

PART C – Decision under Appeal

The reconsideration decision dated 6 August 2013 determined that the appellant was not eligible for continued income assistance because she failed to demonstrate reasonable efforts to comply with the conditions of her Employment Plan (EP) as required under section 9 of the Employment and Assistance Act by failing to attend the scheduled workshops.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9.

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of:

- The appellant is a single, employable person with no dependant.
- An undated EP for the period 19 February 2013 – 2015 signed by the appellant with the condition to “work with the 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 if I am unable to attend a session or when I start or end any employment.”
- A 4-page document from a contractor dated 5 March 2013, signed by the appellant consisting of a work plan including the fact that the appellant would undertake the employment based workshops to learn the required job search skills and listing 5 workshops between and including 18 to 22 March 2013.
- A 4-page document dated 19 June 2103 titled Employment Program of British Columbia Action Plan listing 6 workshops from 18 to 25 March 2013 (workshop on 19 March has a mention “attended”) plus one workshop on 8 April 2013 with the mention “attended”. The appellant signed this action plan under the mention: “I [name] commit to 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.”
- A two-page document that appears to be a log about the appellant by the contractor between 20 February and 2 July 2013 including the following mentions:
 - 27 February 2013: Appellant attended orientation session on 27 February 2013 and scheduled to meet with worker on 5 March 2013 at 2 PM.
 - 7 March 2013: Appellant attended her intake appointment. It states that the appellant used to be a [specified employment] but that her licence has expired and that such job would be the quickest route to employment.
 - 22 March 2013: The appellant was a no show for a workshop on 20 and 21 March. Worker called the appellant who indicated she was sick and not going to sit for 3 hours in a room with others. The appellant was advised that a medical note would be required for further non-compliance activity. The appellant states she called the contractor worker that day and left a message. A note states: “Advised to reschedule.”
 - 25 April 2013: The appellant was informed that a cheque was ready for her to pay for her employment licence renewal. The appellant informed the contractor she was out of town on a family matter.
 - 29 April 2013: The worker talked to the appellant and confirmed that the cheque would be sent to her.
 - 14 May 2013: The appellant contacted the contractor to confirm that she had received the cheque and that her application for her employment licence renewal had been sent to the authorities.
 - 5 June 2013: The appellant informed the contractor that she had received her employment licence and that she had to leave again to attend to family matters and would be back after 20 June.
 - 5 June 2013: The worker calls the appellant to follow up and leaves a message on her voice mail. The appellant called back the same day, informing the contractor she is still out of jurisdiction.
 - 19 June 2013: Note mentions: “Client came in today after having been back [...] due to a

family emergency.” She provided the worker with a copy of her employment licence and is requested to complete her resume. She was registered to workshops the following week and a follow up appointment on 26 June.

- 24 June 2013: Worker calls the appellant to confirm Resume and Cover Letter workshop on 25 June.
 - 25 June 2013: The appellant called the contractor to reschedule her workshop. She was absent from workshops on 18, 19, 20 and 21 March. She had missed or had rescheduled several appointments and the ministry has not received any information regarding a job search and appellant has to report if she even applied for any jobs.
 - 26 June 2013: Appellant was absent from her 3 PM appointment and did not call or provide a reason for the absence.
 - 28 June 2013: Entry indicates: “[Ministry]: Client states she did not know she had to do a job search. Are there case notes to say a JS [job search] was required? JS requirements discussed, client states rescheduled her workshop to July? Please confirm. Thanks.”
 - 2 July 2013: The contractor worker spoke with a named ministry worker and mention he has “uploaded client most recent action plan as the MSD may be denying her benefits based on lack of job search.”
- An undated, 1-page document titled “Register Client for Workshops” indicating that the client did not attend the workshops scheduled on 18, 20, 21 March and 25 June 2013.
 - On 21 March 2013, according to the ministry’s notes, the contractor advised the ministry that the appellant had missed scheduled workshops without calling to say she would not be attending. The ministry worker called the appellant who indicated she was sick and was advised that a medical note would be required for further non-compliance activity. The appellant indicated she had called her case worker and had left a message.
 - On 20 June 2013, the ministry’s notes indicate that it put a hold on the appellant’s July income assistance to be issued on 26 June the reason being: “to discuss your lack of job search”. The worker tried to contact the appellant that day but she was not available and there was no ability to leave a message.
 - On 25 June 2013, the appellant did not attend a workshop that had been scheduled on 19 June but called to reschedule.
 - On 26 June 2013, the appellant did not attend her scheduled 3 PM appointment with her case manager.
 - On 27 June 2013, the ministry’s notes state: “Ministry EP worker called you [the appellant] this date. You stated that you missed the workshop because you went to the doctor again. Worker asked if you got a Dr’s note and you said no because you were not going to pay for it. Asked you why you went to the doctor again on a day that you had a workshop and you said that you cannot help when you get sick. Advised that clinics are open in the evenings as well. Your job search efforts were discussed. You indicated that no one told you to job search. It was requested that you submit your job search activities for June. You said you did not do much of a job search. You advised your phone was dying and the call was disconnected.”
 - On 2 July 2103, the ministry’s notes indicate the appellant called their “phone queue” and was advised that she needed to submit her job search and the appellant replied she had submitted it on 28 June. The appellant was advised that the document was not yet attached to her file and that it may take a few days for it to be attached. The entry continues: “The call between yourself [the appellant] and the phone agent ended when you swore at the ministry worker.” A second entry for that date states that a ministry EP worker returned the appellant’s call and continues:

"Advised that even though the job search was not attached yet, there were enough non compliant activities to date, i.e. missed workshops and missed appointments to be deemed non compliant with your [EP]. You were denied further Income Assistance. [...] You did not provide any mitigating reasons to why you were non compliant with your [EP]."

- In her request for reconsideration dated 22 July 2013, the appellant states that she did not attend the required workshops because she was ill and that she did not get any medical note because she did not have the money to pay for a doctor's note. She also indicates she had to leave the province to attend to a family emergency. She apologizes for expressing her frustration to the ministry worker, "as all of the extra stress in my life has made it very difficult to cope." She indicated she fears to end up on the street, homeless, if she does not get income assistance and that her life could spiral out of control as she used to have a severe drug problem that she had been able to overcome.
- With the appellant's request of reconsideration, there is an undated letter by the appellant's mother stating that her oldest daughter had suffered a severe health condition and that the appellant had to come to assist the family around 15 April until 25 April 2013. The appellant also helped taking care of her sister's child while the mother was at the hospital. They helped finance her trip back home. The appellant went again around 4 June 2013 until around the 12th again at the request of her sister as she was going back to the hospital and they also paid her way back.

In her Notice of Appeal dated 9 August 2013, the appellant states that she wants to argue her case via telephone for the reasons listed in the two letters that had been sent to the reconsideration officer, received at their office on 23 July 2013.

At the hearing, the ministry testified that most of the information in support of its decision to deny income assistance to the appellant came from information provided by the contractor, in particular the log and the two action plans that were provided as evidence to the reconsideration officer. The ministry also confirmed that even though the EP was not dated, it had been signed on 12 March 2013.

At the hearing, the appellant testified that in respect of the March workshops she missed, she was ill but did not want to go to the emergency ward and wait hours to see a doctor and preferred to cure herself at home. She also testified that she does not have a family doctor. In terms of the 25 June workshop, she testified that she went to a hospital for a medical condition that was very embarrassing to her and that she did not want to share with the contractor or the ministry. She also said that she did not get a prescription for medication nor did she request a doctor's note as she was afraid to have to pay for it and did not have any money for that. The panel noted that the appellant was still embarrassed when testifying about her medical condition. When asked whether the visit to the clinic was on the 25th or 26th of June, since she had missed both functions, she stated she was not sure but she thought it was the 25th.

The panel determined 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 that it did shed more light on the events described in the various documents.

The panel noted that there were significant discrepancies in the evidence presented and findings of

facts are in order. Thus the panel finds the following:

- While the contractor log mentions the appellant missed only 2 workshops in March, the first action plan dated 5 March 2013 describes 5 workshops to be taken on the 18, 19, 20, 21 and 22 March 2013. Further, the second action plan dated 19 June 2013 that appears to be retroactive as it deals with workshops in the past except for the 25 June workshop, bears the mention of the workshops that the appellant had attended as of the signature date; those were 19 March and 8 April. On that document, there is no mention of a 22 March workshop. As a result, the panel finds the workshops that the appellant did not attend were on 18, 20 and 21 March 2013.
- The panel accepts the evidence of the appellant that she was sick on those days and that is the reason why she did not attend those workshops and that she called on 22 March to reschedule. This is confirmed by the acceptance by the contractor that she was ill and by the appellant's uncontradicted testimony to that effect.
- The appellant did not attend the 25 June 2013 workshop but she did call the contractor to reschedule as mandated by her EP. The panel accepts her evidence that the reason she did not attend was because she went to a hospital to deal with a health issue and she did not get a doctor's note because she was concerned she would have to pay for it.
- The appellant failed to attend to her appointment on 26 June 2013 and did not call. No reason was provided.
- While the ministry had decided to put a hold on the appellant's income assistance on 20 June, there is no mention in the ministry's notes for 27 June that the appellant was informed of that fact and the panel finds she was not informed until the second call, on 2 July.
- The panel also accepts the fact that the appellant was confused with respect to a job search for the following reasons:
 - The first action plan dated 5 March 2013 mentions a job search only incidentally, on page 2, referring to a financial needs assessment and states more specifically: "...the Job Search Financial Supports are essential to participate in ESC services (e.g. transportation to and from ESC) and other job search related activities (e.g. job interviews and networking events) Client is confirmed as being legally entitled to work in BC." The remainder of the action plan is for the appellant to attend workshops, get a renewal for her employment licence and "to book a dress for success referral".
 - The 12 March 2013 EP does not specifically mention any job search.
 - The second action plan dated 19 June 2013 also only mentions a job search incidentally, in the same terms as the first action plan, at page 3 under the heading "Summary of Financial Support". In terms of follow up, at the bottom of that page it states: "Client has received her [employment] license and will be updating resume for the purposes of job search in [that] field."
 - The contractor worker was also confused about this: in the log for 28 June, the worker wrote: "Are there case notes to say a JS was required? JS requirements discussed [with appellant]. Client states rescheduled her workshop to July? Please confirm."
- Initially, the ministry wanted to deny income assistance to the appellant for failing to do a job search but once it realized that the appellant had filed her job search for June 2013, it fell back to the missed workshops in March and June, for lack of a doctor's note. This appears from the reconsideration decision that only refers to missed workshops (in the rationale for the decision there is even no mention of the missed appointment). It also transpires from the following:
 - Notes from the ministry for a first phone call on 2 July 2013 when the agent advised the appellant that she needed to submit a job search and there was no mention of missed

workshops.

- Notes from the ministry for a second phone call on the same day when the worker mentioned that "even though the job search was not attached yet, there were enough non compliant activities to date i.e.: missed workshops and missed appointments to be deemed non compliant..."
- Contractor's log entry of 2 July 2013 stating that the worker had spoken with a ministry representative and he has "uploaded client most recent action plan as the MSD may be denying her benefits based on lack of job search."

PART F – Reasons for Panel Decision

The issue under appeal in this case is whether the ministry's decision that the appellant was not eligible for income assistance because she failed to demonstrate reasonable efforts to comply with the conditions of her EP as required under section 9 of the EAA, by failing to attend workshops, was either a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation in this matter is s. 9 of the EAA:

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...

(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...

(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*].

The ministry argued that the appellant had been assigned the task of attending workshops to assist her finding employment but that she missed a number of workshops (3 in March and 1 in June 2013) without being able to supply any medical documentation indicating she suffered from any medical issues that would have impacted her ability to attend employment programming. Since the appellant had not demonstrated having made reasonable efforts to comply with the conditions of her EP, or that she had any mitigating circumstances that prevented her from complying with the conditions of her EP, she was not eligible for income assistance.

The appellant argued that she had already attended all the workshops she previously had to attend and that she missed those workshops in March and June because of illness. She did not provide a medical note for the March workshops because she did not even go see a doctor at emergency, fearing there would be too much of a wait and she did not want to leave her house. For the workshop in June, she did call the contractor to advise that she could not attend and to reschedule. She was

aware a medical note might be required but explained that she was concerned she would have to pay the clinic for that and did not have the money. In her submissions, she also argued that she was absent from the jurisdiction for a few weeks in April and in June because of a family emergency and that she had advised the ministry of that.

The panel finds that this matter really boils down to only one missed appointment on 26 June 2013. For the three workshops in March, the panel finds the appellant was indeed ill and had contacted her case worker and left a message. Further, it appears from the evidence that the contractor accepted the appellant's explanation and indicated that a medical note would be required if that happened again in the future. The panel notes that medical reasons are an excuse if a person "ceases to participate in the program" and finds that it is also a justification even though the person may not "cease" to participate in the program but cannot participate in one or few of its activities. Thus, the panel finds it was reasonable for both the contractor and the ministry to be satisfied at that time that the appellant had demonstrated reasonable efforts to participate in the program.

In terms of the 25 June workshop, the panel finds the appellant did call the contractor to reschedule to July as this appears on the contractor's log, the basis for the ministry's notes in that respect. There was no evidence provided that would suggest the contractor did not agree to reschedule this workshop. The panel finds she was complying with a condition of her EP that clearly stated: "I will notify the contractor if I am unable to attend a session...".

The panel finds that the appellant failed to attend to her scheduled appointment on 26 June 2013, that she did not call and provided no reason for failing to attend, in contravention of her EP. As a result of missing the 25 June workshop the ministry contacted the appellant on 27 June 2013 asking for the reasons why the appellant had missed her workshop (on the 25th) but there is no evidence there has been any discussion about the missed appointment (on the 26th) and at that point the issue of the job search was raised with the appellant. The panel finds the appellant immediately complied and filed her job search for June the next day even though the month was not finished yet and even though it was not a specific condition of either her EP or her two action plans.

It is obvious from the record that on 2 July 2013, the ministry had already decided to determine the appellant not eligible for income assistance for non-compliance with her EP, whether it was for a lack of job search or for missing workshops and appointments. The panel notes that contrary to what is mentioned in the ministry's notes to the effect that the appellant had missed "appointments", the evidence shows only one missed appointment. The panel finds it was unreasonable for the ministry to determine at that stage that the appellant had not made reasonable efforts to comply with her EP. S. 9(4)(i) of the EAA states clearly that a recipient must demonstrate "reasonable" efforts – not "every" efforts – to comply with the program. She had a valid reason for not attending workshops (health issues that are recognized under s. 9(4)(ii)) and while the panel does not dispute the reasonableness for the ministry to ask for a medical note, the contractor did not require one for the March missed workshops but only warned her that in the future it would be required and for the one workshop in June that she missed, she called the same day to reschedule, as mandated by her EP.

Thus, the only actual, real non-compliance event is a missed appointment on 26 June at 3 PM that she did not remember at the hearing and for which the contractor and the ministry did not ask any explanation, cutting her off from income assistance even before she could have responded, if they

had asked. Consequently, the panel comes to the conclusion that the appellant did demonstrate reasonable efforts to comply with her EP and that the ministry unreasonably determined she was not eligible for income assistance under s. 9 of the EAA.

The panel finds the ministry decision was not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the decision. Therefore, the ministry's decision is overturned in favour of the appellant.