



### PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated November 20, 2013 to deny the appellant income assistance because he failed to comply with the conditions of his Employment Plan (EP) as required under Section 9 of the Employment and Assistance Act (EAA). The ministry determined that the appellant did not meet the minimum work search requirements of his EP for the month of August, 2013.

### PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 9



## PART E – Summary of Facts

The evidence before the minister at reconsideration consists of the following:

1. December 11, 2012 the appellant signed an employment Plan (EP) agreeing to the terms and conditions outlined in his EP.
2. July 23, 2013 the appellant attended the ministry's office and indicated that he was confused about the details of his previous EP. In administrative fairness, the ministry created a new EP with conditions that the appellant could understand and follow each month. The appellant signed his new EP on this date agreeing to the following conditions:
  - a) update and distribute his resume to all potential employers
  - b) seek out and pursue all available resources and employment opportunities
  - c) record his monthly work search activities on the ministry's form and provide these to the ministry upon request
  - d) utilize all personal contacts to assist his work search
  - e) spend 25 hours minimum per week on work search activities as per the expectations of the ministry
  - f) submit his work search record by the 5<sup>th</sup> of every month showing 5 activities per day, 5 days per week
  - g) contact Employment Program of BC for self-serve services to determine if their resources could assist him to achieve his work search goals
  - h) access services from a WorkBC location closest to his residence
  - i) advise the ministry if unable to follow through.

The ministry reviewed all of the EP conditions, expectations and the consequences of non-compliance with the appellant. The ministry reviewed with the appellant what constitutes a reasonable job search activities list, including examples on the job list forms issued to him. The ministry informed the appellant that he must seek all reasonable forms of employment, not restricted to a specific trade. The ministry informed the appellant that he must submit a signed and dated job search list by the 5<sup>th</sup> every month, always describing the previous calendar month's activities and must meet at least the minimum requirement as set out in his EP. If he was unable to comply with the details of his EP, he must advise the ministry as soon as possible. The ministry stated that the appellant indicated that he understood the conditions, expectations and consequences of his EP.

The ministry asked the appellant if there were any barriers that would interfere with his ability to fulfill all the requirements in his EP and he stated that he had some vision issues mostly resolved by cataract surgery and a diabetic condition that he had under control. The appellant stated that neither condition would unduly interfere with his ability to meet the minimum requirements of his EP. The ministry also suggested that he attend the WorkBC office in his city to which the appellant indicated that he had an appointment the following week with them. The ministry advised the appellant that his next job search activities records for the month of August, 2013 were due on September 5, 2013.

3. September 17, 2013 the ministry reviewed the appellant's file and noted that his job search activities records for August were insufficient as he had recorded only 31 work search activities. The ministry indicated that minimum requirement for the month based on the appellant's EP would be 100.

4. September 23, 2013 the ministry advised the appellant that his August work search records were insufficient and asked the appellant if there were any mitigating circumstances affecting his ability to complete a sufficient job search record. The appellant stated that there was none and that he might have additional job search records at home that had not been submitted as yet. The ministry gave the appellant the opportunity to submit any outstanding job search records for August before making a decision on his compliance for the month.
5. September 24, 2013 the appellant visited the ministry's office and informed the ministry that he did not have any additional job search lists for August 2013. He was informed that he was denied income assistance due to non-compliance with his EP. The appellant asked the ministry why he was being denied now when he had a history of submitting poor job search records and was not denied in the past. The ministry informed the appellant that he was given consideration in the past based on his claims of not being aware of what was required from him, in the form of an adequate job search each month, but based on the many discussions the appellant had with the ministry and his statements on July 23, 2013 regarding his understanding of what was required of him, he could no longer claim to be unaware of what were the requirements of his EP.
6. September 27, 2013 the appellant in his Employment and Assistance Request for Reconsideration (EARR) states that he attempted to provide further work search activities records to the ministry but the worker with whom he spoke did not accept them. The appellant further states that he made reasonable efforts to comply with the conditions of his EP but could not do so for medical reasons.
7. October 28, 2013 the appellant's doctor completed a medical questionnaire provided by his advocate, indicating that the appellant is unable to look for work for 4 months because he has diabetes and needs to rest.
8. November 06, 2013 the appellant provided a medical report completed by his doctor that lists a diagnosis of uncontrolled diabetes mellitus (2003 onset). The only restrictions listed are "headaches, dizzy spells" with a prognosis that these will continue in the next 3-6 months.
9. December 4, 2013 the appellant in his Notice of Appeal (NOA) disagrees with the ministry's reconsideration decision and states that what the worker says about him not submitting additional work search activities is incorrect. He tried to hand in additional job search activities from the start. The worker claims instead he had no further job search information. The appellant said he had additional job search activity records that the worker would not accept.
10. The ministry finds that at the time the appellant's EP was created, the ministry reviewed his previous EP participation with him and made reasonable efforts to create an EP that would be appropriate for him. The ministry indicated that the appellant by signing his EP had confirmed that he read, understood and agreed to the conditions of the EP. The conditions of his EP were explained to him by the ministry when his EP was created on July 23, 2013. The appellant indicated that he understood the conditions of his EP. The ministry is satisfied that the appellant was aware of the conditions of his EP and the consequences of non-compliance.

The ministry explains that the conditions of his EP required the appellant to submit monthly work

search activity records showing five work search activities per day (totaling 100 activities per month). The appellant submitted records of only 31 activities for the month of August and did not submit any work search activities records for the months of September or October. While the ministry acknowledges the appellant's statement that his attempt to provide further work search activities was refused, this statement conflicts with the ministry record that the appellant indicated he did not have any further records to provide. The ministry notes that the appellant did not include any further work search activities records in his reconsideration submission.

The ministry explained that the appellant in his request for reconsideration indicated that he did not comply with the conditions of his EP due to medical reasons. The information his doctor has provided includes information about his current and future ability to look for work but does not explain his failure to meet minimum work search activities for the entire period of time that his EP has been in effect. The information his doctor has provided is not consistent with his indication on September 23, 2013 that he had been actively looking for work and that as of that date, there were no mitigating circumstances that prevented him from meeting his work search requirements.

Since the appellant did not meet the minimum work search requirements specified in the conditions of his EP, the ministry must consider whether he has demonstrated reasonable efforts to participate in his work search program. Reasonable efforts to participate in a program would include attempts to address any barriers a person may have which would impact his or her ability to participate. The appellant has not provided any information to establish that he was attempting to address his medical conditions prior to being informed on September 24, 2013 that he was no longer eligible for assistance.

The ministry also notes that when the appellant was informed that his assistance was being discontinued, he responded that in his previous experience, insufficient work search had not resulted in ineligibility. This indicates that he did not make reasonable efforts to participate in his work search program because he did not believe that the consequences of ineligibility would be applied, not because his level of participation was limited by factors beyond his control.

The ministry explained that although the conditions of his EP and consequences of non-compliance were clearly explained to him, the appellant has not demonstrated that he made reasonable efforts to participate in the work search program to which he was referred.

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance regulation.

At the hearing, the ministry indicated that there is a drop box at the ministry office where documents and other information can be dropped off. The ministry stood by its reconsideration record.

The panel makes the following findings of fact from the evidence presented:

- The appellant signed an EP on July 23, 2013 agreeing to the requirements therein.
- The appellant did not provide any medical documentation with respect to his health or employment barriers subsequent to signing his EP respecting his ability to conduct work searches during August, 2013 and that he had repeatedly denied any barriers to his health following his signing of the EP.

- The appellant's work search activities record lists only 31 work search activities for the month of August 2013.

## PART F – Reasons for Panel Decision

The issue is whether the ministry's decision to deny the appellant income assistance because he failed to comply with the conditions of his EP as required under section 9 of the EAA is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the applicant.

Legislation considered:

### 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 they explained to the appellant when he signed his EP on July 23, 2013 the consequences of not complying with the conditions of his EP, and that he must submit a job search list by the 5<sup>th</sup> every month and he must meet the minimum requirement as set out in his EP. If he is unable to comply with the details of his EP, he must advise the ministry as soon as possible.

The ministry explained that the appellant indicated that even though he had some vision issues mostly resolved by cataract surgery, and a diabetic condition that he had under control, there were no barriers that would interfere with his ability to fulfill all the requirements in his EP.

The ministry explained that the appellant on September 23, 2013 indicated there were no mitigating circumstances affecting his ability to complete his job search record for August 2013 and that he might have additional job search records at home that had not been submitted as yet. The ministry said they gave the appellant the opportunity to submit any outstanding job search records for August 2013 before making a decision on his compliance for the month. However, on September 24, 2013 the appellant informed the ministry that he did not have any additional job search lists for August 2013.

The appellant's position in his EARR dated September 27, 2013 and in his NOA of December 4, 2013 is that he attempted to provide further work search activities records to the ministry but they did not accept them. However, the ministry indicated that there is a drop-box where members of the public could drop off their correspondence.

The appellant further argues that he made reasonable efforts to comply with the conditions of his EP but could not do so because of medical reasons. The ministry however observed that the information the appellant's doctor provided includes information about his current and future ability to look for work but does not explain his failure to meet the minimum work search activities for the month of August, 2013. The information his doctor provided is not consistent with the appellant's indication of September 23, 2013 that he had been actively looking for work and that there were no mitigating circumstances that prevented him from meeting his work search requirements. The appellant did not provide any information to establish that that he was attempting to address his medical conditions prior to being informed on September 24, 2013 that he was no longer eligible for assistance.

The panel finds that the ministry explained to the appellant the terms and conditions of his EP and the consequences of not complying when he signed his EP on July 23, 2013. The appellant was also given the opportunity on September 23, 2013 when he submitted insufficient work search activities record for August 2013 to submit any outstanding job search records for August 2013. The appellant indicated on September 24, 2013 that he did not have any additional job search records. The panel notes that the appellant did not submit the minimum work search requirements for the month of August, 2013. The appellant was required to submit 5 activities a day for 5 days per week, a



minimum of 25 work search activities per week or 100 work search per month. For the month of August the appellant submitted only 31 work search activities. It is the appellant's obligation to comply with the conditions of his EP as required under section 9 of the EAA. The panel finds that the appellant was provided many opportunities to comply with the conditions of his EP. He did not provide medical or other reasons during or respecting the period of his EP for failing to comply with his EP as prescribed under section 9 of the EAA. Therefore, the panel finds the ministry reasonably determined the appellant was not eligible for income assistance under section 9 of the EAA for failing to comply with the terms and conditions of his EP. The panel reviewed the conditions of the EP including the obligation to advise the ministry if he was unable to follow through. The panel finds the ministry is reasonable in its determination that the appellant did not meet the conditions of his EP as required under section 9 of the EAA.

The panel finds that the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.