

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated October 15, 2013, which held that the appellant is not eligible for income assistance due to a failure to comply with the conditions of her Employment Plan (EP) or provide verification to establish that mitigating circumstances prevented her from complying with her EP as pursuant to Section 9 of the Employment and Assistance Act (EAA). The ministry found that the appellant failed to demonstrate reasonable effort to meet the requirements that formed part of her EP, which she signed and agreed to comply with.

**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 reconsideration was:

- 1) A 5-page handwritten undated letter signed by the appellant stating that she admits to not complying with the EP because she is forgetful due to paranoia and forgot to write down all of her searches or hand them in on time but did complete them, and that she is depressed about losing her children, for which she is on a waitlist for counselling. The appellant also describes in length that she has been a victim of abuse in the past which has caused her current mental state;
- 2) A 4-page handwritten letter that is not signed or dated stating that the appellant did not say she was an employable person and that her criminal record is a hindrance to employment, and that she does 2 hours worth of job searches daily though she is aware she is required to do 5 hours per day. The appellant describes her abusive past that she believes has left her traumatized and not ready to work, and because of this trauma she fears getting help. She stated she has poor self-esteem and a poor self-image;
- 3) Employment Plan signed by the appellant on May 3, 2013, which states that she must spend 25 hours per week (5 activities 5 days per week) searching for work and submit the work search records by the 5<sup>th</sup> of every month, and that failure to do so can result in the denial of assistance;
- 4) Employment Plan signed by the appellant on November 27, 2012 which states that she must spend 12 hours per week searching for work and that failure to do so can result in the denial of assistance;
- 5) A handwritten note that has the addresses and cost of several rental spaces.
- 6) Request for Reconsideration signed and dated October 3, 2013, which states that the appellant worked the past summer and that she has no source of income. She stated that she does not want to be on assistance for the rest of her life and that she will soon start a program through her probation. The appellant sees no alternative but to live on the streets if she is denied assistance, that she worked and volunteered the past summer to gain work experience and feel better about herself and that she has social problems that prevent her from working;
- 7) A 30-page hand written submission indicating various job searches and the dates of those searches from November, 2012 to October, 2013. The appellant completed the following job searches, September 2013- 31 job searches, October 2013- 39 job searches, August 2013- 57 job searches, July 2013 – 17 job searches, June 2013 – 20 job searches, May 2013 – 11 job searches, March 2013 to April 2013 – 51 job searches, November 2012 to December 2012 – 34 job searches, and December 2012 to January 2013 – 56 job searches;
- 8) A note stating that the appellant volunteered at a local food bank from August 1-9, 2013 and painted for a friend from June 15, 2013- July 12, 2013 and then again from July 16, 2013-August 1, 2013 (in hand writing similar to the appellant);
- 9) A handwritten submission (without dates) that indicates that the appellant made 25 cold calls to employers.

In the Notice of Appeal, which is signed by the appellant but not dated, she states that she did 10 hours of volunteer work.

At the hearing, the appellant arrived 22 minutes late. She stated that she is often late but tries to be on time. The appellant expressed that since her children were taken away from her, she has been mentally unstable, that she cannot go in public without feeling judged, and that she was admitted into hospital several weeks ago after experiencing suicidal thoughts. The appellant also provided the following information as new evidence:

- A 6-page document showing 40 job searches for November 2013;

- A letter dated November 22, 2013 from a local government agency that provides mental health services. The letter indicated that the appellant has an open file with the agency but that the agency has not been able to make contact with her, she has not followed up with an appointment and she is to call if she does not want her file closed;
- A consent form, which is signed by the appellant and dated December 10, 2013, shows that the appellant has given her consent to participate in a study related to mental health;
- A questionnaire relating to the study that she is taking part of.

The documents the appellant provided at the hearing were originals, and returned to the appellant after the Panel reviewed the documents and explained their contents to the Ministry who was in attendance by teleconference.

The Ministry did not object to the admittance of this new evidence.

#### *Admissibility of New Information*

After a short recess, the panel found that the letter dated November 22, 2013 provided additional detail or disclosed information that was in support of the issues addressed in the reconsideration. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

The panel found that the 40 new job searches for November 2013 pertain to a period that is not in question and does not speak to the appellant's efforts to comply with her EP prior to the October 1, 2013 original denial of income assistance. Accordingly, the panel did not admit this new information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

The panel found that the consent form dated December 10, 2013 and the questionnaire did not provide additional detail in regards to her ability to comply with her EP and were not in support of the issues addressed in the reconsideration. Accordingly, the panel did not admit this new information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

When the appellant was called back into the meeting room after the recess, she decided to leave the hearing as she felt emotionally unstable. The hearing continued without the appellant.

The ministry relied on its reconsideration decision. To this the ministry added that the appellant was provided with a phone number to Work BC which would help in her job search and that the appellant had not given the ministry any information to confirm her medical condition(s) or to verify her volunteer hours that would be credited towards her 25 hours of job search per week.

**PART F – Reasons for Panel Decision**

The issue before the panel is the reasonableness of the ministry's reconsideration decision dated October 15, 2013, which held that the appellant is not eligible for assistance pursuant to Section 9 of the EAA. The ministry determined that the appellant failed to meet the requirements of her EP by not complying with submitting 25 hours per week of various work search activities nor did she provide verification to establish that mitigating circumstances prevented her from attending appointments or participating in the program as outlined in her EP and explained to her by a ministry representative.

Section 9 of the EAA states that:

**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 did not comply with her EP; specifically, she did not complete sufficient work searches nor did she provide verification to establish that mitigating circumstances prevented her from complying with her EP that she agreed upon and signed.

The Appellant's position is that due to the loss of her children and other traumatizing events in her life, she is mentally unfit and unable to work or fulfill her EP requirements.

#### *Panel Decision*

Section 9 of the EAA sets out that to be eligible for assistance, the recipient must, when required to, enter into an EP, and comply with the conditions of the plan. The panel notes that evidence establishes that the appellant was aware of the requirements of her EP and aware of the consequences of not complying with the EP. The panel further notes that the appellant did complete some work search as outlined in her submissions, however, these searches were insufficient to meet the 25 hours minimum per week that was required in her EP and that she did not provide any verification of mitigating circumstances that prevented her from complying with her EP. At the hearing the appellant provided a letter (dated November 22, 2013) from a government agency which provides mental health services. However, the letter only confirms that the appellant has an open file with the agency and her file may be closed because she has not attended the services or been in contact with the agency.

The panel finds that the appellant did not demonstrate reasonable efforts to comply with the conditions of her EP or provide medical information for ceasing to comply with her EP. The evidence establishes that the criteria set out in Section 9 of the EAA have not been met by the appellant. The panel therefore finds that the ministry's decision to deny the appellant income assistance due to failure to comply with the conditions of her EP was a reasonable application of the legislation and was supported by the evidence in the circumstance of the appellant. Thus, the panel confirms the ministry's reconsideration decision.