

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 6, 2013 which held that the appellant is not eligible for income assistance pursuant to section 9(1)(b) of the Employment and Assistance Act (EAA) as she has not complied with the conditions of her employment plan (EP) because she 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 she was medically unable to participate in the plan pursuant to section 9(4)(b) of the EAA.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, and waiting a reasonable time, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of reconsideration included:

- An Employment plan (EP) dated October 23, 2012, signed by the appellant with requirements as follows:
 - I will attend my first appointment with the Employment Program of British Columbia (EPBC) contractor within 5 business days of today's date (2012OCT30).
 - As a condition of continued eligibility for assistance I will participate in EPBC programming regularly and as directed by the EPBC contractor.
 - I will work with the EPBC contractor to address any issues that may impact my employability and will complete all tasks assigned including any activities that may be set out in an action plan.
 - I will notify the contractor [contact information included] if I am unable to attend a session or when I start or end any employment.
 - I understand that if I fail to comply with the conditions of my employment plan, I will be ineligible for assistance under the Employment and Assistance Act or the Employment and Assistance for Persons with Disabilities Act.
 - I will declare all income and report any changes to the ministry and I will attend all ministry review appointments as required.

The EP includes an acknowledgement by the appellant stating that she 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 :

- October 23, 2012 the appellant signed an EP agreeing to participate in employment programming through the EPBC contractor and was required to contact them within 5 business days of October 30, 2013. At the time, the ministry explained the consequences for failing to comply with her EP.
- January 17, 2013 the EPBC contractor informed the ministry that the appellant had failed to contact them. The EPBC contractor attempted to call the appellant, but could not contact the appellant or leave a message.
- January 18, 2013 the ministry sent the appellant a letter requesting he contact the ministry to discuss her EP and to submit a job search and confirmation that she had connected with the EPBC contractor.
- January 23, 2013 the appellant is advised by the ministry in person that she was required to contact the EPBC contractor.
- February 7, 2013 the appellant contacted the ministry because she had not received her income assistance and was informed that her cheque had been held for failing to comply with her EP. At

the time, the appellant stated that she did not understand what she was signing on her employment plan. The ministry denies the appellant income assistance for non compliance with her EP stating it had explained her EP with her prior to her signing it.

- February 26, 2013 the appellant files a Request for Reconsideration in which she notes that when she lived at her previous location her 14 year old son came back to live with her and her daughter. Because she was not receiving child tax or family bonus for him as well no assistance from her spouse she was struggling to make ends meet and could not afford anything other than getting the kids to school. The appellant further notes that she moved to a new location and since being there she and her children have been sick with strep throat and she cannot get prescriptions. The appellant reports she cannot stay where she is without rent and is willing to make a new employment plan and will attend regular appointments.

In her Notice of Appeal (NOA) dated April 2, 2013 the appellant disagrees with the ministry's reconsideration decision and states "Still in need of assistance have two children and rent to pay! Have a part time job now but doesn't pay enough."

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

As a result of the appellant not attending the hearing the panel relies on the record as the appellant's position.

At the hearing, the ministry stood by the record. The ministry pointed out that at the time of presenting and having the appellant sign her EP the conditions, obligations and consequences of not complying with it would have been fully explained to her by the ministry. The appellant by signing the EP acknowledged that compliance was mandatory. The ministry reports that if it or the contractor was contacted by the appellant, in a timely fashion, providing reasons for non compliance exceptions sometimes are made and time limits extended. The ministry notes that the appellant presented in her Request for Reconsideration circumstances that came after her denial of Income Assistance for non-compliance with her 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 her EP pursuant to section 9(4) (a) and did not provide any confirmation from a medical practitioner that she 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 her employment related program as required by her 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 she 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 made no effort to contact the EP contractor as required by her EP and also presented no information that would indicate, at the time, that she had a medical condition that would have prevented this requirement.

The appellant argues in her Request for Reconsideration dated February 26, 2013 that she was unable to comply with the conditions of her EP due to circumstances regarding financial matters that presented themselves with a son moving back to live with her and that she had moved to a different city in B.C. where she and her children became sick.

The panel finds that the EP signed by the appellant dated October 23, 2012 required the appellant to make contact with the EP contractor 5 days from October 30, 2012 and to notify the EP contractor if she was unable to attend a session. This evidence demonstrates that the appellant was aware of the requirements of making contact and of the consequences of not doing so. The panel finds the appellant made no contact with the EP contractor. The panel also finds the appellant made contact with the ministry over 2 and a half months later on January 23, 2013, who advised her in person of her requirement regarding contact with the EP contractor. Following this, the appellant did not contact the ministry again until February 7, 2013 to inquire about her income assistance that was being held. The panel finds the appellant, after several reminders by the ministry did not demonstrate reasonable efforts to participate in her EP. The panel further finds there is not sufficient evidence provided to establish that the appellant had mitigating circumstances or a medical condition, at the time that prevented her from making contact with the EP contractor. Given that the consequence of not complying with the conditions of the EP is ineligibility for income assistance, the panel finds that the ministry reasonably concluded that the requirements, as set out in section 9 of the EAA, were not met.

The panel finds that the ministry's decision was reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision of the ministry.