

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision of November 19, 2012 in which the ministry denied the appellant income assistance because the ministry determined she had not complied with the conditions of her employment plan, as required under the Employment and Assistance Act, section 9(1)(b).

PART D – Relevant Legislation

The Employment and Assistance Act (EAA), section 9.

PART E – Summary of Facts

The evidence includes:

The ministry's reconsideration decision on November 19, 2012 in which the ministry stated that the appellant had signed an employment plan (EP) for a Supervised Independent Work Search on September 10, 2012. The ministry states that on September 19 the appellant contacted the ministry's service provider (SP) informing the SP that she could not search for work without a current resume. She was advised by the SP to seek alternative work search activities, including filling out applications until her resume was completed. When she went to the ministry office on September 21 she was advised by the ministry to continue her work search as required by her EP. On October 24 she attended the ministry office and was advised by the ministry that she had not submitted a work search activities record (WSAR) for September or October. Later that day the appellant returned to the ministry with documentation, confirmed by the SP, that she had attended the SP program on October 1 and 10. On October 25 the appellant submitted a WSAR for the period from September 11-17, indicating that she had participated in at least 2 search activities during that period. There is no record of continued work search activities for the remainder of the month.

- A Message to Worker form, dated November 6, 2012, with information from the appellant in support of her Request for Reconsideration, in which she states she understands she has to complete her resume and is concerned that her children may be taken back into ministry care.
- A Request for Reconsideration form signed by the appellant on October 30, 2012. In the Decision To Be Reconsidered section of the form, the ministry states that on June 15, 2012 the appellant completed an "Activities Towards Independence" EP. The ministry also states that on October 24 while at the ministry's office for the second time that day, the appellant advised the ministry worker that "it would be pointless" to look for work as she would have to turn down employment because she had obligations involving cultural activities. The worker advised the appellant that she was obligated to comply with her EP in order to be eligible for continued income assistance.
- A WSAR submitted to the ministry by the appellant on October 25, 2012 indicating that she had participated in two work search activities for each of the following days: September 11, 12, 13, 14, and four work search activities for September 17.
- An EP signed by the appellant on September 10, 2012. By signing the plan the appellant indicated she read, understood and agreed to the requirements of the SP's program, was aware that her welfare cheque would be withheld until her work search was submitted and was also aware that she would be deemed ineligible for further income assistance if her work search did not meet the SP's requirements. The EP also stipulated that if she enrolls in day school, she cannot take more than three courses.

The required EP activities included:

- update and distribute her resume to all potential employers
- seek out and pursue all available resources and employment opportunities
- register with the ministry's SP and submit a copy of her resume to the ministry with her first WSAR
- submit WSAR's to include a minimum of 2 work search activities per day, 5 days a week
- meet with a worker each month to review and discuss her work search (it is not sufficient to

- place her work search results in the mailbox at the SP's office)
- submit her registration and school reports to the ministry to confirm attendance and progress if she enrolls in day school.

- A letter from the appellant's social worker dated September 10, 2012 indicating that the appellant's children were recently returned to her care. The letter refers to the terms and conditions of a supervision order which must be complied with by the appellant "in order to prevent the children from coming back into the Ministry's care." The order itself, attached to the letter, includes six conditions. The panel notes that neither the letter nor the order states that the children will be returned to the care of the ministry if the appellant loses her eligibility for social assistance.

- An EP signed by the appellant on June 15, 2012 in which the appellant agreed to apply for a daycare subsidy in preparation for her return to the workforce and to explore resources in preparation for an EP to be worked on in August (the September 10 EP described above).

After the date of the reconsideration decision, additional information was submitted:

- in her Reasons For Appeal dated November 20, 2012, included in the appeal record package, the appellant refers to cultural activities she now realizes were "not [more] important than [than] my job search." She states that she has been doing her job search and thinks she "deserves a second chance." She states she kept telling the ministry worker she did not have a resume but she is now handing out her resumes. She states that she wanted to go back to school but the ministry expected her to continue her job search if she attended school. She states she does not want her children to be taken away from her again, which she thinks will happen "automatically" if she loses her assistance and becomes homeless.

- At the hearing, the appellant provided a three-page WSAR listing the appellant's work search activities from October 25 to December 12, 2012. The panel notes that though the ministry's reconsideration decision is based primarily on the lack of sufficient WSAR's in September, 2012, in its decision the ministry states that there is no record of WSAR's from the appellant for October, apart from two appointments in October with the SP. The panel notes that the WSAR submitted by the appellant at the hearing includes two work search activities from October not known to the ministry at the time of its reconsideration decision.

The panel found that the reasons for appeal as well as the WSAR submitted by the appellant at the hearing contained information in support of the information and records that were before the minister when the decision being appealed was made; and therefore the panel determined that the items were admissible as evidence in accordance with the Employment and Assistance Act (EAA), Section 22 (4).

The ministry representative present at the hearing had no objection to the items being admitted as new evidence.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the appellant income assistance was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence, given that the ministry determined that the appellant had not complied with the conditions of her employment plan, as required under the Employment and Assistance Act, section 9(1)(b).

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].

With respect to EAA, section 9(1)(a), the evidence shows that the appellant entered into an EP on September 10, 2012.

With respect to EAA, section 9(1)(b), the panel notes that the provision requires the appellant to comply with the conditions of the EP.

With respect to EAA, section 9(3) the evidence shows that the ministry, through its SP, provided an EP specifying the condition that the appellant participate in a specific employment-related program to assist the appellant to find employment.

With respect to EAA, section 9(4)(a), the appellant's position is that she did not have a resume prepared that would allow her to search effectively for work. She stated in her Reasons For Appeal that she had not known that participation in her EP job search was more important than taking part in cultural activities but felt she now deserves a second chance. She stated that she believed her children would be taken back into the care of the ministry again if she loses her eligibility for income assistance. At the hearing the appellant stated that she could not recall why she did not sufficiently comply with the conditions of her EP for September and October. She stated that she was likely confused about her responsibilities under the EP.

The ministry's position is that the appellant failed to demonstrate reasonable efforts to participate in the program specified in the EP of September 10, 2012. The ministry states that though the EP specifies that the appellant participate in two work search activities per day, five days a week, the report submitted by the appellant on October 15, 2012 shows for September that the appellant participated in at least two work search activities (per day) from September 11-17 (inclusive) but there is no record of continued work search activity for the remainder of the month. The ministry notes that there is no indication that the appellant completed any other work search activities as part of her EP except to attend two appointments in October with the SP. The ministry acknowledges that the appellant was delayed in her work search as she did not have an updated resume. The appellant was advised by the ministry, however, that she could participate in alternative work search activities such as filling out applications and networking, while her resume was being updated.

With respect to EAA, section 9(4)(a), the panel finds that the appellant signed an EP on September 10, 2012 in which she agreed to participate in two work search activities per day, five days a week. The evidence shows that she participated in two work search activities for each of the following days: September 11, 12, 13, 14, and four work search activities for September 17. There is no evidence of work search activity for the remainder of the month of September. The evidence from the WSAR's submitted by the appellant at the hearing is that the appellant carried out two work search activities

on October 25. The panel finds that there is no indication that the appellant completed any other work search activities in October apart from attending two appointments in October with the ministry's SP. With respect to the appellant's slow start in developing her resume, the evidence shows that the ministry provided her with alternative ways to complete the conditions of her EP without a resume, by filling out applications and networking. The panel finds that there is no evidence she did so other than on the days indicated on her WSAR's. The panel therefore finds that with respect to EAA, section 9(4)(a), the ministry's decision was reasonably supported by the evidence.

With respect to EAA, section 9(4)(b), at the hearing the appellant confirmed the ministry's statement that there were no medical reasons for her lack of participation in the EP.

The panel therefore finds that the ministry's decision was reasonably supported by the evidence that she did not comply with the conditions of her EP and confirms the ministry's decision.