

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (the ministry's) reconsideration decision dated March 13, 2013 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 program pursuant to section 9(4)(a) and has not provided any medical reason to substantiate that he is unable to participate in the program 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: (a) a ministry Employment Plan (EP) signed by the appellant and dated December 21, 2012; (b) a no show letter dated January 9, 2013; (c) a Work Search Activities Record, and (d) the appellant's Request For Reconsideration dated March 4, 2013.

On, December 21, 2012, the appellant entered into an EP with conditions as follows:

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

- Attend first appointment with the employment contractor on December 27, 2012 at 1:00 PM,
- Participate in EP programming regularly and as directed by the contractor,
- Work with the contractor 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 contractor 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,
- Report by the 5<sup>th</sup> of each month by SD81, and
- As otherwise specified by the contractor.

By signing his EP, the appellant acknowledged that;

- it is a condition of eligibility,
- he must comply with the conditions as set out in this plan including any condition to participate in a specific employment- related program,
- the contractors 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 EP, he will be ineligible for assistance under the Act.

A no show letter from the ministry dated January 9, 2013 reminded the appellant that he is required to meet with the contracted service provider and participate in ongoing workshops/programs. As records indicate that the appellant has not yet complied; he is requested to contact the contractor to make an appointment and that attending this appointment is required to maintain the appellant's eligibility in the BCEP program. Non-attendance may impact his eligibility to receive income assistance.

A Work Search Activities Record dated February 1, 2013 and signed by the appellant consisted of a variety of 34 activities conducted between January 21 and February 1, 2013.

On February 8, 2013, the contractor closed the appellant's EP file due to no client contact or participation noting that the client had made no attempt in 6 weeks to follow up with the program or rebook.

On February 22, 2013, the appellant called and then attended the ministry's office to address the non-compliance on his file. He stated that he did not receive the no show letter. In response to a question by the worker about his non-attendance of the program, the appellant stated that he got sick and forgot to attend. When asked for a medical note, he advised that he did not see a doctor. When the appellant was asked about his job search efforts, he advised that they were at his girlfriend's house.

On February 26, 2013, the appellant returned to the ministry's office without any of the documentation that he was requested to provide however, did indicate that he had located the letter from the ministry. As the

appellant did not present any mitigating circumstances for not participating in the EP programs, he was deemed ineligible for continued income assistance benefits.

In the appellant's request for reconsideration dated March 4, 2013, he indicates that he has submitted the job searches since January and that he was unable to obtain a copy of his rent receipts as requested by the ministry.

On appeal, the appellant submitted the following documents:

1. A letter dated March 19, 2013 confirming that the appellant has lived at his current address since June 2011 and has been paying his rent regularly.
2. A doctor's note dated March 27, 2013 indicating that the appellant had missed 2 appointments with the ministry during the first week of January which according to the appellant was due to a severe flu illness that week.
3. A letter from the appellant dated March 27, 2013 reporting that he forgot and missed his first appointment with the contractor on December 27, 2012 due to the flu and was unable to attend the appointment on January 3, 2013, due to depression and alcoholism.

On appeal, the appellant writes that he had met with the contractor on March 20, 2013 and has scheduled an appointment on April 17, 2013 with a community support services agency. He adds that he has no money, little food, no transportation and that his living conditions are rapidly deteriorating. He indicates that he has submitted all the required paperwork and answered all of the ministry's questions.

At the hearing, the appellant testified that he had underestimated the importance of the missed appointments with the contractor and was actively looking for work since that time. He indicated that the first appointment was close to Christmas and he forgot about it, and due to having the flu, he had missed the 2<sup>nd</sup> appointment. He did not remember receiving a call from the contractor on January 2<sup>nd</sup> to remind him about the appointment the following day. The appellant also testified that he had been looking for work on a full time basis and had submitted his Work Search Activities Record for the dates of January 7- 19, 2013 at the same time as he had submitted the one starting January 21 through February 1, 2013. He indicated that it was missing from the appeal record. When asked by the panel, the appellant indicated that he understood the conditions of the EP however, when asked about the time lapse between the missed appointments and the contact with the ministry on February 22, 2013, the appellant responded that he thought he would have already found work. He also indicated that he has recently met with the contractor.

The ministry objected to the admission of the letter dated March 19, 2013 regarding the appellant's rental agreement because it was determined not to be relevant to the reconsideration decision.

The panel admitted the doctor's note dated March 27, 2013 along with the appellant's written and oral testimony 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 panel did not admit the letter dated March 19, 2013 confirming the appellant's rental agreement as it was not found to be directly related or in support of the information and records before the ministry at reconsideration.

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

### **Findings of Fact**

The appellant is a single, employable recipient with one dependent.

On December 21, 2012, the appellant entered into an EP with specific requirements and by signing his EP, the appellant agreed that he acknowledged and understood compliance with the EP and actions for non-compliance.

On December 27, 2012, when the appellant failed to attend an appointment with the contractor, the contractor contacted him and rescheduled the appointment for January 3, 2013.

On January 3, 2013, the appellant did not attend the orientation session.

On January 9, 2013, the ministry sent a letter to the appellant reminding him that as part of his EP, he was required to meet with the contractor and participate in ongoing workshops/programs.

On February 26, 2013, during a scheduled meeting with the ministry, the appellant failed to submit any medical documentation or a record of his work search activities and was denied income assistance.

On February 28, 2013, the appellant submitted his Work Search Activities Record dating his work search from January 21 to February 1, 2013.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant income assistance because the appellant failed to comply with the conditions of his EP pursuant to section 9 of the EAA.

### Relevant Legislation

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.

Based on the appeal record, the ministry maintains that having signed the EP, the appellant read, understood and agreed to the conditions specified in the plan. The ministry determined that the appellant did not supply any medical documentation that indicates he suffers from any medical issues that would impact his ability to attend employment programming. The ministry found that the appellant had not demonstrated that he had made a reasonable effort to comply with the conditions of his EP because he failed to attend two appointments on December 27, 2012 and January 3, 2013, both which he had agreed to attend. Additionally, with regard to the ministry's letter dated January 9, 2013 to remind the appellant to contact the contractor, the appellant did not contact them until February 22, 2013, at which time he learned that his file had been closed. The ministry also determined that the appellant has not provided any evidence indicating that mitigating circumstances had prevented him from complying with the conditions of his EP.

The appellant's position is that he had underestimated the importance of the missed appointments with the contractor and was actively looking for work since that time. He indicated that the first appointment was close to Christmas and he forgot about it, and due to having the flu, he had missed the 2nd appointment. He argues that he has submitted all the required paperwork and answered all of the ministry's questions. He also indicated that he has recently met with the contractor.

In determining the reasonableness of the ministry's decision, the panel finds that the appellant entered into an EP on December 21, 2012 which required him to participate fully and to the best of his ability in the activities required by the ministry or contractor. The panel accepts the contractor's evidence that the appellant did not attend their meeting on December 27, 2012 and that it was rescheduled for January 3, 2013. Although, the appellant testified that he does not remember being reminded by a telephone call from the contractor the day before, the appellant did not attend the 2<sup>nd</sup> appointment on January 3, 2013 and failed to notify the contractor that he could not attend. The panel notes that after having missed the 2 appointments, the appellant was reminded by the ministry by a letter dated January 9, 2013 that he was required to meet with the contractor and

participate in ongoing workshops/programs. While the panel also notes that on February 28, 2013, the appellant submitted his Work Search Activities Record, the panel finds that this was 23 days after the work search activities report was due on the 5<sup>th</sup> day of each month as required by his EP and 20 days after his EP file was closed due to no client contact or participation. The panel also finds that although the appellant's doctor's note dated March 27, 2013 indicated that the appellant had missed 2 appointments with the ministry during the first week of January due to a severe flu illness, the appellant's doctor did not supply any additional medical documentation that indicates he suffers from any medical issues that would impact his ability to attend employment programming.

By signing the EP, the appellant acknowledged that he understood the conditions as set out and agreed to them; however the panel finds that he failed to comply. The evidence is that the appellant was aware of the consequences of not complying with the conditions of his EP and there is insufficient evidence that he did not comply due to medical reasons. Therefore, the panel finds that 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 that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.