APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated September 19, 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).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 9

APPEAL #

PART E – Summary of Facts

With the assistance of his advocate who also provided language translation, the appellant consented to the attendance of a ministry observer at the hearing.

The evidence before the ministry at the time of the reconsideration decision included:

1) Employment Plan (EP) signed by the appellant and dated February 21, 2013.
2) Employment Plan (EP) signed by the appellant and dated May 31, 2013. The terms of the EP include provisions requiring the appellant to:
   -update and distribute his resume to all potential employers;
   -to seek out and pursue all available resources and employment opportunities;
   -to record his monthly work search activities on the ministry form and provide these to the ministry;
   -to record all activities he does that help make him more employable, e.g. counseling sessions, medical appointments, etc. and he understands that these activities fall within his work search requirements;
   -that the ministry expectation is that he spends 25 hours minimum per week on work search activities;
   -the reporting requirements are by the 5th of every month showing 5 activities per day for 5 days per week;
   and the statement: "I am aware that I can contact the Employment Program of BC for self serve services to determine if their resources could assist me to achieve my work search goals and assist me to overcome my barriers";
3) Work Search Activities Record for June 2013 showing 14 listed activities;
4) Work Search Activities Record for July 2013 showing 14 listed activities;
5) Work Search Activities Record for August 2013 showing 14 listed activities similar to those listed for July;
6) Request for Reconsideration- Reasons dated September 4, 2013.

In his Request for Reconsideration, the appellant wrote that English is his second language. He used the little that he has to communicate with the ministry. He did not understand everything in the conversation. He was not advised to not apply for the same job when doing his job search. He got this idea when he attended a program two years ago. He was told that in order to get hired by any company he should apply many times to the same company so they will know that he is really serious about the job. This is what made him apply to the same jobs every day. The ministry should have requested an interpreter to explain to him exactly what is needed in the job search program. The appellant wrote that he was not even given a warning that if he brings the same activities about job searching, that he will be denied benefits. The appellant wrote that he was just doing what he was told by the ministry and he was surprised when his assistance was denied.

In his Notice of Appeal, the appellant indicated that he disagreed with the ministry's decision and wrote that English is his second language. He cannot read or write English. A friend helped him fill out his job search. He did not understand all the details for looking for work. When the worker told him to sign his name, that is what he would do, but he did not understand the rules about looking for work.

At the hearing, the advocate stated that the appellant was told to sign a document that he did not understand. The advocate stated that the appellant cannot read or write in the English language. The advocate stated that his agency has employees who speak several different languages and when someone is requested to assist, they will attend and provide translation. The appellant cannot sign to indicate that he understands the conditions and the consequences when he cannot read the document. The advocate stated that the appellant had a friend prepare the work search records based on information that the appellant provided in their native language. The advocate stated that the appellant needed help understanding the process and the ministry did not request the assistance of language translation. The advocate stated that the appellant was taking English as a Second Language (ESL) classes and he does not yet know the alphabet but he had to go and look for work so he could not finish Level 2. In response to a question, the appellant stated that he attended ESL classes in 2002 and 2003. The appellant stated that he went in the last 6 months to talk to the coordinator about getting involved in classes again and he was told that there is no room in the classes until March. The appellant cannot express himself in English and, therefore, cannot get a job. He went to many companies to

drop off a resume but no one called him. There was one company that allowed him to work for a period of time but then the business slowed down, and that has been the appellant's only work experience in Canada.

The appellant stated that the work search records for activities in July and August 2013 are very similar because he thought he should apply to a company more than once to show he was "serious." The appellant stated that he will sometimes get a ride to the company office with a friend, or he will ride his bike, and that he does not get assistance with translation for submitting his resume. The appellant stated that his understanding about the requirements for his work search activities was taken from a letter he received from the ministry which stated that he had to contact 15 companies within a month. The appellant stated that the letter was explained to him by a friend. The appellant did not provide a copy of the letter at the hearing and the ministry was not aware of the particulars of a letter sent to the appellant. The appellant stated that he also went several times to a temporary worker service office and would sit and wait all morning, until noon, to see if a job opportunity would arise. In response to a question, the appellant stated that he did not fill out any forms to qualify for this service and he is not familiar with the day labour registration form. The appellant stated that he went to this office in August, as well as 3 times in September and 2 times in October.

The appellant acknowledged that an interpreter had been provided at the time that he applied for income assistance but the person who attended did not speak the dialect of his language that the appellant could understand. The appellant did not say anything because he thought the ministry would provide a different interpreter. The appellant acknowledged that he does not have an interpreter with him when he goes about in the community and does his shopping and other activities. The advocate stated that the appellant has come to him a few times for assistance and he has helped him to update his resume, for example. The advocate stated that the appellant was receiving income assistance "2 or 3 years ago" and the advocate assisted him at that time. The advocate has also more recently assisted the appellant with resolving matters relating to GST and citizenship. The advocate stated that it is a rule in his agency that all requests for interpretation go through one person and that a request must be made by the ministry before he can assist with interpretation. The advocate admitted that a request can also be made by the client for assistance.

The ministry's evidence included that the appellant most recently signed an EP on May 31, 2013 for an independent work search. The conditions of his plan require that the appellant spend a minimum of 25 hours per week on work search activities and submit a work search activities record by the 5th of each month showing 5 activities per day, 5 days per week. The conditions of his EP also advised the appellant that he may access employment services for the Work BC location closest to his residence to determine if their resources could assist him with achieving his work search goals and to overcome his barriers. The ministry reviewed with the appellant the expectations of his EP and advised him of the consequences for failing to comply and the appellant stated that he understood. The appellant had previously entered into a similar EP dated February 21, 2013, submitted a work search record with 14 contacts only, and successfully negotiated with the ministry to rescind the denial for non-compliance with that EP.

On June 27, 2013, the ministry reviewed the work search activities record for the month of June, which showed 14 work search activities for June 3 through June 26, 2013. The ministry advised the appellant of all of his EP conditions and the consequences of non-compliance and the appellant stated that he understood. On July 29, 2013, the appellant submitted his work search record for the month of July and he had completed 14 work search activities and stated that he had attended at a program the month before. The ministry confirmed that the program mentioned by the appellant ended in April 2012. The ministry provided the appellant with the contact number for the Work BC contractor. At the hearing, the ministry explained that this contractor is capable of assisting with programs to address barriers clients may have such as English language skills. On August 29, 2013, the ministry reviewed the appellant's work search activities record for the month of August which showed 14 work search activities from August 5 through August 28, 2013 which was a copy of the work search activities the appellant completed in July. The appellant had not contacted the Work BC contractor or any community resources for additional support with his work search.

APPEAL #

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's conclusion that the appellant did not comply with the conditions of his EP, and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA) is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

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].

The ministry's position is that the appellant entered into an EP dated May 31, 2013 and the conditions of his EP require that he submit a work search report by the 5th of each month showing 5 activities per day, 5 days per week, and recommends that the appellant contact Work BC to assist him in his work search and to overcome his employment barriers. The ministry argued that although the appellant stated that English is his second language and he did not understand what he was signing on his EP, the ministry advised the appellant on May 31, June 27, and July 29, 2013 of the conditions of his EP and the consequences for failing to comply with the conditions. The ministry argued that the appellant stated that he understood and the ministry had no reason to believe otherwise and the appellant did not request the assistance of an interpreter. The ministry argued that the appellant failed to complete an adequate work search because he only completed 14 activities for each month and the same companies were contacted for two consecutive months when it was indicated that they were not hiring.

The appellant argued that English is his second language and he cannot read or write English. The appellant argued that when the ministry told him to sign his name, that is what he would do, but he did not understand the rules about looking for work. The appellant argued that the ministry should have requested an interpreter to explain to him exactly what is needed in the job search program and what is not needed. The appellant argued that he was not even given a warning that if he brings the same activities about job searching, that he

would be denied benefits.

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. The appellant signed an EP on May 31, 2013 for an independent work search which included conditions that he record his monthly work search activities on the ministry form and provide these to the ministry upon request. The ministry further expected the appellant to spend 25 hours minimum per week on work search activities, and that the reporting requirements are by the 5th of every month showing 5 activities per day for 5 days per week. The EP also included an agreement by the appellant that he is "...aware that I can contact the Employment Program of BC for self serve services to determine if their resources could assist me to achieve my work search goals and assist me to overcome my barriers." The panel finds that the appellant's EP does not include a condition requiring the appellant to participate in a specific employment-related program to assist the appellant to find employment or to become more employable, as covered by Section 9(3) of the EAA, as the appellant's involvement with the Work BC program was voluntary.

Although the appellant tendered work search activities records for the months of June, July and August 2013, the panel finds that the ministry was reasonable in determining that these records did not meet the requirements set out in the appellant's EP, which stipulate that he must show 5 activities per day for 5 days per week. The appellant stated that he understood from a letter he received from the ministry that he was supposed to submit a record of 15 activities per month; however, the appellant did not provide a copy of this letter at the hearing and the ministry was not aware of the particulars. The work search activities records submitted by the appellant show 14 activities for each month and show the same activities of providing his resume to the same companies in 2 consecutive months. A condition of the appellant's EP is to record all activities that the appellant does that help to make him more employable and it specifically states that these activities are considered within the appellant's work search requirements. The appellant described some efforts he made, such as inquiring about ESL classes and attending several times at the temporary worker service office; however, he did not provide specific information about when he performed these activities and they were not set out on the work search records submitted to the ministry. The panel finds that while the ministry has the discretion to accept the appellant's work search activities as presented in his work search reports, the ministry reasonably concluded that the appellant failed to comply with the conditions of his EP when he did not submit work search activities reports that conformed to the terms of his EP.

The appellant argued that the ministry should have requested an interpreter to explain to him exactly what is needed for the EP and the independent work search. However, the appellant specifically stated to the ministry on at least two different occasions, on May 31, 2013 and again on June 27, 2013, that he understood the terms of the EP and the consequences of non-compliance and the panel finds that the ministry was reasonable in relying upon the appellant's stated response. The appellant previously entered into a similar EP, had been found non-compliant for submitting a work search record with 14 contacts only, and had successfully negotiated with the ministry to rescind the denial of income assistance for non-compliance with that EP. The appellant has requested the services of a friend as well as his advocate for language translation to deal with important matters such as those relating to income assistance the appellant received in the past and, more recently, for understanding a letter received from the ministry, for dealing with GST and citizenship issues and for the purposes of this hearing. The appellant has demonstrated an awareness of the language translation resources available in the community to assist him, and the advocate confirmed that the language translation services of his agency are available to the appellant upon his request. The panel finds that, in the appellant's circumstances, the ministry reasonably placed the responsibility for requesting language translation services on the appellant, particularly since he is the person best able to determine if there is any difficulty with language comprehension.

The panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the EAA.