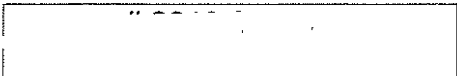


**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision of April 26, 2012 denying the appellant 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.

**PART D – Relevant Legislation**

Section 9 of the Employment and Assistance Act.



## PART E – Summary of Facts

The evidence before the ministry at reconsideration included:

- an employment plan signed by the appellant with a start date of October 13, 2011 in which the appellant agreed to participate in employment programming with the ministry's service provider.
- an employment plan signed by the appellant with a start date of November 23, 2011 in which the appellant agreed to participate in employment programming with the ministry's service provider.
- an employment plan signed by the appellant with a start date of February 1, 2012 in which the appellant agreed to participate in employment programming with the ministry's service provider. Required activities in the plan included full participation by the appellant in employment programming with the contractor (the ministry's service provider) and the appellant's advising the contractor any time he is unable to attend programs specified by the contractor.
- the ministry's reconsideration decision of April 26, 2012 in which the ministry states that a ministry worker spoke to the appellant when he signed the plan with a start date of February 1, 2012 about compliance and non-compliance with the plan as well as consequences for non-compliance, confirming that the appellant understood. The ministry states that it is reasonable for the appellant to have continued looking for work despite not having a driver's license. The ministry states that on February 22, 2012 the contractor returned the appellant's file as "No Show" to the ministry because the appellant had not completed an intake appointment with the contractor with the 21-day referral period. The ministry also states in its reconsideration decision that the appellant's files on two previous employment plans, one scheduled to start October 13, 2011 and the other to start November 23, 2011, had been returned to the ministry as "No Shows" because in both cases the appellant did not attend the contractor's office within the 21-day referral period.
- the appellant's 3-page handwritten "Reason for Request for Reconsideration" signed by the appellant April 16, 2012 in which the appellant stated that he complied with the ministry's demands by going to the BC Employment Program office but the workers there could not help him because his driver's license had been taken away, and he needed a driver's license in order to work. He also stated that he did not feel he should have to ride a bus to work. "I should not have to ride a ... bus half way to work then walk the rest of the way because the bus does not go there," he wrote.

The following information was not before the ministry at reconsideration:

- a) A "Reasons for Appeal," signed by the appellant on May 2, 2012 and included in the appeal record, in which the appellant states that all the jobs he can do in his home community require a driver's license and he cannot afford a lawyer to get his license back.
- b) a statement by the appellant at the hearing that though he wrote in his "Request for Reconsideration" that he had complied with the ministry's demands by going to the BC Employment Program office, he was not sure when he went there but it was likely before February 2012.
- c) a statement by the ministry at the hearing that the appellant had likely contacted the service provider in 2011 in regard to seeking assistance after he has stopped receiving Employment Insurance benefits.

d) a statement by the appellant at the hearing that he could not recall the details of his visit to the service provider's office but it was likely in connection with the cessation of EI payments as the ministry stated.

e) a statement by the ministry at the hearing that many persons in employment plans directed by the ministry's service provider do not have a driver's license.

f) A statement by the appellant at the hearing that he suffers from a sore back as a result of a car accident several years ago.

The panel found that this information (a-f) is in support of the information and records that were before the minister when the decision being appealed was made; and therefore the panel determined that the information is admissible as evidence in accordance with the Employment and Assistance Act (EAA), Section 22 (4).



## **PART F – Reasons for Panel Decision**

The issue under appeal is whether the ministry's decision denying the appellant 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 was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence.

### **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*].

With respect to Section 9(1)(a) of the Employment and Assistance Act, the evidence shows that the appellant entered into an employment plan with the ministry's service provider. The plan, signed by the appellant, was to start February 1, 2012.

The panel notes that Section 9(1)(b) of the Employment and Assistance Act requires compliance with the employment plan, and Section 9(4) of the Employment and Assistance Act indicates the conditions under which the requirement to comply with an employment plan is not met.

With respect to Section 9(4)(a) of the Employment and Assistance Act the ministry contends that the appellant did not make reasonable efforts to participate in the employment-related program. The ministry points out that by signing the employment plan with a start date of February 1, the appellant agreed that he had read, understood and agreed to its terms and conditions. The ministry states that when he signed the employment plan the appellant confirmed to the ministry worker that he had read, understood and agreed to its terms and conditions, which included the appellant's advising the contractor any time he is unable to attend programs specified by the contractor. The ministry states that on February 22, 2012 the contractor returned the appellant's file as "No Show" to the ministry because the appellant had not completed an intake appointment with the contractor within the 21-day referral period.

The ministry also states that the appellant's files on two previous employment plans had been returned to the ministry as "No Shows" because in both cases the appellant did not attend the contractor's office within the 21-day referral period. The panel notes that its role is to determine if the ministry's reconsideration decision was reasonable, and for this appeal the ministry's reconsideration decision was that the appellant was denied income assistance because he did not comply with the terms of his employment plan with a start date of February 1, 2012. The panel therefore finds that the appellant's failure to comply with the two employment plans with starting dates in 2011 is not within the panel's scope.

With respect to the ministry's contention that the appellant did not comply with the terms of his employment plan with a start date of February 1, 2012 because he did not show up at the service provider's office within the 21 day referral period, the appellant in his "Reason for Request for Reconsideration" of April 16, 2012, stated that he complied with the ministry because he did go to the office of the service provider. At the hearing, in response to a question from the panel, the appellant indicated that he likely went to the office of the service provider before February 2012 to seek assistance after he stopped receiving Employment Insurance payment. The panel finds that there is no evidence the appellant was in attendance at the service provider's office within the 21 day referral

period as required by the appellant's employment plan with a start date of February 1, 2012.

With respect to the appellant's statement that he could not comply with the employment plan without a driver's license, the ministry contends that it is reasonable for the appellant to continue looking for work despite not having a driver's license and that many persons in employment plans directed by the ministry's service provider do not have a driver's license. The appellant's contention is that the only jobs he can do in his community require a driver's license. The panel finds that there is no evidence to show that the lack of a driver's license prevented the appellant from making a reasonable effort to participate in the employment-related program developed by the ministry's service provider as required by Section 9(4)(a) of the Employment and Assistance Act.

In summary, there is no evidence to indicate that the service provider was mistaken in informing the ministry that the appellant did not show up for an intake appointment within the 21 day referral period required by his employment plan; and there is no evidence to show that a lack of a driver's license prevented the appellant from making a reasonable effort to participate in the employment-related program developed by the ministry's service provider. Therefore the panel finds that the ministry's decision that the appellant failed to demonstrate reasonable efforts to participate in the program as required by Section 9(4)(a) of the Employment and Assistance Act was reasonably supported by the evidence.

With respect to Section 9(4)(b) of the Employment and Assistance Act, the ministry contends that the appellant does not have a confirmed medical condition that prevented him from participating in the employment-related program. The panel notes that though the appellant indicated at the hearing that he sometimes suffers from a sore back as a result of a car accident several years ago, he did not provide medical evidence that his condition prevented him from participating in the employment-related program.

The panel therefore finds that the ministry's decision denying the appellant 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 was reasonably supported by the evidence and the panel confirms the ministry's decision.