

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated December 6, 2012, which held that the appellant was not eligible for income assistance because she failed to comply with the terms and conditions of her employment plan (EP) pursuant to Sections 9 (1) (b), and 9 (4) of the *Employment and Assistance Act (EAA)*. The ministry determined that the appellant is not eligible for income assistance because she did not make reasonable efforts to participate in her employment program as she failed to submit her monthly work-search forms. The ministry further determined that the appellant failed to provide medical information confirming that her medical condition prevented her from participating in her employment plan.

PART D – Relevant Legislation

Employment and Assistance Act – EAA – Sections 9 (1) and 9 (4)

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

1- The Employment Plan (EP) signed by the appellant on June 29, 2012. The terms of the EP included that the appellant update and distribute her resume to all potential employers and seek out and pursue all available resources and employment opportunities. The appellant further agreed that she will record her monthly work search activities on the ministry form and provide these to the ministry upon request.

2. A copy of the Medical Report Employability dated November 17, 2012. The physician reported that he has been the appellant's medical practitioner over 6 months. The physician stated that the appellant's medical condition is depression and muscular-pain and that the appellant is reluctant to take antidepressant. The physician further stated that the appellant should avoid excess lifting and bending at work.

3- Request for reconsideration decision dated November 22, 2012.

In the request for reconsideration the appellant stated that she did not submit the monthly work search because she was not clear about her responsibility. The appellant said that she has language barrier and does not have enough information about the "system in Canada". The appellant requested her multiple barriers be considered as she is a single mother and didn't have a chance to have education back home or in Canada. The appellant said that she is now clear about her responsibility regarding submitting work search and will do that in the future.

In the Notice of Appeal, the appellant stated that she has back problem and pain in her arm and shoulder because of a motor vehicle accident and cannot find an easier job. The appellant further stated that she has a 4 year old daughter and is a single mother.

The appellant's sister attended the hearing to assist her as an interpreter. The panel spoke with the appellant and was satisfied that the appellant was able to communicate in English because the appellant told the panel that she was able to continue the hearing in English and was able to understand and communicate in English. The appellant's sister participated in the hearing as her support person.

At the hearing, the appellant stated that she had an accident in 2007 when she was hit by a truck while on her bike. The appellant said that she is a single mother and is in lots of pain and unable to find an easy job. The appellant further submitted that she searched the internet in order to find a job but did not complete the monthly reports as she did not send out any resumes. The appellant said that in 2009 she worked three months in a shoe store but left the job due to pain and that she was not able to walk. She said that she also worked in a fast food restaurant for 2 weeks in March 2012; however was unable to continue working due to shoulder and back pain. The appellant said that her physician has not prescribed any pain medication and asked her to seek massage therapy. She said that she was not able to follow the direction as it was too expensive and she did not have resources to pay for the therapy.

The appellant agreed that she signed the Employment Plan and that she did not submit any work-search reports from July to December 2012; but said that she signed it without understanding the content of the plan. The appellant further submitted that she is not able to work due to shoulder pain.

The ministry stated that the reconsideration decision is reasonable as the ministry staff reviewed the EP with the appellant with an interpreter, provided information and made sure that the appellant understood all the requirements. The ministry further stated that the appellant understood that she should update and distribute her resume to all potential employers and should advise the ministry if she was not able to follow through with her EP. The appellant was aware that failure to comply with her EP would result in her ineligibility for income assistance.

The ministry submitted that on August 13, 2012, the appellant advised the ministry that she was not able to look for work due to her shoulder pain. The ministry sent her a copy of the Medical Report requesting that she ask her physician to complete the report. On August 23, 2012 the ministry received the Medical Report stating that the appellant was experiencing muscular pain and was not able to bend or perform heavy lifting. The appellant was advised to search for work and submit her monthly work search activity forms; however, she failed to follow the directions and as such she was advised that she was ineligible for income assistance.

The panel finds that:

- The appellant is suffering from some muscular pain as a result of an accident in 2007;
- The appellant signed the EP on June 29, 2012 agreeing to provide monthly work-search to the ministry, update and distribute her resume to all potential employers and seek out and pursue all available resources and employment opportunity;
- The appellant provided a Medical Report stating that she is unable to perform heavy lifting and bending at work;
- The appellant did not provide her monthly work search from July to December 2012.

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 by not providing monthly work-search report and not searching for employment.

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.

Section 9(4) of the EAA states that 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 agreement on June 29, 2012. The ministry requested that the appellant submit a work search activity form every month but the appellant failed to submit the reports from July to December 2012. The ministry stated that the appellant did not comply with the conditions of her EP and did not demonstrate reasonable efforts to participate in the program.

The appellant stated that she tried to work but could not continue due to shoulder and back pain. The appellant said that she is not able to work and did not submit the work-search reports because she was only searching on the internet and "did not send any resume to any employer". The appellant said that she has two young children and does not have any other resources to take care of them.

Respecting Section 9(1) of the EAA, the panel finds that the appellant signed the EP agreeing to the terms of her EP including updating and distributing her resume and recording and submitting her monthly work search activities to the ministry.

Respecting Section 9(4), the appellant argues that she could not follow her EP due to her medical condition. The appellant provided a Medical Report; however, the panel finds that the physician did not report that the appellant is not able to follow through her EP due to medical reasons.

The panel finds that the ministry reasonably determined that the appellant failed to comply with the conditions of her EP by failing to update and distribute her resume and to record and submit her monthly work-search activities. Although the appellant provided a Medical Report completed by her physician, the panel finds that the physician does not report that the appellant is not able to search for work and follow her program due to her medical condition.

Therefore, the panel finds that the ministry reasonably concluded that the appellant failed to demonstrate reasonable efforts to participate in the employment program and was not in compliance with the conditions of her employment plan and that she did not have a medical reason for ceasing to participate in the program.

The Panel finds that the ministry's decision denying the appellant income assistance was a reasonable application of the applicable legislation in the circumstances of the appellant, and therefore, confirms the decision.