

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development Reconsideration Decision dated April 24th 2012 whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the Employment and Assistance Act (EAA) for not complying with the conditions of his Employment Plan (EP) due to his failure to make reasonable efforts to participate in his employment related program.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 9

PART E – Summary of Facts

The hearing scheduled for May 24th 2012 was adjourned at the request of the appellant, to July 11th 2012.

The evidence before the ministry at the time of the reconsideration consisted of:

1. Employment Plan (EP) signed by the appellant dated September 15th 2011. The terms of the EP include provisions requiring the appellant to: participate in the employment program with the contractor specified by the ministry in order to be eligible for income assistance, to make an appointment with the contractor for an interview, complete all tasks assigned by the BC Employment program in accordance with responsibility as established by the contractor.
2. Outbound call record from phone provider showing outbound calls made on the appellants phone from 10/3/11 to 10/6/11 which included calls to the employment contractor.
3. Request for reconsideration dated November 4th 2011

The appellant did not attend the hearing. After confirming the appellant was notified, and waiting 20 minutes, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The ministry's evidence included that the appellant was denied his request for income assistance due to non compliance with the EP.

On September 15th 2011 the appellant attended the ministry's office where a new employment plan was created for the appellant that included a referral to the BCEP through an employment contractor. The appellant signed the EP agreeing to the conditions and required activities as well as the consequences for non compliance. On September 16th 2011 the appellant attended an intake assessment as required by the employment contractor and was accepted into the BCE program and given a schedule of upcoming required appointments.

On October 26th 2011 a case worker called the employment contractor who confirmed the appellant missed workshops/appointments on October 3rd, 4th, 5th, 6th 2011, without any contact. The employment contractor confirmed that the appellant received a schedule listing all of the workshops and appointment dates. The employment contractor stated that the appellant was called by the employment contractor, regarding the missed appointments on October 4th and 5th. The appellant did not give any information explaining his lack of attendance at appointments with the employment contractor from October 5th through October 19th 2011.

On October 19th 2011 the appellants BCEP file was returned to the ministry with a reason of non-compliance.

The employment contractor confirmed that they spoke to the appellant, advised him of his obligation to attend and advised the appellant to contact the ministry office and case manager. On October 26th the appellant was asked by the employment contractor if he had received a schedule of appointment and workshop dates and times. The appellant answered yes and also stated that there were no barriers to his participation in the program when asked.

On October 26th 2011, the appellant was advised by the ministry that he was not eligible for income

assistance for non-compliance with the terms and conditions of his employment plan.

The appellant in the request for reconsideration submitted evidence that showed his service provider phone records which verifies that he did call the employment contractor on a number of occasions on 10/3/2011 (4 times) 10/4/2011 and 10/5/2011.

The appellant stated that he contacted the employment contractor on October 3rd 2011 and was advised that his caseworker would contact him within 72 hours. The appellant stated that the caseworker did not contact him until October 4th 2011 at 4:20 pm and that was the reason he missed the scheduled October 4th appointment. He also stated that he did not attend the first meeting because he had a job interview.

The appellant stated that the employment contractor called him on October 6th and asked how the job search was going and he stated fine. The appellant stated that he has continued his job search and has had a couple of interviews. He stated that he will go back to the employment contractor if he has to and complete the workshops, but he is well on his way in his job search. The appellant stated that he will provide a resume and a list of places he applied to upon request. The appellant stated that he needs to continue with income assistance until he secures a full time job.

In the notice of appeal, the appellant submitted that he needed to get an advocate and a psychological evaluation completed. The appellant also stated that he was willing to complete an employment plan. He stated that his original appeal was never heard, it was cancelled by the Tribunal on March 28th 2012.

The panel makes the following finds of fact:

The appellant signed the EP on September 15th 2011. The required activities of the EP were that the appellant participate in an employment program to the best of his ability. The dates of the EP were from September 16th 2011 to September 15th 2013. The appellant did not attend the program starting from October 3rd 2012..

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant did not make reasonable efforts to comply with the conditions of his EP through non-attendance and failure to participate in the employment contractors program, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the Employment and Assistance Act (EAA).

Section 9(1) of the EAA provides that, when the ministry requires, a person must enter into an EP and comply with the conditions in the EP in order to be eligible for income assistance. Under Section 9(3) of the EAA the ministry has the authority to specify conditions in an EP, including a requirement that the person participate in an employment-related program. Pursuant to section 9(4) of the EAA, if an EP includes a condition requiring a person 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 if the person ceases, except for medical reasons.

The ministry's position is that the appellant entered into an EP dated September 15th 2011, that he was referred to an employment-related program in which he was required to participate. On September 16th 2011 the appellant attended an intake assessment as required by the employment contractor and was accepted into the BCEP. At that time the appellant was given a schedule of upcoming required appointments.

The ministry submitted that the appellant missed his October 4th 2011 appointment and the following appointments from October 5th to October 19th 2011, thus did not comply with the conditions of the EP as he did not demonstrate reasonable efforts to participate in the program. The ministry points out that when the appellant signed his EP, he agreed to the requirements of attendance and compliance with the program as well as the consequences for non-compliance. The ministry points out the appellant did not have any reason for not attending his appointments.

The appellant in his request for reconsideration submitted that he did try to return calls to the employment contractor and provided a record of the calls he made to the employment contractor. The appellant stated that he did try to get hold of his case worker. The appellant stated that he has continued with his job search and that he has had a couple of interviews. The appellant stated that he will go back to the employment contractor and complete the workshops if he has to and he will provide a resume and a list of places he applied to upon request.

The panel finds that the EP signed by the appellant on September 15th 2011 requires the appellant to fully participate in the program as directed by the employment contractor and to advise the employment contractor anytime he is unable to attend. The panel finds that the appellant received a schedule at the intake session September 16th 2011, listing all the appointments and workshop dates. The panel finds that the appellant missed workshops on October 3rd, 4th, 5th and 6th and all other subsequent appointment through October 19th 2011.

The panel finds that the appellant did not demonstrate a reasonable effort to comply with the conditions of the EP. The panel finds that there was no evidence of a reason for the appellant failing to fully participate in the program. The legislation requires that the appellant demonstrate reasonable efforts to participate in the program and the panel finds that the ministry reasonably concluded, pursuant to Section 9 of the EAA, that the requirements have not been met in this case.

The panel finds that the ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.