

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated December 12, 2012, which held that the appellant was not eligible for income assistance because he failed to meet the legislative requirements set out in Section 9(1)(b) and 9(4) of the Employment and Assistance Act (EAA). Specifically the ministry determined that the appellant failed to comply with the conditions of his Employment Plan (EP) and failed to demonstrate reasonable efforts to participate in the employment program, or provide documental medical evidence for 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 includes:

- Two copies of the appellant's Work Search Activity Record submitted November 15, 2012, for the period November 5, 2012, to November 9, 2012.
- Copy of a Work Search Activity Record for October 29, 2012, to November 1, 2012.
- Copy of a Work Search Activity Record submitted November 8, 2012, for the period October 26, 2012, to November 3, 2012.
- Copy of a Work Search Activity Record submitted for October 23, 2012.
- Copy of the appellant's resume.
- An undated copy of an EP.
- A signed copy of the appellant's EP dated November 5, 2012.
- The appellant's Request for Reconsideration form signed November 27, 2012.
- An undated Assisting Clients with Reconsideration Quick Reference Check List form.

At the time of reconsideration the Appellant was a single employable person with no dependants. His file with the ministry was opened July 2012.

In section 2 of the appellant's Request for Reconsideration form, the ministry reports that in July 24, 2012, they confirmed with the local community college that the appellant had been enrolled in English class at English as Second Language (ESL) level 4, and that he had adequate English skills to conduct a work search. An EP was completed with the appellant requiring that he conduct a Supervised Independent Work Search. Compliance with the EP and the consequences of non-compliance were discussed with him.

On November 5, 2012, the appellant attended the ministry office where it was determined that his signature had been missed on his October 23, 2012, EP. The appellant then signed his EP and expectations, compliance and consequences were reviewed with him. He was then advised to contact the contractor and book an appointment with them.

On November 6, 2012, the appellant failed to attend Touchback Tuesday, provide a work search, or contact the Assistant Supervisor to explain why he was unable to attend. On November 8, 2012, the appellant attended the ministry office and told the ministry that he had not attended Touchback Tuesday because he was sick. Mandatory compliance with the terms and conditions of the appellant's EP was reviewed with him and he stated that he understood. At that meeting the appellant stated that he may not be able to undertake his work search as he has an English class from 12 to 5 P.M. The ministry again explained that compliance with the conditions of his EP are mandatory in order to maintain eligibility for assistance and that attending school does not exempt him from his obligations to comply with his EP. The appellant reported that he understood. The ministry also reports that the job search submitted by the appellant that day was not adequate and explained to the appellant what an adequate job search should be. The ministry also reports that the appellant was told that this was his last chance, and that if he was not compliant with his EP he would be denied assistance. Again the ministry reports that the appellant said he understood.

On November 13, 2012, the appellant failed to attend Touchback Tuesday, provide a work search, or contact the Assistant Supervisor to explain why he was unable to attend. On November 15, 2012, the appellant submitted an inadequate job search for the period from November 5, 2012, to November 9, 2012, and was advised that he must also provide a work search for the period October

23, 2012, to November 2, 2012, by the end of the day. The appellant was also reminded of the consequences of the failure to submit job search lists and attend Touchback Tuesday sessions.

On November 20, 2012, the appellant did attend Touchback Tuesday, however he failed to submit his work search. The appellant was asked if he had looked for work, to which he replied he had. The appellant was then asked to write down all of the contacts he could remember making on his job search form, and the appellant was only able to provide three activities. The appellant was then asked if he remembered the previous conversation on November 8, 2012, regarding compliance and expectations, and he said he did. The ministry reports that the appellant said he is still going to school and the ministry once again reminded the appellant that he had previously been informed that attending school did not exempt him from his obligations to comply with the conditions of his EP. The ministry then reports that the appellant was denied further assistance for failing to comply with the conditions of his EP and was advised of his right to request reconsideration of this decision.

On November 21, 2012, the appellant attended the ministry office with a friend and the reasons for denial of income assistance were once again explained to him. The ministry asked if the appellant understood everything that was being said, to which he responded he did. The ministry reports that the appellant stated that he did not submit an adequate job search on November 20, 2012, because he was focusing on school and had a test.

In Section 3 of the appellant's Request for Reconsideration he presents arguments as to why he believes the ministry's decision to find him ineligible for income assistance was not reasonable.

The EP signed by the appellant November 5, 2012, confirming that that he understood the consequences of non-compliance, and had read and agreed to the conditions of compliance and attendance with the program. By signing his EP the appellant agreed he had read and understood the following:

- I will attend all appointments with the EPBC contractor.
- As a condition of continued eligibility for assistance I will participate in EPBC programming regularly, and as directed by the EPBC contractor.
- I will work with the EPBC contractor to address any issues that may impact my employability, and will complete all tasks assigned including any activities that may be set out in an action plan.
- I will notify the EPBC contractor if I am unable to attend a session, or when I start or end my employment.
- I will attend Touchback Tuesday sessions with the Ministry of Social Development every Tuesday at 9:15 am.
- If I am unable to attend Touchback Tuesday sessions for any reason I will contact the Assistant Supervisor by telephone.
- I will update and distribute my resume to all potential employers.
- I will submit my comprehensive job search list to the ministry every Tuesday, documenting a minimum of 15 employer contacts, and 25 hours per week of work search activity.
- I will declare all income, and report any changes to the ministry, and will attend all ministry review appointments as required.
- I understand that if I fail to comply with the conditions of my EP, I will be ineligible for assistance under the Employment and Assistance Act or the Employment and Assistance for Persons with Disabilities Act.

In his Notice of Appeal, under Reasons for Appeal, the appellant provides arguments as to why he believes the ministry's reconsideration decision was not reasonable.

Although the appellant had requested that his hearing be in person, on the morning of the hearing he contacted the Tribunal Office and was provided with teleconference numbers so that he could participate by phone. The appellant called in and requested a delay of a few hours as he had to attend to some matters with his school after which he would be available to attend his hearing. He explained that bus transportation made it impossible to get to the hearing location and tend to his educational matters on the same morning. The panel confirmed that the Tribunal had provided the appellant due notice of the date, time and location of his hearing and therefore determined that the appellant's reasons for requesting an adjournment were not reasonable. The panel thereby denied the appellant's request for an adjournment and the hearing proceeded with the appellant participating by phone.

The appellant stood by the record providing argument as to why he believes he had met the conditions of his EP with respect to involvement with the EPBC contractor. The appellant restated that while his education was his number one priority he had sent out numerous resumes to employers on line and would be more than willing to work if offered employment.

The ministry stood by the record stating that although the appellant did not sign an EP until November 5, 2012, he had been involved in a job search program prior to that time and had not followed through with planned activities. The ministry also pointed out that the appellant was required to enter into an EP only after the ministry consulted with the college to ensure that the appellant had adequate English skills to conduct a work search. The ministry informed the panel that while the appellant is currently enrolled in ESL level 4, that ESL level 2 was generally the minimum English level that the ministry required a recipient to have in order to conduct a work search. The ministry also provided argument as to why they contended that the appellant had not provided information that confirmed he participated with the EPBC contractor. In response to a question from the panel regarding communication and reporting between the EPBC contractor and the ministry, the ministry explained that the only time they hear from the EPBC contractor is when there is an issue of non-compliance.

The panel made the following findings of fact:

- At the time of reconsideration the Appellant was a single employable person with no dependants. His file with the ministry was opened July 2012.
- On July 24, 2012, the ministry confirmed with the local community college that the appellant had been enrolled in English class at English as Second Language (ESL) level 4, and that he had adequate English skills to conduct a work search.
- On November 5, 2012, the appellant signed his EP confirming that that he understood the consequences of non-compliance and had read and agreed to the conditions of compliance and attendance with the program.
- The appellant did not attend Touchback Tuesday at the ministry office or contact the Assistant Supervisor by phone to explain his absence on November 6, 2012, or on November 13, 2012.
- The appellant did not submit a comprehensive job search list to the ministry at Touchback Tuesday meetings documenting a minimum of 15 employer contacts and 25 hours per week of work search activity November 6th, 13th, or November 20, 2012.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably determined that the appellant was not eligible to receive income assistance as he failed to comply with the conditions of his EP, and failed to demonstrate reasonable efforts to participate in the employment program, providing no documental medical evidence for non-participation. In arriving at its decision the ministry relied upon the following legislation:

Employment and Assistance Act – Section 9

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].

The ministry's position is that the appellant is not eligible to receive income assistance as he failed to comply with the conditions of his EP, and failed to demonstrate reasonable efforts to participate in the

employment program, providing no documental medical evidence for non-participation.

The appellant's position is that in order to become employable he requires both additional English language training and job skill training. He states that he is certainly willing to take a job if someone offers one to him however, at this time school is his number one priority.

As to the condition in the appellant's EP in which he agreed to:

- Attend all appointments with the EPBC contractor.
- As a condition of continued eligibility for assistance, participate in EPBC programming regularly and as directed by the EPBC contractor.
- Work with the EPBC contractor to address any issues that may impact his employability, and complete all tasks assigned, including any activities that may be set out in an action plan.
- Notify the EPBC contractor if I am unable to attend a session, or when I start or end my employment.

The ministry argued in their Reconsideration Decision, and in response to a panel members question at the hearing, that the appellant has not provided information to confirm that he participated with the EPBC contractor. The ministry had no explanation as to why there was no documental evidence in the record to confirm that the appellant had not complied with the conditions noted above, but never the less argued that he had not. The appellant argued at the hearing that he had attended a meeting with the EPBC contractor as set out in his EP; however the appellant was unable to recall the date of his meeting and did not provide any details as to what transpired at this meeting.

In the absence of any documental evidence in the record, and the ministry's statement at the hearing, that the EPBC contractor only contacts the ministry when there is an issue of non-compliance, the panel finds the ministry's determination that the appellant had not complied with the EP conditions noted above is not supported by the evidence.

As to the conditions in the appellant's EP in which he agreed to:

- Attend Touchback Tuesday sessions with the Ministry of Social Development every Tuesday at 9:15 am.
- Submit my comprehensive job search list to the ministry every Touchback Tuesday, documenting a minimum of 15 employer contacts and 25 hours per week of work search activity.
- If unable to attend Touchback Tuesday sessions for any reason I will contact the Assistant Supervisor by telephone.

The ministry argued that the appellant did not attend touchback Tuesday meetings each week as required in his EP, did not submit comprehensive job search lists documenting a minimum of 15 employer contacts and 25 hours per week of work search activity as required in his EP, and did not contact the Assistant Supervisor by phone to explain his reasons for not attending Touchback Tuesday which is also a condition of his EP. For these reasons the ministry argued that the appellant had failed to participate or demonstrate a reasonable effort to participate in his EP as required in EAA section 9 noted above.

The appellant argued that he did not attend Touchback Tuesday or submit a comprehensive job search list to the ministry November 6, 2012, because he was sick and that he had tried to comply

with this condition of his EP to the best of his ability. He further argued that he had tried to find work by distributing resumes on line to prospective employers and applying for any jobs he could find. In meetings the appellant had with the ministry on November 20th and 21, 2012, he further argued that the reason he did not submit an adequate job search list November 20, 2012, was because he was focused on school and had a test.

Based on the evidence presented, the panel finds that the appellant did not comply with the conditions noted above regarding attendance at Touchback Tuesday meetings on November 6, 2012, or on November 13, 2012. While the record shows that on November 8, 2012, the appellant reported that he missed Touchback Tuesday November 6, 2012, because he was sick, no explanation was provided as to why he had not contacted the Assistant Supervisor by phone as stipulated in his EP. The panel further finds that the appellant failed to comply with the conditions of his EP on Touchback Tuesdays, November 6th, 13th and November 20, 2012. On these dates the appellant failed to submit a weekly comprehensive job search list, documenting a minimum of 15 employer contacts and 25 hours per week of work search activity to the ministry. The panel acknowledges that the record shows that the appellant did submit a job search list November 15, 2012, for the period November 5th to 9th, 2012; however the panel finds that the list submitted does meet the aforementioned conditions set out in the appellant's EP. For these reasons, and as the appellant has presented no documental medical evidence for non-participation, the panel finds the ministry reasonably determined that the appellant has not met the legislative requirements set out above in section 9(1)(b) and section 9(4) of EAA.

In the appellant's Notice of Appeal, he argues that he has been looking for work but his lack of knowledge of the English language and low job skills present a huge problem. The appellant further argued that he has done most of the work he was asked for, but some of his submitted documents and report papers were lost, he thinks. Furthermore, the appellant argued in section 3 of his Request for Reconsideration that he requires income assistance as he has nothing to pay for rent and bills.

The panel finds no evidence has been presented indicating that the appellant was unable to comply with the conditions of his EP because of his lack of English language or work skills. Furthermore the panel finds that on July 24, 2012, the ministry consulted with the local college where the appellant was enrolled in ESL level 4, and determined that the he had adequate English language skills to conduct a work search. The panel finds no documental evidence to support the appellant's argument that he had done most of the work he was asked for, or that some of his submitted documents and report papers were lost. The appellant argues in his Request for Reconsideration that he requires income assistance as without it he has no means of paying his rent and bills. The panel finds that the ministry met with the appellant and reviewed expectations, compliance and consequences for non-compliance with the appellant on November 5th, 8th, and November 15, 2012, and still he chose not to comply with all of the required conditions of his EP.

The panel therefore finds that the ministry's decision that the appellant is not eligible for income assistance was a reasonable application of the legislation and confirms the ministry's reconsideration decision.