

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated October 18, 2012 which held that the appellant is not eligible for income assistance for two calendar months because he failed to accept suitable employment, pursuant to Section 13 of the Employment and Assistance Act (EAA) and Section 29 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 13

Employment and Assistance Regulation (EAR), Section 29

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 work 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 was lied to and the ministry covered up its lies at his expense.

In his Request for Reconsideration, the appellant stated he had all intentions to let the ministry know that he has a job with his old moving company. The ministry told him not to cut himself off until he had a least two cheques so he would have coverage to get on his feet. The appellant stated that he was then told he had to sign a new EP because he was given the wrong one, so he signed the EP and got his cheque. This was two cheques ago, and at the last cheque issue his supposed room-mate "jammed" on him and he had to use his whole cheque (for rent). The appellant stated the ministry re-issued him and he came to pick up the cheque and they had no idea what he was talking about. The appellant stated that if he had transportation money, he would have work.

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 he otherwise would walk or ride his bike to the ministry office. 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, disassembling furniture and helping to carry it to the truck. 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 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 appellant stated that he would need to take public transit to the company location as it is too far to bike.

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). 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 do the job due to lack of funds for transportation. The appellant was asked how he attended the job site on September 4 and 6, and the appellant replied that friends drove him. At the hearing, the ministry clarified that the "job site" was the ministry office and not the company location.

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. In response to a question, the ministry clarified that it first became aware of the appellant's potential employment opportunity on September 6, 2012, but that it was not clear which day the appellant failed to accept suitable employment.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant failed to accept suitable employment and that he is, therefore, not eligible for income assistance for two calendar months, pursuant to Section 13 of the EAA and Section 29 of the EAR.

Section 13 of the EAA provides:

Consequences of not meeting employment-related obligations

- 13 (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if
- (a) at any time while a recipient in the family unit is receiving income assistance or hardship assistance or within 60 days before an applicant in the family unit applies for income assistance, the applicant or recipient has
 - (i) failed to accept suitable employment,
 - (ii) voluntarily left employment without just cause, or
 - (iii) been dismissed from employment for just cause, or
 - (b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment.
- (2) For the purposes of subsection (1),
- (a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and
 - (b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.
- (3) The Lieutenant Governor in Council may specify by regulation categories of applicants or recipients to whose family units this section does not apply.

Section 29 of the EAR provides in part:

Consequences of failing to meet employment-related obligations

- 29 (1) For the purposes of section 13 (2) (a) [consequences of not meeting employment-related obligations] of the Act,
- (a) for a default referred to in section 13 (1) (a) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each of 2 calendar months starting from the later of the following dates:
 - (i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;
 - (ii) the date the default occurred, and
 - (b) for a default referred to in section 13 (1) (b) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each calendar month until the later of the following occurs:
 - (i) the income assistance or hardship assistance provided to the family unit has been reduced for one calendar month;
 - (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.
- (2) The reduction under subsection (1) applies in respect of each applicant or recipient in a family unit who does anything prohibited under section 13 (1) [consequences of not meeting employment-related obligations] of the Act.
- (3) For the purposes of section 13 (2) (b) [consequences of not meeting employment-related obligations] of the Act, the period of ineligibility for income assistance lasts
- (a) for a default referred in to section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:
 - (i) the date of the applicant's submission of the application for income assistance (part 2) form under

- this regulation;
- (ii) the date the default occurred, and
- (b) for a default referred to in section 13 (1) (b) of the Act, until the later of the following has occurred:
- (i) the family unit has been ineligible for income assistance for one calendar month;
 - (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment. . . .

The ministry's position is that the appellant failed to accept suitable employment as he had resources available to find transportation. The ministry argues that it may also assist with transportation for employment through the confirmed job supplement if the appellant had approached the ministry about his full-time job. The ministry argues that the appellant did not present any mitigating evidence or circumstances as to why he was unable to go to work.

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 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 argues that his landlord gave him a ride to the ministry office on September 6, 2012 because he wanted to get money for outstanding rent, and that he either walked or rode his bike to the ministry office on other occasions.

The appellant signed an EP on July 26, 2012 which included conditions that the appellant participate in an active work search. Although the appellant stated that he advised the ministry before signing the EP that he already 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 appellant did not provide additional information from the moving company confirming that an offer of employment has been made to him, and the appellant admitted that he has not worked for the company since signing his EP to the date of the hearing. The panel finds that there was also no information provided by the ministry, by way of a verbal or written communication with a representative of the company, to confirm that an offer of employment had been made to the appellant or any of the details of when this offer was made. In response to a question, the ministry stated that it was not clear which day the appellant failed to accept suitable employment and, therefore, which day would be considered as the date of default, pursuant to Section 29(3)(a) of the EAR, to determine the commencement of the two-month period of ineligibility for income assistance.

In the appellant's appeal of his denial of income assistance for failure to comply with the terms of this EP, which was heard at the same time as the subject appeal, the ministry 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 did not reasonably conclude in the subject appeal that the appellant failed to accept suitable employment, under Section 13(1)(a)(i) of the EAA, as there is insufficient evidence that there had been an offer of suitable employment made to the appellant. Therefore, the panel finds that the ministry unreasonably concluded that the appellant is not eligible for income assistance for two calendar months, pursuant to Section 29(3)(a) of the EAR.

APPEAL #

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.