

PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated 28 May 2012 which held that the appellant had been denied income assistance due to non-compliance with the conditions of her employment plan (EP) contrary to Section 9 (1) (b) of the Employment and Assistance Act (EAA).

PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

Employment and Assistance Act (EAA)
Section 9

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of reconsideration was as follows:

- The Employment Plan (EP) signed by the appellant and dated 13 October 2011. The terms of the EP required the appellant to update and distribute her resume to potential employers, seek out and pursue all available resources and employment opportunities, submit her work search activities record monthly to the ministry, spend 25 hours a week on work search activities, to submit an action plan to the ministry by 15 November 2011, to follow through with all action plan activities as listed, to submit her job search by the 5th of each month and record a minimum of 5 activities per day 5 days a week.
- The request for Reconsideration signed by the appellant and dated 16 May 2012 wherein the appellant gave her reasons for reconsideration. Her reasons were she has 3 children, two at school and a 3 year old at home, for which she has full responsibility including getting them fed and ready for school and picking them up from school for lunch and other activities. Further, she is new to her community and gets lost when trying to go further afield when doing job searches. This has limited her to dropping off resumes in the places that she knows or is familiar with in her community. And, the combination of her parenting responsibilities, having a three year old at home, being new to her community made it difficult for her to have 25 hours per week to spend on job search(s). She also stated not many companies were hiring in her community which limited her ability to find a job further.
- Copies of the appellant's work search records for the period 24 October 2011 to 25 April 2012 – these showing the following work search activities: 5 in October, 9 in November, 20 in December, 11 in January, 30 in February, 16 in March, and 7 in April
- Action Plans developed by the appellant, with the local youth employment agency, and signed by her on 15 November 2012 and 16 May 2012
- A letter from a representative of the local community advocacy centre dated 18 May 2012 which set out that the appellant had recently been in hospital for treatment and requires daily IV therapy and antibiotics. Further she was suffering from dizziness and would be seeking a note from the hospital as to whether or not she was able to look for work or not. The letter also indicated the appellant needs more support in her efforts to look for work noting she has 3 children and day care for the 3 year old had fallen through. The centre noted the appellant faced cultural and language challenges and a more supported plan (EP) might be in order that is if the appellant was able to partake in in employment related activities at all. The centre also reported the appellant had been served with an eviction notice.
- A copy of a prescription for the appellant dated 14 May 2012
- A second prescription dated 18 May 2012
- A copy of a requisition for an outpatient ultrasound which is undated but has a fax date of 18 May 2012

At the hearing the appellant made an oral submission that covered the following points:

- Her responsibilities for her three children limited her ability to search for employment
- Her arrangements for child care for her three year old child had fallen apart after a month and

she had not been able to make other care arrangements

- Not many employers in her area are hiring
- She was new to the community and consequently she was not able to search outside the community as she would, and indeed did, get lost
- She does not own a vehicle and had to rely on public transportation which again limits her employment search
- She does not own a computer so any computer based searching she did required her to go to the community centre or the ministry office
- Her newness to the area coupled with English being her second language again limited her capacity to carry out a more extensive employment search
- She did attend an employment related course at a College
- She had come to understand the obligations of her EP after several discussions with ministry staff but it was too late

At the hearing the ministry restated the position as it was set out in the reconsideration decision, reaffirming the appellant had not made a reasonable effort to comply with the conditions of her EP. The ministry noted that when the appellant signed the EP, she affirmed that she had read, understood and agreed to follow the terms conditions of the EP. Further, the appellant had not indicated how she had attempted to schedule her day to accommodate work search activities, or what steps she had taken to resolve any scheduling difficulties she may have had due to child care obligations. Moreover the ministry noted that the appellant did not discuss during employment plan reviews, the impact child care obligations had upon her ability to comply with the conditions of her EP. The ministry also noted the appellant had restricted her job search to an area she described as having limited employment opportunities, in order not to get lost. The ministry stated that the appellant had not shown a reasonable attempt to expand her work search area by better getting to know her surroundings. The ministry noted the appellant had, when applying for income assistance, indicated she had completed an English as a Second Language course.

The ministry noted it had met with the appellant on several occasions between 13 October 2011 and 27 April 2012 to review her job search efforts and to reaffirm her obligations under her EP.

PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant income assistance because the appellant did not comply with the conditions of her Employment Plan, pursuant to Section 9 of the Employment and Assistance Act.

The relevant legislation is 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.

(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.

ATTACH EXTRA PAGES IF NECESSARY

(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 ministry's position is it could not be determined that the appellant demonstrated a reasonable effort to comply with the conditions of the EP she signed on 13 October 2012. While the ministry acknowledged that she did make an effort to comply with her EP, the appellant's job search records for the period 24 October 2011 and 25 April 2012 do not show her as having made a minimum of 5 job search activities per day 5 days per week throughout this period. Further, the ministry met with the appellant on several occasions to review her job search efforts and to reaffirm her EP obligations. The ministry also argues that the appellant did not raise her child care issues during these discussions.

The ministry argues that although the appellant was seeking medical treatment on 14 May 2012 the reconsideration decision took in the period 13 October 2011 and 27 April 2012 and the appellant did not demonstrate she had a medical condition that prevented her from complying with the conditions of her EP during that period. Nor does the prescription issued on 18 May 2012 appear to contain information regarding restrictions to the appellant's ability to participate in the program specified in her EP.

The appellant acknowledged she did not fully meet the conditions of her EP but argues her ability to do so was constrained by: her parenting responsibilities (sole parent for three children, one of whom is three years old), the limitations of having to rely on public transport place in her job search activities both in terms of time and scope, the limited hiring opportunities in her community, and her limited access to a computer to further her search capabilities.

The EAA in Section 9 clearly gives the minister authority to prescribe conditions of an Employment Plan to maintain eligibility for income assistance. These conditions, acknowledged and agreed to by the appellant, included updating and distributing her resume to potential employers, seeking out and pursuing all available resources and employment opportunities, submitting her work search activities record monthly to the ministry, spending 25 hours a week on work search activities, submitting an action plan to the ministry by 15 November 2011, following through with all action plan activities as listed, submitting her job search by the 5th of each month and recording a minimum of 5 activities per day 5 days a week.

The panel acknowledged the constraints outline by the appellant in trying to comply with the requirements of her EP. The panel also recognized the proposal by the local community advocacy centre that the appellant might benefit from a more supported EP. Nonetheless, the panel noted that Section 9 (7) of the EAA provides that that the conditions of an employment plan are not grounds for an appeal under section 17 (3) of the EAA. The panel finds, however, that, despite being repeatedly reminded of her obligations, the appellant did not meet the requirements of her EP in that she did not carry out the job search activities as required in that plan. Further, the panel finds the ministry reasonably determined that a medical condition did not prevent the appellant from participation in her EP.

Therefore the panel finds that the ministry decision that the appellant is not eligible for income assistance due to her failure to comply with the requirements of her Employment Plan was reasonably supported by the evidence and thus confirms the Ministry decision.