

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated October 9, 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) and did not 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 did not complete her required work searches, she did not follow-up with the ministry's contractor by phone or email every 3 weeks, and that her attendance at the required workshops and program was not satisfactory to meet the conditions 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) Request for Reconsideration signed and dated October 30, 2013, which states the following:
  - “my spouse is struggling with addiction and the ministry has said that as a couple I should be looking for work and he is to watch the children. I do not feel comfortable with this so now I am supposed to look after 2 children as well?”
  - “Recently my mother-in-law fell sick with cancer and I am now responsible to care for her while her husband works full time 5 days a week.”
  - “I did not get one single message to call [the contractor for Employment Plan of British Columbia (EPBC) Action Plan]. This is not my personal number, it is the landlord’s and her son does not relay any messages to me. Therefore I found out I was denied (the day I was to get my cheque Oct. 25) by mail and have rent to pay tomorrow and 2 small children.”
  - “This all seems unfair. My plate is too full to do all of this.”
- 2) EPBC Action Plan signed and dated December 12, 2013, which states:
  - Strengths: has some customer services, sales, call centre skills. Looking to go back to work in a clerical position;
  - Considerations: limited funds. Needs to get daycare in place to attend workshops;
  - Employment Needs: Needs job search workshops to strengthen skills. May need to access training to obtain employment;
  - Action Plan: follow up every 3 weeks by phone call or email. Drop off job search records at reception once a month. Call if employment is found or if action plan changes;
  - External Referrals: the appellant was referred to another agency to “explore Essential Skills Access Programs for Office Administration and Related”;
  - Workshops: Networking/Accessing the Hidden Job Market (2.5 hrs), Develop a Resume that Works (3 hrs) and cover Letters that Sell (2 hrs);
  - Follow-up Schedule: follow up Jan. 3/12 and drop off job search log.
- 3) Employment Plan, signed and dated January 29, 2013, which states in part that the appellant will:
  - Attend all appointments with the EPBC contractor;
  - Participate in EPBC Action Plan programming regularly;
  - Work with EPBC Action Plan contractor to address any issues that may impact her employability and complete all tasks assigned including any activities that may be set out in an action plan;
  - Notify the contractor if she is unable to attend a session or when she starts or ends any employment;
  - Be ineligible for assistance if she fails to comply with the conditions of her EP.

In the Notice of Appeal, dated October 24, 2013 but not signed by the appellant, she states that she has found drug addiction treatment for her husband which can be confirmed by the Ministry of Children and Family Development (MCFD), and she is in full time care of both children and their grandmother who has cancer.

At the hearing the ministry relied on its reconsideration decision and added that:

- the appellant is a part of a 2-parent family that has 2 children;
- the workshops and programming she was required to attend were related to her skill set;
- the ministry does not dictate which parent must work and which should stay home with the children;
- the ministry understands the appellant's circumstance in regards to her children's care and that her mother-in-law is ill, however, these circumstances do not qualify as mitigating circumstances that could exempt her from complying with the conditions of her EP. The only mitigating circumstance that would exempt her from complying with her EP would be confirmation of a medical condition that she suffers from. Therefore, she is still required to comply with the conditions of her EP;
- the appellant did not contact the ministry to advise that the conditions of her EP were not achievable for her. The ministry only found out about the appellant's non-compliance from the contractor;
- the ministry may have assisted with child-care but the appellant stated in February 2013 that it was taken care of but the ministry is not aware when or how the child –care issue was dealt with;
- the EPBC Action Plan (or EP) does not indicate how many work searches the appellant is to complete each month, but this would have been communicated to her verbally and written confirmation would have been given as well. However, the denial decision is not solely based on the appellant's failure to complete her work searches but on an overall non-compliance with conditions of her EP.

The appellant did not attend the hearing. The panel confirmed that the appellant was notified of the hearing and proceeded in her absence in accordance with section 86(b) of the EAR.

## PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the ministry's reconsideration decision dated October 9, 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 the conditions of her EP nor did she provide verification to establish that mitigating circumstances prevented her from complying with the conditions of her EP. Specifically, the ministry found that the appellant did not complete her required work searches, she did not follow-up with the ministry's contractor by phone or email every 3 weeks, and that her attendance at the required workshops and program was not satisfactory to meet the conditions of her EP, which she signed and agreed to comply with.

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 the conditions of her EP; specifically the appellant did not complete her required work searches, she did not follow-up with the ministry's contractor by phone or email every 3 weeks, and that her attendance at the required workshops and program was not satisfactory to meet the conditions of her EP, which she signed and agreed to comply with. Also, it is the ministry's position that child-care issues were dealt with and that the appellant is not responsible for the care of her ill mother-in-law and that there were no mitigating circumstances preventing her from complying with the conditions of her EP.

The Appellant's position is that she was not able to meet the requirements of her EP because she must take care of her two small children and her ill mother-in-law, and that, due to his addiction issues, she does not trust her husband to care for their children.

#### *Panel Decision*

Section 9 (1) 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. As well, Section 9 (4) states that if an employment plan includes a condition requiring an applicant or a recipient 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. 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 ministry advised the appellant on May 21, 2013 that her work searches were insufficient to meet the conditions of her EP. However, the panel notes that neither the EP nor the EPBC Action Plan state how many work searches are to be completed per month. The EP does not directly address the requirements of work searches and the EPBC Action Plan simply states that the work searches are to be submitted once per month. The panel finds that the evidence demonstrates that the ministry failed to give the appellant clear direction on how many work searches are to be completed per month, and therefore, the ministry was not reasonable in finding that the appellant had failed to demonstrate reasonable efforts to complete her work searches.

The ministry found that the appellant did not follow-up with the ministry's contractor every 3 weeks or attend all required workshops and programming as indicated in her EPBC Action Plan and the appellant has not disputed the ministry's finding. The evidence demonstrates that the appellant,

despite being aware of the consequences of non-compliance, did not maintain contact with the ministry's contractor every 3 weeks either by phone or email, she did not attend or complete the required workshops, and she did not contact the agency referred to in her EPBC Action Plan. Therefore, panel finds that the ministry was reasonable in determining that the appellant did not make reasonable efforts to participate in employment-related programming as required by section 9 (4) (a) of the EAA.

The appellant argues that she is unable to attend workshops or complete work searches because she must take care of her children and her ill mother-in-law. The ministry argues that child-care was addressed in February 2013 and that if the appellant told the ministry about the need for child-care it would have assisted her in arranging alternative child-care, and that her mother-in-law's care is not the appellant's responsibility. The panel finds that the EPBC Action Plan indicates that child-care is a need for the appellant but evidence does not demonstrate that child-care was adequately addressed by the ministry, its contractor or that the appellant was told to find alternative child-care on her own. Nevertheless, the panel also finds that the ministry was reasonable in determining that the care of her children and mother-in-law do not qualify as mitigating circumstances that prevent the appellant from complying with the conditions of her EP as the legislation clearly states that medical reasons that pertain to the recipient (in this case the appellant) are the only exemption for the failure to participate in an employment-related program (section 9 (4) (b) of the EAA). The panel further notes that the appellant states in her Request for Reconsideration that illness and therefore care of her mother-in-law is a 'recent' event. The panel finds that the evidence establishes that during the time the appellant was non-compliant with her EP; the care of her mother-in-law was not an issue.

The evidence establishes that the terms and conditions set out in the appellant's EP and EPBC Action Plan have not been met, and as a result, 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.