

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated December 28, 2012 which held that the appellant is not eligible for income assistance pursuant to section 9(1)(b) as he has not complied with the conditions of his employment plan (EP) because he failed to demonstrate reasonable efforts to participate in the employment program pursuant to section 9(4)(a) and did not provide any confirmation from a medical practitioner that he was medically unable to participate in the plan pursuant to section 9(4)(b) 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 reconsideration included:

- An Employment plan (EP) dated February 20, 2012, signed by the appellant with requirements as follows:
 - To participate in employment programming with the contractor specified by the ministry;
 - To fully participate as directed by the contractor and will advise the contractor any time he is unable to attend;
 - To be assessed for employment services on February 24, 2012;
 - To agree to participate in the new employment program of BC (EPBC);
 - That he understands that he would be directed to the new EPBC contractor prior to April 2, 2012 by my current contractor or by the ministry;
 - That he understands that participation in these programs is mandatory to be eligible for income assistance.

The EP includes an acknowledgement by the appellant stating that he read, understood and agreed to the requirements of and compliance with the employment plan as well as the consequences of non-compliance.

In its reconsideration decision, the ministry provided the following chronology of events:

- July 10 and August 8, 2012 the appellant missed scheduled appointments with EPBC. The appellant's case manager attempted to contact with the appellant by phone, email and mailed letter, but was unsuccessful.
- September 17, 2012 the appellant's file was closed with EPBC for non-participation.
- November 14, 2012 the ministry mailed the appellant a letter regarding his non-compliance with his EP.
- November 22, 2012 the appellant attended the ministry office to discuss his non-compliance. The appellant stated he thought the EP was over and had been doing his own work search. The appellant provided a receipt from a college and advised he was on a waitlist for upgrading. The appellant was unable to provide any other confirmation of his work search activities. The appellant was advised he was not eligible for income assistance.
- December 21, 2012 the appellant filed a Request for Reconsideration in which he said he was attacked and received a head injury on July 25, 2012 and had been unable to search for work since that time. A letter from the appellant's advocate outlining the reason for his reconsideration includes a police report confirming the assault and a hospital emergency department report confirming his treatment for a head wound on the left side of his head. The advocate reports that the appellant continues to experience ongoing symptoms related to his head injury since his attack. The symptoms are severe in nature and restrict his daily activities. The appellant has experienced dizziness, headaches, restricted hearing one ear, anxiety and memory problems since the attack.

- A letter (undated) from a long-time friend of the appellant indicating that the appellant has been in severe pain since the attack and that she and her husband help the appellant with daily living activities. The friend reports that she has noticed the appellant has increased pain in his back, severe headaches, frequent bouts of depression, increased forgetfulness about completing tasks, increased anxiety when leaving his home and has had no hearing in his right ear for 3 months.

In his Notice of Appeal (NOA) dated January 2, 2012 the appellant argues the ministry's reconsideration decision "is patently unreasonable."

At the hearing, the appellant was represented by his advocate. The advocate presented a submission with arguments as well as documents and information:

The advocate argues that the reconsideration decision refers to the appellant having missing his scheduled appointments with EPBC on July 10, 2012 and August 8, 2012. The advocate submits the appellant received a workshop calendar indicating that his last workshops in July were on July 3, 2012 and July 4, 2012. It argues that the ministry has presented no evidence to indicate that the appellant was advised or made aware of a July 10, 2012 meeting with the service provider. The advocate further argues that the appellant was unable to attend his meeting on August 8, 2012 due to medical reasons due to his unstable physical and mental health following his assault. The advocate argued further given the nature of his injury, it would not be reasonable to expect him to participate in the program. The advocate pointed out that the legislation does not require confirmation from a medical practitioner of an inability to participate in the EPBC in any capacity.

The advocate's submission also included the following documents and information:

- A copy of the Ministry's letter dated November 14, 2012 (referred to in the ministry reconsideration decision but not included) that indicates the appellant has not followed through on the conditions of his EP and that it would like him make contact to discuss his reasons. The appellant attended the ministry's office on November 22, 2012 and spoke to a worker, who looked at a photograph of his head injury and the details of the case. At the time, the ministry advised him that most likely he would not be cut off income assistance, but that he needed to follow through with a request for reconsideration. The ministry at no time documented its decision to terminate the appellant's income assistance and did not tell the appellant what information was needed for it to make a fair decision about whether his circumstances fell within the exceptions of Section 9 (4) (a) or (b). Rather, it simply advised the appellant that it was unlikely his income assistance would be cut off and to apply for a request for reconsideration.
- May 7, 2012 an EP of B.C. Action Plan concerning the appellant that outlines a series of ESS Workshops that he was required to attend every Tuesday with a start date of May 15, 2012 and an end date of July 3, 2012. Also included was the service provider's workshop calendar for this period that highlights in bold the Tuesday workshops.
- A colour photograph of the appellant's wound and treatment with staples.

- A note dated January 18, 2013 from a medical clinic doctor confirming that the appellant was seen August 5, 2012 for removal of staples from his scalp.
- A January 18, 2013 letter from the Pastor of the appellant's church that indicates he is an acquaintance of approximately 7 years and states that after the appellant's assault, his recovery took some time and that he was unable to go about his normal activities.
- A medical website article regarding severe head injuries and resulting short-term and long-term symptoms.
- January 21, 2013 a letter from a Doctor who examined the appellant, who confirms that the appellant's symptoms of anxiety, depression, confusion, dizziness, loss of hearing in one ear and headaches following his assault on July 25, 2012 are consistent with his significant head injury he received. The doctor indicates after reviewing the hospital and police records concerning the assault that the appellant would have been extremely challenged to comply with his employment plan.

The advocate further testified that she had been in contact with the appellant's Case Manager with the EP service provider would confirmed that the appellant up until July 2012 was willingly participating in his employment plan and had "if not close to perfect attendance, then perfect attendance." The Case Manger also informed the advocate that the appellant's file was not closed because of missed appointments that the ministry states occurred on July 10, 2012 and August 8, 2012. Because the service provider is contracted by the ministry, the Case Manager was unable to provide written documentation concerning the appellant's attendance and participation in his EP. A process that could take up to 60 days through the Freedom of Information and Protection of Privacy Act would have been required to receive this documentation.

At the hearing, the appellant also provided testimony together with that of a witness. The appellant, referring to his EP workshop calendar outlined and recalled in detail his diligence in ensuring his attendance at every Tuesday workshop as well as his ongoing discussions with his Case Manager and that his Case Manager had highlighted in bold font his key Tuesday appointments to emphasize this diligence. The appellant also described and highlighted his understanding of the importance concerning his attendance of all EP appointments. He argues he constantly made sure that he was complying with all workshops prescribed for him which concluded on July 3 and 4, 2012 and that his assault was on July 25, 2012. The appellant clarified that his last meeting with his Case Manager was on June 19, 2012, who was going on holiday and who advised him, at the time, that their next meeting would be on August 8, 2012. He contends that he was never advised of a July 10, 2012 appointment. He also reports that around the end of November 2012 he was getting better and that contact with his Case Manager indicated that his file was not closed.

A witness provided testimony to support her undated letter concerning her observations of the appellant following his assault. She stated that the appellant is allowed use of her phone number so messages can be left on his behalf. However, because she and her husband moved residences on two occasions between May and October, 2012 and switched phone numbers this caused difficulty for the appellant to make contact with his Case Manager.

The panel finds that the information contained in the NOA, and the above documents, information and testimony as admissible under section 22(4) of the EAA as being in support of the information that was before the ministry at the time of reconsideration.

At the hearing, the ministry indicated that on November 22, 2012 when the appellant was submitting his monthly income form it noticed that his file had been closed with the EPBC which prompted an inquiry. The ministry advised that its records indicate that the appellant's participation stopped with the EPBC on July 3, 2012 and that there was no documented record of a July 10, 2012 scheduled appointment. The ministry acknowledged that the record appeared unclear on this point and there appeared to be a conflict with the information in this regard. The ministry also indicated there was no ministry policy that requires medical confirmation of medical reasons for ceasing participation in an EP.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant continued income assistance because the appellant failed to make a reasonable effort to comply with the conditions of his EP pursuant to section 9(4) (a) and did not provide any confirmation from a medical practitioner that he was medically unable to participate in the plan pursuant to section 9(4)(b) of the EAA.

Section 9(1) of the EAA states that 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.

Section 9(3) states 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.

Section 9(4) states, 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.

Section 9(6) states the minister may amend suspend or cancel an employment plan.

Section 9(7) states 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 argues that the appellant did not demonstrate a reasonable effort to participate in his employment related program as required by his employment plan. The ministry maintains that the appellant signed and had an active EP with conditions that must be met. By signing this plan, the appellant indicated he read, understood and agreed to the requirements of attendance and compliance with the program as well as the consequences for non-compliance. However, the appellant missed an appointment on July 10, 2012 prior to the occurrence of his head injury and did not advise the ministry of his inability to participate. The appellant further missed an appointment on August 8, 2012. While the ministry acknowledges the assault that resulted in a head injury, it argues there is insufficient information to establish that the appellant was unable to participate in the EPBC for medical reasons.

The appellant argues that he made a constant and reasonable effort to comply with the requirements of his employment plan through to July 3 and 4, 2012 and that he never received any information concerning an appointment on July 10, 2012. With regard to missing an appointment on August 8, 2012 he argues that as a result of receiving a an assault on July 25, 2012 with resulting symptoms he was unable to put together the required medical evidence without assistance due to the significant cognitive deficits that resulted from a severe head injury.

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. The panel finds the ministry's conclusion that these requirements have not been met in this case as unreasonable.

The ministry concluded that the appellant failed to demonstrate reasonable efforts to participate in his EP. The panel finds that the EP signed by the appellant dated February 20, 2012 requires the appellant to participate in his appointments as well as advise the ministry of any inability to attend appointments. The panel notes that the reconsideration decision refers to a missed appointment of July 10, 2012 which is inconsistent with the ministry's testimony at the hearing that there is no documentation of a required July 10, 2012 appointment of the appellant with the EP service provider. It finds the appellant's testimony and recollection of his compliance and participation through his workshop calendars presented up until July 3 and 4, 2012 as reliable and credible and concludes the ministry's account of a July 10, 2012 appointment with the service provider as less credible. The panel finds there is no evidence of the appellant receiving notice of a July 10, 2012 appointment. It further finds that the matter presents an ambiguity or doubt that a July 10, 2012 appointment ever existed and that the appellant failed to reasonable participate in his EP according to the statute. The panel resolves this conflict in favor of the appellant and finds the ministry was unreasonable in its determination that the appellant failed to reasonably participate in his EP by missing an appointment on July 10, 2012.

The ministry also concluded that although the appellant received a severe assault on July 25, 2012 that resulted in a head injury, there is insufficient information to establish that the appellant was unable to participate in the EPBC for medical reasons. The panel finds that it is not disputed that the appellant missed his scheduled August 8, 2012 appointment. The panel, however, relies on more recent medical evidence that suggests the appellant's symptoms comprising both reduced physical and mental capacity that immediately followed his assault is sufficient evidence to conclude that he ceased to participate in the EP and missed his August 8, 2012 appointment for medical reasons.

The panel, therefore, finds the ministry's reconsideration decision dated December 29, 2012 was not reasonably supported by the evidence and was an unreasonable application of the legislation in the circumstances of the appellant and rescinds the decision in favour of the appellant.