

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated October 16, 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 program and with no medical reason for his non-participation.

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 the reconsideration decision consisted of:

- 1) Employment Plan (EP) signed by the appellant dated July 26, 2012. The terms of the EP include provisions requiring the appellant to: update and distribute his resume to all potential employers; to seek out and pursue all available resources and employment opportunities; to record his monthly work search activities on the ministry form and provide these to the ministry upon request; to utilize all personal contacts to assist his work search; that the ministry expectation is that he spends 25 hours minimum per week on work search activities; the reporting requirements are monthly by telephone; and
- 2) Request for Reconsideration- Reasons.

In his Notice of Appeal, the appellant stated that he disagrees with the ministry's decision because he still owes his landlord \$100 for last month because the ministry said he was cut off of welfare. The appellant stated that the good thing is that he is a drug addict but he still has a job at a moving company when he can get the transportation help. The appellant stated that he thought transportation help was part of the assistance he was supposed to be getting from welfare. The appellant stated that he went to drug dealing because he wanted to survive and this is why he became "a client of welfare."

In his Request for Reconsideration, the appellant stated that two months back he went to the ministry office to pick up his cheque or to find out where it was and to inform the office that he was re-hired or called back to work with the moving company in another community. The appellant stated that the ministry told him that he should not cut himself off until at least his first or second pay cheque. The appellant stated that he was asked to sign a different EP and then he would get his cheque. The appellant assumed that "...everything was OK." The appellant stated that at the last cheque issue, after the ministry told him to come in to get his rent "make up cheque", he arrived at the office to discover it was not in his file.

At the hearing, the appellant stated that when he went into the ministry office in July 2012, he asked whether working would be a problem and was told to hold on for 2 or 3 weeks before letting the ministry know so that he could get some money together from his pay cheques to get himself back on his feet. The ministry told him to be sure to let them know how it is going, but the ministry did not suggest requesting a transportation supplement to help him get to the job location. The appellant stated that he had been homeless but got a place to live around May 2012 for rent of \$550 which he shared with a room-mate, each paying \$275. The appellant stated that his room-mate disappeared and then he found out that his room-mate had been arrested. The appellant stated that he was stuck paying the full rent and needed more money towards the rent and the ministry told him when he called to come into the office to pick up a cheque for \$100. The appellant stated that his landlord gave him a ride to the ministry office on September 6, 2012 because he wanted to get the money for the rent. The appellant stated that when he arrived at the ministry office, he was told there was no cheque for him and that he will likely be cut off because he was not applying himself to his job search. The appellant stated that he was trying to find a stable place to live which is difficult in his current community, that he has found a new place to live for a rent of \$650 per month and that it is in the same community. The appellant stated that since his room-mate got arrested, he was also left to clean up the old residence, to get rid of all the garbage, and to get moved to the new place by himself.

The appellant stated that he has been working "on and off" as a "swamper" for the moving company in another community for around 10 to 12 years, that he can often get work if he can find transportation to the company's location. The appellant clarified that a swamper loads the moving truck and disassembles furniture. The appellant stated that he worked full-time for this company for two years a while ago. The company pays a \$20 advance every day to help him get to work for the next day, to pay for transportation and a cup of coffee or a meal. The appellant stated that he talked to his driver who said there is lots of work if he could report to the location in the other community. In response to a question, the appellant stated that he still has not worked for the moving company, as of the hearing date, because there has always been something going on, such as his room-mate getting arrested, moving, and having no transportation to get to the company.

The ministry's evidence included that the appellant has entered many employment plans over the years and that he has a history of non-compliance. The appellant most recently signed an EP on July 26, 2012 for a Supervised Independent Work Search (SIWS), that by signing the EP the appellant indicated that he had read, understood and agreed to the requirements of compliance with the program as well as the consequences for non-compliance. The terms of the EP included provisions requiring the appellant to: update and distribute his resume to all potential employers; to seek out and pursue all available resources and employment opportunities; to record his monthly work search activities on the ministry form and provide these to the ministry upon request; to utilize all personal contacts to assist his work search; that the ministry expectation is that he spends 25 hours minimum per work on work search activities. On September 6, 2012, the appellant attended at the ministry office to discuss his September shelter and, upon review of his file, the ministry found that the appellant had not submitted any work search activities to the ministry. When the ministry inquired as to why, the appellant stated that he has full-time employment with a moving company. When asked to submit confirmation, the appellant stated that he has not been to the job due to lack of funds for transportation and that he does not need to be looking for work because employment is available. On September 6, 2012, the appellant was advised that he is not eligible for income assistance for non-compliance with the terms and conditions of his EP.

At the hearing, the ministry stated that the appellant's previous EP was a "soft plan" to deal with life situations, in his case to find stable housing. When the appellant attended at the ministry office in July 2012, it was determined that the appellant had found housing and needed to sign a new EP. The ministry stated that there are notes on the appellant's file that on July 4, 2012 the appellant agreed to participate in a SIWS and there are no notes about the appellant having employment. The ministry stated that the appellant is required to complete monthly reporting stubs to declare any funds received as well as any anticipated change in circumstances, such as a move of residence or potential employment. The ministry stated that anything reported by the appellant would be noted on his file, and there is no note in his file at that time that he had found employment. The ministry stated that the training of ministry workers includes standards of performance and that all conversations with clients are to be recorded on the client's file. In a situation of uncertainty about employment, in the normal course, the client would be advised to let the ministry know if he/she starts employment, and also to advise the client that there is an obligation to declare any funds received, and that if there are obstacles that arise, there may be supplements available from the ministry where there is confirmed employment.

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, with no medical reason for not participating, and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the Employment and Assistance Act (EAA).

Section 9 of the EAA provides:

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].

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, to participate in the program.

The ministry's position is that the appellant entered into an EP dated July 26, 2012, that he was required to participate in a SIWS, and that he did not comply with the conditions of the EP as he did not demonstrate reasonable efforts to participate in the program. The ministry argues that although the appellant states that he has full time employment, he has not submitted confirmation from the company. The ministry argues that the appellant's lack of transportation to the employment is an indicator that the appellant should continue to seek out employment that is closer to his residence or does not require a commute. The ministry argues that the required activities of the appellant's EP include: updating and distributing his resume to all potential

employers, seeking out and pursuing all available resources and employment opportunities and spending a minimum of 25 hours per week on work search activities, and that the appellant has not been performing these activities as he has admitted that he is not currently looking for employment. The ministry argues that the appellant does not appear to have a medical condition that would have prevented him from participating in his EP.

The appellant's position is that he advised the ministry of his situation in July 2012, that he could get employment at any time with the moving company, and he was told by the ministry to wait for a few weeks before reporting this, to give him a chance to make some money to get back on his feet. The appellant agrees that he signed the EP on July 26, 2012 that states he will engage in an active work search but he did not know that he could refuse to sign a document that he believed did not reflect his situation. The appellant argues that he had to sign the EP because he wanted to get his cheque. The appellant argues that there have been a number of issues that have kept him from reporting to work with the moving company, including the arrest of his room-mate, his move of residences, and his lack of transportation to the company location which is in another community. The appellant argues that he was not advised by the ministry that there may be a supplement available from the ministry to assist him with transportation to confirmed employment. The appellant does not argue that he has a medical condition that prevented him from participating in his EP.

The panel finds that the appellant signed the EP on July 26, 2012 and that he understood that the EP included conditions that he participate in an active work search which included, among other things, that he update and distribute his resume to all potential employers, and that he seek out and pursue all available resources and employment opportunities. The panel finds that it is not disputed that the appellant did not distribute his resume or seek out and pursue all available resources and employment opportunities as required by his EP. The appellant argues that he did not perform these activities because he already had an employment opportunity available to him and he, therefore, did not need to continue looking for a job. Although the appellant stated that he advised the ministry before signing the EP that he had an employment opportunity, the ministry stated that there is no mention of this or any issues with transportation in the notes in the appellant's file with the ministry, and the panel finds that the ministry was not advised of this potential employment opportunity until September 6, 2012. When asked by the ministry on September 6, 2012 to provide confirmation of this employment, the appellant could not do so, and he stated that he could not get to the company location due to a lack of transportation. The ministry found that the appellant lacked transportation and that this should have been an indicator to him to continue to seek out employment that is closer to his home. The panel finds that the ministry reasonably determined that, as of September 6, 2012, there was no confirmed suitable employment opportunity for the appellant and, therefore, that this was not a satisfactory reason for the appellant to have ceased the active work search required by his EP for the preceding month.

The panel finds that the ministry reasonably concluded that the appellant did not demonstrate reasonable efforts to comply with the conditions in his EP. The panel finds further that there is no information provided to establish that the appellant has medical issues that restrict him from participating in his EP. The legislation requires that the appellant demonstrate reasonable efforts to participate in the program, or to provide a medical reason for ceasing 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.