

PART C – Decision under Appeal

The Decision under appeal is the Ministry's Reconsideration Decision, dated April 19, 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-Two page employment plan signed by the Appellant on Dec 22, 2011, where he acknowledges he must comply with the conditions of the plan and participate in the program. The plan sets out the following as required activities;

- a- must update and distribute resume to potential employers and must seek out and pursue all available resources and employment opportunities;
- b- must submit work search activities record monthly to ministry and utilize all the personal contacts to assist in work searches;
- c- the ministry expects 25 hours a week to be spent on work search activities;
- d- will contact the named work program, (WP), within one week of signing the EP, submit his action plan by Jan 21 and follow through with all action plan activities as listed; and
- e- submit his activities record by the 5th of each month, 5 activities/day, 5 days/week.

2-A three page "Employment and Assistance Request for Reconsideration" including the appellant's request for reconsideration, signed by the appellant on 04-04-12.

The original decision notes among other things the following:

- a- on Dec 22 the appellant signed his EP acknowledging he understood the requirements of the EP. The worker explained the how to complete the job search list and the requirement to submit the search list by the 5th of every month;
- b- Jan 6 confirmation was submitted he had an appointment at the WP for Jan 11 and the worker advised he must still submit an action plan and a job search list. On Jan 23 an action plan was submitted dated Jan 11. The worker reviewed the requirement to submit a job search list from Dec 29 to Jan 31;
- c- Feb 10 an action plan dated Feb 7 was submitted and a job search list dated Dec 31-Jan 31;
- d- Mar 7 a resume was submitted along with the Feb 7 Action Plan. Appellant advised he had forgotten his job search list but he would submit it;
- e- Mar 21 when advised no job search list had been provided, the Appellant advises he lost his bag and stated he was not aware he had to submit job searches monthly. Worker advised the file notes indicated the appellant clearly knew the expectations and the due date was written on the work search activities record. Advised April cheque being withheld until search list provided;
- f- Mar 22 job search list provided, which is a copy from Dec-Jan with the dates scratched out and written over to reflect Feb dates. When confronted the Appellant denied it was the same list. Appellant advised he attends the WP and when asked how often by the worker he stated he did not go often, he was at the WP yesterday. Worker advised he was noncompliant; and
- g- in the request for reconsideration the appellant advises he had been looking for work and recording all the places he had applied to in Feb but he lost the reporting sheet. He states he told the ministry this and because he had to submit something he re-submitted the old sheet with new dates as he could not remember the places he applied to.

3-One page copy of an "Action Plan" dated Jan 11 indicating the appellant was referred to workshops at the WP for Jan 12, 13, 17 and 25. It notes the client continues to job search and will return Jan 24 for a referral.

4-Six pages of "Work Search Activities Record" showing activities from Dec 28 to Jan 31. At the top of page one there is a handwritten notation, "Dec28<--->Jan 31 by Feb 5th." The activities recorded include job searches, appointments with the ministry and attendances at workshops for Jan 12, 13, 16, 17, 20, 25 and 27.

5- One page copy of an "Action Plan" dated Feb 7, 2012, which notes the client continues his job search and he is registered for a Feb resume workshop.

6- Four pages of work search activities from Feb 6-24 that appear to be overwritten from the previously submitted work search.

7-A one page copy of the Appellant's resume.

The Reconsideration Decision found that the appellant had not demonstrated reasonable efforts to participate in the program. The decision noted the following, among other things;

- a- Jan 23 submitted action plan which included Dec and Jan activities, worker reviewed with him the requirement to submit his material on time;
- b- Feb 10 action plan was late;
- c- Mar 7 action submitted late and did not include job search list;
- d- Mar 22 job search list is late; it is recognized as being overwritten from previous search, which was denied by the appellant; worker is advised that he had not been attending care very often, assistance denied due to non-compliance.
- e- appellant explains he had been looking for work and recording this but he lost his reporting sheet and advised the ministry of this, as the appellant had to submit something he re-submitted the old from with new dates as he could not recall the date and places he had applied for jobs;

The decision found the appellant had not complied with the conditions of the EP. He had been required to attend the WP regularly and he advised the ministry he was not going very often, although he signed the EP requiring him to submit his job searches by the 5th of each month and record 5 work related activities five days per week. Further, the appellant submitted to the Ministry erroneous information and although he was required to submit his materials by the 5th of each month he was consistently late. As such, the ministry determined the appellant did not comply with the EP.

For the written hearing the ministry submission was simply the reliance on the reconsideration summary. The appellant relied on a one page submission from an advocate, dated May 17, 2012. The advocate pointed out that the appellant advised he had been looking for work and had been recording the searches but he lost the reporting sheet. He advised the ministry of this but because he had to submit something he re-submitted the old sheet with new dates as he could not remember where he applied for jobs.

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, so the question is whether the ministry was reasonable in finding the appellant had not "demonstrated reasonable efforts to participate in the program."

The appellant's position appears to be he was actively seeking work. The advocate argued that reasonable means ordinary, average, not extraordinary. The appellant did provide his work searches for Dec and Jan late, and lateness is not uncommon. This does not necessarily go to non-compliance but to whether the appellant recognizes the significance of the Ministry deadlines. In all the circumstances the decision should be rescinded. The ministry argues that the appellant was aware of the conditions of the EP and his responsibilities and did not follow through with those.

It is clear on the material that the appellant the EP acknowledged he was required to comply with the WP and job search activities. The panel finds that the appellant was aware of the consequences of non-compliance with his EP.

In relation to attending the WP and complying with that aspect of his EP, the ministry relied solely on the statement made by the appellant he was attending the WP, but not very often. When one looks at the evidence it is apparent from the one page Action Plan, dated Jan 11, the appellant was referred to workshops at the WP for Jan 12, 13, 17 and 25. It notes the client continues to job search and will return Jan 24 for a referral. The Dec-Jan activities record included attendance at workshops for Jan 12, 13, 16, 17, 20, 25 and 27. This would show the appellant attended to the WP on more occasions than scheduled.

The Action Plan dated Feb 7, 2012, notes the client continues his job search and he is registered for a Feb resume workshop. It does not appear from the plan with the WP that the appellant was scheduled to attend at the WP in Feb, except for the one workshop. As such, it is not unexpected that the appellant would say he is attending, but not very often. The WP did not have him scheduled to be there very much in Feb. The panel finds that the appellant was demonstrating reasonable efforts to comply with this portion of the EP and he attended the WP more often than required by the WP. There is no evidence he did not attend the WP in February and no material from the WP saying he had failed to participate. The finding by the ministry that the appellant was not compliant with this portion of his WP was unreasonable.

The next issue relates to the appellant's continued lateness in filing materials, contrary to the EP and the erroneous information provided by the appellant. The EP signed by the appellant acknowledged he understood the consequences of failing to comply with the conditions of his EP. On Jan 6 the appellant was reminded he must submit an action plan and a job search list. By Jan 21 his action plan were not received. On Feb 10 he submitted an action plan and his job search list late again. On March 5 his job search list was not received. On March 7 the appellant stated he had forgotten, not lost, his job search list, and that he would submit it. On Mar 21, two weeks later, when the ministry reminded the appellant he had not submitted his job search list, he advised he had lost his bag. Further, he advised he was not aware of the need to submit monthly job search lists. This is completely contrary to the signed EP and the reminders he had already received.

When the appellant is advised that his cheque will be held pending the receipt of his job search list, he attends the next day and provides his old search record with the original dates scratched out and new dates filled in. The appellant then denies he has done this. It is only later at the reconsideration level he admits falsifying the document. The appellant was aware of the need to comply with the requirements of the EP. He was reminded several times about his but still failed to comply.

Reasonable efforts do not require perfect compliance. If one accepts that reasonable means ordinary or average, the panel finds that an ordinary or average person would make efforts to comply with the requirements of an EP in order to receive assistance. Further, when one is reminded several times of the need to comply and fails to

do so, and then provides false information, it is not unreasonable to find the person is not-compliant and is not making reasonable efforts to comply.

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. The appellant is not successful in his appeal.