

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated May 16, 2012 which held that the appellant is not eligible for income assistance as of March 2012 pursuant to s. 9 of the Employment and Assistance Act (EAA) because he did not comply with the conditions of his employment plan.

Additionally, the ministry determined that the appellant failed to comply with the requirement under s. 13 of the EAA to demonstrate reasonable efforts to search for employment when he was in receipt of income assistance and that he is subject to the applicable sanction though ineligibility under s. 9 of the EAA takes precedence over the s. 13 sanction.

Further, the ministry determined that the appellant had failed to meet the reporting obligations set out in s. 11 of the EAA, though the ministry declined to apply a sanction.

The ministry also considered whether the appellant had failed to provide verification of information pursuant to s. 10 of the EAA but appears to find that compliance with s. 10 is no longer in issue and is not a basis for denial of income assistance.

The ministry determined that the appellant was eligible for income assistance for February 2012.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), s. 9, 10, 11 and 13

PART E – Summary of Facts

Documentary evidence before the ministry comprised:

- 1) April 24, 2012 unsigned letter from the appellant describing the source of 3 separate bank deposits.
- 2) April 24, 2012 letter from an individual who reports hiring the appellant to do painting and maintenance.
- 3) April 19, 2012 letter from an individual who states that the appellant owes the individual \$500 for rent for February, March, and April 2012.
- 4) An employment plan dated January 10, 2012 which was signed by the appellant on January 18, 2012 and set out the required activities as follows:

“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 (EPBC). I understand that I will be directed to the new EPBC contractor prior to April 2, 2012 by my current contractor or by the ministry. I understand that my participation in these programs is mandatory to be eligible for income assistance.”

- 5) A copy of the appellant's December 13, 2011 Application for Income Assistance.
- 6) A statement of the balance as at April 17, 2012 of 2 savings accounts and 1 chequing account held by the appellant.
- 7) A Work Search Activities Record (WSAR) signed and dated by the appellant April 19, 2012 showing 2 entries for February 2012, 5 entries for March 2012, and 3 entries for April 2012 all of which are described as job applications through one named website.
- 8) The appellant's Request for Reconsideration submission, a letter, dated April 26, 2012 which was received by the ministry on April 27, 2012. With respect to his work search efforts, the appellant writes that he has responded to every advertisement for a resident manager on 2 named web sites which resulted in a couple of interviews but no employment offer. Further, the appellant reports that he researched and has a list of management companies that employ resident managers and has visited every office where he submitted his resume. The appellant reports having contacted a head hunter and looking for a job through a network of friends and acquaintances working as resident managers. Additionally, the appellant writes that the ministry was “correct” in stating that the appellant did not comply with the conditions of his employment plan adding that he visited the contractor's office a couple of times and was told that the contractor cannot help him find a job but can teach the appellant how to look for one. The appellant writes that the contractor's program was attended by various people from the

other "margin" of life around whom the appellant did not feel comfortable and that the contractor had nothing to teach the appellant that he did not already know. The appellant also writes that, during one of his visits to the contractor, he was asked if he had decent clothing for an interview and that this "question had hit me hard to a point that I sunk into a depression mode" resulting in him being unable to leave his room for days. The appellant writes that he is not a drug or alcohol user and does not appreciate being treated as such. The appellant writes that he is uncertain what the ministry means when stating that he, the appellant, did not notify the ministry of changes to his situation and did not supply verification of information supplied to the minister. The appellant writes that he has tried everything in his power to find a position as a resident manager, which is the only position he is qualified for, he is happy to look into further schooling, and is, at this point, desperate and requests guidance.

- 9) A May 15, 2012 ministry letter to the appellant apologizing for having neglected to provide a copy of the appellant's non-participation report from the contractor and enclosing a copy of said report. The report indicates that the appellant attended an intake appointment with the contractor on January 12, 2012 and that a "strengths and barriers" assessment was completed on January 26, 2012 identifying that the appellant had a valid driver's licence, no issue with employability skills (good problem solving), good job search skills, no health conditions, good numeracy and literacy, no mental health conditions, no housing issues or active substance abuse, adequate work skills, but had inadequate access to transportation. Further, the appellant is reported as having completed services described as ES and LS on February, 1 and February 13, 2012, respectively. February 13, 2012 was the last contact date. On March 8, 2012 the contractor returned the "participant for non participation."

Evidence outlined by the ministry in its reconsideration decision is that the appellant entered into an employment plan on January 10, 2012 and that on February 13, 2012 the contractor notified the ministry that the appellant was non compliant with the ministry directed employment plan. A hold was placed on the appellant's March 2012 assistance cheque and a letter was mailed to the appellant advising him to contact the ministry. The ministry received no response to the letter or contact requesting the March 2012 cheque. On March 9, 2012, a second letter was sent to the appellant requesting that he contact the ministry and a hold was placed on the appellant's April 2012 assistance cheque. The ministry also states that no eligibility concerns were noted on the appellant's file in January 2012 when February 2012 assistance was issued but that the ministry cancelled the February assistance cheque because it was unclaimed.

On appeal, in a Notice of Appeal dated May 22, 2012 by the appellant, where asked to state why he disagrees with the ministry's reconsideration decision, the appellant writes "Please, see attached letter." However, no letter other than the above noted April 26, 2012 letter appears in the appeal record.

The ministry's submission on appeal is its reconsideration summary.

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 and subject to a sanction under s. 13 of the EAA is 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.

10(1) For the purposes of

- (b) determining or auditing eligibility for income assistance, hardship assistance or a supplement,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
- (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
- (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for income assistance, hardship assistance or a supplement.

(4) If an applicant or a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for income assistance, hardship assistance or a supplement for the prescribed period.

11 (1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time specified by regulation, must

(a) submit to the minister a report that

- (i) is in the form prescribed by the minister, and
- (ii) contains the prescribed information, and

(b) notify the minister of any change in circumstances or information that

- (i) may affect the eligibility of the family unit, and
- (ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

13 (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if

(b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment.

(2) For the purposes of subsection (1),

(b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.

Compliance with employment plan conditions (EAA s.9)

The appellant's position appears to be that the ministry decision that he did not comply with the conditions of his employment plan is correct with the explanation that he visited the employment program contractor a couple of times but did not continue attending because he did not feel comfortable around the other attendees, the program had nothing new to teach him, and he became depressed after being asked if he had decent clothing for an interview.

The ministry's position is that the appellant does not deny that he was non-compliant with the contractor's program. Further, the ministry argues that the appellant was advised to contact the ministry regarding his non-compliance by two separate letters but that the appellant did not contact the ministry. The ministry also argues that the appellant did not provide any evidence from a doctor to confirm that he had depression.

The panel finds that on January 18, 2012 the appellant signed the January 10, 2012 employment plan and agreed to meet the set out requirements which included participating in the contractor's programming and contacting the contractor any time the appellant was unable to attend. The panel finds that the undisputed evidence of the contractor establishes that the appellant attended his intake

appointment and two subsequent appointments with the contractor, the last being on February 13, 2012, but that the appellant did not attend any further appointments with the contractor after that date up to and including March 8, 2012 when the appellant's file was returned by the contractor to the ministry for non participation. While the appellant argues that he was in a depressed state following the contractor asking if he, the appellant, had clothing suitable for an interview, he did not provide any confirming evidence such as a physician's letter. In the absence of confirmation that the appellant was suffering from depression, or any other medical condition, during the time period in issue, the panel finds that the ministry reasonably determined that the appellant did not cease to participate in the contractor's employment program for medical reasons. The appellant offers alternative reasons for ceasing to attend the contractor's program including being uncomfortable around the other participants and not learning anything from the contractor; however, these reasons do not negate the appellant's obligation to attend the program or to have contacted the contractor to advise that he was unable to attend. Therefore, the panel finds that the ministry's decision that the appellant did not demonstrate reasonable efforts to participate in the employment program and thereby did not comply with the conditions of his employment plan as required by s. 9 of the EAA to be eligible for income assistance was reasonably supported by the evidence.

Failure to demonstrate reasonable efforts to search for employment (EAA s. 13)

The appellant's position is that he did demonstrate reasonable efforts to search for employment as he responded to all advertisements for a resident manager, attended the offices of management companies that employ resident managers, was in contact with a head hunter, and utilized contacts in the field of residential management. The appellant further contends that he is only qualified to be a resident manager.

The ministry's position is that the appellant's job search should have included all employment opportunities, not just those for a resident manager, and that the majority of the appellant's job search appears to have been on-line rather than in-person. Further, the ministry points to the evidence that the appellant only conducted 2 job searches in February, 5 in March, and 3 in April and has not provided confirmation that he was ill during this time period. Thus, the ministry concludes that the appellant is subject to the applicable sanction under s. 13 of the EAA though ineligibility under s. 9 of the EAA takes precedence.

The panel notes that, subject to the conditions of an employment plan under s. 9 of the EAA, s. 13(1) of the EAA requires a recipient of income assistance to demonstrate reasonable efforts to search for employment and that if this requirement is not met, a family unit which does not include dependent children, the consequence set out in subsection (2) is ineligibility for the prescribed period. While "employment" is not defined in the legislation, the panel finds that the plain meaning of employment is not reasonably construed as indicating employment solely in a chosen field of expertise and/or experience and, accordingly, that the ministry reasonably found that the appellant's job search for only resident manager positions was insufficient to demonstrate reasonable efforts to search for employment. Respecting the number of job searches reported by the appellant in his WSAR, 10 over a 3 month period, the panel finds that, in the absence of information confirming that the appellant was ill during the period in question, February through April 2012, the appellant has not established that he was unable to make further efforts to search for employment and that the ministry has reasonably viewed the number of job searches as inadequate to demonstrate reasonable employment search

efforts. Therefore, the panel finds that the ministry reasonably determined that the appellant did not demonstrate reasonable efforts to search for employment and was subject to the sanction of ineligibility set out in s. 13 and s. 29 of the EAA, some or all of which was subsumed by the appellant's ineligibility under s.9 of the EAA.

Failure to provide notification of changes to your situation (EAA s. 11)

The appellant's position is that he is uncertain of the meaning of the ministry's decision.

The ministry's position is that the appellant failed to advise that he was ill and that he was residing with a person, his girlfriend, who was supporting him which is information affecting his eligibility for income assistance. The ministry further takes the position that, although the appellant was in non compliance with s. 11 of the EAA, it will not apply a sanction and this is not the issue at reconsideration.

The panel is unclear what sanction the ministry is referencing. While s. 33 of the Employment and Assistance Regulation (EAR) sets out the timeframe for submitting information to the ministry and what information is required pursuant to s. 11 of the EAA, the EAR does not set out a sanction for failing to comply with s. 11 of the EAA. Rather, the consequence for failing to comply with s. 11 of the EAA is self-contained within s.11 which states "For a family unit to be eligible for income assistance, a recipient, in the manner and within the time specified by regulation, must (a) submit a report that...." Based on the wording of s. 11 of the EAA, the consequence of non compliance is ineligibility for income assistance. Given that the ministry has declined to impose a "sanction" under s. 11 of the EAA, the panel understands the ministry to be stating that it has not found the appellant ineligible under s. 11 of the EAA. Consequently, the panel will not consider the reasonableness of the ministry's decision as it relates to s. 11 of the EAA.

Conclusion

The panel finds that the ministry's reconsideration decision that the appellant is ineligible for income assistance for failing to comply with the conditions of his employment plan as required by s. 9 of the EAA and for failing to demonstrate reasonable efforts to search for employment as required by s. 13 of the EAA is reasonably supported by the evidence and confirms the decision.