

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry's) May 9, 2013 reconsideration decision finding the appellant was not eligible for income assistance pursuant to section 9 Employment and Assistance Act, because he had not demonstrated a reasonable effort to comply with the conditions of his employment plan, or that he had any mitigating circumstances preventing compliance.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 9, (1),(3),(4)

PART E – Summary of Facts

The appellant was represented at the hearing by his advocate, with the written authority of the appellant. The appellant did not attend. After confirming the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the minister at reconsideration included:

(a) a ministry employment plan dated January 24, 2013 signed by the appellant; (b) a warning letter from the ministry dated February 6, 2013; (c) the appellant's request for reconsideration dated April 29, 2013, which included a list of appointments with the service provider.

The appellant was a single employable recipient with no dependants. He entered into an employment plan with conditions as follows:

Participate fully and to the best of the appellant's ability in the activities required by the ministry or service provider as set out:

- Attend first appointment with the service provider on January 29, 2013,
- Participate in employment plan programming regularly and as directed by the service provider,
- Work with the service provider to address any issues that may impact the appellant's employability,
- Complete all tasks assigned including any activities that may be set out in an action plan,
- Notify service provider if unable to attend a session or when starting or ending any employment,
- Declare all income, report any changes to the ministry,
- Attend all ministry review appointments

The appellant signed the employment plan acknowledging that:

- it is a condition of eligibility to sign the plan,
- he must comply with the conditions as set out in his plan, including any condition to participate in a specific employment-related program,
- the service providers have the ability to report back on the appellant's activities,
- he may be required to provide verification of his compliance with the conditions of this plan, including proof of active work search and/or records of attendance and participation in an employment-related program as required by the ministry,
- he understands that if he fails to comply with the conditions of his employment plan, he will be ineligible for assistance under the Act.

- The service provider advised the ministry that the appellant failed to attend orientation sessions on January 29 and February 5.

- The ministry sent a letter dated February 6 to the appellant warning that he must reschedule and attend the mandatory orientation session to maintain eligibility in the program, and non attendance could impact his eligibility to receive income assistance.

- The appellant failed to attend the rescheduled session on February 19.

- On February 26 the appellant cancelled the scheduled session, stating he was in the final steps of obtaining employment.

- On March 26 the appellant attended the mandatory orientation session.

- On March 28 the appellant attended an intake appointment, completed an action plan, and was told by the case manager he was required to attend appointments and programs to remain

eligible for the program. The appellant was scheduled to attend workshops for April 8, 9, 10, 11.

- On April 11 the service provider advised the ministry the appellant failed to attend the April 8, 9, 10 and 11, 2013 workshops
- On April 24 the appellant told the ministry he had been going to the service provider and using their computer and talking to the case manager. The ministry confirmed with the service provider that the appellant attended the orientation session March 26 and intake March 28, and there had been no further contact since then by the appellant.
- On April 25 the appellant was denied assistance for failing to comply with the condition of his employment plan.

In his April 29, 2013 request for reconsideration, the appellant wrote apologizing for miscommunication with the service provider. He said he was told by the worker at the service provider it is up to them to decide on how to proceed with training and whatever they see fit as far as helping him. He said when he spoke to the manager on April 24 she re-booked him for the workshop and advised him that this should not warrant his cheque being held.

He said he was willing and able to work, that he spent at least four hours a day looking for work and handing out resumes, and that he needs help because he did not want to end up on the street. He said he would not miss any other appointments, but was afraid of becoming homeless.

In the reconsideration decision the ministry stated the appellant did not supply any medical documentation indicating any medical issues that would impact his ability to attend employment programs.

On June 17, 2013, the ministry provided a copy of an employment program action plan signed by the appellant on May 17, 2013, a clearer copy of which was provided by the appellant's advocate at the hearing. The action plan showed as "employment needs" the appellant needed skill enhancement. He was registered for OFA1 (occupational first aid, level 1), date to be determined, forklift certification shown as Sunday, June 9, and job search workshop May 27-31.

At the hearing the appellant's advocate submitted the service provider's "client connect" notes from January 24, 2013 to April 11, 2013 listing contacts and scheduled events with the appellant.

The advocate also submitted a copy of a May 10, 2013 certificate showing the appellant had successfully completed *Essential Skills for Employment*, and a written submission on behalf of the appellant.

The ministry had no objection to the introduction of the new evidence, as the service provider's notes were in fact supplied by the ministry.

The panel admitted the employment program action plan dated May 17, 2013 and the service provider's notes as evidence under section 22(4) of the Employment and Assistance Act as they were found to be directly in support of the information and records before the ministry at reconsideration. The certificate was received for information. The written submission on behalf of the client constituted argument.

No additional evidence was provided by the ministry at the hearing.



PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's decision to deny income assistance to the appellant, due to his failure to comply with the terms of his employment plan. The Employment and Assistance Act 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.*

(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.*

Appellant's Position

The appellant argues there is a lack of direct evidence to support a claim of non-compliance, and the evidence does not support the conclusion that he failed to comply for the following reasons.

- After the appellant missed his first intake appointment in January, he was "automatically rolled" into a February 5, 2013 session. The evidence indicates the case manager "left message with voicemail to reschedule to next week." The appellant was not provided with written notice of this appointment, nor did he confirm he received this information and could attend. The evidence does not establish he was aware he was supposed to attend on this date.
- After not attending on February 5, the appellant was rebooked into an orientation session for February 19. There is nothing to establish the appellant was informed of this time and date.
- The ministry alleges that the appellant attended the service provider on March 28 for an intake appointment at which time he completed an action plan with his case manager, that he was "clearly advised by the case manager that client needs to attend appointments and programs to remain eligible", and that he was also signed up for the Essential Skills Workshop for April 8-11. However, the ministry has not provided the action plan. The only action plan submitted is effective and signed May 17, 2013. The appellant argues that although the relevance of the May 17 action plan is questionable, it highlights the evidentiary problems. One activity in this plan is to attend a Forklift Safety Certification course on "Sunday, June 9 at 9:00". The appellant attempted to attend this course, but later learned the course was actually held on June 7. The appellant further argues that there is no written record or reference to conversations between the appellant and the case manager with respect to advice by the case manager "that client needs to attend appointments and programs to remain eligible", nor direct evidence about what obligation to attend the April 8-11 Skills Workshop

was said or agreed to by the Appellant.

Citing benevolent purpose and liberal interpretation of the legislation, the appellant further argues the ministry unreasonably applied a strict interpretation of the legislation when it determined he was ineligible for assistance for failure to comply with the conditions of his Employment Plan.

Ministry's Position

The ministry relied on the reconsideration decision. Responding to the appellant's arguments in relation to the service provider notes, the ministry argues the onus is on the applicant to keep in contact and follow up with the service provider and ensure he knows what is expected. It is the ministry's position that until employment is confirmed, the applicant should continue with the plan and appointments. The ministry pointed out that "self-referral" comment in the February 10 note by the service provider indicates the appointment was booked by the appellant. The ministry argues that the appellant had a history of non-compliance, documented by the service provider's record indicating "no show" on January 29, February 5, February 19 and the April 8-11 workshops, and taking two months before attending the mandatory orientation session on March 26 .

Panel's Decision

The panel notes the appellant signed an employment plan dated January 24, 2013, in which he agrees, among other things, to attend the service provider on January 29, 2013, that as a condition of continued eligibility for assistance he will participate in the programming regularly and as directed by the service provider, that he will notify the service provider if he is unable to attend a session, and that he understands if he fails to comply with the conditions of the employment plan, he will be ineligible for assistance under the Employment and Assistance Act. The appellant was also sent a February 6, 2013 letter from the ministry reminding him he was required to meet with the service provider, that he had not complied with this requirement, and warning him that non-attendance may impact his eligibility to receive income assistance.

The panel finds that the appellant does not dispute he did not attend appointments with the service provider scheduled on January 29, February 5, February 19, and the April 8-11 workshops, or that he did not advise the service provider he would not attend. While the appellant argues there is a lack of direct evidence that he was properly informed by the service provider of scheduled appointments, the panel was not provided with evidence from the appellant that he did not receive messages or was unaware of the appointments. The panel also finds there is no evidence of medical or other reasons preventing the appellant from keeping the appointments.

The legislation requires that the appellant demonstrate reasonable efforts to participate in his employment plan, and the panel finds the ministry reasonably concluded that the requirements were not met at the time of reconsideration. Therefore, the panel finds the ministry reasonably determined that the appellant had not made a reasonable effort to comply with his employment program, pursuant to section 9(4) of the EAA, to be eligible for income assistance pursuant to section 9(1).

The panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.