

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 10, 2013 which held that the appellant is not eligible for income assistance pursuant to section 9(1)(b) as he has not complied with the conditions of his employment plan (EP) because he failed to demonstrate reasonable efforts to participate in the program pursuant to section 9(4)(a) and has not provided any medical reason to substantiate that he is unable to participate in the program pursuant to section 9(4)(b) of the Employment and Assistance Act.

### PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9.

## PART E – Summary of Facts

The ministry attended with a co-op student and after confirming with the appellant that he had no objection for the student to sit through the appeal as an observer, the hearing commenced.

The evidence before the ministry at the time of reconsideration included: (a) a Client Connect Log opened February 15, 2013; (b) an Employment Readiness Information Questionnaire dated June 25, 2013; (c) a ministry Employment Plan (EP) signed by the appellant and dated July 24, 2013; (d) the appellant's Action Plan effective August 23, 2013; and (e) the appellant's Request For Reconsideration dated September 27, 2013.

On June 25, 2013, the applicant completed a ministry Employment Readiness Information Questionnaire providing his work history and job search skills.

On July 24, 2013, the appellant entered into an EP with conditions as follows:

Participate fully and to the best of the appellant's ability in the activities required by the ministry or contractor as set out;

- Attend appointment with the employment contractor on July 26, 2013 at 1:00 pm,
- Participate in EP programming regularly and as directed by the contractor,
- Work with the contractor to address any issues that may impact the appellant's employability,
- Complete all tasks assigned including any activities that may be set out in an action plan,
- Notify contractor if unable to attend a session or when starting or ending any employment,
- Declare all income, report any changes to the ministry,
- Attend all ministry review appointments,
- Meet weekly with case manager/programs and workshops regarding client activity report.

By signing his EP, the appellant acknowledged that;

- it is a condition of eligibility for income assistance,
- he must comply with the conditions as set out in this plan including any condition to participate in a specific employment - related program,
- the contractors have the ability to report back on the appellant's activities,
- he may be required to provide verification of his compliance with the conditions of this plan, including proof of active work search and/or records of attendance and participation in an employment-related program as required by the ministry,
- he understands that if he fails to comply with the conditions of his EP, he will be ineligible for assistance under the Act.

### ***Appeal Record Chronology***

A 2013, Client Connect Log for the appellant indicated that he failed to show for appointments scheduled for July 26 at 1:00 pm, July 30 at 12:00 pm, August 1 at 9:00 am and August 20 at 9:00 am. An appointment was also scheduled for September 5 at 2:00 pm with no status indicated.

On August 7, 2013, the ministry sent the appellant a letter to remind him about the requirements of his EP to meet with the service provider and participate in ongoing workshops and programs. The ministry further stated that an appointment was to be scheduled with the contractor and non-attendance may impact his eligibility to receive Income Assistance.

On August 20, the contractor closed the appellant's file for non-participation but re-opened it after receiving a call on August 23, 2013 from the appellant because he said he was worried about missing a 10:00 am appointment that morning (actually it was scheduled for 9:00 am on August 20). The appellant attended the

contractor's office at 2:00 pm, at which time his Action Plan (AP) was completed, his participation obligations were reviewed and an appointment to work on his resume was rescheduled for September 5. The AP included the appellant's Current Employment Goals, Considerations, Employment Needs and Activities.

On September 5, 2013, the appellant did not show for his appointment with the case manager.

On September 6, 2013, the ministry sent the appellant a letter requesting him to contact their office by Wednesday September 25, 2013 to discuss why he did not follow through with his EP.

On September 25, 2013, the appellant attended the ministry for his income assistance cheque and was advised that unless he can present mitigating circumstances as to why he did not follow through with the conditions of his EP, he was not eligible for income assistance. The appellant stated at that time that he had no medical conditions or barriers which would have prevented him from complying with the conditions of his EP. The appellant was also asked for his work search for that period but did not have one to present to the ministry.

In the appellant's Request For Reconsideration dated September 27, 2013, he writes that when he went to the contractor's office, he was told that they had called him 3 times. He then determined that the telephone number that they had used was wrong, so he gave them his current phone number. The appellant stated that he met with his caseworker who had been away from September 6-26, 2013 and also e-mailed her for a second appointment. He indicates that he was told by the contractor's front counter staff that he had been compliant.

#### ***Oral Testimony by the Appellant***

At the hearing, the appellant testified that he has been a single father for 2 years and that he has been actively looking for work. The appellant stated that he had requested that the ministry send him to the contractor because through the contractor he could get his Food Safe certification. He indicates that despite the contractor having the wrong phone number for him, he has not missed any appointments of which he was aware. The appellant stated that the contractor has told him that he was compliant; it is the ministry who has deemed him non-compliant. He indicates that he had attended 2 & 1/2 days of a 4 day workshop in early July 2013, missing the 4<sup>th</sup> day because he had an interview. In response to a question by the panel, the appellant confirmed that he does use e-mail and that he attends the contractor's office weekly on Tuesdays, noting that his caseworker was on holidays for 3 weeks. In response to another question by the panel, the appellant indicated that he had missed his July 26, 2013 intake appointment because he had to pick up his daughter from camp when her mother couldn't pick her up.

The appellant also submitted original copies of Work Search Activities Records for July and August 2013, which he stated were requested by the ministry when he met with them on September 25, 2013. He explained that these Work Search Activities Records were not required by the contractor but he prepared them for his own records only.

#### ***New Information***

At the hearing, the appellant submitted his Work Search Activities Records for July and August 2013.

The ministry representative upon review of these records indicated that she had no objection to their being accepted as evidence and intended to address their relevancy during her testimony.

#### ***Oral Testimony by the Ministry***

The ministry representative confirmed that while the contractor's records indicate that an incorrect phone number for the appellant had been used, the contractor must have had contact with the appellant in order to reschedule his appointments. She further stated that leaving a voice mail message or sending an e-mail only is not the contractor's practice. The ministry also explained that once a client is referred to the contractor then the ministry relies on their feedback and progress reports, having nothing other than those records to go on. She indicated that the Client Connect notes are not ministry documents; they are the contractor's notes. The ministry stated that the appellant's non-compliance in regards to appointments is based on the arrangements the contractor has made with the appellant. While the ministry uses Work Search Activities Records, the ministry representative stated that in the case of the appellant, his EP sets out his reporting requirements that are to be used with the contractor.

### ***Admissibility of Evidence***

The panel has admitted the appellant's Work Search Activities Records for July and August, 2013 as well as the testimony from the appellant and the ministry as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the Employment and Assistance Act.

### ***Findings of Fact***

The appellant is a single, employable recipient with one dependant.

On July 24, 2013, the appellant entered into an EP with specific requirements and by signing his EP, the appellant agreed that he acknowledged and understood compliance with the EP and actions for non-compliance.

The appellant failed to show for the following scheduled appointments: July 26 at 1:00 pm, July 30 at 12:00 pm, August 1 at 9:00 am, August 20 at 9:00 am and September 5 at 2:00 pm, 2013.

The last time that the appellant met with the contractor was August 23, 2013 which was after his file was closed and then re-opened, when he attended their office at which time they set out his Action Plan.

On September 6, 2013, the contractor advised the ministry that the appellant's file was being closed and returned to the ministry for no-contact/non-compliance.

On September 6, 2013, the ministry sent the appellant a letter requesting him to contact their office by Wednesday September 25, 2013 to discuss why he did not follow through with his EP.

On September 25, 2013, the appellant attended the ministry for his income assistance cheque and was advised that unless he can present mitigating circumstances as to why he did not follow through with the conditions of his EP, he was not eligible for income assistance.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant income assistance because the appellant failed to comply with the conditions of his EP pursuant to section 9 of the EAA.

### Relevant Legislation

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.

Based on the appeal record, the ministry maintains that having signed the EP, the appellant read, understood and agreed to the conditions specified in the plan. The ministry determined that the appellant did not complete all tasks assigned by the contractor, did not attend all the appointments with the contractor and did not notify the contractor each time he was unable to attend. The ministry notes that the appellant missed one appointment due to illness but has not provided any verification of any illness or indicated why he did not notify the contractor as required. The ministry also noted that the appellant missed an appointment due to a scheduling conflict and notified the contractor by e-mail, but he does not explain why he had scheduled another appointment at the same time as the EP appointment. While the ministry acknowledges the appellant's submission that the contractor did not have his correct phone number, this does not explain why the appellant missed appointments that were booked in person or by e-mail. The ministry also determined that as per the appellant's EP which requires the appellant to contact the contractor at least once every 2 weeks; the information provided by the contractor indicates that the appellant made no contact with them between August 23 and September 25, 2013. Additionally, when the ministry requested documentation for the appellant's work search activities, the appellant was unable to provide verification that he had been conducting an active, thorough and documented work search as set out in his EP action plan that he signed on August 23, 2013.

In regards to the appellant's Request for Reconsideration, the ministry has found that when the appellant was told on September 25, 2013 by the contractor's receptionist that he has been compliant; this was a tentative statement based on limited access to information not consistent with the other information provided by the contractor and does not establish that the appellant was making reasonable efforts to participate in programming provided by the contractor. While the ministry notes that the appellant has since contacted the contractor and arranged for a second appointment, the ministry finds that this demonstrates a marginal level of involvement that appears to have occurred only after the appellant was advised of the denial of income assistance, and does not address the pattern of non-participation established over the prior two month period for which the EP was in effect.

The appellant's position is that he did participate in his EP, that he had maintained contact with the contractor and that he has been actively looking for work. He indicates that despite the contractor having the wrong phone number for him, he has not missed any appointments of which he was aware. The appellant stated that

the contractor has told him that he was compliant; it is the ministry who has deemed him non-compliant. He indicates that he had attended 2 1/2 days of a 4 day workshop, missing the 4th day because he had an interview. The appellant also confirmed that he does use e-mail and that he attends the contractor's office weekly on Tuesdays, noting that his caseworker was on holidays for 2 weeks. Also, the appellant disputes the contractor's evidence to the effect that he failed to inform her that he would not attend the workshops and that he had failed to attend many workshops.

### ***Panel's Findings***

In determining the reasonableness of the ministry's decision, the panel finds that the appellant entered into an EP on July 24, 2013 which required him to participate fully and to the best of his ability in the activities required by the contractor. While the appellant argues that he was compliant, and is actively searching for work; the panel finds that the evidence does not support that he attended all the appointments scheduled with the contractor or that he notified the contractor each time he was unable to attend. The panel accepts that the appellant met with the contractor on August 23, 2013, which was after his file was closed and then re-opened, when he attended their office at which time they set out his Action Plan. However; the panel finds that there is no evidence to support that the appellant undertook any of the activities as specified in the Action Plan and specifically did not meet with the contractor at least once every 2 weeks by phone, e-mail or person as required. The panel finds that the Client Connect log does not show that any contact was made by the appellant after August 23, 2013 until September 25, 2013.

By signing the EP, the appellant acknowledged that he understood the conditions as set out and agreed to them; however the panel finds that he failed to comply. The evidence is that the appellant was aware of the consequences of not complying with the conditions of his EP and there is no evidence that he did not comply due to medical reasons. Therefore, the panel finds that the ministry reasonably determined that the appellant had not made a reasonable effort to participate his employment program pursuant to section 9(4) of the EAA, to be eligible for Income assistance pursuant to section 9(1).

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.