

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development's (ministry's) reconsideration decision dated March 12, 2013 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).

**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 included:

- 1) Employment Plan (EP) signed by the appellant and dated November 22, 2012. The terms of the EP include provisions requiring the appellant to:
  - update and distribute his resume to all potential employers;
  - to seek out and pursue all available resources and employment opportunities;
  - to record his monthly work search activities on the ministry form and provide these to the ministry upon request;
  - to utilize all personal contacts to assist his work search;
  - that the ministry expectation is that he spends 25 hours minimum per week on work search activities;
  - the reporting requirements are by the 5th of every month showing 5 activities per day for 5 days per week; and the statement: "I am aware that I can contact the Employment Program of BC for self serve services to determine if their resources could assist me to achieve my work search goals.";
- 2) Work Search Activities Record dated December 4, 2012 showing activities for the period from November 26, 2012 through December 5, 2012;
- 3) Work Search Activities Record dated January 4, 2013 showing activities for the period from December 10, 2012 through January 4, 2013; and,
- 4) Request for Reconsideration- Reasons.

At the hearing, the appellant provided a letter dated April 11, 2013 from a Housing and Stabilizing Outreach worker who works with persons who are homeless and hard to house. The outreach worker wrote that, in 2010, the appellant was a client that she housed. With the support of the program, he was able to maintain housing. The outreach worker wrote that the appellant refused to seek supports for his addictions or recovery services in 2010. Presently, his condition has deteriorated to the point that he is abusing household sanitizing products, such as Listerine, to manage his addictions. The outreach worker wrote that it is her professional opinion that, due to the severity of the appellant's addictions, he is unable to attain employment or partake in work searches until he seeks supports to manage his addictions. The ministry did not object to the admissibility of this letter and the panel admitted it as providing further detail of information that was before the ministry at reconsideration, pursuant to Section 22(4) of the Employment and Assistance Act (EAA).

The advocate also provided a written submission dated June 14, 2010 that was prepared for a previous appeal by the appellant. The advocate explained that the appellant was before the Tribunal at that time for the same issue and wished to rely on the same arguments made at that time. The advocate acknowledged that the submission refers to facts that relate to the EP at that time but argued that the appellant's circumstances are the same and he was successful with the previous appeal. The ministry did not object to the admissibility of the submission; however, the panel did not admit the evidence in the submission which related to the details of the appellant's previous EP, as it was not in support of information or records that were before the ministry at reconsideration, pursuant to Section 22(4) of the EAA. The panel accepted the balance of the submission as argument on behalf of the appellant.

In his Notice of Appeal, the appellant wrote that he disagrees with the ministry's decision because he suffers from anxiety and he is deep in his addictions. He is unable to search, accept or continue employment due to his addictions. His doctor passed away and the ministry is aware of his history. He is optimistic and motivated; however, the ministry is aware he is unable to comply with his EP.

In his Request for Reconsideration, the appellant wrote that it is his fault for he has been through this before. He wishes he was reminded of the consequences. He always lapses around the holidays. That is why he was not able to fulfill his EP.

At the hearing, the appellant stated that he has been an alcoholic for over 15 years and his addiction has become severe. He has also used crack cocaine and heroine as well as crystal meth and was on a

methadone program. The appellant stated that he has a huge physical dependency and he gets the shakes if he tries to cut back on his drinking. At times he will consume anything he can get his hands on to make him feel numb. The appellant stated that he is not allowed into the liquor store and he has resorted to drinking Listerine. On one occasion, he drank 7 bottles in one day. The advocate added that this is an indication of the severity of the appellant's problem and that the likelihood of recovery at this point becomes remote.

The appellant stated that he always feels contrite and this has led to depression and panic attacks. The appellant further stated that his family doctor, who knew him since he was born, passed away in July 2012 and he has not been able to get another doctor. In response to a question, the appellant stated that he does not know if another physician took over his previous doctor's practice. The appellant stated that he was supposed to have a Medical Report completed by a doctor to apply for Persons With Persistent Multiple Barriers to employment (PPMB) status, but he wants to believe that there is still hope that he can get a job.

The appellant stated that he was clean for 6 months and in November 2012 he felt good and wanted to enter into an EP. The advocate added that the appellant was in denial about his problem and was overly optimistic. The appellant stated that he has not worked since 2007 and "time is his worst enemy," and even going to the employment centre deflates him. He does not have the necessary credentials for many jobs and he began to feel bad. The appellant stated that by February 2013 he was not able to comply with his EP as he had lapsed over the holidays and started drinking again. The appellant further stated that the holidays are difficult for him, like many, because his family has not spoken to him in 7 years.

The advocate pointed out that, looking at the Work Search Activity Records dated December 4, 2012 and January 4, 2013, the appellant was never achieving the minimum requirements set out in his EP of 5 activities per day for 5 days per week. The appellant stated that he wants to find employment but physically, emotionally and psychologically he is not "there" yet. The appellant stated that he was supposed to provide a Work Search Activity Report (WSAR) to the ministry for activities in January 2013 but he did not and he thought it would "work out." The appellant stated that he did attend at the Work BC program centre and was waiting for a worker to follow up with him.

The ministry's evidence included that the appellant most recently signed an EP on November 22, 2012 for a Supervised Independent Work Search (SIWS). The conditions of his plan require that the appellant spend a minimum of 25 hours per week on work search activities and submit a work search activities record by the 5th of each month showing 5 activities per day, 5 days per week. The conditions of his EP also advised the appellant that he may access employment services for the Work BC location closest to his residence. At the hearing, the ministry clarified that it was not a requirement for the appellant to participate in the Work BC program.

A ministry worker reviewed all of the EP conditions and the consequences of non-compliance with the appellant and he confirmed that he understood as he had previously been denied income assistance for failure to comply with his EP. The ministry worker further asked the appellant if there were any reasons he would be unable to conduct a work search at that time. The appellant stated that he was managing his drug and alcohol usage and would be able to conduct a work search as required. In response to a question, the ministry stated that there was information in the appellant's file regarding his addictions problems in the past and the ministry asked about this and was told by the appellant that his addictions were under control. The ministry stated that an EP can be tailored to the circumstances of a particular client, but only if the client is forthright about any barriers they face.

The WSAR submitted by the appellant for December 4, 2012 and January 4, 2013 were reviewed and deemed adequate by the ministry. At the hearing, the ministry agreed that these were seen as reasonable efforts even though they did not meet the requirements contained in the EP. The ministry stated that the client's limitations can be taken into consideration when determining whether to accept the activities record provided. On

APPEAL #

January 24, 2013, the appellant showed the ministry worker reviewing his WSAR a welcome letter from the Work BC program dated January 15, 2013. On February 15, 2013, the appellant attended the ministry office and was advised to submit his WSAR for activities in January. The appellant advised that he did not have it and that he had been ill with the flu for the past 2 weeks. The ministry asked the appellant to submit his WSAR indicating the days that he was ill as well as the days that he conducted his work search activities. The appellant did not submit a further WSAR for January or February 2013. On February 22, 2013, the ministry spoke with a case worker from the Work BC program who indicated that she had been trying to get a hold of the appellant through phone calls, letters and emails since January 2013 with no success. She also advised that she had never met the appellant and that the appellant was not being case managed.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's conclusion that the appellant did not comply with the conditions of his EP, and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the Employment and Assistance Act (EAA) is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

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].

The ministry's position is that the appellant entered into an EP dated November 22, 2012 and the conditions of his EP require that he spend a minimum of 25 hours per week on work search activities and submit a WSAR by the 5th of each month showing 5 activities per day for 5 days per week, or a minimum of 25 activities per week. The ministry argued that participation in employment-related programming with the Work BC program was not a condition of the appellant's EP but that such participation would have been regarded as a work search activity. The ministry also argued that the appellant did not submit any further WSAR listing activities for the remainder of January 2013 and for February 2013, which he was required to submit by February 5 and March 5, 2013 respectively.

The ministry argued that although the appellant stated that he relapses into his addictions during the holidays, the period of time during which the appellant has been non-compliant with the conditions of his EP has lasted over 3 months and was not restricted to the holiday season. The ministry also argued that the appellant indicated on November 22, 2012 that he had previously been denied income assistance due to failure to comply with the conditions of an EP and reasonable attempts were made by the ministry to ensure that the appellant was aware of the conditions of his EP and the consequences of non-compliance.

The appellant's position is that he made reasonable efforts to comply with the conditions of his EP given his severe addiction problems. The advocate argued that the appellant was never meeting the minimum requirements of 5 searches per day for 5 days per week and this shows that he was in denial about his addiction problem when he signed the EP. The advocate argued that the appellant was not required as a condition of his EP to participate in an employment-related program with Work BC. The advocate also argued that the appellant's EP ceased, under Section 9(4)(b) of the EAA, due to the medical reason of his severe addictions, as confirmed in the statement by the outreach worker. The advocate argued that it is not a requirement of Section 9(4)(b) of the EAA for the appellant to produce confirmation from a medical practitioner that he has a medical reason for not participating in the program and that, therefore, the ministry's policy is not binding.

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. The appellant stated that he has been an alcoholic for 15 years and that he is currently active in a severe addiction and this is information that the ministry stated can be taken into account prior to the appellant entering into an EP, but only if the appellant is forthright regarding his barriers at that time. The appellant signed an EP on November 22, 2012 for a Supervised Independent Work Search which included conditions that he record his monthly work search activities on the ministry form and provide these to the ministry upon request. The ministry further expected the appellant to spend 25 hours minimum per week on work search activities, and that the reporting requirements are by the 5th of every month showing 5 activities per day for 5 days per week. The EP also included an agreement by the appellant that he is "...aware that I can contact the Employment Program of BC for self serve services to determine if their resources could assist me to achieve my work search goals." The panel finds that the ministry and the appellant both agreed that the EP does not include a condition requiring the appellant to participate in a specific employment-related program to assist the appellant to find employment or to become more employable, as covered by Section 9(3) of the EAA, as the appellant's involvement with the Work BC program was voluntary.

The appellant provided the required WSAR to the ministry for December 2012 and January 2013 which, although not fulfilling the expected minimum of 25 work search activities per week as set out in the EP, were nonetheless accepted by the ministry. The panel finds that it is not disputed that the appellant did not submit a further WSAR for January or February 2013 although the appellant stated that he had attended at the Work BC program and was waiting for a worker to follow up with him, and he had been ill with the flu for part of February. According to the ministry records, a case worker from the Work BC program had been trying to get a hold of the appellant through phone calls, letters and emails since January 2013 with no success and the appellant was not being case managed. The appellant was advised by the ministry to indicate on his WSAR the time that he had been ill with the flu. The panel finds that while the ministry has the discretion to accept the appellant's work search activities as presented in his WSAR, the ministry reasonably concluded that the appellant failed to comply with the conditions of his EP when he did not submit any record of his work search activities for January and February 2013.

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 ceases, except for medical reasons, to participate in the program. Although the advocate argued that the appellant ceased his EP for a medical reason, being his severe addiction problem, the panel finds that the subject EP does not include a condition requiring the appellant to participate in a specific employment-related program and, therefore, this sub-section does not apply to the appellant's circumstances.

The panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the EAA.