

PART C – Decision under Appeal

This is an appeal of a decision of the Ministry of Social Development ("the ministry"), dated May 8, 2013. The ministry found that the appellant was non-compliant with his employment plan and that there were no mitigating circumstances or a medical condition which prevented his compliance. The ministry found him ineligible for income assistance pursuant to section 9 of the *Employment and Assistance Act* (EAA).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9

PART E – Summary of Facts

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

- An Employment Plan (EP), dated June 7, 2012, which contains the following terms and was signed by the appellant:
 - "The purpose of the 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."
 - "As a condition of continued eligibility for assistance I will participate in EPBC programming regularly and as directed by the EPBC contractor."
 - "I understand that my participation in these programs is mandatory to be eligible for income assistance."
 - "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."
 - The appellant was required to report monthly. The method of reporting was "Other."
- An email from the employment program contractor to the ministry with copies of emails sent to the appellant on March 15, 2013 and April 12, 2013. The March email notes a lack of contact with the appellant and asks him to contact the program by March 22, 2013 or his file will be closed. The April email notes the previous email contact as well as telephone voicemail message left for the appellant to which no response was received. It states that his income assistance could be affected due to his lack of response.
- A letter to the appellant dated April 22, 2013 requiring him to contact the ministry prior to May 17, 2013 due to his lack of participation in his employment plan.
- An email dated May 7, 2013 from the employment program contractor to the ministry describing the employment, training and reporting objectives for the appellant. It requires the appellant to continue an active, thorough and documented job search, practice keyboard skills, prepare a list of accomplishments to use in interviews, build a network and references through volunteering etc., develop a resume and send a draft to the program manager, attend scheduled workshops and stay in touch bi-weekly with his case manager. It notes the appellant's lack of a telephone. (The appellant's name is not mentioned in the email but at the hearing, the appellant agreed that the description applied to him but did not recall the case manager setting out these terms for him. He particularly disputed the bi-weekly reporting requirement as inconsistent with what he was told.)
- In his request for reconsideration, the appellant stated that he met numerous times with his counselor and attended at least one workshop. He was put on the online system and participated in WHMIS and FoodSafe training. He switched to the downtown office as it was more convenient for him and attended regularly.

- A request for reconsideration which sets out a record of the ministry's decision to discontinue income assistance. It contains the following information:
 - 2012 May 30 – appellant attended mandatory orientation session with employment program contractor.
 - 2012 June 6 – appellant attended an intake appointment with his case manager and signed his action plan.
 - 2012 June 14 – appellant attended mandatory workshop.
 - After this date there was no further contact with the appellant. No workshops, programs or training were attended.
 - 2013 March – appellant did not respond to email from case manager.
 - 2013 April 1 – case manager informed the ministry of lack of contact
 - 2013 April 22 – ministry mailed a non-compliance letter to the appellant.
 - 2013 April 24 – during an interview with the ministry the appellant stated he had moved and was accessing the downtown office. The ministry pointed out that he had not transferred his file, seen a case manager or participated in training at the downtown office. Nor did he provide evidence of a work search or mitigating circumstances.

The following evidence was received at the hearing:

Appellant

The appellant stated that he initially used the employment program contractor office near his previous residence. In January 2013 he moved to a new residence and advised the ministry of this change. The ministry paid his damage deposit. There was no discussion with the ministry about his employment plan at that time. The downtown office belonging to the same employment program contractor was more convenient for him, so he started using that location. Apart from using the computer at this location he did not speak to anyone.

He was issued a card by the employment program contractor with a barcode which allowed him to use their computer system to look for work. He showed the card to the panel members. He stated that he was told to swipe it every time he attended the employment program contractor office and that his attendance would be recorded. He used it actively during the time he was subject to the employment plan. When he swiped it, the program would ask what he wanted to do and he would select 'use resource equipment.' When he tried a few days prior to the hearing, the program advised him that he was no longer a client with the employment program contractor and the search program was not available to him.

He had previously been on PPMB and attended workshops as required then, as well as at the beginning of this employment plan. He did not attend workshops during the nine month period between June 2012 and March 2013, nor was he asked to.

With respect to the ministry's attempts to contact him, the appellant stated that he created a new email address to avoid junk email he was receiving, but he did not close the old account to which the ministry sent emails in March and April 2013. The appellant provided both old and new email addresses. His telephone was 'message-only' and belonged to his ex-roommate who did not supply

him with the access code. He agreed that his new address was the same as that on the April 22, 2013 letter from the ministry but did not recall seeing the letter.

Under section 22(4)(b) of the Act, the Panel admitted the new evidence as it is in support of information and records which were before the Ministry at the time of its decision. The evidence spoke to the appellant's efforts to comply with his employment plan.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's determination that the appellant was ineligible for income assistance based on his lack of compliance with his employment plan, was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Section 9 of the EAA 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.
- (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.

The appellant argues that he complied with the employment plan set out for him and did what was asked of him. He attended workshops as directed and regularly accessed the employment program contractor's system for searching for work. He started at the location where he had his intake interview but started using the downtown locale after his move in January 2013. Although he didn't arrange workshops or training at the downtown location, he regularly used his pass card to access the site and use its computer system to search for work as he was instructed to do. He understood that the use of his pass card would be recorded by the employment program contractor. With respect to the ministry's attempts to contact him, he states he did not receive the March or April emails due to a change of email addresses. Nor did he receive the telephone voicemail as he did not have access to the voicemail system. He also objected to the ministry's position that he had a bi-weekly reporting requirement as inconsistent with what he had been told.

In its decision, the ministry stated that the appellant did not comply with the bi-weekly reporting requirements of his employment plan, he did not provide a record of his work search, nor did he respond to attempts by the employment program contractor and the ministry to contact him. With respect to his assertion that he used the downtown office, the manager of that office had no recollection of him being there or taking training or workshops.

The panel first must examine the employment plan contract signed by the appellant. It makes it clear that he was mandated to abide by the action plan laid out by the employment program contractor and report as required in order to maintain his income assistance payments. The initial plan describes

monthly reporting, although the method of reporting is "Other." The subsequent email from the employment program contractor to the ministry sets out a more detailed work plan but it is not dated and does not show the appellant's name nor indicate that he was made aware of the plan or acceded to it. It mentions bi-weekly reporting.

Between June 2012 and March 2013, the appellant appears to have been left to his own devices with no required attendance at workshops or meetings with the employment program contractor. The appellant states that he was told to use his card to access the site and computer system of the employment program contractor and this would be recorded.

The appellant informed the ministry of his move to a new residence in January 2013. No discussion of his employment plan occurred at that time. Indeed, the ministry helped with his move, providing a security deposit.

After a nine month period, the employment program contractor attempted contact with the appellant in March and April 2013 via email and telephone with no reply. The appellant explained that he changed his email address due to an excess of junk mail. The appellant provided both old and new email addresses to the panel. With respect to his telephone access, the appellant stated that he did not have access to the voicemail of the telephone number used by the ministry to contact him. The employment program contractor acknowledged the appellant's lack of a telephone in its May 7, 2013 email to the ministry.

The appellant had no excuse for his lack of response to the ministry's April 22, 2013 letter to him.

The appellant's main argument for overturning the ministry's decision was that he regularly used his pass card to log into the employment program contractor's facility and computer system in order to look for work. He understood that this was acceptable to the employment program contractor and therefore the ministry. The ministry argues that he did not access workshops or training and that he was not known to anyone at the downtown office of the employment program contractor.

The EP with the appellant discusses monthly reporting but only requires "Other" as the reporting requirement. While the subsequent email to the ministry lays out bi-weekly reporting along with other expectations, it is not clear that the appellant had been apprised of these requirements. With the lack of further specificity in the appellant's contract, "Other" could be broadly interpreted to include using his pass card to record his attendance, as the appellant understood was the case.

Given that the computer system which the appellant states he regularly signed into was administered by the employment program contractor, it is unfortunate that the ministry did not attend the hearing or provide evidence to confirm or rebut the appellant's evidence that he regularly attended the employment program contractor's office for the purpose of searching for work. During his interview with the ministry regarding his apparent non-compliance, the appellant could not produce records of his work search. However, the records of his activities with the employment program contractor should have been available to the ministry for it to assess the veracity of his claim. It is a stretch to require the appellant to produce records which one would reasonably expect the ministry to be able to reference.

The panel found the appellant credible and accepts his evidence that he attended the downtown

location and searched for work using his pass card. He gave a believable report of what he saw when he accessed the system and how it denied his use once he was no longer deemed a client of the employment program contractor. The panel also accepts his evidence that he was complying with what he thought was expected of him as well as his evidence regarding the regularity of his attendance. The panel finds that, given the lack of follow-up by the employment program contractor regarding bi-weekly contact in the months after referral to the contractor, it was reasonable for the appellant to assume that the employment program contractor was satisfied that he was in compliance with his EP.

With respect to the employment program contractor's attempts to email and telephone the appellant, the panel accepts his explanations as to why he did not reply. However, the panel finds no excuse for his lack of reply to the ministry's April 22, 2013 letter, but taken in isolation and in consideration with his attendance at the employment program contractor's office, it is not fatal to his appeal.

The panel also notes that neither the employment program contractor nor the ministry made attempts to contact the appellant during the nine month period between his initial meetings in June 2012 and the employment program contractor's attempts in March and April 2013. The appellant spoke with the ministry in January 2013 regarding his household move but no discussion of his employment plan, positive or negative, occurred at that time.

In summary, the panel finds that the appellant held an honest belief that by using his pass card to access the employment program contractor's facility and computer system in his search for work, he was complying with the spirit of his employment plan. Delving further, the conditions of his initial employment plan do not exclude the interpretation supplied by the appellant. Nor does the subsequent email regarding more specific requirements contradict his understanding of his obligations, in the absence of a clear indication that he was made aware of the more restrictive conditions and that they excluded his interpretation of what it meant to comply.

As a result, the panel finds the ministry was not reasonable in determining that the appellant was ineligible for income assistance due to a lack of participation in his employment plan. The ministry's decision is rescinded.