

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 12, 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 her employment plan (EP), due to the failure of meeting the minimum of 25 hours of work search activities required weekly to be reported monthly under her employment plan.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9

PART E – Summary of Facts

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

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

- The appellant receives income assistance as a single parent and her file was opened in September 2008.
- An Employment plan (EP) signed by the appellant effective August 16, 2012 with requirements as follows:
 - To update and distribute her resume to all potential employers.
 - To seek out and pursue all available resources and employment opportunities.
 - To record her monthly search activities on the ministry form (SD 0077) and provide these to the ministry upon request.
 - To utilize all personal contacts to assist her work-search.
 - That she is aware the ministry expects her to spend 25 hours minimum per week on work search activities.
 - To do research for upgrading in order to obtain her G.E.D. and to contact the ministry once she made a decision regarding her schooling and to provide this information.

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 which indicates that the income assistance issued will be discontinued.

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

- August 16, 2012 the appellant entered into a new employment plan requiring independent work search. The ministry reports the appellant's work search obligations were explained to her at this time. The ministry notes the appellant was advised she was required to spend a minimum of 25 hours per week on work search activities and to submit a monthly work search activities record listing a minimum of 5 work search related activities for each day by the 5th of each month.
- December 13, 2012 during a phone call the ministry's expectations regarding adequate work search were reviewed with the appellant as the monthly work search records submitted by the appellant consisted of only 6 activities per month. The appellant is reminded to submit a monthly work search activities record listing a minimum of 5 work search related activities for each day by the 5th of each month.
- January 18, 2013 the appellant submitted a work search activities record for the dates of December 12, 2012 to January 17, 2013 consisting of 26 work search activities.
- January 22, 2013 after reviewing the appellant's work search activities record the ministry determined that the appellant had not met the minimum work search requirements specified by the conditions of her employment plan.

- January 24, 2013 the appellant was advised she was no longer eligible for income assistance due to failure to comply with the conditions of her employment plan.
- February 28, 2013 the appellant filed a Request for Reconsideration in which she submits the following:
 - her work search was successful in that she obtained part-time work effective January 31, 2013 with a retail company that averages about 20 hours per week. The appellant reports that she is still continuing her work search even though she is working 20 hours per week.

-the appellant acknowledges that at the time of signing her new employment plan on August 16, 2012 she was given a handout by the ministry called "Reasonable Work Search Activities Guidelines" which states that "the applicant consistently utilized at least 5 different work search activities". The appellant submits that the handout does not specify if it is supposed to be 5 different work search activities a day, a month or a week. The appellant also submits that it was never explained to her that she had to have 5 work search related activities a day until she received a phone call on December 13, 2012 explaining the requirements of an acceptable work search.

-the appellant handed in work search activities for August, September, October and November prior to the December 13, 2012 phone call and was never informed that the work search she was doing prior to this was unacceptable.

-the appellant submits that her vehicle was unable to be driven from December 16, 2012 until January 7, 2013 and that she did her work search from home during this time, but did not record the activities. During this time her children were home from school for school break and with no child care no work search was possible away from her family home.

-the appellant submits it is unreasonable for the ministry to expect a single parent to do work search during the Christmas break without child care or a vehicle. The appellant significantly improved her work search in January 2013 which is demonstrated by comparing her work searches of December 2012 with those of January 2013. The appellant submits that she was doing the requirements of her work search from January 7, 2013.

In her Notice of Appeal (NOA) dated March 27, 2013 the appellant disagrees with the ministry's reconsideration decision because she is currently working part-time and is still looking for full-time work or another part-time job to create full-time income. The appellant reports she did not hand in a pay stub or work search on March 5, 2013 as she was told by the ministry when she handed in her appeal paper that should wait for the decision of the appeal first.

At the hearing, the appellant gave oral testimony that, at the time, of signing her EP plan on August 16, 2012 she was provided a handout that referred to a requirement to undertake 5 different work search activities, but that it was never explained to her that this meant 5 different work search activities by day, week or month. On December 13, 2012 after submitting 4 months of work search activities the ministry advised her by phone of her requirements. The appellant notes, at this time, she

was still not advised of the requirement of 5 work search activities per day, but rather was told that she did not have enough job search contacts to meet the requirements of an acceptable work search. While she understood the requirement of spending 25 hours minimum per week on work search activities the ministry's reference to insufficient job search contacts left her with a misunderstanding of what exactly her requirements and obligations for work search activities entailed. Following this, the appellant reports she did her best to meet what she believed to be her obligation of work search activities through to January 17, 2013. During this period from December 16, 2012 to January 7, 2013 she did continue various work search activities, but they were not recorded as she was home bound with her children who required child care and because mice had chewed the wires in her car making it inoperable for external work search activities. She reports that her work search efforts were successful in that she secured a part-time job on January 31, 2013 and is working 20 hours per week. The appellant reports that for March and April she has been submitting her pay stubs and was prepared to submit her work search activities, but was told to hold these pending the results of her appeal.

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

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated March 12, 2013 that found the appellant ineligible for income assistance because she did not comply with the conditions of her EP due to not meeting the minimum work search activities required weekly and to be reported monthly under her EP.

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 the appellant has not demonstrated that she met the minimum work search activities requirement during any month since she signed her employment plan on August 16, 2012. It submits the employment plan was reviewed with the appellant on December 13, 2012 to ensure she understood the details of her requirements and to give her an opportunity to comply. Further, although the applicant claims she continued work search activities from December 16, 2012 to January 6, 2013 she did not record or submit these to the ministry as required to allow for verification. Further, the ministry submits that the appellant's January 2013 work search record only meets the minimum work search requirements of five activities per day on only 3 days: January 7th, 9th and 14th, 2013. Also the appellant has not provided confirmation of her employment status or reported income for February 2013 and has not provided any records to support continued work search activities.

The appellant argues that it was never fully explained to her nor did she ever understand that the requirement under her EP that stipulates 25 hours per week meant she was to complete 5 work search activities per day on work search activities and to report these by the 5th of each month. The appellant further argues it was unreasonable for the ministry to expect a single parent to do work search during the Christmas break without child care and no vehicle. She argues she was doing the requirements of her job search from January 7, 2013 and her work search was successful in that she obtained part-time work effective January 31, 2013 and even though she is working 20 hours per week she is still continuing her work search.

The panel finds that section 9(1) of the EAA provides that the minister may require that an applicant or recipient enter into an EP and comply with the terms of the EP in order to be eligible for income assistance. Section 9(3) of the EAA provides that the minister may specify the conditions in an EP without limitation. The panel finds the appellant failed to provide the ministry with a record of her employment search activities as required by the ministry in order to comply with the conditions of her EP. Under the circumstances, section 9 (1) empowers the ministry to declare the appellant ineligible for income assistance.

The panel finds that on December 13, 2012 the ministry, after reviewing the appellant's work search activities over a previous four month period, found that the appellant's record of work search activities consisted of only six activities per month. The appellant does not dispute that her records only consisted of six activities per month. The panel finds that the ministry undertook to explain to the appellant, at this time, the requirements in her EP regarding monthly work search activities and spending 25 hours minimum per week on job searches by subsequently describing these as the requirement to submit 5 work search activities per day for the 5th of the following month. The panel finds that the appellant's argument that she was not aware that she was required to provide 5 work search activities per day by the 5th of the month an insufficient explanation as to why she has not demonstrated 25 hours of work search. Despite the appellant's oral testimony that she never fully understood this requirement, the appellant signed off on February 28, 2013 acknowledging and confirming her full understanding of her EP work search requirement. The panel finds the appellant's job search activities for the months of December, 2012 and January, 2013 included on the record as inconsistent and insufficient against this requirement except for the 3 days as noted by the ministry of January 7th, 9th and 14th. Further, the panel finds that although the appellant may have undertaken home based work search activities during the period December 16, 2012 to January 6, 2013 there was no adequate justification or compelling reasons provided that prevented a recording of these activities. The evidence confirms that that the appellant read, understood and agreed to the conditions of her EP that includes the requirement to record her 25 hours of weekly work search activities to be reported on a monthly basis. Overall and based on the above analysis the panel finds that the appellant did not comply with the terms of her EP for the months of December 2012 and January 2013.

The panel finds that the ministry's decision to deny the appellant income assistance was reasonably supported by the evidence and the applicable legislation. The panel, therefore, confirms the decision of the ministry.