

PART C – Decision under Appeal

This is an appeal of a decision of the Ministry of Social Development (“the ministry”), dated September 7, 2012. The ministry found that the appellant was non-compliant with his employment plan and therefore ineligible for income assistance pursuant to section 9 of the *Employment and Assistance Act* (EAA).

PART D – Relevant Legislation

EAA section 9

PART E – Summary of Facts

The following evidence was before the ministry at the time of its reconsideration:

- An Employment Plan (EP), dated December 23, 2011, which contains the following terms and was signed by the appellant:
 - “The purpose of the EP is to outline the activities and expectations for you to find employment or become more employable. These expectations are required by the Employment and Assistance Act and the Employment and Assistance for Persons with Disabilities Act. The EP will have specific timelines for activities and will be reviewed regularly. The EP tracks your progress to employment. Any changes to your plan will require an amendment agreed to by the ministry. It is important that you follow through with the conditions of your EP. If you are unable to follow through please advise the ministry. If you fail to comply with your EP you will be ineligible for assistance.”
 - “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.”
 - “I understand that if I do not comply with the conditions of this employment plan, the assistance issued to me and/or my family will be discontinued.”
- A request for reconsideration which sets out a record of the ministry’s decision to discontinue income assistance. It contains the following information:
 - “Client initialed the employment plan agreeing that he understood the above listed requirements. Client signed the back of the employment plan agreeing that he acknowledged and understood compliance with the employment plan and actions for non compliance.”
- The request for reconsideration then lists the attempts to contact the appellant:
 - April 26, 2012 – EPBC made first call to connect with client to book an orientation session and were unable to reach client.
 - May 10, 2012 – EPBC made second call to connect with client to book an orientation session and were unable to reach client.
 - May 18, 2012 – EPBC mailed a letter to client inviting him to a specific time orientation and info session and requested if client is not in need of services to please call and advise them.
 - June 1, 2012 – EPBC made a third call to connect with client to book an orientation session and were unable to reach client.
 - July 11, 2012 – EPBC closed client’s file as no show/non participation. A service request was sent to the Ministry of Social Development, advising that client no longer had open file with the program.
 - August 21, 2012 – client was informed by the ministry of his non-compliance and that there were no mitigating circumstances.
- A letter dated August 8, 2012 advising the appellant that he has not complied with his EP and that his assistance may be delayed.

The panel notes that the original record from the employment contractor was not in evidence in its original form; rather it was restated in the request for reconsideration. The appellant did not disagree with this evidence and, as it is consistent with other evidence under review, the panel accepts it.

The following evidence was received at the hearing:

Appellant

- The employment contractor he was using moved locations at the beginning of April 2012.
- He wasn't able to locate the new premises and there was no sign at the old location as to where they had moved.
- The employment contractor had changed its policy so that it now permitted walk in clients – previously only referrals were accepted.
- He changed residences effective June 1, 2012 and dealt with the ministry at the time to receive his damage deposit. He made the ministry aware of his new address.
- He found the new location of the employment contractor in July and registered to obtain access to their computers for job search purposes on July 10, 2012. He assumed that this would reactivate his EP file. He said that he didn't know that he should have used the term "legacy client" when talking to the EP provider in order to reactivate his previous file.
- Under questioning, the appellant stated that he was living at his old residence in May 2012, when the employment contractor twice tried to telephone him and sent him a letter. He stated that he did not receive the telephone messages nor the letter.
- He also agreed with the ministry's position that he was not engaged in job search activities with the employment contractor between April 2 and July 10, 2012. He was busy looking for an apartment and volunteering.

Ministry

- The appellant updated the ministry when he moved but not the employment contractor. By policy the ministry does not share clients' information with the employment contractor after the initial referral.

Under section 22(4)(b) of the Act, the Panel admitted the new evidence as it is in support of information and records which were before the Ministry at the time of its decision.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision dated September 7, 2012 to discontinue income assistance for the appellant based on non-compliance with his EP, was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The EAA section 9 states:

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.

...

(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.

The Appellant argues that he was not aware of the new location of the employment contractor after it moved in April 2012. When he did find the new location on July 10, 2012, he registered for access to their computers to conduct job searches, not realizing that this did not reactivate his EP file.

The ministry argues that the appellant did not make reasonable efforts to comply with his employment plan between April 2, 2012 and July 10, 2012 and therefore became ineligible for income assistance.

The panel notes the requirements of both the legislation respecting EPs (section 9 EAA) and the EP contract have strict language regarding the appellant's duty to remain involved with his EP and make reasonable efforts to become employed or more employable.

The evidence shows that the appellant was aware that the employment contractor was moving in April 2012, which was initialed and signed by the appellant.

The appellant was in contact with the ministry regarding his move to a new residence on June 1, 2012, but neither the ministry nor the appellant appears to have ensured that the EP was continuing with the employment contractor in the new location.

That being said, the employment contractor telephoned the appellant twice and sent him a letter in May 2012. These communications were directed to his address where he lived until the end of May 2012. It is unfortunate that the appellant did not receive them nor make enquiries as to the location of the new premises of the employment contractor.

Section 9(1)(b) required the appellant to "comply with the conditions in the employment plan." The EP contained references to the change in locations of the employment contractor on April 2, 2012 and the appellant acknowledged awareness of this by virtue of initialing and signing the EP. The employment contractor made efforts to contact him in May, which he did not receive.

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.

There is no evidence of a medical reason which prevented the appellant from participating in his EP.

The evidence shows that between April 2, 2012 and July 10, 2012 the appellant did not make sufficient efforts to locate the employment contractor and re-engage his job search activities. The ministry was reasonable to find that the Appellant did not make reasonable efforts to participate in his employment plan as required by 9(4) and discontinue his income assistance as a result of this pursuant to (1).

The panel confirms the ministry's decision.