

### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated May 28, 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 he has not complied with the conditions of his employment plan (EP) because he failed to demonstrate reasonable efforts to participate in the employment program pursuant to section 9(4)(a) and did not provide any mitigating circumstances that he 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 evidence before the ministry at the time of reconsideration included:

- An Employment Plan ( EP) dated July 17, 2012, signed by the appellant with requirements as follows:
  - I will attend my first appointment with the Employment Program of British Columbia (EPBC) contractor at (address specified) July 18 at 10:00 am.
  - 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.

The EP in section (f) under the heading Client Reporting Requirements notes frequency as "Monthly".

In its reconsideration decision, the ministry provided the following chronology of events :

- July 17, 2012 the appellant signed an EP agreeing to participate regularly in employment programming through and as directed by the EPBC contractor. The appellant agreed to contact the contractor if he was unable to attend a session or when he started or ended employment. The appellant also acknowledged that failing to comply with the conditions of his EP he would be ineligible for assistance.
- July 20, 2012 appellant attends mandatory orientation session with EPBC contractor
- August 7, 8, 9 and 10, 2012 the appellant attended workshops
- August 20, 2012 the appellant attends booked appointment with case manager at EPBC
- August 28, 2012 the appellant's case manager with the EPBC contractor sent the appellant an email asking him to connect and book another appointment, but the appellant failed to respond to the email.
- December 19, 2012 the appellant's case manager with the EPBC contractor mailed the appellant a letter advising him to connect to remain eligible for their programming, but the appellant failed to respond to the letter.
- January 10, 2013 the appellant's case manager with the EPBC contractor called the appellant and left him a message asking him to connect, but the appellant failed to respond to the message.

- February 1, 2013 the EPBC contractor advised the ministry that the appellant had not complied with their requests to connect with them.
- February 6, 2013 the ministry sent the appellant a letter reminding him that as part of his EP he was required to meet with the EPBC contractor and participate in ongoing workshops/programs and advised to contact the EPBC contractor to schedule an appointment. The appointment was required to maintain eligibility for the EPBC and that non-attendance may impact his eligibility to receive income assistance. The appellant failed to respond to the ministry's letter.
- April 10, 2013 the ministry sent the appellant another letter asking him to talk with them by April 19, 2013 about why he has not followed through with his EP.
- April 16, 2013 the appellant contacted the ministry and stated that he had attended workshops with the EPBC contractor last July and was completing his work search from home as he saw no need to attend the EPBC contractor and was not aware he was required to continue to be involved with the EPBC contractor. At the time, the ministry requested he attend the local office with a list of work search activities for the past few months.
- May 2, 2013 the appellant advised the ministry that he thought he was only required to attend the 5 workshops with the EPBC contractor which he had completed. The appellant also advised that he was completing an independent work search and showed samples. The ministry was not satisfied with these work search efforts as the appellant was not looking for all types of employment, but focusing on media jobs. The appellant did not identify any medical or mitigating circumstances that prevented him from complying with his EP. The ministry verified his mailing address and confirmed that letters from both the BCEP contractor and the ministry were sent to the appellant's correct address. The appellant was denied assistance for failing to comply with the conditions of his EP.
- May 14, 2013 the appellant filed a Request for Reconsideration in which he made the following submission:
  - the appellant did not receive emails, letters or phone calls from the EPBC contractor
  - the appellant checks his phone and email religiously and believes the EPBC contractor never tried to contact him and the only 2 letters from the ministry are offered as supporting documentation
  - the appellant acknowledges receiving the April 2013 letter from the ministry, but never received the one in February 2013. His roommate did not see any letters, but he does receive a lot of junk mail and it is possible it was thrown out.
  - the appellant completed all his workshops in August 2012
  - the appellant called the office in April but not on April 16, 2013 as recorded in the reconsideration decision and attended a meeting at the ministry on May 2, 2013.
  - other than a single letter in April 2013 he did not receive any other communications.
  - the appointment he attended was not a fair meeting and he should have been given a chance to present his work search efforts. The appellant submitted evidence of his work search. He brought samples of work search efforts including resumes, email histories, a targeted research list of local employers and volunteer work searches but claims the ministry was not interested. He claims he spends hours researching local employers, scanning job sites and has applied for anything and everything within his

wheelhouse. He has exhausted his network to find employment and has used all the techniques and strategies outlined in the workshops.

- the appellant is currently volunteering with a foundation as executive assistant to increase his employability.

In his Notice of Appeal (NOA) dated April 2, 2013 the appellant notes that he disagrees with the ministry's reconsideration decision.

In attendance at the hearing were two observers, one for the appellant and one for the ministry, each with the consent of the other party.

At the hearing, the appellant was represented by his advocate. The advocate presented a submission with documentation and arguments.

The documentation included records obtained July 30, 2013 through the *Freedom of Information and Protection of Privacy Act* (FOIPPA). The records requested by the advocate on behalf of the appellant were the ministry's complete file with the BCEP contractor together with any records related to the request from the appellant's income assistance file back to January 1, 2012. The records documented the following:

- ministry interactions with the appellant between July 17, 2012 and June 24, 2013
- EPBC Employment Readiness Information Questionnaire, completed by the appellant on July 20, 2012
- EPBC Action Plan, signed by both the appellant and the case manager on July 20, 2012 that contained a section on Services and Activities to be completed and a signature of the appellant that followed the statement, "*I (the appellant), commit to carry out the activities and carry out the activities and participate in services identified in my Action Plan to the best of my abilities. I will work with my case manager to achieve my employment goals and follow up on our agreed to schedule to review my progress and update or revise my Action Plan.*" It also included a signature of the appellant's case manager with the EPBC contractor that followed the statement "*As your case manager, I will follow up with and support you with your Action Plan as needed to assist you in achieving your employment goals.*"
- Pages titled "Case Association History Applet"; "Benefits"; "Assessments"; "Assessment Items" that do not refer to the appellant by name.
- A copy of an email dated July 20, 2012 from the appellant to his case worker at EPBC that refers to and attaches various resume and cover letter styles by the appellant.

The panel accepted the above documentation into evidence under Section 22(4) of the Employment and Assistance Act as being in support of the information that was before the ministry at the time of reconsideration as the records relate to his interactions concerning his EP.

The Appellant's advocate noted that this is the appellant's first involvement with income assistance in over 10 years and prior to this had been consistently employed or in school. He also acknowledged the appellant's EP that stated in part: "*I will attend my first appointment with the Employment*

*Program of British Columbia (EPBC) contractor at (address specified) July 18 at 10:00 am. 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....”*

The advocate then made the following arguments:

1. the EP also establishes that the appellant must report on a monthly basis with respect to a monthly income assistance pay stub. In addition the EP establishes that the appellant must report as required “As per contractor” and that this establishes that in order for the appellant to fulfill his EP he must satisfy the terms established in conjunction with the EPBC contractor. The appellant agreed to attend workshops and also agreed to develop and renew his Action Plan as required. The EPBC Action Plan commitments of both the appellant and his EPBC Case Manager (CM) **create an obligation on both of them to follow up with each other to investigate the progress of the goals identified in the Action Plan** (panel emphasis). Between July 17 and August 10, the appellant attended an introductory meeting with his CM and attended a series of workshops run by the EPBC. Between August 28, 2012 and January 10, 2013 the ministry alleges that the EPBC contractor attempted to contact the appellant by email, phone call and a printed letter. The appellant argues that he did not receive any of these communications and that his last email contact with the EPBC contractor was by the email he sent to his CM on July 20, 2013. The appellant also argues he did not receive the ministry’s letter dated February 6, 2013. The appellant is sent another letter by the ministry dated April 10, 2013 and is advised to contact the ministry before April 19, 2013. On April 16, 2013 the appellant contacted the ministry and stated that he was completing his work search independently and the ministry requests he submit a list of his work search activities. On May 2, 2013 the appellant met with a ministry worker that found his work search sample incomplete; that he had focused entirely on media jobs and the appellant was declared ineligible for income assistance because he did not demonstrate he had made a reasonable effort to comply with his EP.

2. the interactions between the appellant and the EPBC contractor form the basis of whether or not the appellant is complying with his EP. In this case, a lack of direct evidence to support a claim of non-compliance is lacking. The Appeals record only has 2 pieces of evidence; the letter dated February 6, 2013 and April 10, 2013 sent to the appellant. Between August 20, 2012 and January 10, 2013 the ministry alleges a series of communications that the appellant’s CM made to the appellant, but since the disclosed documents did not include any of those communications, there is no evidence they took place and therefore, it does not exist. The FOIPPA records did not include a “Client Connect” record of communications between the appellant and the EPBC contractor and the advocate makes the assumption that such a document does not exist. The advocate reports that he was unable to access this information both from the ministry and the EPBC contractor. The FOIPPA records indicate the ministry advised the advocate on June 10, 2013 the following.... “that emails between [EPBC contractor] and the [appellant] would not have been provided, and there is no evidence of any such emails in the income assistance file. Recommended he get emails from [EPBC contractor], and the ministry cannot be held responsible if [EPBC contractor] will not provide them.”

3. The ministry has used alleged evidence to support its decision and has used unverifiable and unexaminable evidence presented by the EPBC contractor as the basis of its determination that the appellant is not eligible for income assistance at reconsideration.

4. The ministry evidence includes only 2 letters only one of which is uncontested that the appellant received. It also includes the EP signed by the appellant on July 17, 2013 and the meeting he had with the ministry on May 2, 2013. In relation to this evidence the advocate further argued there are 2 issues:

i) The EP signed by the appellant places an obligation on both the appellant and his CM to stay in contact. The appellant alleges the non-response of his CM to an email he sent her on July 20, 2013 constitutes the last contact he received from the EPBC contractor. He further submits that he was not aware of any further obligations and assumed his CM would contact him if there were further obligations.

ii) At the meeting on May 2, 2013 the appellant submitted evidence of his extensive work search efforts he had conducted independently in 2012 and 2013. He argues, however, that he was not given a chance to submit a full account of his work search and that the ministry unreasonably applied the legislation by determining he was ineligible for assistance for failure to comply with the conditions of his EP. He referred to Section 8 of the *Interpretation Act* (RSBC 1996) that said "every enactment must be construed as being remedial and must be given such fair and large and liberal construction and interpretation that as best ensures the attainment of its object". He further argues that the Ministry is required to resolve any ambiguity in the legislation in favour of the Appellant in accordance with *Hudson v. Employment and Assistance Appeal tribunal (2009 BCSC 1461)*. The ministry did not give the appellant an adequate chance to demonstrate his work search and, has instead, equated the requirement to make reasonable efforts to participate in his EP program equal to maintaining a relationship with the EPBC contractor without demonstrating that this relationship is helpful to the appellant.

The appellant testified he was given a second chance to submit his work search and that he had sent his work search documentation to his CM the day of their meeting on July 20, 2013. When he got no response he thought maybe there were other people in greater need than himself and that his CM was very busy and he did not want to unnecessarily contact him or her.

At the hearing, the ministry stood by the record. The ministry presented documentation that it had requested from the EPBC contractor. This included a "Client Connect" document or case file of the appellant that noted appointments, communications, and events as well as the EPBC Action Plan for the appellant signed by both the appellant and his case manager on July 20, 2012 and noted above in the submission of the appellant. The appellant represented by his advocate argued against admitting this new evidence as it was not made available through its FOIPPA request and was made only available to the ministry, but did not request an adjournment.

The ministry in response felt this issue should be taken up with FOIPPA officials and should not be made a concern of theirs and the documents be admitted. Since the appellant did not request an adjournment and since he, himself, had asked to have access to those documents as important pieces of evidence in this matter, the panel admitted the documents into evidence under Section

22(4) of the Employment and Assistance Act as being in support of the information that was before the ministry at the time of reconsideration. The documents support the ministry reconsideration record of dates concerning appointments, communications and events between the EPBC contractor and the appellant.

The ministry also pointed out that it is not reasonable to expect that regular contact with appellant would be dependent on the EPBC contractor. There was no contact with the appellant for a long period of time and it would have been reasonable to expect some contact. The ministry pointed out that the appellant took it upon himself to do an independent work search. The appellant could have asked to have his EP changed to reflect this, but choosing not to meet the conditions of his EP is not a mitigating factor. There was no verification from the EPBC contractor respecting the appellant's work search efforts. The appellant's EP was not geared toward an independent work search, but rather referral to a contractor which indicates an agreement to participate regularly as directed by the EPBC contractor. The ministry reasonably interprets the conditions of the EP require regular contact by the appellant with the EPBC contractor. It further considers, therefore, it a reasonable interpretation that no contact for a long period of time by the appellant with the EPBC contractor is not regular. By not attending to his contract the conditions of his EP were not met. The ministry also noted that the work search efforts by the appellant do not apply to his EP. It also observed that contact is in the best interests of the EPBC contractor who only receives payment for client interactions. Finally, no medical or other mitigating circumstances were presented by the appellant to demonstrate he was unable to participate.

## 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 demonstrate reasonable efforts to comply with the conditions of his EP pursuant to section 9(4) (a) and did not provide any confirmation from a medical practitioner that he 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 appellant's position is that:

- He could not reasonably be expected to respond to the communications from the EPBC contractor as he did not receive the letter dated February 6, 2013. He did respond as soon as he received the second letter on April 10, 2013 from the Ministry.
- He was not aware of any further obligations in relation to the EPBC contractor and assumed that his case manager would contact him if, indeed, he did have further obligations.
- He was making a reasonable effort in that he constantly engaged in an extensive independent work search of his own.



- The ministry has equated the requirement to make reasonable efforts to participate in the Employment Plan program equal to maintaining a relationship with the EPBC contractor, without demonstrating that this relationship is helpful to him. He conducted a substantial and effective work search independently which is reasonable in light of the purpose of his EP and the legislation.

The Ministry's position is that:

- The extent of the appellant's work search activities are not relevant to this decision and were not part of the Reconsideration Decision. A condition of the appellant's assistance was that he participate in a specific employment-related program, namely that provided by the EPBC contractor. This is in line with Section 9 (3) of the legislation. Section 9 (4) states that, if a recipient fails to demonstrate reasonable effort to participate in the program, or ceases, except for medical reasons, to participate in the program, the condition requiring the recipient to participate in a specific employment-related program is not met.
- The appellant's failure to respond to the emails, telephone calls, and letters sent by the EPBC contractor, and to maintain contact with the EPBC contractor over an extended period of time from August 20, 2012 do not constitute reasonable efforts to participate in his EP.
- No medical reasons or other mitigating circumstances were provided for ceasing to participate.

The panel finds that the EP signed by the appellant dated July 17, 2012 included a condition that his regular reporting requirement with the contractor was monthly. 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 ministry reasonably determined the appellant made no contact with the EPBC contractor after August 20, 2012, but did so approximately 8 months later on May 2, 2013. By his own admission, the appellant made no attempt to follow up with the EPBC contractor during this time. The panel finds the appellant chose unilaterally to conduct outside his employment plan an independent work search of his own. It finds these actions were made without the knowledge and sanction of the EPBC contractor. The panel also finds further there were repeated attempts by the EPBC contractor to contact the appellant over an extended period of time to no avail. By his own admission, the appellant made no attempt to follow up and make contact with the EPBC contractor after August 20, 2012. The evidence shows the appellant upon completing the necessary workshops in July 2012 decided to take on an independent work search of his own and the panel finds that, whether or not the appellant received the follow-up communications from the EPBC contractor, he had a responsibility to contact the EPBC contractor to determine whether additional actions were required or whether his EP had been completed, particularly in that the appellant's EP is clear regarding his responsibility to maintain a monthly reporting requirement with the EPBC contractor. The panel further finds there is no evidence provided to establish that the appellant had mitigating circumstances or a medical condition at the time that prevented him from making contact with the EPBC contractor. Therefore, the panel finds that the ministry reasonably determined that the appellant had not made a reasonable effort to participate in his employment program and did not have a medical reason for not participating and, as a result, did not comply with his EP.

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.