

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated October 26, 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 her Employment Plan (EP), due to her failure to make reasonable efforts to participate in an employment-related program and with no medical reason for her 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 May 29, 2012. The terms of the EP include provisions requiring the appellant to: update and distribute her resume to all potential employers; to seek out and pursue all available resources and employment opportunities; to record her monthly work search activities on the ministry form and provide these to the ministry upon request; to utilize all personal contacts to assist her work search; that she is aware that the ministry expectation is that she spends 25 hours minimum per week on work search activities; the reporting requirements are "other", for her to keep until requested through a client activity report;
- 2) An undated two-page resume for the appellant, which includes four references;
- 3) An undated information sheet for free skills training at a local university;
- 4) Work Search Activities Record for June 2012 which lists examples of work search activities as preparing of a resume in combination with employer contacts, telephone inquiries to potential employers, fact finding interviews in combination with employer contacts, responding to newspaper and internet ads, cold calling, networking with social contacts, submitting applications, and attending interviews, and with handwritten notes indicating 34 activities, including contacts for food attendant, customer representative, caretaker, flagger, cashier, labourer, cleaning person, office assistant, carpenter, and landscaping;
- 5) Work Search Activities Record for August 2012 with handwritten notes indicating 34 activities, including contacts for cashier, labourer, landscaping, food attendant, painter, construction, warehousing, caretaker, cleaning, gas station attendant, receptionist, welding, chicken catcher, flagger, housekeeping, and dishwasher;
- 6) Work Search Activities Record for September 2012 with handwritten notes indicating 13 activities, including contacts for shipping/ receiving, an interview for a server position, kitchen helper, prep person, cook, cleaner, chicken catcher, general labour, night cleaner, and farm worker;
- 7) Print out dated September 26, 2012 for an on-line job posting for a General Clean-Up Position;
- 8) Appointment information slip for the appellant for October 1, for a local community job search organization with several resources, including self-employment, workshops, specialized assessments, training, and community connections;
- 9) Work Search Activities Record for October 2012 indicating 14 activities, including contacts for merchandiser, construction labourer, dishwasher, food server, farm labour, liquor server, milker, data clerk, chicken catcher, mover, shop helper, purchasing clerk, gas station attendant, shipper, forklift driver, landscaper, and customer service;
- 10) Letter dated October 17, 2012 from a facilitator for a work program to the appellant regarding her application to the work program, and requesting that she make contact "before 4:30 today if possible" so that this can be discussed further;
- 11) Fax Cover Sheet dated October 22, 2012 from the appellant to the ministry with a handwritten note stating in part that she is still homeless and looking for a job, that she enrolled herself in a work program that will assist her with effective job search and attaching a list of 25 more jobs for which she has applied; and,
- 12) Request for Reconsideration- Reasons.

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

In her Notice of Appeal dated October 29, 2012, the appellant stated that she will explain in person why she disagrees with the ministry's reconsideration decision, and she requested an oral in person hearing. The appellant also stated that she has a learning disability. Prior to the hearing, the appellant provided another Notice of Appeal dated November 15, 2012 which stated that she is an addict and living on the streets plus also looking for a job. The ministry did not raise an objection to the admissibility of this document and the panel admitted the information into evidence, under Section 22(4) of the Employment and Assistance Act, as relating to the reason for the appellant's circumstances and being in support of the information that was before the ministry on reconsideration.

In her Request for Reconsideration, the appellant stated that she is homeless and looking for a place to live and a job at the same time. The appellant stated that she is a recovered addict and has been attending meetings to better herself. The appellant stated that she has been e-mailing and faxing companies her resume and still has not heard back from the places that she called, emailed or faxed to. The appellant stated that it is hard to find a job in her community compared to her previous community but she is in her current community because her two sons live nearby with their father. The appellant stated that she has no other income and that she has been doing what the ministry requested that she do. The appellant stated that she goes to the work program to look for a job and for a place to live. The appellant stated that she has been staying in shelters and has been calling for places to rent and so far the rent is too high so she has to look for a room-mate to share a place with. The appellant stated that she does not have a phone.

The ministry's evidence included that the appellant signed an Employment Plan (EP) on May 29, 2012 for a Supervised Independent Work Search (SIWS), thereby indicating that she 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 her resume to all potential employers; to seek out and pursue all available resources and employment opportunities; to record her monthly work search activities on the ministry form and provide these to the ministry upon request; to utilize all personal contacts to assist her work search; that she is aware that the ministry expectation is that she spends 25 hours minimum per week on work search activities.

On August 22, 2012, an EP review was conducted on the appellant's file and it was found that the appellant had not submitted any work search activities since she signed her EP in May. On August 30, 2012, the appellant attended at the ministry office and she was advised that she was non-compliant with her EP. The appellant stated that she had been performing a job search and would submit her work search activities. On the same day, the appellant submitted work search activities for June and August 2012 and stated that she had lost the work search activity report for July 2012. The work search activities were reviewed by the ministry and accepted however the appellant was advised that 25 hours per week of job searching should result in more than 28 activities. On September 28, 2012, the appellant submitted her September work search activities to the ministry which included 12 activities, her resume, and a print off of an internet job posting. The appellant was advised that these activities do not meet the requirements of her EP.

At the hearing, the ministry clarified that many activities are considered to qualify as work search activities, including talking or networking with neighbours. In response to a question, the ministry agreed that one activity, such as preparing or updating a resume, may take much longer than an email sent to an online job posting. The ministry stated that an average time is figured for various activities and that approximately 45 to 60 different activities for the month are required to reach approximately 25 hours per week. The ministry also explained that the work search is not 'supervised' in the sense of ongoing guidance, but consists of a periodic review by the ministry of the activities undertaken by the client. In the appellant's EP, she is required to simply record her work search efforts, with no specific form being required, and to retain these records until requested by the ministry.

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 her 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 May 29, 2012, that she was required to participate in a SIWS, and that she did not comply with the conditions of the EP as she did not demonstrate reasonable efforts to participate in the program. The ministry acknowledges that the appellant submitted her monthly work search activities but argues that the appellant was informed in August that 28 activities per month is not sufficient to reach 25 hours of work search activities per week. The ministry argues that the required activities of her EP include an expectation by the ministry that the appellant spend a minimum of 25 hours per week on work search activities, and the appellant submitted 12 activities to the ministry for September 2012. The ministry argues that the appellant does not appear to have a medical condition that

would have prevented her from participating in her EP.

In her Request for Reconsideration, the appellant argues that she is homeless and looking for a place to live and a job at the same time. The appellant argues that she has been staying in shelters and has been calling for places to rent and so far the rent is too high so she has to look for a room-mate to share a place with, and she does not have a phone. The appellant argues that she is a recovered addict and has been attending meetings to better herself. The appellant argues that she has been e-mailing and faxing companies her resume and still has not heard back from the places that she called, emailed or faxed to. The appellant argues that it is hard to find a job in her community compared to her previous community but she is in her current community because her two sons live nearby with their father. The appellant argues that she has no other income and that she has been doing what the ministry requested that she do.

The panel finds that the appellant signed her EP on May 29, 2012 and the EP includes conditions that she engage in a SIWS, to update and distribute her resume to all potential employers; to seek out and pursue all available resources and employment opportunities; to record her monthly work search activities and provide these to the ministry upon request; to utilize all personal contacts to assist her work search; and agreeing that the ministry expectation is that she will spend 25 hours minimum per week on work search activities. The panel finds that it is not disputed that the appellant submitted monthly work search activities and that it is the appellant's monthly report for September 2012 that the ministry found to be deficient, as not meeting the requirement that she spend a minimum of 25 hours per week on work search activities. The panel finds that the appellant's Work Search Activities Record for September 2012 indicates 13 activities, including contacts for shipping/ receiving, kitchen helper, prep person, cook, cleaner, chicken catcher, general labour, night cleaner, and farm worker, as well as an interview for a server position and she also provided a print-out dated September 26, 2012 for an on-line job posting for a General Clean-Up Position, an appointment information slip for October 1 for a local community job search organization, and a two-page resume. The appellant provided a letter dated October 17, 2012 from a facilitator for a work program confirming the appellant's application to the work program. By way of fax dated October 22, 2012, the appellant also provided the ministry with a report itemizing 25 more jobs for which she had applied.

The panel finds that the requirement is for the appellant to comply with the conditions of her EP and that an expectation regarding the number of hours spent on work search activities does not dictate the number of itemized work search activities required, but rather that the ministry has formulated an approximate number as a gage for the time spent. In the appellant's case, some of the activities listed indicate additional time required, such as preparing a resume, particularly if it involved verifying dates and contacting four references and arranging for use of a computer. Attending an interview for a job and setting up an appointment with a job search organization are also more time-consuming activities. The panel finds that the appellant has researched and applied for a wide range of job postings in diverse areas, as set out in her Work Search Record, and that this would also be more time-consuming for the appellant due to her lack of a permanent residence, currently living on the streets and in shelters, and the lack of a telephone or a computer. The panel finds that the appellant has also provided information, that was not disputed by the ministry, that she has a learning disability and she has been looking for a place to live as well as for a room-mate to share the rent with, and that, since she is a recovered drug addict, she has been attending support meetings. The ministry stated that the range of activities that the ministry is prepared to consider as reasonable work search activities is quite broad, and the panel finds that it is reasonable to consider securing a stable place to live, in the appellant's circumstances, as part of the required activities in order to be in a position to find and maintain employment.

The legislation requires that the appellant demonstrate reasonable efforts to participate in her EP, pursuant to Section 9 of the EAA, and the panel finds that the ministry's conclusion that the requirements have not been met in this case was unreasonable. The panel finds that the ministry decision was not reasonably supported by the evidence and rescinds the decision. Therefore, the decision is overturned in favour of the appellant.