new job and that he left a message with [] that he was starting work.

On appeal, the appellant provided a Notice of Appeal in which he stated "I don't disagree. I've had a lot of medical problems, but I will need hardship for the month of April." In a 2-page handwritten Notice of Appeal, the appellant writes that he did not make an appointment with the SP in February as he thought he was going back to work and that he left a message with the SP to this effect. The appellant also states that the employment program was not offering him help that he required as he has his own job finding resources and resume and has work experience and a licence in his field of work and would not have problems getting work soon since his health is better now.

The panel determined that the appellant's written testimony related to his employment program and health in the Notice of Appeal documents was further description of the appellant's circumstances at the time in issue and was therefore admitted under s. 22(4) of the EAA as being in support of the information and records before the ministry at reconsideration. The appellant's request for hardship assistance is outside the panel's jurisdiction which is limited to considering the reasonableness of the ministry's decision to deny income assistance.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant is not eligible for income assistance pursuant to s. 9 of the EAA because he failed to comply with the conditions of his employment plan was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

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 of 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.

The appellant's position, based on the written record, is that he did not make an appointment with the SP because he believed that he would be starting work in April and would no longer need income assistance. On appeal, the appellant also argues that he is in need of hardship assistance. For April 2012.

The ministry's position, based on the written record, is that the appellant understood the conditions of his employment plan and the consequences of non-compliance and it was his responsibility to inquire if he still needed to attend the SP program despite his pending job. The ministry argues that, despite the SP attempting to contact the appellant 7 times between March 1st and 3rd to discuss his required attendance in the program to remain eligible for income assistance and the SP rescheduling the intake appointment twice, the appellant did not attend an intake appointment within the 21 day referral period. The ministry argues that mitigating reasons for the appellant's failure to attend any of the intake appointments have not been established as the appellant did not respond to any of the phone calls or messages from the SP since February 28, 2012 and, on March 1, 2012, advised the SP that he would be starting work in April despite having previously advised the ministry that he would be undergoing medical testing.

The panel finds that the appellant entered into and signed an employment plan on February 22, 2012 which expressly set out the requirement to fully participate in employment programming with the SP and to advise the SP any time he is unable to attend. The panel finds that the SP Client Notes establish that the appellant was given the opportunity to attend an intake appointment with the SP on three occasions, the initial intake appointment date of February 28 and the re-scheduled appointment dates of March 2 and March 8, and that the appellant did not attend any of these appointments. Further, the SP Client Notes establish that the SP repeatedly phoned the appellant to advise of each

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of these scheduled intake appointments, including 6 phone calls between March 1 and 2nd, left messages with a third party when able to do so, and sent letters advising of all three intake appointments. The evidence also establishes that the appellant contacted the SP on March 1, 2012 and left a message that he would no longer be attending as he would be employed at the end of the month. Subsequently, the appellant indicated that he felt the services offered by the SP were of little value given his work experience and qualifications. However, the panel finds that the fact that the appellant advised the SP that he would not attend the employment program and felt that it was of little value to him, does not amount to compliance with the requirement set out in the employment plan to fully participate and does not establish that he was unable to attend. Rather, the evidence establishes that the appellant made a choice not to attend for various reasons. Additionally, the panel finds that the information respecting medical testing the appellant underwent for weakness and fatigue prior to entering into the February 22, 2012 employment plan, is insufficient to establish that medical reasons prevented his attendance at appointments with the SP during the period in question.

For these reasons, the panel finds that the ministry reasonably determined that the appellant is ineligible for income assistance pursuant to s. 9 of the EAA because he did not make reasonable efforts to participate in his employment program, thereby failing to comply with the conditions of his employment plan, and did not cease to participate in the program for medical reasons.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and confirms the decision.