

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated July 30, 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 her failure to make reasonable efforts to participate in an employment-related program and with no medical reason for her non-participation.

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) Letter dated April 3, 2013 from the ministry to the appellant stating in part that an Employment Plan (EP) is required and her assistance cheque will be held until this has been received;
- 2) EP signed by the appellant dated April 12, 2013. The terms of the EP include provisions requiring the appellant to participate in the Employment Program of B.C. program regularly and as directed by the contractor. She will work with the contractor to address any issues that may impact her employability and complete all tasks assigned including any activities that may be set out in an action plan. She will notify the contractor if she is unable to attend a session or when she starts or ends any employment;
- 3) Letter dated June 4, 2013 from the ministry to the appellant stating in part that an EP review is required and her cheque will be held until this has been completed. As a condition of her EP, the appellant is to be attending at the contractor's office. The appellant has been non-compliant with the activities of her EP; and,
- 4) Request for Reconsideration- Reasons dated July 18, 2013.

In her Request for Reconsideration, the appellant wrote that she has been doing her best to look for a job but she was not informed where and what date to hand in the job search papers. The appellant wrote that she thinks the problems are not all her fault, but also that of the contractor case worker. The appellant wrote that she met with her caseworker at the beginning of April and discussed a Youth Skills Program that the appellant was interested in. The case worker left a message on the appellant's answering machine later that same day to let her know that a spot had opened up for the Program information session the following day. The appellant wrote that she did not listen to the case worker's message until after the information session was over. The appellant wrote that she later got a ride to the contractor's office and was told that they would be closed for 2 weeks and she should call them on May 4, 2013. The appellant stated that time slipped by with her looking for work, dealing with MCFD court dates, dealing with restricted foster care and the money she receives for her niece and nephew.

The appellant wrote that on June 21, 2013 she called her case worker and left a message. The case worker called back on June 25, 2013 and set up an appointment for July 8, 2013. They discussed the Youth Skills Program but, because the appellant was taking a family vacation out of the country at the end of August to see her sister, the case worker could not advise her to wait for the Program. The appellant wrote that the case worker said that because the appellant is not on assistance she is, technically, not her case worker. The appellant wrote that she called the Youth Skills Program on June 21, 2013 and was told that they were in negotiation with the government and to call back on July 4, 2013. She called back on July 4, 2013 and there was no answer. The appellant wrote that she called the Youth Skills Program again on July 16, 2013 because of the ministry's comment that the program was not closed down. The information given to the appellant was that they closed at the end of April 2013 for two weeks of holidays and that from that time until the middle of July 2013 they had no idea if the program was going to be continued. The appellant wrote that an agreement was reached and the appellant is on the list to be called about the information session with the program starting in October 2013. The appellant wrote that she did not understand that she was not allowed to go out of town and she still did the job searches and left her contact numbers in case someone called for an interview. The appellant wrote that she understands that she should have been in touch with the contractor but she was still trying to find a job and looking into the Youth Skills Program.

In her Notice of Appeal dated August 8, 2013, the appellant wrote that she is sorry that she made the mistake of not following through with her case worker. She was informed the Youth Skills Program would be on a 2-week break and to call back later. On June 20, 2013, she was told that the program was in negotiations for the contract and it was unknown if they would still be running the program. She called back on July 4, 2013 and there was no answer. On July 17, 2013, the appellant called again and was told that the information session would be booked for the middle of September and the program would be starting sometime in October 2013. The appellant wrote that she is in need of income assistance and her case manager told her that it would be

better for the appellant to be in the program because her resume is poor and she has no skills to obtain a job. The appellant wrote that she has had three different case managers.

At the hearing, the appellant stated that she has been looking for a job and completing the job search sheets, but her case worker did not tell her where or when to drop them off. The appellant stated that she has had 3 different case managers at the contractor which is confusing. The appellant stated that when she met with one case manager, she understood that the Youth Skills Program would not start for one to two weeks so she was not expecting to get a call later that same day. As it turned out, she did not hear the voice message that the case worker left later that day until after the information session was over. She had gone to her dad's place for dinner and took her niece swimming the next day. When she followed up to see about another information session, the contractor was closing for two weeks of vacation and she was told to call back on May 4, 2013. The appellant admitted that she did not explain to her case worker that she had been in contact with the Youth Skills Program, but stated that she had dealt with three different people and was not sure who she should contact. The appellant admitted that she went on a trip to another province for two weeks in May to help her niece move, but stated that she continued to look for jobs and had left her contact numbers if anyone wanted an interview. The appellant stated that she only got one email from the contractor and did not deny that she did not respond to it.

The appellant stated that she called back to the Youth Skills Program in June and was told the program was under consideration and they were not sure if it would be continuing. The appellant admitted that she did not call the program until June 21, 2013. The appellant stated that she felt the ministry was calling her a liar but she called the program 3 or 4 times and they kept saying that the program was on hold until the end of July. The appellant stated that she feels it is important for her to get into a program because she has no skills to put on a resume since she has only been a babysitter and most places need customer service skills. The appellant stated that she has already done the program about writing a resume in the past. The appellant stated that she met with her case worker on July 8, 2013 and the appellant advised her that she was going on a family vacation at the end of August and the case worker said she could not help the appellant because the appellant was "no longer with the ministry."

The ministry relied on its reconsideration decision which included evidence that the appellant signed an EP on April 12, 2013, thereby agreeing to participate in employment programming through a contractor. The conditions of her plan require that the appellant complete all tasks assigned and to notify the contractor if she is unable to attend a session. On June 4, 2013, the contractor advised the ministry that the appellant failed to attend the Youth Skills Program to which she had been referred by her case manager, and had failed to respond to their calls and emails requesting that she contact them. The ministry sent a letter to the appellant dated June 4, 2013 advising her that she was non-compliant with the conditions of her EP and to contact the ministry as soon as possible. On June 27, 2013, the appellant contacted the ministry regarding her July benefits. The ministry asked the appellant why she had not been participating with the contractor or responding to their various attempts to connect with her. The appellant stated that she contacted the Youth Skills Program but they advised that they were closing down and she had been in another province for two weeks in May to help move her niece to B.C.

At the hearing, the ministry clarified that it is not uncommon for a client to deal with one person at the contractor upon referral, and then to deal with another particular case worker or two, depending on the needs of the client. The ministry explained that it was not a condition of the appellant's EP that she complete job search sheets to submit to the ministry. The ministry stated that the Youth Skills Program is just one of many programs that the contractor could get the appellant involved with and the requirement was to stay in contact with the contractor.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant did not make reasonable efforts to comply with the conditions of her EP, with no medical reason for not participating, and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA).

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].

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. Under Section 9(3) of the EAA, the ministry has the authority to specify conditions in an EP, including a requirement that the person participate in an employment-related program. 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 fails to demonstrate reasonable efforts to participate in the program or if the person ceases, except for medical reasons, to participate in the program.

The ministry's position is that the appellant entered into an EP dated April 12, 2013 and, by signing her EP, confirmed that she read, understood and agreed to the conditions specified. It is a requirement in the appellant's EP to complete all tasks assigned by the contractor and the appellant failed to respond to the contractor's calls and emails. She should have notified her case manager immediately when she realized that she missed the information session for the Youth Skills Program. The ministry argued that although the appellant states that she left her contact numbers when she was out of town in case someone called for an interview, she did not respond to calls and emails from the contractor requesting that she get in touch with them. The ministry argued that there was no evidence of a medical issue that affected her ability to comply.

The appellant's position is that the problems are not all her fault, but also that of the contractor case worker. The appellant argued that the case worker gave very short notice of the date and time for an information session, having left a telephone message in the afternoon for a session the next morning. The appellant argued that she later went to the Youth Skills Program to get signed up for another session and was told that they would be closed for two weeks and she should call them on May 4, 2013. The appellant stated that time slipped by with her looking for work, dealing with MCFD court dates, and dealing with restricted foster care. The appellant argued that on June 21, 2013 she called the Youth Skills Program and was told that they were in negotiation with the government and they were not sure if the program would be continued. The appellant argued that on July 8, 2013 she met with her case worker and they discussed the Youth Skills Program but the case manager said she could not help her. The appellant argued that she did not understand that she was not allowed to go out of town and she still did the job searches and left her contact numbers in case someone called for an interview. The appellant argued that she understands that she should have been in touch with the contractor but she was still trying to find a job and looking into the Youth Skills Program.

The panel finds that the appellant signed her EP on April 12, 2013 and the EP includes conditions that she will work with the contractor to address any issues that may impact her employability, complete all tasks assigned including any activities that may be set out in an action plan, and notify the contractor if she is unable to attend a session. It is not disputed that the appellant missed an information session for the Youth Skills Program, but the appellant explained that her case manager left a voice message the same day of their meeting for a session the next day and that the appellant did not receive the message until after the session was over. It is also not disputed that the case worker did not speak to the appellant in person to advise her of the date and time for the information session and the telephone message was left less than 24 hours in advance, and the panel finds that this was not sufficient notice to reasonably expect the appellant to attend. However, the appellant admits that she did not contact the contractor to explain that she had missed the session, as required by her EP. The appellant stated that she, instead, contacted the Youth Skills Program and was advised that they would be closed for vacation for two weeks and to call them on May 4, 2013.

The appellant admits that she travelled to another province for two weeks in May 2013 and that she did not advise the contractor that she was leaving. While the appellant argued that she continued to look for a job during this time, she also admitted that she did not respond to the contractor's attempts to contact her, including telephone calls and at least one email. It was not until June 21, 2013 that the appellant contacted the contractor and followed up with the Youth Skills Program, and the appellant did not explain this delay other than to say that 'time slipped by' because she was busy with other issues. It is not disputed that the ministry sent the appellant a letter dated June 4, 2013 advising her that she was non-compliant with the conditions of her EP and to contact the ministry as soon as possible, and the appellant did not contact the ministry until June 27, 2013. The panel finds that the appellant did not advise the contractor that she was unable to attend the information session, she failed to respond to attempts by the contractor to contact her, and she did not stay in communication with the contractor regarding her travel or to inquire about her participation in other possible workshops or courses.

To 'participate' is to take part in or to be actively involved in, and the panel finds that the ministry reasonably determined that the appellant failed to make reasonable efforts to participate in the program. The panel finds further that there is no information provided to establish that the appellant has medical issues that restrict her from participating in her program. The legislation requires that the appellant demonstrate reasonable efforts to participate in the program, or to provide a medical reason for ceasing to participate in the program, and the panel finds that the ministry reasonably concluded, pursuant to Section 9 of the EAA, that the requirements have not been met in this case.

The panel finds that the ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.