

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated September 16, 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 his Employment Plan (EP), due to his failure to make reasonable efforts to participate in an employment-related program and with no medical reason for his 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) Action Plan dated February 13, 2013;
- 2) Employment Plan (EP) signed by the appellant dated March 15, 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. He will work with the contractor to address any issues that may impact his employability and complete all tasks assigned including any activities that may be set out in an action plan. He will notify the contractor if he is unable to attend a session or when he starts or ends any employment;
- 3) Letter dated June 3, 2013 from the ministry to a third party stating in part that an EP review is required and requesting that the appellant contact the ministry to discuss his employment obligations;
- 4) Letter dated August 22, 2013 from the ministry to a third party stating in part that job search information and an EP review is required and requesting that the appellant contact the ministry to discuss his failure to comply with the conditions of his EP; and,
- 5) Request for Reconsideration- Reasons dated September 4, 2013.

In his Request for Reconsideration dated September 4, 2013, the appellant wrote that he missed a few appointments with the contractor, that days were mixed up. He was looking after a sick child. Now he has a better understanding and will comply with tasks. The appellant also submitted a Request for Reconsideration dated September 18, 2013 in which he wrote that he has many barriers, many challenges to overcome. He is hindered by the lack of education and/or certification.

In his Notice of Appeal, the appellant wrote that there are a number of other facts and events that have to be considered, such as Treaty meetings. Two injuries kept him immobile for a few days.

At the hearing, the appellant stated that he thinks the biggest problem causing him to be denied is that he did not transfer enough information since he had several things going on at the time. The appellant stated that he was being uprooted at this time, he was being stripped from his community and his future was uncertain. He received a letter in June 2013 that his family was to get out of their native housing with no reason except that the building envelope was being repaired. The appellant stated that there were misrepresentations made because they were originally told that they could move back in after the renovations but then the place was "sold off." The appellant stated that in July 2013 he was trying to figure out where to move a family of 5 people on a limited budget and he did not have time for 25 hours each week of job search activities. The appellant stated that they were fortunate to find a place to live, even though smaller than their previous residence, but he also had problems with the move. The appellant stated that he told the ministry about the move, which was delayed and actually occurred on August 7, 2013. Prior to the move, he was doing some repairs and had an injury to his face and, during the move, he injured his back. The appellant stated that the move was also very stressful for him as some boxes were thrown out which were supposed to be moved.

The appellant stated that in May 2013 he attended for a workshop but was told that he had already taken the course, so he left. He did not attend the following days because he understood that he did not need to take the workshops again. His daughter was sick at the time as well. He also got sick with the flu around May 15, 2013 and was "not thinking right", but he is not going to run to the doctor every time someone in his family gets sick. There is usually a charge to get a letter from the doctor and he cannot afford it. In response to questions, the appellant acknowledged that the conditions of his EP were explained to him and that he understood that the consequences for non-compliance would be a denial of income assistance. The appellant acknowledged receiving the letters from the ministry dated June 3 and August 22, 2013 which were addressed to his partner. The appellant stated that his partner has some mental health issues, that she is applying for Persons With Disability (PWD) designation, and that he also has to help her much of the time, as well as take care of the children. The appellant stated that the ministry called him after the August 22, 2013 letter was sent to him and he was advised that he was no longer eligible for income assistance.

The appellant stated that he has also spent time assisting a non-profit society in an effort to develop his resume. His education level is around grade 9, he has no additional education and no certification so there is not much currently on his resume. He is looking at security guard training as a possible employment option. The appellant stated that the action plan with the contractor was not very specific and he was not sure if the time he spends commuting to the activities could be included as part of the 25 hour per week requirement. The appellant stated that he did not realize that he would have to account for "every little detail" of his activities during this time period and many of his papers are at home "in the clutter."

The ministry relied on its reconsideration decision which included evidence that the appellant signed an EP on March 15, 2013, thereby agreeing to participate in employment programming through a contractor. The conditions of his plan require that the appellant complete all tasks assigned and to notify the contractor if he is unable to attend a session. On April 15, 2013, the appellant notified the contractor that he would be unable to attend an appointment as his child was sick. On April 19, 2013, the appellant attended the re-scheduled appointment and the contractor assigned the appellant the task of updating his resume and covering letters in preparation for job fairs and doing a job search, and the next appointment was scheduled for May 2, 2013. The appellant did not attend the appointment on May 2, 2013 and did not notify the contractor. The contractor contacted the appellant and re-scheduled an appointment for May 8, 2013. On May 8, 2013 the appellant attended the appointment but had not completed the tasks assigned to him on April 19, 2013. The appellant was advised of the requirement to attend computer training workshops on May 10, May 15 and May 22, 2013 and the next appointment with the contractor was scheduled for May 24, 2013.

On May 10, 2013, the appellant attended the workshop but did not stay to complete it. The appellant did not attend the workshops on May 15 or May 22, 2013 and did not notify the contractor. On May 24, 2013, the appellant did not attend the appointment with the contractor and sent an email stating that his son had to go to the dentist and that he would call to re-schedule. On June 3, 2013, the ministry sent the appellant a letter requiring him to contact the ministry regarding his EP. On June 11, 2013, the appellant met with the ministry and the consequences for non-compliance with the EP were reviewed and the appellant indicated he understood. On June 28, 2013, the appellant met with the contractor and he advised that he would be moving. The appellant confirmed with the ministry that he understood the requirement to balance family and job search obligations. On July 31, 2013, the appellant notified the contractor that he could not attend the scheduled appointment and it was re-scheduled for August 15, 2013. On August 15, 2013, the appellant did not attend the appointment or notify the contractor. On August 16, 2013, the contractor attempted to contact the appellant by telephone and sent an email to the appellant advising him of the re-scheduled appointment for August 21, 2013. On August 21, 2013, the appellant did not attend the appointment or notify the contractor.

On August 23, 2013, the ministry contacted the appellant to discuss the unsatisfactory participation with the contractor and the appellant stated he was very busy. He had moved and his spouse was babysitting their grandchild. The new house needed cleaning and repairs as well. The appellant stated that he hurt his eye while moving and that is why he missed one appointment. The appellant stated that he got the days mixed up and missed another appointment, and that he is involved with a non-profit society which is also time-consuming. At the hearing, the ministry clarified that the ministry can provide assistance with the cost of letters or notes from medical professionals to confirm an illness. The ministry also explained that although the appellant's work with the non-profit society may qualify as part of the required job search activities, the appellant did not submit the job search reports, which are not required in a particular format and can simply be written out on a sheet of paper. The ministry stated that it is likely that the appellant's commuting for the purposes of attending required activities would also qualify as time towards his job search activities.

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 his 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 March 15, 2013 and, by signing his EP, confirmed that he read, understood and agreed to the conditions specified. The ministry argued that the conditions of the appellant's EP and the requirement to participate with the contractor were provided to the appellant in writing and were also discussed with the appellant at the time and reviewed with him on June 11, 2013. The ministry argued that it is a requirement of the appellant's EP that he complete all tasks assigned by the contractor and the information establishes that the appellant did not attend all of the appointments with the contractor or notify the contractor each time he was unable to attend. The ministry argued that the appellant has not provided information to establish that he made reasonable efforts to ensure that he would not miss

appointments such as writing them on a calendar. The ministry acknowledged that the appellant has childcare responsibilities but argued that they do not negate his obligation to comply with the conditions of his EP and there was no indication of an effort to coordinate childcare duties with his spouse or make other arrangements. The ministry argued that none of the other reasons the appellant provided, such as moving or cleaning house, explain why the appellant has repeatedly failed to participate as required.

The appellant's position is that he has many barriers, many challenges to overcome and he is hindered by his lack of education and/or certification. The appellant argued that he missed a few appointments with the contractor because the days were mixed up, he was looking after a sick child and he got sick with the flu, he had Treaty meetings, and two injuries kept him immobile for a few days. The appellant argued that in May 2013, he was told by the contractor that he had already taken some of the courses and he understood that he did not need to take them again. The appellant argued that in July 2013 he was trying to figure out where to move a family of 5 people on a limited budget plus cleaning and repairing homes and he did not have time for 25 hours each week of job search activities. The appellant argued that his partner is applying for PWD designation because of mental health issues so he also has to help her.

The panel finds that the appellant signed his EP on March 15, 2013 and the EP includes conditions that he will work with the contractor to address any issues that may impact his employability, complete all tasks assigned including any activities that may be set out in an action plan, and notify the contractor if he is unable to attend a session. In terms of tasks assigned to the appellant, it is not disputed that the contractor asked the appellant on April 19, 2013 to update his resume and covering letters in preparation for job fairs and doing a job search, and that this was not complete, as required, by the re-scheduled appointment on May 8, 2013. The appellant stated that the action plan with the contractor was not very specific about the requirements for job search activities, and the ministry did not offer further evidence of the specific requirements.

The appellant attended some appointments with the contractor over the period from May 2, 2013 to August 21, 2013, but he does not dispute that he also missed several scheduled appointments and that on many occasions he did not notify the contractor that he would not be attending or the reason for his absence. While the appellant described several challenges that he had to deal with over this time period, including a sick child, demanding volunteer work, the move of his family, and two injuries he sustained, he did not provide an explanation for not contacting the contractor to provide notice and the reason for his non-attendance at several appointments. The appellant acknowledged that he received the ministry's letter dated June 3, 2013 and that the ministry reviewed with him the consequences for non-compliance with his EP and that he understood. However, the appellant subsequently missed two appointments, on August 15 and 21, 2013, after his move had been completed, and again did not notify the contractor. The appellant stated that he sustained a bruise to his eye prior to his move and an injury to his back during the move and that these incapacitated him for a couple of days, but the appellant did not suggest that the injuries prevented him from continuing in the program and he did not provide medical information to that effect.

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 him from participating in his 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.