

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development (the ministry) dated 23 March 2012 which held that the appellant was not eligible under section 9 of the Employment and Assistance Act for income assistance as the ministry had determined that she had not demonstrated reasonable efforts to comply with her employment plan, nor had it been established that she had ceased to participate in the program for medical reasons.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9

PART E – Summary of Facts

At the first hearing, on 12 June 2012, the appellant stated that she did not have the appeal record. The panel noted that instead of it being mailed to her through Canada Post, at her request the package had been emailed to her the week before, on 06 June 2012. The appellant stated she had not been able to go to a library to access her email. She also indicated that she did not realize that she could have an advocate to assist her in her appeal. The appellant requested an adjournment so as to have time to download the appeal record as well as to secure the help of an advocate. The ministry had no objection to an adjournment. After due consideration, the panel granted an adjournment.

The appellant failed to appear at the rescheduled hearing at the scheduled time and date. After verifying that the appellant had been notified of the rescheduled hearing at least 2 business days before the hearing date, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration can be summarized as follows:

From the appellant's Request for Reconsideration dated 05 March 2012, under Decision to be Reconsidered, prepared by the ministry, and a summary of communications from her BC Employment Program (BCEP) contractor:

- On 24 November 2011 the appellant signed an Employment Plan (EP) in which she acknowledged that she understood her responsibilities to comply with the terms of the EP and the consequences of non-compliance. The EP referred her to the BCEP contractor.
- The appellant attended a scheduled intake appointment with the contractor on 05 December 2011 and thereafter from 06 December to 19 January attended all appointments regularly, as well as attending drop-in dates.

From this point, there are conflicting accounts:

According to the BCEP contractor summary of communications, the appellant did not attend a scheduled appointment on 31 January 2012. On 13 February 2012 the contractor noted that no contact had been established with the appellant since 19 January 2012.

Similarly, in the Request for Reconsideration the ministry states that "Staff at [the BCEP contractor] made several attempts to contact [the appellant], but they were unsuccessful." The ministry states that when the appellant attended the ministry office on 27 February 2012 a ministry worker called the contractor case worker "B" and she advised that no contact had been made with them since 19 January 2012. The case worker advised that the appellant had made an appointment for 31 January 2012, but that she did not show up or contact them to advise that she would not be attending. The contractor closed the appellant's file for non-participation on 14 February 2012. The ministry therefore advised the appellant that she was ineligible for income assistance on 27 February 2012.

The appellant offers a different account of this time period. In her Request for Reconsideration, under Reasons, the appellant writes:

" ... My worker "A" transferred my file to a new worker "B." My appointment for her was

scheduled on January 31st. On January 31st I called the [BCEP contractor's] office and spoke presumably to the receptionist and requested to have my appointment rescheduled, as I had a coveted job interview to attend that morning. I was advised to come back on the drop in date and that someone would call me to reschedule my appointment. No one from [the contractor] called me after January 31st, especially not my worker "B". So I went to [the contractor] myself a couple of times, most recently on February 20, 2012, and I signed the drop in sheet for "B". However I was not allowed to see her and the receptionist told me my file was closed and I would need to come to the ministry office and discuss with a worker as my file with [the contractor] was closed." [The balance of the appellant's submission in her Request for Reconsideration goes to argument and to comments about how she feels she was treated badly by a ministry worker when she attended the ministry office on 27 February 2012 when she was advised that she was not eligible for income assistance due to EP non-compliance.]

In her Notice of Appeal dated 02 April 2012, the appellant stood by her account of calling the BCEP contractor on 31 January 2012 to reschedule an appointment that day as she had a job interview, and being told by a receptionist that her worker would call her to reschedule the appointment. She stated that no one called, and when she went to the contractor's office, she was told that her file had been closed. The balance of her submission goes to argument.

At the hearing the ministry explained that the BCEP had its own policies for serving its clients, what was expected from them and for when a client's file would be returned to the ministry for reasons of non-participation. In answer to a question, the ministry stated that the usual BCEP standard of job-search participation is 25 hours/week, normally involving the client attending the office at least once a week. The ministry stood by its Reconsideration Decision.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant was not eligible under section 9 of the Employment and Assistance Act for income assistance as the ministry had determined that the appellant had not demonstrated reasonable efforts to comply with her employment plan, nor had it been established that she had ceased to participate in the program for medical reasons.

The relevant legislation is set out in the EAA, section 9:

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].

The position of the ministry is that at reconsideration the appellant had ample opportunity to provide information to substantiate her call to the BCEP contractor on 31 January 2012 (for example, from records from her telephone service provider), or even some evidence of her job interview on that date, and failed to do so. Since there was no record that she had participated in any way in job

search activities under her EP between her last visit to the contactor's office on 19 January 2011 and 14 February 2012 when the contractor returned her file, the ministry was justified in determining that she was not in compliance with her EP and therefore not eligible for income assistance.

The position of the appellant, as set out in her Notice of Appeal, is that the ministry was harsh and unfair in denying her income assistance and the punishment was severe. She had been attending the BCEP contractor on a regular basis and just missed one appointment due to a job interview. She stood by her account of calling the contractor and not being called back. She argues that she is still in need of assistance and is experiencing severe hardship. She has had to move and has had difficult times. She is still actively looking for work and found that the BCEP contractor was very helpful.

The panel is mindful of the general principle that the applicant/recipient of public benefits is responsible for providing the information required to justify the receipt/continuation of such benefits. In this case, the panel finds it reasonable that at reconsideration the ministry would expect the appellant to provide evidence of her calling in to the BCEP contractor office on 31 January or at least provide the name of the business at which she applied for a job, and the title of the position for which she was interviewed. The panel also notes that for the 2 week period immediately after the job interview in question, there is no evidence that, not hearing back from the BCEP contractor, she contacted that office to reschedule her appointment or attended the office to resume her EP activities, or no explanation as to why she did not. The panel therefore finds that the ministry reasonably determined that the appellant had not demonstrated reasonable efforts to comply with her employment plan. The panel notes that there is no reference in the appeal record of any medical reasons that might have caused the appellant to cease participation in the program.

For these reasons, the panel finds the ministry decision that the appellant was not eligible for income assistance, as she had not demonstrated reasonable efforts to comply with her employment plan nor had it been established that she had ceased to participate in the program for medical reasons, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.