

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated December 18, 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 including the following:

- 1) Employment Plan (EP) signed by the appellant dated August 30, 2012. The terms of the EP include provisions requiring the appellant to: attend his first appointment with the service provider within 10 business days of signing the EP, participate in the service provider's programming regularly and work with the service provider to address any issues that may impact his employability and complete all tasks assigned; notify the service provider if he is unable to attend a session or when he starts or ends any employment; declare all income and report any changes to the ministry and attend all ministry review appointments as required; and,
- 2) 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.

Prior to the hearing, the appellant provided a second Notice of Appeal dated January 2, 2013 in which he stated that he saw a doctor before he applied and informed the ministry that he has substance abuse problems. The appellant stated that the doctor never took him seriously, but he has a problem.

The ministry did not object to the admissibility of this document. The panel admitted the second Notice of Appeal, pursuant to Section 22(4) of the Employment and Assistance Act, as providing further information regarding the appellant's condition and being in support of information that was before the ministry on reconsideration.

In his Notice of Appeal dated December 19, 2012, the appellant stated that he disagrees with the ministry's decision because there is unresolved issue that has to be addressed and he needs "...to get more paper work as the problems start."

In his Request for Reconsideration, the appellant stated that he has a lot of trouble with remembering what he is doing at times due to personal abuse issues, like substance abuse. The appellant stated that he also has pressures from living at a level of poverty without a phone or transportation. He has issues with being around town, harassment from authorities and also just trying to find money for food kept him from doing his EP.

The ministry's evidence included that the appellant signed an EP on August 30, 2012, 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: attend his first appointment with the service provider within 10 business days of signing the EP, participate in the service provider's programming regularly and work with the service provider to address any issues that may impact his employability and complete all tasks assigned; notify the service provider if he is unable to attend a session or when he starts or ends any employment; declare all income and report any changes to the ministry and attend all ministry review appointments as required. At the hearing, the ministry explained that the appellant was put into a work-ready program without any medical exemptions because he had not informed the ministry of substance abuse issues and provided medical verification of the impact of this condition on the appellant, as required by the ministry. On November 9, 2012, the service provider indicated that the appellant failed to attend several scheduled appointments and the appellant's last contact with the program was on September 16, 2012. On November 22, 2012, the appellant was provided with a ministry representative's phone number and was advised to contact her regarding non-compliance. At the hearing, the ministry confirmed that the appellant did not contact the ministry, as requested. On November 28, 2012, the appellant was advised that he is not eligible for income assistance for non-compliance with the terms and conditions of his EP.

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 August 30, 2012 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 trouble remembering due to substance abuse issues, keeping track and recording scheduled appointments is considered to be part of compliance with the EP. The appellant states that he does not have a phone or reliable transportation, but the ministry can assist with these barriers and the appellant did not make reasonable efforts to overcome them. 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 has a lot of trouble with remembering what he is doing at times due to substance abuse issues. The appellant argues that he informed the ministry of these issues and saw a doctor for this problem prior to applying but the doctor did not take him seriously. The appellant argues that he also has pressures that kept him from doing his EP, such as living at a level of poverty without a phone or transportation, with being around town and harassed by authorities, and also just trying to find money for food.

The panel finds that the appellant signed the EP on August 30, 2012 and 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 his EP included provisions requiring the appellant to participate in the service provider's programming regularly and work with the service provider to address any issues that may impact his employability and complete all tasks assigned, as well as to notify the service provider if he is unable to attend a session. The panel finds that it is not disputed that the appellant failed to attend several scheduled appointments and the appellant's last contact with the program was on September 16, 2012. On November 22, 2012, the appellant was provided with a further opportunity to connect with the program as he was given a representative's phone number and was advised to contact her regarding non-compliance. The appellant did not make this contact. Although the appellant stated that he advised the ministry before signing the EP that he had substance abuse issues, he also admitted that his doctor did not take him seriously and he does not dispute that no medical verification of this condition and its impact was provided to the ministry. The appellant also argued that he had pressures that kept him from doing his EP, such as living in poverty with no phone or transportation, yet the appellant does not describe any efforts made by him to overcome these barriers. The ministry stated that there are a number of options for obtaining both transportation and a telephone with which the ministry can also possibly assist.

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.