

PART C – Decision under Appeal

This is an appeal of a decision of the Ministry of Social Development ("the ministry"), dated March 21, 2013. The ministry found that the appellant was non-compliant with her employment plan and did not provide evidence to establish that a medical condition prevented her from participating in her plan. The ministry therefore found her ineligible for income assistance pursuant to section 9 of the *Employment and Assistance Act* (EAA).

PART D – Relevant Legislation

EAA section 9

PART E – Summary of Facts

The following evidence was before the ministry at the time of its reconsideration:

- An Employment Plan, dated August 13, 2012, which contains the following terms and was signed by the appellant:
 - “The purpose of the Employment Plan (EP) is to outline the activities and expectations for you to find employment or become more employable. These expectations are required by the Employment and Assistance Act and the Employment and Assistance for Persons with Disabilities Act. The EP will have specific timelines for activities and will be reviewed regularly. The EP tracks your progress to employment. Any changes to your plan will require an amendment agreed to by the ministry. It is important that you follow through with the conditions of your EP. If you are unable to follow through please advise the ministry. If you fail to comply with your EP you will be ineligible for assistance.”
 - “I will attend my first appointment within 5 business days of signing the employment plan. 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] 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.”
 - Under Client Reporting Requirements Frequency, “Other” was chosen. The options were Daily, Weekly, Monthly, Other.
 - Under Client Reporting Requirements Method, “Other” was chosen. The options were Client Activity report, SD0077, Telephone, Mail, In Person, Other.
 - “I further acknowledge and understand that, if the ministry refers me to a specific employment-related program, I will participate fully and to the best of my ability in the activities required by the ministry contractor.”
 - “I understand that if I do not comply with the conditions of this employment plan, the assistance issued to me and/or my family will be discontinued.”
- In her request for reconsideration, dated March 1, 2013, the appellant described the events that occurred to her while she was subject to the employment plan:
 - Due to her ongoing struggle with anxiety/depression, the EP manager agreed she could continue her job search from home.
 - She did not receive the phone calls and messages as claimed by the EP manager, either because her phone was not operational or her ex-boyfriend didn't tell her about them.

- She had been brutally attacked by an acquaintance and has since been suffering memory blockages/loss, agoraphobia, intensified anxiety, paranoia/nervousness. Her dominant hand was broken in the attack giving her problems with her grip and acting as a reminder of the incident.
 - More recently she arrived at the scene shortly after the person who had attacked her had been shot. The memory of this grisly scene and her emotions surrounding it torment her daily.
 - She experiences extreme memory loss and cannot stay focused on anything.
 - She takes medication for anxiety/depression and has asked for it to be increased.
- A note dated March 5, 2013, from the appellant's landlord requesting overdue rent with an implication of eviction if it remains unpaid by March 15, 2013.
 - A listing of jobs that the appellant appears to have printed off from an internet search.
 - A request for reconsideration which sets out a record of the ministry's decision to discontinue income assistance. It contains the following information of the appellant's activities:
 - 2012 Aug 14: signed the EP.
 - 2012 Aug 22: attended a scheduled appointment with the Employment Program.
 - 2012 Dec 12: Employment Program sent her an email but received no reply.
 - 2012 Jan 15: Employment Program sent her an email but received no reply.
 - 2013 Jan 24: Employment Program left her a voicemail but received no reply.
 - 2013 Feb 20: the appellant contacted the ministry requesting her March income assistance payment and was informed that she had not responded to the Employment Program's attempts to contact her.
 - The ministry representative relayed the discussion with the appellant, who confirmed her telephone number was what was registered with the Employment Program and that she did internet searches for online jobs using a friend's computer. At another point in the conversation she stated she did not have computer access. The appellant stated that she wasn't aware that she was required to stay in contact with the Employment Program but that she was searching for jobs online.
 - In the reconsideration decision the ministry notes that the Employment Program manager's last contact with the appellant was on November 21, 2012, when the appellant left a voicemail for the manager. Prior to that the manager had told the appellant to submit monthly records of her job searches. Nothing was received in December 2012 or subsequent months. Nor did the appellant reply to the manager's attempts to contact her.

Information received subsequent to reconsideration and prior to the hearing

- A letter from a friend of the appellant, dated April 10, 2013, which corroborates and expands upon the appellant's narrative of events surrounding the attack she experienced (June 2012). She states her anxiety/depression have since worsened as have her coping skills. Other events have contributed to her difficulties: her ex-boyfriend being released from jail, the passing of her father-in-law and her grandmother, losing a friend in a car accident, witnessing the aftermath of the shooting. Her memory loss is significant, sometimes not recalling events from the previous day.

- A submission from the appellant's advocate which restates the events and their impact on the appellant and described above. In response to the ministry's comment in the reconsideration decision "you have not provided any evidence to establish that a medical condition prevented you from making contact with your EPBC contractor for four months," the advocate states: "the Appellant and her advocate tried to contact the Appellant's physician to confirm medical evidence but received no response from the physician."

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision dated March 21, 2013, to discontinue income assistance for the appellant based on non-compliance with her EP, was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The EAA section 9 states:

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.

...

(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.

The appellant and her advocate argue that she suffered traumatic incidents prior to the period when she was subject to her employment plan. These events contributed to a reduced mental state with severe memory loss, anxiety and depression. Combined with the appellant's misunderstanding of the reporting requirements to the Employment Program manager and her efforts at home to search for work online, it was unreasonable for the ministry to discontinue her assistance.

The appellant's advocate further argues that, unlike sections in the *Employment and Assistance Regulation*, section 9 of the EAA does not require confirmation by a medical practitioner.

In its reconsideration decision, the ministry acknowledged the traumatic events which occurred to the appellant but that she made no efforts to contact the Employment Program manager or comply with her EP following November 21, 2012. The manager had required that the appellant submit records of her job searches at the end of each month. None were received and the ministry noted three attempts by the manager to contact the appellant in December 2012 and January 2013 to which the appellant did not respond.

In a reply to the advocate's submission, the ministry argued that, despite the lack of a legislative requirement for confirmation by a medical practitioner of the appellant's medical condition, the ministry was reasonable to request such information to verify what was provided by her.

Examining the EP contract signed by the appellant on August 14, 2012, the panel notes the clear requirements for the appellant to abide by its provisions and participate fully and to the best of her ability. That being said, the reporting requirements were not set out as any timeframe or method but as "Other." Nonetheless, the panel is satisfied that the Employment Program manager made it clear to the appellant what was required of her. She was to submit monthly records of her job searches starting in December 2012. The appellant argues that she misunderstood this instruction and that due to her poor memory, lack of computer access and an abusive ex-boyfriend she did not reply to the manager's attempts to contact her by email or phone.

While the panel has sympathy for the appellant's situation, the ministry and the manager seem to have understood the challenges she was facing and made reasonable efforts to accommodate her difficulties. With respect to the appellant's explanation as to why she did not reply to the manager's attempts to contact her, she provided conflicting information regarding her ability to access a computer (and therefore the email messages sent to her from the manager). She provided records of an online job search; therefore the ministry was not unreasonable to assume she could access her email.

Additionally, the EP contract places an onus on the appellant to "participate fully and to the best of my ability in the activities required by the ministry contractor." The ministry was reasonable to expect monthly reporting by the appellant, or at least to clarify what was required of her in the absence of contact with the Employment Program.

With respect to the appellant's medical condition, the appellant's advocate correctly notes that section 9 does not require confirmation from a medical practitioner. At the same time it does not preclude the ministry from seeking such confirmation to satisfy itself of the appellant's circumstances. The appellant was seeing a physician for her condition so it is not an unreasonable request, especially given the limited effort required to comply with her EP.

In conclusion, the panel finds that the ministry was reasonable in determining that the appellant did not comply with her EP and that there was not sufficient evidence to show that she was prevented from doing so for medical reasons.

The panel confirms the ministry's decision.