

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 27, 2012 which held that the appellant is not eligible for income assistance pursuant to section 9(1)(b) as he has not complied with the conditions of his employment plan (EP) because he failed to demonstrate reasonable efforts to participate in the plan pursuant to section 9(4)(a) and has not provided documentation confirming mitigating circumstances that would have prevented him to participate in the plan pursuant to section 9(4)(b) of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9

PART E – Summary of Facts

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

- An Employment plan (EP) dated December 19, 2011, signed by the appellant with requirements as follows:
 - Participate in employment programming with the contractor specified by the ministry;
 - Fully participate as directed by the contractor and will advise the contractor any time I am unable to attend;
 - Meet with EPBC contractor appointment on December 23, at 9:30 am;
 - To be assessed for employment services beginning April 2, 2012;
 - Agree to participate in the new employment program of BC (EPBC);
 - Understand that will be directed to the new EPBC contractor prior to April 2, 2012 by my current contractor or by the ministry;
 - Understand that participation in these programs is mandatory to be eligible for income assistance.

The EP includes an acknowledgement by the appellant stating that he read, understood and agreed to the requirements of and compliance with the employment plan as well as the consequences of non-compliance.

The ministry provided the following chronology of events:

- April 2, 2012 the appellant attended the EPBC office to register, but did not make an appointment.
- April 25, 2012 EPBC attempted to contact the appellant to schedule an orientation session, but was unsuccessful.
- May 9, 2012 EPBC attempted again to contact the appellant, but was unsuccessful.
- May 17, 2012 EPBC mailed the appellant a letter that invited him to a specific orientation session and stated that if he no longer needed their services to advise EPBC.
- May 30, 2012 EPBC called the appellant for the third time to connect, but he was not available.
- June 6, 2012 EPBC closed and returned the appellant's file to the ministry for non-compliance.
- August 16, 2012 the appellant attended the ministry office to discuss his non-compliance, but was unable to provide any explanations to the reason he failed to comply with the terms and conditions of his employment plan. The appellant was advised he was not eligible for income assistance.
- August 27, 2012 the appellant filed a Request for Reconsideration in which he indicates he was not contacted by phone or mail until he received mail on August 8, 2012 and has since set up an employment plan appointment at 9:30 am on August 27, 2012.

In his Notice of Appeal (NOA) dated August 30, 2012, the appellant wrote that there was a breakdown with communication with the EPBC contractor. The appellant states "Before the switch over [the contractor] only said register after April. Always complied when asked to do employment plan in past. Lost previous phone and got new number so was not contacted after last meeting with [the contractor]." At the hearing, this Notice of Appeal was admitted into evidence under Section 22(4) of the Employment and Assistance Act as in support of the information and records that were before the ministry at reconsideration.

At the hearing, the appellant was represented by his father who acted as his advocate. The advocate contends the whole matter represents a breakdown in communication. His son has been on income assistance for approximately one and a half years and has had previous experience with a former EP program of the ministry. He described his situation as a single father raising his son and a daughter and that his son realizes the importance of maintaining his income assistance for the family's overall well being. He outlined that April 2012 was a bad month consisting of family illnesses, falling behind on a utility bill that required a switch to another phone carrier and his son losing his phone. He further submits that the letter dated May 17, 2012 was never received and could not say why, but noted that there had been similar past issues regarding missing mail at his place of residence. He also emphasized that his son has always complied with his previous EP and is always looking for work and that if they had received the letter his son would have complied with his plan. He further notes that his son holds a number of work related certificates, but does encounter a range of barriers when applying for work. The appellant states that when he met with the EP contractor on April 2, 2012 he was not told to make an appointment for orientation. The appellant also acknowledged to the panel his previous experience with employment plans and that he understood the implications of not complying with his employment plan.

At the hearing, the ministry stood by the record. It noted that the appellant has had previous experience and employment plans under prior employment program contractors. It noted that the appellant has signed an active EP on December 19, 2011 with the conditions outlined that must be met. The ministry emphasized that while the appellant may have lost his phone; there was a considerable lapse of time after April 2, 2012 when he met and registered with a new EP contractor until August 16, 2012 when he met with the ministry to discuss his non-compliance. A time span within which he could have made reasonable efforts to update the ministry of his circumstances. Even taking into consideration the ministry's letter dated May 17, 2012 inviting him to a specific orientation and information session may not have been received there were no attempts to contact the ministry and provide reasons for his non attendance over an approximate 4 month period. Finally, the ministry has to base its decision on the appellant's compliance with his EP, not on work search efforts by him or lost phones or mail it is unaware of.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant continued income assistance because the appellant failed to make a reasonable effort to comply with the conditions of his EP pursuant to section 9(4) (a) and has not provided documentation confirming mitigating circumstances that would have prevented him to participate in the plan pursuant to section 9(4)(b) of the EAA.

Section 9(1) of the EAA states that 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.

Section 9(3) states 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.

Section 9(4) states, 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.

Section 9(6) states the minister may amend suspend or cancel an employment plan.

Section 9(7) states 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 argues that the appellant has not provided any mitigating reasons why he was unable to make reasonable efforts to comply with his employment plan. The ministry maintains that the appellant signed and had an active EP with conditions that must be met. By signing this plan, the appellant indicated he read, understood and agreed to the requirements of attendance and compliance with the program as well as the consequences for non-compliance. However, the appellant did not comply with the required activities of his EP to attend and make an orientation appointment with the new EP contractor at any time in accordance with his EP following his meeting on April 2, 2012.

The appellant argues that he was never fully told of the requirement to make an appointment for an orientation session with the new EP contractor. He further argues because he lost his phone and did not receive a ministry letter dated May 17, 2012 he was not aware of his non-compliance. He maintains that he has been constantly searching for employment.

The panel finds that the evidence confirms that the appellant read, understood and agreed to the conditions of his employment plan and did not make any reasonable attempts to advise his EP contractor over an extended period of time between April and August 2012 of his circumstances for being unable to attend a required orientation session. The panel also notes that the legislation requires that an EP must be complied with in order to be eligible for income assistance. The panel also finds that there is no supporting evidence to indicate the appellant's inability to submit the records was due to a medical reason. The appellant states that he was not told of the requirement to attend an orientation session and did not fully understand the requirement. However, by his own testimony and his past experience with a previous EP he understood the importance and implications of non-compliance. The panel further notes that the EP sets out in writing that the appellant must participate fully to the best of his ability. While the panel acknowledges there may have been a breakdown in communications with regard to a lost phone or missing mail, there is no justification for the appellant's non-communication actions over an extended period of time. Finally, the panel finds that there are no compelling reasons that prevented the appellant from following through and complying with his plan regarding the requirement to advise the contractor of his circumstances preventing his participation in his EP.

The panel therefore confirms the ministry's Reconsideration decision dated July 5, 2010 as it is a reasonable application of the legislation in the circumstances of the appellant.