APPEAL #

PART C – Decision under Appeal

The Decision under Appeal is the Ministry's Reconsideration Decision, dated Oct. 11, 2013, which denied the Appellant Income Assistance (IA), as the Ministry determined the Appellant was non-compliant with the conditions of her employment plan, (EP), contrary to Sec. 9(1)(b) of the Employment Assistance Act.

PART D – Relevant Legislation

EAA	Employment and Assistance Act – Section 2, 9 and 13
EAAR	Employment and Assistance Regulation – Section 29

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The material before the ministry at reconsideration showed that the Appellant, a single mother, was the recipient of IA with three children. Early in 2013 the Appellant's youngest child turned three years old and as such the appellant was required to enter into an Employment Plan, (EP). On Aug. 12 she attended the ministry office where it was determined she was in her mid-twenties, a single mother of three children, who had never worked and supported her family with IA. She was advised that IA is temporary; she was expected to perform job searches and comply with her EP. The ministry was made aware that the Appellant was attending school two days a week for three hours each day.

On Aug. 12 she signed an EP, acknowledging she understood and agreed to participate fully and to the best of her abilities in the EP, that being a "supervised independent work search." She was required to: update and distribute her resume to all potential employers; seek out and pursue all available resources and employment opportunities, e.g. EAS providers, Service Canada, internet, library, newspaper, community agencies, cold-calling potential employers, etc.; record monthly work search activities on the ministry form and provide to the ministry on request; and utilize all personal contacts to assist with her work-search. The EP acknowledged that the ministry "expectation" was that she spend a minimum of 15 hours per week on work search activities and that she submit her work search with her stub on the 5th of each month. It also stated she was aware she could attend Work BC for added support.

On Sept 16 the ministry received the Appellant's work search record which included a total of two entries for August. A signal was placed on her cheque to follow up which resulted in the Appellant attending the ministry office on Sept. 25 where it was confirmed she had no resume and that she had not connected with Work BC or any other community services to assist in her job search. The appellant advised she had applied online for two jobs recorded in her work search and had not completed any other job search activities. When asked why the appellant stated she did not know why, it's hard and she has three kids. When asked she did not claim any medical issues. The ministry worker then denied her IA. On Sept. 25 the appellant requested reconsideration. Included in the request was a letter from an educational program confirming her adult education program which had started Sept. 2012, and a work search activity form listing 15 activities for Sept 25, 26 and 30. The request also included a letter to the Appellant from her advocate comprised of argument, which is set out in Part F of this decision, and stating that the Appellant felt mistreated by the ministry worker on the Sept. 25 meeting where she advised the worker she was worried, she did not know how she would care for her children, and she broke-down crying when advised she should have thought of that before. On Oct.11 the reconsideration decision upheld the denial of IA for failing to comply with the EP. The reconsideration officer mentions the advocate's letter and sets out and deals with some of the points from it. It discusses an exemption from an employment search as there was a dependent child and whether the EP may have been unreasonable based on the time needed for child care, the time for her schooling and her lack of skills. Regarding sec. 7 of the EAA, and employment programs for people to become more employable, the decision discusses the suggestion the ministry worker did not provide the Appellant with information about programs available.

The Decision acknowledged that the Appellant was required to enter into an EP and this is not appealable. However, it notes the conditions can be reconsidered. The decision goes on to say that at the time of signing the EP the Appellant agreed to comply and understood the consequences of non-compliance. She understood her own circumstances by way of her child care, schooling, lack of skills and that if she felt the terms unreasonable she could have expressed such to the worker. Her

situation was taken into account and the EP was modified for this purpose.

The decision found that as the Appellant's youngest child was now more than three years old the appellant was no longer exempt from an EP. The Appellant had been provided with information from the ministry for added supports through Work BC and Aboriginal programs, but the Appellant chose to not make efforts to contact them. Due to only completing two job searches in the first few weeks of the EP, the understanding of the consequence for non-compliance, being given information for supports provided by the ministry and the ability to advise the ministry of the challenges she faced, the decision found she was not in compliance. Further, once notified of the default she submitted a work search record showing 15 activities in a span of 6 days and she had an opportunity to create and email a resume, leading the ministry to believe she had the capability to comply, but chose not to. The ministry found she was not in compliance with her EP and denied further assistance.

The Appellant filed two Notices of Appeal dated Oct. 17, 2013 setting out a number of arguments.

At the hearing the Appellant's advocate relied on and expanded the submission's previously received. The advocate stated that the appellant had nothing to offer an employer and nothing to put on a resume. The Appellant signed the EP or was going to get cut off. She is very quiet and would not stand up for herself. When she was confronted by the worker and told the worker that it was hard and she had three kids, the worker told her she should have thought of this before. (The Appellant was noted to have tears flowing as this conversation was related.) The ministry treated the Appellant badly and should have ensured she was streamed to programs to help her become employable.

The Appellant testified that on the Aug. 12 meeting for her EP she;;

- was told she must enter an EP,
- did not think she was asked personal questions by the worker,
- did not think she was asked about her schooling,
- was for the first time involved in an EP,
- was handed some pamphlets for resources,
- was told she could get help with resources and computer access but didn't know where they were,
- had to walk about 20 minutes to access resources like the library,
- was just supposed to spend 15 hours looking for jobs on the computer,
- was mailed a letter saying her cheque was being held,
- was receiving appeal benefits not hardship assistance,
- had applied to go to school full-time to get her high school graduation certificate.

The ministry relied on the reconsideration decision. The ministry representative gave evidence that she reviewed the file and that the appellant had been receiving appeal benefits not hardship assistance. The ministry stated that eligibility for IA is determined on an ongoing basis. Each month the recipient must supply their stub and eligibility is assessed for the next cheque. Just because you are initially found to be eligible does not mean you are eligible forever. Under sec. 9(1) of the EAA

each recipient of IA, when required to do so, must enter into and comply with an EP or they are ineligible. The ministry can choose between ineligibility and sanctions under sec 13. It is up to the ministry to decide the appropriate sanction. Sec. 4 of the EAR was simply mentioned in the decision as it explains why the Appellant did not have to enter an EP previously; she had dependent children under three years old. The ministry also provided a copy of their policy manual which guides them in their decisions. The reference to a modified plan in the decision reflects that usually an EP will provide for 25 not 15 tasks per week. The ministry usually sets a requirement of 5 contacts per day, 5 days per week and to be completed by the 5th of each month. Due to the Appellant's personal circumstances this was modified to assist her.

In relation to the conditions of her plan it is up to the ministry to decide the conditions. When the Appellant entered into the EP she was advised of the consequences of non-compliance. This meeting was her opportunity to discuss her situation and help decide the appropriate plan. The Appellant was given the names of service providers who can assist her to become more employable and agreed she received pamphlets. One of these providers, Work BC, is close to the library she went to. Even if she had no internet she could use the library as she stated. It is explained to recipients that a task such as working on your resume is considered a work search and can be recorded. When the Appellant was denied she only had the two recorded events from August.

When asked by the advocate, the ministry agreed she was not present at the meetings, did not ask any workers about the meetings with the Appellant, and could not say what was in the worker's mind at the time of the meetings. When asked by the panel the ministry agreed that it was unusual that someone would be cut off IA on the very first occasion of non-compliance. Usually people are given a chance to comply but this can be based on what the worker feels at the time of the meeting. The ministry also confirmed that a "supervised" independent work search meant that when the job searches were handed in with the stub on the 5th of the month, the worker who received the information would check to see if the requirements were being met. When asked by the panel about the difference between sec 9 and 13 of the EAA the ministry's position was that they could simply find the person ineligible-that was a consequence of failing to comply just as sec. 13 set out consequences.

In reply the advocate stated that sec. 9 only applies at the beginning of the process to state an application, as sec. 9 is near the beginning of the Act. Later the Act states in sec. 13 that the IA is to be reduced. This is what must occur.

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PART F – Reasons for Panel Decision

The issue to be determined is whether the Ministry reasonably denied the Appellant IA, after determining that the Appellant was non-compliant with the conditions of her EP, contrary to Sec. 9(1)(b) of the Employment Assistance Act.

Employment and Assistance Act

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

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.

…

(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.

...

Consequences of not meeting employment-related obligations

13 (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if

(a) at any time while a recipient in the family unit is receiving income assistance or hardship assistance or within 60 days before an applicant in the family unit applies for income assistance, the applicant or recipient has

(i) failed to accept suitable employment,

(ii) voluntarily left employment without just cause, or

(iii) been dismissed from employment for just cause, or

(b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment.

(2) For the purposes of subsection (1),

(a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and

(b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.

(3) The Lieutenant Governor in Council may specify by regulation categories of applicants or recipients to whose family units this section does not apply.

Employment and Assistance Regulation

Consequences of failing to meet employment-related obligations

29 (1) For the purposes of section 13 (2) (a) *[consequences of not meeting employment-related obligations]* of the Act,

(a) for a default referred to in section 13 (1) (a) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by $100 for each of 2 calendar months starting from the later

of the following dates:

(i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;

(ii) the date the default occurred, and

(b) for a default referred to in section 13 (1) (b) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by $100 for each calendar month until the later of the following occurs:

(i) the income assistance or hardship assistance provided to the family unit has been reduced for one calendar month;

(ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.

(2) The reduction under subsection (1) applies in respect of each applicant or recipient in a family unit who does anything prohibited under section 13 (1) *[consequences of not meeting employment-related obligations]* of the Act.

(3) For the purposes of section 13 (2) (b) *[consequences of not meeting employment-related obligations]* of the Act, the period of ineligibility for income assistance lasts

(a) for a default referred in to section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:

(i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;

(ii) the date the default occurred, and

(b) for a default referred to in section 13 (1) (b) of the Act, until the later of the following has occurred:

(i) the family unit has been ineligible for income assistance for one calendar month;

(ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.

(4) Section 13 *[consequences of not meeting employment-related obligations]* of the Act does not apply to a family unit of an applicant or recipient who is in any of the following categories:

(a) Repealed. [B.C. Reg. 116/2003, Sch. 1, s. 2 (a).]

(b) sole applicants or sole recipients who have at least one dependent child who

(i) has not reached 3 years of age, or

(ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;

(c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

(d) sole applicants or sole recipients who have a foster child who

(i) has not reached 3 years of age, or

(ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;

(e) persons who receive accommodation and care in a special care facility or private hospital;

(f) applicants or recipients admitted to hospital because they require extended care;

(g) persons who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the person from leaving home for the purposes of employment;

(h) applicants or recipients in a family unit that includes only applicants or recipients who are

(i) Repealed. [B.C. Reg. 160/2004, s. 2.]

(ii) persons who are participating in a treatment or rehabilitation program approved by the minister, if their participation in that program, in the minister's opinion, interferes with their ability to search for, accept or continue in employment,

(iii) persons who have separated from an abusive spouse or relative within the previous 6 months, if, in the minister's opinion, the abuse or the separation interferes with their ability to search for, accept or continue in employment,

(iv) persons not described in section 7 (2) *[citizenship requirements]*;

(v) persons who have persistent multiple barriers to employment; or

(vi) persons who have reached 65 years of age;

(i) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

(j) sole applicants or sole recipients who are providing care under an agreement referred to in section 8 *[agreements with child's kin and others]* of the *Child, Family and Community Service Act* for a child who

(i) has not reached 3 years of age, or

(ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;

(k) sole applicants or sole recipients who are providing care under an agreement referred to in section 93 (1) (g) (ii) *[other powers and duties of directors]* of the *Child, Family and Community Service Act* for a child who

(i) has not reached 3 years of age, or

(ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment.

[am. B.C. Regs. 367/2002, Sch. 1; 116/2003, Sch. 1, s. 2; 331/2003, s. 2; 160/2004, s. 2; 304/2005, s. 4; 48/2010, Sch. 1, s. 1 (b).]

Under sec. 2 of the EAA a family unit is eligible, in relation to income assistance, if each person in the family unit on whose account the income assistance is provided satisfies the initial and continuing conditions of eligibility established under this Act, and the family unit has not been declared ineligible for the income assistance under this Act.

Under sec. 9(1) of the EAA, to be eligible for income assistance, each recipient, when required to do so by the minister, must enter into an employment plan, and comply with the conditions in the employment plan. Under 9(3) the minister may specify the conditions in an employment plan requiring the recipient to participate in a specific employment-related program that, in the minister's opinion, will assist the recipient to find employment or become more employable.

Sec. 13 of the EAA describes the consequences of not meeting employment-related obligations. It states that, subject to the conditions of an EP, (panel's emphasis) the family unit of a recipient, (the recipient and any dependent children), is subject to the consequence described for a family unit matching the recipient's family unit if at any time while a recipient in the family unit is receiving income assistance, the recipient fails to demonstrate reasonable efforts to search for employment. For these purposes, if a family unit includes dependent children, the income assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period under sec. 29 of the EAAR.

The appellant, through her advocate, argues that the ministry has not properly applied the legislation, including that the Appellant was now improperly being provided hardship assistance. The advocate used this as an example of the ministry's inability to properly apply the legislation. This argument was abandoned at the hearing when it was confirmed by the Appellant she was not receiving hardship assistance but was receiving appeal benefits. The appellant also argues that she should have been assessed a reduction in benefits under sec. 13 of the EAA, by the prescribed amount for the prescribed period, as found in sec. 29 of the EAR. The advocate submitted this was the only path that could be followed under the legislation but the issue was not dealt with by the reconsideration officer.

The advocate also pointed to other alleged errors by the reconsideration officer to bolster the claim that the reconsideration officer got it wrong. As an example, when the decision stated that the

ministry believed the Appellant had the capability to comply with her EP, (as demonstrated by her job search after the initial denial), this was relevant to the conditions of her employment plan not to the consequence of the failure to comply. When the decision stated that Sec. 9(1)(b) of the EAA directs that an individual must comply with the terms of an EP to "maintain" eligibility for IA, the word maintain was added to satisfy the reconsideration officer and her objective; it was submitted that sec. 13(2)(a) keeps the Appellant eligible. Further when it was written that sec. 4 of the EAR exempts recipients from EP's when they have a dependent under three years of age, this is taken from sec 4.1(6) not sec. 4. The use of this section was inappropriate as this was relevant when the Appellant first applied, not now years later. The submission was that the decision was wrong and these were examples of other sections being used improperly.

The Appellant also argues that the EP conditions of work search based on her lack of previous work history, grade 8 education, and current attendance at school were unreasonable. She should have been streamed to programs to help her become more employable under sec. 9(3)(b) of the EAA. This Notice included five pages of submissions by the Appellant.

The advocate submitted, among other things that the reconsideration decision did not deal with the issue of the Appellant becoming more employable, that she needed extra attention and help to succeed. He noted that the decision talked about a "modified" plan, but as there had never been a prior plan for his client, what was this to be compared to for a modification? It was suggested that his client had little input into the plan and that she signed the EP as she had no other option. The ministry worker should have ensured the Appellant was directed to other resources. The advocate strongly argued that the reconsideration decision relied on evidence not before it; this was the reference to a resume being sent out. (It was later pointed out to the advocate that the job search form from Sept 26, handed in by the Appellant, stated, "emailed resume" on the form.) The advocate submitted that when the Appellant was asked why she was not able to do what was required in her EP, her answers were such to suggest she was at a total loss of how to proceed; the worker was simply blurting out demands and handing out consequences as opposed to assisting the Appellant. The Appellant never knew that alternatives to work-searches were available and that options to become more employable should have been considered. The advocate pointed out that sec. 9(6) of the EAA allowed EP's to be amended and that sec 17(1)(e) of the Act allowed the Appellant to request the reconsideration of her EP conditions.

The ministry's position was that the Appellant had been made aware of the requirements to comply with the EP and that the conditions were modified taking into consideration her background. As her youngest child had turned three some months earlier she was now required to enter into an EP. She had only completed two work search activities in the first weeks of her plan and made no effort to contact the other supports offered to help her comply with the plan. As further evidence that she could have met the requirements the ministry pointed out her activities in the few days after she was found to be ineligible where she recorded 15 activities in the span of six days and was able to put together a resume.

The issue is whether the Appellant was properly denied IA, as opposed to being sanctioned for being non-compliant with the conditions of her EP. Although the advocate argues that the appellant should have her conditions of the EP changed so that she is streamed to programs to make her more

employable is also at issue, s. 9(7) expressly states that a ministry decision specifying the conditions of an employment plan is not open to appeal. Additionally, sec. 17(3) states that only decisions described under subsections 17(1) (a) to (d) can be appealed to the Tribunal. The Tribunal is a creature of statute and is bound by the jurisdiction conferred upon it by statute. As the decision respecting the conditions of an employment plan is described under sec. 17(e), such decisions cannot be appealed to the Tribunal, this panel does not have jurisdiction to review the ministry's decision as to the conditions of the EP. Consequently, the panel has no authority to address this argument.

Application of s. 9 of the EAA

Sec. 2 of the EAA states that a family unit is eligible for IA if each person on whose account the IA is provided satisfies the initial and continuing (panel's emphasis) conditions of eligibility under the Act and the family unit has not been declared ineligible. Under Sec 9(1), to be eligible for income assistance, each recipient, when required to do so by the minister, must enter into an employment plan, (panel's emphasis), and comply with the conditions in the employment plan. In effect the Appellant acknowledges she did not comply with the terms of the plan but submits that does not render her ineligible, but subject to a reduction in IA for the prescribed period.

The EP signed by the appellant states that it is important to follow the conditions of the plan and if one cannot follow the plan, they are to inform the ministry. It then states if you fail to comply with your EP you will be ineligible for assistance. The EP is signed by the appellant confirming she read, understood and agreed to the conditions of the plan. She was required to update and distribute her resume and pursue available resources and employment opportunities. She was expected to spend a minimum of 15 hours per week on these activities and she was to record her monthly work search activities on a ministry form and provide the record to the ministry upon request. The plan also required the work search activities record to be submitted by the 5th of each month.

When the Appellant handed in her first activity record, which was late, she had only recorded two searches and was not able to supply much of an excuse for the inactivity. The ministry gave evidence that it is unusual that a recipient would be immediately cut-off and not given a chance to become compliant. Further, it appears that immediately after the appellant was told of the problem she became compliant for the balance of Sept. in her search activities. The decision however found that this evidence of compliance in latter Sept., demonstrated that she could have completed the work searches prior to this but she simply chose not to do. This is a finding that was open to the reconsideration officer. The legislation is clear and the issue is non-compliance, not compliance after the fact.

The Advocate seemed to intimate in submissions that the Appellant may not be required to enter into an EP. It was not clear to the panel if this was actually being argued. However, sections 2 and 9 of the EAA make it clear that eligibility is continuing, that an EP can be implemented by the ministry when required, and that the recipient must enter such a plan or is not eligible. When the advocate states the Appellant felt she must agree to enter the EP, this is correct. The legislation mandates it.

Sec. 9 gives the minister broad discretion both as to whether to require an employment plan and as to what conditions will be included in the employment plan. This is in harmony with the broad legislative scheme of the Act in encouraging persons to acquire suitable employment. Sec. 13 sets out certain employment-related obligations with respect to accepting or retaining suitable

employment, and identifies the consequences of not meeting those obligations.

It is the view of the panel that the terminology at the beginning of sec 13. "Subject to the conditions of an employment plan," means, in effect, "unless a recipient is subject to an employment plan." The effect of this is that sec. 13 means, in the case at hand, that unless the recipient, the Appellant, is subject to an employment plan and fails to demonstrate reasonable work search efforts the consequences set out apply. In this case the recipient, the Appellant, is subject to an employment plan and as such sec. 9 would apply. Another way to read the sec. would be as follows; "the family unit of a recipient is subject to the consequence described in subsection (2) for a family unit matching the recipient's family unit if at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment, unless the recipient is subject to the conditions of an employment plan."

Another way to look at this would be to ask if sec. 13 only applies if there is an employment plan in place. This would result in a situation where the minister would always have to require an employment plan, otherwise applicants or recipients would be free to turn down or leave suitable employment without affecting their eligibility benefits. This would severely constrain the broad discretion granted to the minister by s. 9 and would conflict with the legislative scheme which seeks to encourage persons to acquire suitable employment.

It is the view of the panel that sec. 9 governs when a recipient of IA has entered into an EP. Sec. 13 applies when the recipient is not under an EP and fails to comply with the requirements under sec. 13. As such, the panel finds that the decision by the ministry, that the Appellant was non-compliant with the conditions of her EP, and as such was ineligible as opposed to subject to sanctions under sec. 13, was reasonable and confirms this decision.

As the panel has no jurisdiction to review the conditions of the plan, and the panel has confirmed the decision on ineligibility for IA under s. 9 of the EAA, the panel confirms the reconsideration decision as it was reasonably supported by the evidence.