



PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated November 20, 2013 which held that the appellant was not eligible for income assistance because she failed to comply with the conditions in her employment plan as required by section 9 of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 9

PART E – Summary of Facts

The documentary evidence before the minister at reconsideration was the following:

- An Employment Plan dated February 28, 2013 signed by the appellant that required that she undertake specified activities intended to help her to become more employable. By signing the plan the appellant acknowledged that she was required to participate fully in the activities required by the ministry contractor and that failure to do so would result in discontinuation of income assistance.
- An Employment Plan dated March 27, 2013 signed by the appellant that details prescribed activities in which she must participate, and reporting requirements associated with those activities. In particular, the Plan specifies that the appellant participate in employment programming through a specific EPBC contractor and that the appellant will notify that contractor if she is unable to attend a session. In addition, the plan specified that the appellant was to submit each month confirmation of her weekly attendance at EPBC workshops.
- A note from a medical doctor dated May 5, 2013 which states:
"Physio (illegible) Mid-thoracic backpain since moving belongings last month. Analgesics not helping. (Illegible) advice on back exercises – muscle strengthening relax".
- The appellant's request for reconsideration dated November 6, 2013 which included the following reasons for requesting reconsideration:
"I had a fall in Nov 3/2011. I was told I tore a muscle in my back. I was seen by a chiropractor since Sept 2011 til Aug 2013 with no progress. I am able to take care of my sons, cook, shop and do the housework with help from my mom. When moving to (a new community) for purposes of childcare to return to work I strained my back again. The pain is chronic. I can't walk very far which is why I missed my appts. My parents had gotten lost in a forest ending the summer of 2013. Search and Rescue were alerted. This is why I missed my last appt. I am now on medication for fibromyalgia (which isn't mild pain) & depression for which I have been suffering a long time, and my family doctor has completed a disability form to confirm this. On the employment plan, medical reasons excuse me from looking for work. That is my conclusion for my non-compliance."

The additional evidence as noted by the ministry in its reconsideration decision is as follows: On August 7, 2013 the contractor reported to the ministry that the appellant had moved and the contractor had not had any contact from her. On September 4, 2013 the appellant advised the ministry that she had not had any contact with the contractor since May because of a bad back, family illness and child care issues. The ministry advised the appellant of the consequences of non-compliance and put her October assistance on hold for confirmation that she had attended the contractor. On September 17, 2013 the appellant advised the ministry that she had an appointment with the contractor for September 23, 2013. The ministry advised the appellant that her November assistance was being held for confirmation of her attendance. On September 24, 2013, the ministry was advised that the appellant had not attended the meeting with the contractor. On October 29, 2013 the appellant advised the ministry that she had not attended the September 23, 2013

appointment but did not give a reason for her failure to attend. The appellant advised the ministry that she had a mild case of fibromyalgia but did not provide any medical documentation to confirm this condition. The ministry noted that the appellant had not previously advised the ministry of any medical issues that impacted her employability. The ministry reviewed the doctor's note of May 30, 2013 which indicated that the appellant required physiotherapy for her back due to the injury which occurred when she was moving her belongings in the previous month and noted that analgesics were not helping. But the ministry was not satisfied that the appellant's medical condition impacted her ability to attend employment programming.

Following reconsideration, the appellant submitted the following new evidence in support of her appeal application:

- A letter dated November 26, 2013 from a chiropractic clinic listing seven dates in June and July of 2013 on which the appellant received treatment.
- A letter dated November 26, 2013 from a Community Safety Coordinator to the Ministry of Social Development that confirms that the appellant participated in a Grief and Loss program in July 2013, and a Self Defense for Women program in July/August 2013.
- A Medical Certificate from a medical doctor dated November 27, 2013 on behalf of the appellant which states:
"This patient suffers from depression and fibromyalgia and is currently unable to work. She is currently on treatment with medication and is starting physiotherapy. Please excuse excuse (sic) from work for the next 3-6 months. She will be continuously re-evaluated to see if gradual return to work is an option at any stage"
- A letter dated November 28, 2013 from a Child and Youth Mental Health Therapist who writes in support of the appellant's application for social assistance. She indicates that the appellant is a single parent who is strongly dedicated to supporting the needs and best interests of her children. She confirms that the appellant has told her that she is seeking financial assistance due to ongoing medical concerns.
- A "10 Day Notice to End Tenancy for Unpaid Rent or Utilities" dated December 3, 2013

The appellant did not provide a written submission for the hearing but included the following statement in her Notice of Appeal as the reason why she disagreed with the ministry's reconsideration decision:

"I have a medical condition and was recently prescribed medication for it. I am working with my doctor to gain the ability to go back to work."

The ministry provided a written statement dated December 19, 2013 which stated:

"The minister acknowledges the supplemental medical documentation submitted with the appellant's written appeal. Although the minister does not object to the submission of this evidence as it is the minister's opinion that it is in support of the evidence previously submitted, the minister would like it noted that this supplemental information was not before the minister at the time the Reconsideration Decision was made."

The panel finds that the following information is in support of the information and records before the minister when the reconsideration decision was made:

- The following statement from the appellant's Notice of Appeal:

"I have a medical condition and was recently prescribed medication for it. I am working with my doctor to gain the ability to go back to work."

- The medical certificate dated November 27, 2013.
- The letter from the chiropractic clinic dated November 26, 2013.
- The written statement from the ministry dated December 19, 2013.

This information relates to the medical status of the appellant. In addition, the panel finds that the letter dated November 26, 2013 from a Community Safety Coordinator to the Ministry of Social Development is in support of the information and records before the minister when the reconsideration decision was made since it relates to the appellant's ability to attend programs during the months of July and August of 2013.

The minister's submission agreed to the admission of the medical certificate dated November 27, 2013. The other items are not explicitly addressed in the ministry's submission but no objection is raised by the ministry to their admission. Accordingly, the panel admits this information according to section 22(4) of the EAA.

The panel does not admit the letter dated November 28, 2013 from a Child and Youth Mental Health Therapist as it primarily addresses her role as a parent, and is not in support of the information and records before the minister when the reconsideration decision was made. Similarly, the panel does not admit the Notice to End Tenancy for Unpaid Rent or Utilities dated December 3, 2013 as it is not in support of the information and records before the minister when the reconsideration decision was made.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant's request for income assistance based upon EAA sections 9(1)(b) and 9(4) because she had failed to comply with the conditions of her employment plan. Specifically, the issue is whether the ministry's decision is reasonably supported by the evidence, or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is the following:

From the EAA:

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*].

In her request for reconsideration the appellant stated that she injured a muscle in her back in November 2011 and had seen a chiropractor from September 2011 until August 2013 but had experienced no progress from this treatment. She stated that she reinjured her back during a recent

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move to a new community and suffers chronic pain as a result. She indicated that she can't walk very far and this is the reason she missed her appointments. In addition, she stated that her parents had been lost in a forest in the summer of 2013 and this was the reason she missed her last appointment. The appellant reported that she is now on medication for fibromyalgia and depression. She stated that she has been suffering for a long time and that her family doctor has completed a disability form to confirm this. She observed that the employment plan specifies that medical reasons excuse one from looking for work and states that this is the reason for her non-compliance. In her notice of appeal the appellant stated that she has a medical condition and was recently prescribed medication for it.

At reconsideration, the ministry argued that the appellant had failed to comply with the conditions in the employment plan. The ministry noted that on March 27, 2013 the appellant had signed an employment plan agreeing to participate in employment programming through a specific EPBC contractor. As a condition of continued eligibility for assistance, the appellant had agreed to participate regularly in programming and to notify the contractor if she was unable to attend a session. Based on the evidence outlined in the reconsideration decision, the ministry concluded that the appellant had not demonstrated a reasonable effort to comply with the conditions of her employment plan, nor that there were mitigating circumstances that prevented her from complying with the conditions of the employment plan. Accordingly, the ministry decided that the appellant was not eligible for income assistance accordingly to section 9 of the EAA.

The panel noted that the appellant had reported to the ministry that she had not been in contact with the EPBC contractor from May to September 2013 and had missed appointments with the contractor, including the appointment of September 23, 2013. Accordingly, the panel concluded that the appellant is not challenging the ministry's claim that she failed to comply with the conditions of the employment plan. Rather, she is claiming that her medical conditions sufficiently restricted her ability to participate in employment programs that she should be exempted from the requirements of the employment plan according to section 9(4)(b) of the EAA.

In her request for reconsideration, the appellant identified chronic back pain and her resulting inability to walk very far as the reason why she had missed her appointments. She also identified fibromyalgia and depression as conditions from which she has suffered for a long time. The panel reviewed the May 30, 2013 medical note and found that it made no mention of any restrictions resulting from her backpain, nor did it make any reference to her ability to work or to participate in work related programs. The panel therefore concluded that the ministry reasonably determined that this medical note did not adequately demonstrate that the appellant's medical condition impacted her ability to attend employment programming. The panel reviewed the medical certificate of November 27, 2013. This certificate confirms that the appellant is presently unable to work and that she is incapable of working until April 1, 2014. But the certificate only confirms that the appellant is "presently unable to work" and unable to work until April 1, 2014. No mention is made of the appellant's ability to work during the period of March 27, 2013 (the date of the more recent employment plan) and the time of the reconsideration decision. Specifically, it provides no evidence that the appellant was unable to attend the appointments and programs with the EPBC contractor during this period of time. Moreover, the letter of November 26, 2013 from the Community Safety Coordinator confirms that the appellant did attend two programs offered to support prevention of violence against women during the months of July and August of 2013. These were not programs offered by the EPBC contractor and did not relate to the conditions and requirements specified in the employment plan. Nonetheless, they confirm that the appellant was able to attend programs during this time period. Accordingly, the panel

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concluded that there was insufficient evidence that the appellant's medical conditions resulted in her being unable to attend employment programming, and therefore the ministry had reasonably determined that the appellant had failed to comply with the conditions of her employment plan by failing to demonstrate reasonable efforts to participate in her employment program.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for income assistance was reasonably supported by the evidence.

The panel therefore confirms the ministry's decision.