

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (“Ministry”) reconsideration decision dated February 19, 2013, which found the appellant not eligible to receive income assistance due to her failure to comply with the conditions of her employment plan as required by Section 9 of the Employment and Assistance Act.

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 consisted of:

1. The Appellant's Employment Plan dated May 22, 2012.
2. A Work Search Activities Record, for the Appellant, dated September 26, 2012.
3. The Appellant's school schedule dated September 27, 2012.
4. Payroll reconciliation records for 2012 and 2013 from the Appellant's employer.
5. Appellant's pay statements dated October 19, 2012 and December 5, 2012.
6. Written notice, from the Ministry to the Appellant, dated December 4, 2012 advising that the Appellant's income assistance cheque will be held pending the Ministry's receipt of the Appellant's job search information.
7. A second Work Search Activities Record, for the Appellant, dated January 28, 2013.
8. Job search records for the Appellant for the dates: February 4, 7 and 11, 2013.
9. Request for Reconsideration from the Appellant dated February 6, 2013 where she indicates the following:
 - The Appellant acknowledges that she has not submitted proper paystubs to the Ministry; so, she had her boss submit a payroll reconciliation outline to match her T4 record.
 - The Appellant did not submit a job search last year [2012] because she was working three to four shifts a week up until Christmas and at that point, work slowed down and she was called off of shifts to the point where she only had one shift a week.
 - The Appellant is in desperate need of income assistance so that she might catch up with 'things' [she] is behind in and she is scheduled for four shifts the week of Feb 6, 2013 and there is no chance she will get called off of them because she is an early start.
 - The Appellant states she has been continuing to look for further employment, including sending her resume to staffing agencies; but, is not having any luck as of yet.
 - The Appellant anticipates that her hours will continue to get better at her employment.
 - The Appellant does not understand how [the Ministry] expects her to have full time employment when she is thankful to have the job she does; that the Ministry is totally unaware of how many interviews and how many resumes she has handed out, emailed out.
 - This area is a very difficult area to find work in and she expects she should be able to find full time work this spring.
10. T4 slip showing Appellant's 2012 earned income.
11. Letter from the Appellant to the Ministry dated February 18, 2013 stating that she has been trying to look for work but most places in this area are not hiring until spring or beginning of summer.
12. A doctor's note, dated February 18, 2013 indicating the Appellant is not able to look for or accept work from February 18, 2013 to September 1, 2013.

In the Appellant's Notice of Appeal dated February 25, 2013, the Appellant's reasons for appeal are stated as follows: (quote)

"I have handed in numerous job searches. Also a Dr. note stating I am unable to hold a full time job due to my depression and anxiety. I have a job part time since September 2012. I dropped out of school so I could obtain more hours at work but have not been getting any because of slow season. I've also had three interviews but was not hired. I don't know what else I am supposed to be doing but am trying my best."

Prior to the hearing, the Appellant submitted documentary evidence in the form of Transaction History documents that show transaction details of the Appellant's chequing account from October 1, 2012 to February 20, 2013 inclusive.

The Panel admitted these documents, per Section 22(4) of the EAA, as they were in support of the information before the Ministry at the time of Reconsideration as they related to the Appellant's income information.

The Appellant's submission at the hearing included the following:

- The Appellant states she did not get work in May, when she first signed her employment plan because businesses had already done their summer hiring by that point.
- The Appellant states the Ministry did not make any requests for information from her from May to August 2012.
- In response to a question about her job search efforts from October to December 2012, she confirmed that she did not fill out any Work Search Activities Records because she was working part time and did not understand that she had to look for other work. That she would not have been able to work while she was going to school part time, too.
- That her anxiety and depression, and the medication she takes for these conditions present challenges to her working full time
- That she did not understand that she was to look for work a minimum of twenty five hours per week.
- That she did not receive the letter from the Ministry dated December 4, 2012 because she had moved residence in September; and had advised the Ministry of her new address.
- That she did not work in December before the holidays.
- That it is a slow time in this area right now and businesses will start to hire for the summer season soon.
- That she has provided the Ministry with a Dr.'s note indicating she cannot look for or accept work at this time.
- In response to a question about her job search efforts from October through December 2012 the Appellant confirmed that she did not fill out any Work Search Activities Records because she was working part time and did not understand that she had to look for other work.
- In response to a question, the Appellant stated that she did not remember what job search efforts she made between January 27, 2013 to February 3, 2013.

The Ministry's submission at the hearing included the following:

- The Ministry was relying primarily on the information in their reconsideration decision dated February 19, 2013.
- The Appellant had signed an Employment Plan in May of 2012 and by doing so had agreed to comply with the Employment Plan, which stated on the form that if [an IA recipient] is found to be noncompliant with their respective Employment Plan, they will then be considered ineligible to receive income assistance.

- The Employment Plan, signed by the Appellant, clearly states the Appellant is to update and distribute [her] resume to all potential employers; that [she] will seek out and pursue all available resources and employment opportunities; and, that [she] will record all her work search activities on the Ministry form and provide these to the Ministry upon request.
- The Employment Plan also states [through signature] the Appellant is aware that the Ministry expectation is [she] spends 25 hours minimum per week on work search activities.
- The part time hours worked by the Appellant could be used as hours towards her work search activities.
- It is the Ministry's position that the Appellant has not demonstrated that she conducted any work search activities prior to January 8, 2013 or, for the period of time from January 27, 2013 to February 3, 2013 as required by the Employment Plan.
- That, of the records received by the Ministry from the Appellant, such as T4, employer's information on hours worked, and two Work Search Activity Records, the Appellant has not met the weekly work search requirement of 25 hours per her Employment Plan.
- The Ministry sent a notice to the Appellant on December 4, 2012, advising that her income assistance cheque was being held pending the Ministry receiving the required work search activity forms showing the Appellant was complying with her Employment Plan.
- That the Appellant has provided only two work search records up to reconsideration.

The Panel finds :

- The Appellant entered into an Employment Plan with the Ministry in May of 2012.
- At that time the Appellant agreed, via her signature on that plan, to comply with the requirements of the Employment Plan; specifically, that she was to maintain monthly records of her work search activities that equated to a minimum work search time of 25 hours per week.
- The Appellant was employed part time during her Employment Plan.
- The Appellant provided two monthly records of her work search activities, one in September 2012 and one in January 2013.

PART F – Reasons for Panel Decision

The issue to be decided at appeal is whether the Ministry reasonably concluded, under Section 9(1)(b) of the Employment and Assistance Act (EAA), that the appellant was not eligible for February 2013 income assistance based on her noncompliance with the requirements of the Employment Plan she agreed to.

The legislation 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*].

The Appellant argues that she has handed in numerous job searches as well as a doctor's note stating that she is unable to hold a full time job due to her depression and anxiety. She states that she has had a part time job since September 2012 and that she dropped out of school so she could obtain more hours at work. She has not been getting any more hours because of the slow season. She has interviewed three times but not been hired. She does not know what else she can do, but she is trying her best.

The Ministry argues that based on the information at reconsideration, the Appellant has not complied with the conditions of her Employment Plan per Section 9(1)(b) of the EAA and, therefore, she has been deemed ineligible to receive further income assistance.

The Panel finds that the Appellant's evidence is that she did not understand that she needed to continue work search efforts while she was working part time, while the Employment Plan signed by the Appellant clearly indicates that she was required to spend 25 hours minimum per week on work search activities. In addition, although the Appellant's evidence is that the Ministry did not ask her to provide further work search records so she did not keep any further records, the Employment Plan indicates the Appellant agreed to record her monthly work search activities and provide them to the Ministry upon request. It is clear however, that later when the Ministry requested the Appellant's work search records, she did not provide them as she had not kept any further work search records as required by her Employment Plan.

The Panel notes that although the Ministry states the Appellant has not demonstrated that she conducted any work search activities prior to January 8, 2013, the Appellant's Work Search Activity Record of September 26, 2012, does indicate that she called two employers and submitted two resumes by email. However, it is clear that the Appellant's work search activities, as provided, were minimal and did not meet the requirements of her Employment Plan.

The Panel also notes the Appellant provided a doctor's note dated February 18, 2013 that indicates that the Appellant is unable to work from February 18, 2013 through September 1, 2013 for medical reasons, the Panel notes that this evidence is not applicable to the timeframe of the Reconsideration decision; that being, work search activities prior to January 8, 2013 or from January 27, 2013 through February 3, 2013 so the Panel does not give this evidence any weight.

Based on the foregoing, the Panel finds that the Ministry's determination the Appellant had not

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complied with work search requirements of her Employment Plan was a reasonable application of the applicable enactment in the circumstances of the Appellant and the Panel finds the Ministry's decision is reasonably supported by the evidence and confirms the Ministry's Reconsideration Decision dated February 19, 2013.