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PART C – Decision under Appeal

The decision under appeal is the reconsideration decision dated July 22, 2013, in which the Ministry determined that the appellant was ineligible for income assistance for failing to comply with the conditions of his employment plan under s.9 of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 9.

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PART E – Summary of Facts

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

The evidence before the Ministry at reconsideration included the following:
• The applicant was advised of the original decision on June 5, 2013.
• On July 9, 2013, the appellant submitted a request for reconsideration.
• On July 22, 2013, the ministry reviewed the request for reconsideration
• On August 02, 2013, the reconsideration decision to deny income assistance was made and provided to the appellant.

On February 19, 2013, the appellant signed an employment plan (EP) agreeing to participate in an independent work search and to attend an orientation session at a contractor on February 26, 2013 at 10:00 a.m. As part of this plan, the appellant was required to contact potential employers, record monthly work search activities on the ministry form and submit the form with the stub for continued assistance, each month.
On May 31, 2013, the Ministry reviewed the EP and noted that the appellant had failed to submit any records of work search activities. The appellant stated that he had been dropping off the records, but not attached them to the stub for continued assistance. The appellant also stated that he had not attended the orientation session at the contractor because they required a referral form from the ministry. The appellant was scheduled for an appointment on June 4, 2013 to see a ministry worker to receive the referral form.

On June 4, 2013, the appellant did not attend the appointment.

On June 5, 2013, the ministry informed the appellant that he was not eligible for income assistance because he had failed to comply with his EP.

In his request for reconsideration dated July 8, 2013, the appellant stated that after he was referred to the contractor, they had moved offices and that he had to go back to the ministry for the referral form, as he was not registered. When he talked to the worker, she said that he had to come to the appointment the next day or he would be cut off benefits. When he came to the appointment, security said that he could not come in with his skates or just in his socks. When he returned, just over an hour later, the booth was closed. He dropped off his work search report.

In the Notice of Appeal dated August 1, 2013, the appellant states that he disagrees with the Ministry's reconsideration decision, because it is unreasonable.

At the hearing, The Ministry representative provided the following evidence;
-as part of the EP, the appellant had agreed to a supervised independent work search and was required to submit work search activity records on a monthly basis
-the appellant was asked to contact the contractor as a "self-referral". Therefore, he did not need a referral form from the Ministry as it is normal practice for the contractor to implement the work search process without a referral form

-in the 3 months from February to the beginning of June, no evidence of work search submissions was provided to the ministry.
-at the reconsideration, the appellant did not provide any copies of work search submissions
-normal practice is for submitted work search documents to be scanned by Ministry staff and added to the appellant's file. No submissions are on file.
-although a referral form for the contractor was not required, if the appellant had contacted the Ministry and requested one, he would have been given it
-the ministry also indicated that normal procedural at their office is not to refuse access to someone who has skates but to advise a worker of the problem in order to provide direction as to what to do. It is not unusual to have people show up at the ministry in socks or bare-footed, particularly children.

It was not clear for the panel, as to the date when the appellant states that he was refused admittance to the Ministry office because he was wearing his skates. This might have occurred after the February 19 meeting or for the June 4 meeting. As the appellant did not attend the panel hearing, this could not be clarified. Therefore, the panel finds that it cannot make such a determination but that in either way, it does not affect the determination of this case.

The panel determined that the additional oral evidence was admissible under s. 22 (4) of the EAA as it was in support of the records before the minister at reconsideration, in particular because it provides more information as to the process used at the ministry to deal with the type of issues raised by the appellant.

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PART F – Reasons for Panel Decision

The issue under appeal, is whether the Ministry's decision that the appellant was not eligible for income assistance, as he did not comply with the conditions of an EP under Section 9 of the EAA, is either a reasonable application of the legislation or is reasonably supported by the evidence.

Section 9 (1) b of the Employment and Assistance Act states that in order to be eligible for income assistance, the recipient must comply with the conditions of the employment plan. Section 9(4) of the Employment and Assistance Act, requires a person to make reasonable efforts to participate in an employment program, unless there are medical reasons.

The Ministry argued that the appellant agreed to a supervised independent work search EP, which included self-referral to a contractor and monthly submission of work search records with the stubs. From February 19, 2013, no work search submissions have been provided to the Ministry. In other words, three monthly submissions have been missed. The ministry further argued that even if the appellant was on a self-referral to the contractor, if he had requested a form from the Ministry, the referral form would have been provided.

The Ministry argued that it is not normal practice for a client to be refused admission because he was wearing skates, or socks. As a minimum, he would have been allowed to see the worker to reschedule an appointment. Nonetheless, the ministry argued that the appellant did not file his work search reports, that there is no trace of any report filed, and that he did not attend his orientation reports with the contractor. Therefore, he did not make reasonable efforts to participate in the program. Finally, the ministry's position is that no evidence was provided to show that any medical reasons existed that would prevent the completion of the EP.

The appellant argues that he did drop off his search reports and that if he did not attend to his orientation session with the contractor, it is because they had moved, that he needed a referral from the ministry and that when he tried to get that referral, he was turned away because he did not wear appropriate footwear.

The Ministry stated that even if the appellant was on a self-referral to GT Hiring plan, and had requested a form from the Ministry, the referral form would have been provided.

The panel finds that, although it is not clear from the evidence at what date that the appellant submitted that he tried to meet the Ministry worker and was refused admittance, the date is not critical to his submission. Whether the date was in February or June, normal Ministry practice would have been to provide a referral form and the panel finds that he has been without contact with the contractor and the ministry during at least 3 months of his EP. The panel finds that the ministry reasonably determined the appellant had failed to attend his orientation in February. Also, in the absence of any evidence provided by the appellant of his work search activities during those 3 months where he was to participate in his EP program, the panel also finds it was reasonable for the ministry to determine he had failed to report his monthly work search activity in the ministry form, as provided by his EP. Given that the appellant did not make any effort during those 3 months to comply with his EP, the panel finds the ministry reasonably determined he was not eligible for income assistance under s.9 of the EAA.

In conclusion, the panel finds the Ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.