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PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated January 31, 2013 in which the Ministry of Social Development (the "ministry") denied the appellant further income assistance. The ministry held that the appellant had failed to comply with the conditions of an employment plan into which she had entered pursuant to subsection 9(1) of the *Employment and Assistance Act* and, accordingly, she ceased to be eligible for income assistance.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9.

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PART E – Summary of Facts

The evidence before the ministry on reconsideration included the following documents:

1. an employment plan signed by the appellant on December 20, 2012 which included two conditions: (a) that she spend at least 25 hours per week on work search activities and (b) that she submit a monthly report recording at least 5 work search activities per day, 5 days per week;
2. a 3-page form titled Work Search Activities Record on which the appellant had listed work search activities over the period December 20, 2012 to January 18, 2013. The record listed 30 work search activities over that period; and
3. the appellant's handwritten notes on Section 3 of the Employment and Assistance Request for Reconsideration dated January 25, 2013.

In addition, together with the Notice of Appeal, the appellant included a 1-page letter from her older sister and a 5-page letter that the appellant had written. The sister's letter confirmed the accuracy of the appellant's letter and the appellant's letter essentially expanded upon what she had written in her request for reconsideration and the oral evidence, summarized below, that she gave at the hearing of the appeal.

The appellant's oral evidence at the hearing included the following:

1. She is 23 years old.
2. She is a single mother of a son who recently turned 3. She lives at home with her mother. Her mother is terminally ill.
3. She is reluctant to enroll her son in day care until he acquires sufficient verbal skills to be able to tell her what happens when he is at day care, just in case something happens that she would need to know to properly protect him.
4. Although she is aboriginal, she is not a status Indian but has applied for that status.
5. She completed Grade 8 in 1997 and, although she hopes to obtain Grade 12 standing, she has not yet embarked on further studies.
6. She has never worked and has never been enrolled in a job search program.
7. She has lived all her life in her present community, a mid-sized city.
8. She did not immediately begin the work search activities required by the Employment Plan which she signed on December 20, 2012 because she did not think that any prospective employer would be seeking an employee just a few days before Christmas. Then, on or about December 23, 2012, she became ill. That made work search activities very difficult for her.
9. Her illness developed into bronchitis and she did not feel better until around mid-January, 2013.
10. A few days after she became ill her 3-year old son also became ill. To complicate the family's difficulties during this time, her mother also became ill and so there was no caregiver in the home who was well. Her older sister, who did not live in the home, provided such help as she could.
11. She sought medical attention for her illness but she had lost her health care card (it was destroyed in a fire) and had not yet replaced it, so the clinic she attended turned her away.
12. She has a computer with internet access and she has a mobile telephone.
13. She does not own a car and does not have a driver's license.
14. A month or so prior to entering into the Employment Plan she asked the ministry about a job search program that she thought was called Bridging the Gap but she was told the program had been discontinued. She later learned that the program, if it had been discontinued, was

operating again. She thinks that such a program would assist her in seeking employment and in gaining greater confidence.

15. The ministry drafted the conditions set out in her Employment Plan and discussed them with her but did not seek input from her prior to the conditions being drafted. Indeed, she thought the conditions had been drafted before she met with the ministry. She informed the ministry of some of the restraints on her ability to search for work: that she was a single mother; that her mother was too frail and ill to provide reliable, long-term child care; that she had only a Grade 8 education; that she had no work experience; and that she thought she would benefit from job search training. She believed that this information was not considered in formulating the Employment Plan.
16. Her work search activities had produced very few expressions of interest and no job offers.

The ministry did not question or attempt to controvert any of the foregoing evidence nor did the ministry object to the admission of the two letters (from the appellant and the appellant's sister) that were written subsequent to the reconsideration decision. None of this evidence was new; it essentially repeated evidence before the ministry on reconsideration or elaborated on that evidence. The panel admitted the two letters and the appellant's oral evidence under subs. 22(4) of the Employment and Assistance Act as being in support of the evidence that was before the ministry on reconsideration.

The ministry's comments on the appeal largely reprised the reconsideration decision. The ministry submitted that clearly the appellant had not fulfilled the conditions set out in the Employment Plan and the ministry was satisfied – and the appellant so admitted – that she had understood those conditions. The ministry confirmed that the Bridging the Gap program had been discontinued and then restarted. The ministry agreed that such a program could be of help to the appellant and that there was another government service operating in the community in which the appellant lived, known as Work BC, that provided services to assist persons like the appellant in finding work. In response to a question from the panel, the appellant said that she was not aware of the existence of Work BC and that the ministry had not previously mentioned it to her.

The panel found as facts the following:

1. the Employment Plan contained a condition that the appellant was required to submit a monthly report recording at least 5 work search activities per day, 5 days per week;
2. for the period December 20th, 2012 through January 20th, 2013, the appellant's report itemized at total of 30 work search activities;
3. the facts contained in the foregoing statements , it being understood, however, that statements described as thoughts or beliefs of the appellant represent facts as regards the thought or belief of the appellant but do not establish that the underlying assumptions on which those thoughts or beliefs are founded are factually correct; and
4. during the relevant one-month period, the appellant failed to fill the quota set by the aforesaid condition for work search activities.

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PART F – Reasons for Panel Decision

The ministry's January 31, 2013 reconsideration decision was based on the ministry's conclusion that the appellant had not satisfied the conditions set out in the Employment Plan, which conditions the ministry was authorized to set pursuant to section 9(3) of the EAA. In particular, the appellant had not engaged in a minimum of 5 work search activities every day, 5 days per week. The consequence of the failure to comply with that condition was that the appellant ceased to be eligible for income assistance.

The relevant legislation is as follows:

EAA

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 appellant's submission, set out in the Request for Reconsideration and reiterated in the Notice of Appeal and her letter dated February 7, 2013, was that she had complied with the Employment Plan "to the best of my knowledge and ability". The appellant was very candid in her oral evidence: she agreed that she had not complied with the conditions set out in the Employment Plan. She argued, in effect, that she observed the spirit of the Employment Plan if not the letter. She presumed that what

she had managed to do – 30 work search activities over a period of approximately one month – was sufficient given the time of year and what she described as her difficult circumstances. The ministry was generally aware of those circumstances but did not view them as justifying partial performance of the conditions set out in the Employment Plan.

At the outset of its consideration of this appeal, the panel noted that the appeal record did not include a copy of the appellant's Employment Plan. The panel viewed this as a serious gap in the record. The only reference to the terms of the Plan are those cited in the Reconsideration Decision, namely the number of work search activities required and the number of hours to be spent on those activities. Whether there were additional conditions, or whether the stated conditions were in some fashion modified, is not known to the panel. Being unable to answer those questions the panel proceeded on the assumption that the only conditions were those specifically cited in the reconsideration decision. The panel proceeded on this assumption, albeit hesitantly, on the grounds that neither the appellant nor the ministry had at any time, either prior to the hearing of the appeal or at the hearing, suggested that there were other conditions or that those conditions were in some manner qualified. The panel is of the view, however, that it has an obligation to point out to the ministry that, to ensure a fair hearing, it is essential that a document central to an appeal - such as the Employment Plan was to this appeal - should always be included in the record.

The panel agreed with the ministry that section 9(1) of the EAA, by using the word "must", created a statutory requirement that allowed no discretion. Once the ministry required the appellant to enter into an Employment Plan with conditions, the fulfillment of that Plan and those conditions was mandatory. The appellant's assertion that she had complied "to the best of [her] knowledge and ability" did not create an exception to the strict application of section 9(1) to the appellant in the event that her efforts to comply failed to meet the conditions stipulated in the Employment Plan

Nonetheless, the panel's inquiry into the reasonableness of the reconsideration decision must go beyond the strict interpretation of the legislation. The panel must also determine, pursuant to section 24(2)(a) of the EAA, whether the decision of the ministry is "a reasonable application of the applicable enactment in the circumstances of the [appellant]". The ministry, in addressing this issue on reconsideration, concluded that the appellant "did not make reasonable efforts to comply, and therefore your request for further income assistance is denied." In so phrasing its conclusion it appears that the reconsideration decision officer considered that the provisions of section 9(4) of the EAA relating to an employment-related program apply also to an employment plan under section 9(1) of the EAA. The panel does not agree that section 9(4) is applicable to an employment plan pursuant to section 9(1). By referring in section 9(4) to both an employment plan and an employment-related program it is clear that the two terms as used in this statutory provision are operationally distinct. Thus, while the panel must address the reasonableness of the application of section 9(1) to the appellant, it does not have the jurisdiction to import the language of section 9(4) into that inquiry and address the question of whether or not the appellant made reasonable efforts to comply with section 9(1).

The appellant submitted that the panel, in determining whether or not the reconsideration decision was a reasonable application of section 9(1) of the EAA to her in her circumstances, were primarily the following:

1. She engaged in work search activities of the kind expected by the ministry, although she did not satisfy the quota stipulated in the Employment Plan.

2. She considered that a job search during the period December 20, 2012 to about January 1, 2013 was largely pointless as no one was hiring during that period.
3. The time available to her for work search activities was limited because she was a single mother of a 3-year old son and that she had no reliable, long-term child care
4. Her illness during the last week of December, 2012 and the first two weeks of January, 2013 – exacerbated by the illness of her son and her mother - placed significant restrictions on the time and energy she could put into work search activities during this period
5. She left school at age 17 with a Grade 8 education. She had never worked. The world of work was an unfamiliar place for a person such as her to be thrust into with little or no preparation.
6. She did not own a car and did not have a driver's license. Accessing prospective work places not close to her home were necessarily going to be challenging.
7. She had expressed to the ministry a desire to engage in some form of job search/preparation training but the ministry did not follow up on this.

The panel viewed the second of these circumstances as being relevant to its inquiry. The Employment Plan described the frequency of work search activities as five activities a day every five days. The panel concluded that was a reference to the five days of a normal work week. Accordingly, it would be reasonable to remove from that work week any days that a person would not normally work over the Christmas holiday period. The panel was of the view that about one half the days between December 20th, 2012 and January 2nd, 2013 would normally not be working days and so the appellant's obligation under her Employment Plan over that period would be approximately five work search activities on seven days, that is approximately 35 such activities.

The panel also considered the appellant's period of illness as a circumstance that should be considered in applying the provisions of section 9(1) of the EAA to her. The illness of the appellant's son and her mother at the same time was a circumstance that further aggravated the effect of her illness. It is normal that persons who are ill either do not work or work less until they have recovered. While the panel might have viewed the appellant's illness as a circumstance that justified an interruption in the appellant's obligation to comply with the Employment Plan, the appellant did in fact continue to undertake work search activities throughout the time she was ill. The panel concluded that the ministry should reasonably have deemed the twenty work search activities that the appellant reported on her Work Search Activities Record that she undertook during the period of her illness, constituted reasonable compliance with the conditions of Employment Plan during that period.

In respect of the appellant's illness, the ministry stated that if she was ill she should have provided it with confirmation from a doctor. In response the appellant said that she could not; she had sought treatment but, because she did not have a care card (she said it had been destroyed in a house fire) she was turned away from the health clinic. The ministry said that there was no evidence that she had applied for a replacement card. The panel concluded that the argument presented by the ministry did not establish that appellant had not been ill during the period she claimed to have been ill. The panel accepted the appellant's evidence regarding her illness. The panel concluded that the ministry, acting reasonably, should have done so as well and, accordingly, should have considered this a circumstance that justified fewer work search activities over the period of the appellant's illness.

The panel considered the other circumstances that the appellant submitted as mitigating her failure to comply strictly with the requirement that she engage in the required number of work search activities

in accordance with the Employment Plan. These circumstances included her relative lack of schooling, the fact she had no work experience, her concerns about child care for her son, her lack of transportation and her desire to be enrolled in a work orientation program. The panel agreed that these circumstances would likely be barriers to finding and maintaining employment. But that was not the object of the appellant's the Employment Plan. That Plan was limited to work search activities and, as such, these circumstances were not relevant. The panel concluded that it was reasonable for the ministry to not consider these circumstances when considering whether or not the appellant had satisfied the conditions of her Employment Plan.

The panel found that during the month from December 20th, 2012 to January 20th, 2013 the appellant engaged in a total of 30 work search activities. Taking into account the reduction in such activities that the panel concluded the ministry should reasonably have conceded over the Christmas period and during the appellant's illness, the appellant should have engaged in approximately 75 work search activities during that month. Accordingly, after taking into consideration the circumstances of the appellant which the panel concluded were relevant, the appellant failed to satisfy more than one half the quota of work search activities which were a condition of her Employment Plan

Section 9(1) of the EAA is mandatory. The appellant fell significantly short of the performance required of her pursuant to the terms of her Employment Plan. Accordingly, in deciding that the appellant was no longer eligible for income assistance the ministry reasonably applied the provisions of that section. Given the magnitude of the shortfall in work search activities, this conclusion is unaltered following a consideration of the appellant's circumstances. The January 31, 2013 reconsideration decision is confirmed.