

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (ministry's) reconsideration decision dated May 29, 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 February 27, 2013. 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 record all activities he does that help make him more employable, e.g. counseling sessions, medical appointments, etc. and he understands that these activities fall within his work search requirements;
 - 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 and assist me to overcome my barriers."; and,
- 2) Request for Reconsideration- Reasons prepared by an advocate on behalf of the appellant.

In his Request for Reconsideration, the appellant wrote that he has several barriers to participating in his current EP which is a Supervised Independent Work Search. The appellant was recently released from incarceration, has active substance addiction and depression. These conditions can result in a lack of appropriate judgment and ability to participate and follow through, as is the case with the appellant.

In his Notice of Appeal, the appellant indicated that he disagreed with the ministry's decision, that he has no phone and no money. The appellant requested a language interpreter.

An interpreter attended the hearing and the appellant would only cooperate with translation if he felt he did not understand what was being said; however, the panel insisted on translation of its explanation regarding the decision for the appeal and important information from the ministry. The appellant stated that he is currently homeless and he agreed that, in terms of receiving the written decision for this appeal, if he did not receive a copy through his previous residence, due to various problems at the residence identified by the appellant, that he would inquire at the ministry office for the results of the decision.

At the hearing, the appellant stated that he was in jail for 1 1/2 years and lost everything he owned. He got out of jail with no clothes, no boots, no vehicle and no I.D. The appellant stated that they gave him some "jail clothes" and he had to walk everywhere because the nice car he had was sold for scrap when he was incarcerated. If he wants to get a meal from the Salvation Army, it takes him an hour to walk from his residence. His experience with work is in construction as a 'framer' but he does not have any tools to get a job. The appellant stated that when he was working, he was making \$20 per hour and was getting \$1,600 every 2 weeks. The appellant stated that he called an old work partner to see about getting some work, but he is in the middle of divorcing his wife and could not help. The appellant stated that he has also worked as a roofer at times but now his back is wrecked from a motor vehicle accident and cannot do that work anymore. The appellant stated that he cannot even stand for any length of time without significant pain. The appellant stated that he had been referred to a specialist about his back but they told him it would be a year before he could get an appointment and then he went to jail and he was told he had to go to the bottom of the waiting list so he gave up.

The appellant stated that he asked mental health for help and they gave him the contact information for John Howard and the Salvation Army, but he was told by the John Howard Society that they only help those released from federal institutions. The appellant stated that one of the residents at his previous address is elderly and fell and broke her hip so he spent lots of time trying to help her and get her place cleaned up. The

appellant stated that he lost some of the papers he received from the Tribunal because everyone at the house where he was residing is doing drugs, that one resident is hoarding things, and he described a chaotic environment. The panel confirmed that the appellant had papers with him at the hearing, including copies of the Reconsideration decision, his EP, and his Request for Reconsideration.

The appellant stated that he has had problems because he has a no contact order with his girlfriend and she will ask to talk to him and then get mad and call the police and they will take him back to jail. The appellant stated that he does not know how to cope "on the street," that he has been incarcerated on and off since he was 17 years old. The appellant stated that he has been using drugs for about 20 years and when people are using drugs all around him, he has found it hard to resist and has gotten back into taking drugs. The appellant stated that at one point he thought about committing suicide. The appellant stated that his doctor is in another community and he has not been able to make an appointment with him. The appellant stated that he probably could have made more of an effort to look for a job.

The ministry's evidence included that the appellant most recently signed an EP on February 27, 2013 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. On March 18, 2013, the appellant attended at the ministry office and a ministry worker reviewed all of the EP conditions and the consequences of non-compliance with the appellant and he confirmed that he understood. The appellant advised that he would attend the Work BC office to see what type of assistance he could get there. On April 16, 2013, an EP review was completed and the appellant had failed to submit any work search documents since his EP was completed on February 27, 2013. The ministry stated at the hearing that there is no information in the appellant's file confirming that the appellant has medical conditions or that a condition would prevent him from searching for employment.

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 February 27, 2013 and the conditions of his EP require that he submit a work search report by the 5th of each month and recommends that the appellant contact Work BC to assist him in his work search and to overcome his employment barriers. The ministry argued that although the appellant stated that he cannot participate in his EP due to substance abuse and depression, the appellant has not provided any medical reports to the ministry to confirm that he has a medical condition or that the condition would prevent him from searching for employment. The ministry argued that the appellant stated that he would try to connect with the program, there is no evidence provided that he has done so, and no evidence of any work search activity in the two months since signing his EP.

The appellant argued that he has several barriers to participating in his current EP due to the challenges of being recently released from incarceration and his active substance addiction and depression. The appellant argued that these conditions can result in a lack of appropriate judgment and ability to participate and follow through. In the Request for Reconsideration, the advocate argued that the ministry has the discretion to amend an EP to best suit the client and his individual needs in order to support his success. The advocate quoted a statement by the minister that the goal of the ministry is to help individuals and families become more

self-sufficient by focusing on supporting the most vulnerable citizens and providing people with the tools and ability to be independent. The advocate argued that the appellant's EP is not suited to help him become more independent since he does not have the ability to participate fully due to his medical conditions of addiction and/or depression. The advocate argued that the appellant does not currently have the capability to participate in a Supervised Independent Work Search and to deny him at this point would not be supporting his independence; rather, he would become homeless or worse.

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 signed an EP on February 27, 2013 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 and assist me to overcome my barriers." The panel finds that the appellant's 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 panel finds that it is not disputed that the appellant did not submit the required work search records from the time of signing his EP to the time of the ministry's review on April 16, 2013. The advocate argued in the Request for Reconsideration that the appellant's EP is not suited to help him become more independent, as is the goal as communicated by the minister, since he does not have the ability to participate fully due to his medical conditions of addiction and/or depression; the advocate argued that the ministry has the discretion to amend the appellant's EP in order to better support his success. The ministry stated at the hearing that there is no information in the appellant's file confirming that the appellant has medical conditions that would impact his ability to participate in the Supervised Independent Work Search, and the appellant admitted at the hearing that he has not seen his doctor who is located in another community, and he had no medical documentation available at the hearing. A condition of the appellant's EP is to record all activities that the appellant does that help to make him more employable and it specifically states that these activities are considered within the appellant's work search requirements. The appellant described some efforts he made, such as contacting a previous work partner, as well as seeking help through mental health and getting contact information for the John Howard Society and the Salvation Army; however, he did not provide specific information about when he performed these activities, and he admitted that he "...probably could have made more of an effort to look for a job." The panel finds that while the ministry has the discretion to accept the appellant's work search activities as presented in his work search reports, and that these include any activities that make him more employable, 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 to the ministry.

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 did not participate in his EP for a medical reason, being his medical conditions of addiction and depression, 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.