

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 05 December 2013 that found that the appellant was not eligible for income assistance pursuant to section 9 of the Employment and Assistance Act. The ministry determined that the appellant has not demonstrated that she has made a reasonable effort to comply with the conditions of her employment plan (EP) or that she has a medical condition that has prevented her from complying with those conditions.

PART D – Relevant Legislation

*Employment and Assistance Act (EAA), section 9.*

## PART E – Summary of Facts

At the request of the ministry and with the consent of the appellant, a ministry trainee attended the hearing as an observer.

The evidence before the ministry at reconsideration included the following:

1. The appellant's EP signed by the appellant on 03 July 2013. In her EP, the appellant agreed to the following conditions:
  - Attend appointment with the Employment Program of BC (EPBC) contractor on 17 July 2013 at 1:00 pm,
  - Participate in EP programming regularly and as directed by the contractor,
  - Work with the contractor to address any issues that may impact her employability,
  - Complete all tasks assigned including any activities that may be set out in an action plan,
  - Notify the contractor if unable to attend a session or when starting or ending any employment.

By signing her EP, the appellant acknowledged that;

- it is a condition of eligibility for income assistance,
  - she must comply with the conditions as set out in this plan including any condition to participate in a specific employment - related program,
  - the contractors have the ability to report back on the appellant's activities,
  - she may be required to provide verification of his compliance with the conditions of this plan, including proof of active work search and/or records of attendance and participation in an employment-related program as required by the ministry,
  - she understands that if she fails to comply with the conditions of his EP, she will be ineligible for assistance under the Act.
2. The appellant's EPBC Action Plan dated 06 August 2013. The Action Plan included attending 5 workshops through August 2013, with an appointment with her EPBC case manager (CM) on 23 September 2013.
  3. An email to the appellant from her CM dated 31 August 2013 concerning her workshop schedule as set out in the Action Plan.
  4. An email to the appellant from her CM dated 24 October 2013 advising her that the CM was discontinuing her job search workshops and enrolling her into a new program called "Personal Mapping," beginning 29 October to 14 November 2013, every Tuesday and Thursday from 9:00 am to 3:30 pm. The CM advises the appellant that it is mandatory to attend and if she does not show up for a workshop or cancel attendance at one the ministry will have to be informed and her file returned.
  5. An EPBC contractor print out of the appellant's workshop and appointments, showing 7 "no-shows" and 3 cancelled appointments from 17 August to 14 November 2013. She was a no-show for all 5 "Personal Mapping" sessions.
  6. The CM's Notes:
    - The entry for 29 October 2013 states that the CM had arranged for the appellant to have an appointment with an in-house Registered Clinical Counsellor on 25 October 2013 and did not show.
    - The entry for 31 October 2013 indicates that the CM sent the ministry a Resolve Client Issues memo stating that "client has a history of no-shows and reschedules, reschedules with no-shows, cancellations without rescheduling, and arriving late for

workshops and leaving early etc. She has been advised on many occasions in person, via e-mails and tel messages she must attend the scheduled workshops and appointments. As a "last ditch effort" to address her personal issues that the case manager felt may be in the way of the client succeeding through a reasonable return to work action plan, case manager asked if she would like to see a registered clinical counselor and client said she would. An appointment was made for her to see our in-house RCC at the client canceled the appointment. She did not pressure joint..."

- The same entry states that "all clients are given a reminder calls the day before a workshop or appointment or in the case of a Monday workshop/appointment, a call on Friday."

7. From the ministry's files, as set out in the Request for Reconsideration:

- 08 November 2013: the appellant was mailed a noncompliance letter advising her she was not compliant with her EP. She was asked to attend the office to discuss eligibility for income assistance and mitigating circumstances for noncompliance.
- 21 November 2013: "[The appellant] attended office for her Dec. cheque. [She] was advised not eligible for income assistance unless she is able to present mitigating circumstances as to why she did not follow the conditions of her employment and action plan. [The appellant] stated she has had the flu that last week and has only missed a few appointments. Worker reviewed all missed appointments, cancellations, no-shows, late arrivals and early departures with programs and workshops. [The appellant] stated she was doing the work search. [The appellant] did not have a full proper work search to submit. [The appellant] stated she provides one every month. Review of file shows only two incomplete work searches have been submitted. Both work searches submitted were incomplete. [The appellant] was unable to present any mitigating circumstances as to why she did not participate in the EPBC programs.....[The appellant] advised a ministry worker that there were no medical barriers preventing her participation. [The appellant] has been deemed ineligible for continued income assistance benefits."

8. The appellant's Request for Reconsideration dated 22 November 2013. The appellant writes that she has a doctor's note, she suffered trauma (PTSD) – was brutally attacked. She attaches:

- A Crime Victim Assistance Application dated 20 June 2013 completed by the appellant, relating to an assault reported to the police on 15 June 2013.
- A letter from the Crime Victim Assistance Program dated 27 June 2013 acknowledging receipt of the appellant's application for crime victim assistance.
- A note from a treatment center physician dated 22 November 2013 stating: "Medical condition – poor sleep, ↓focus, headache 2<sup>0</sup> to trauma. Pls support financial if possible."

In her Notice of Appeal, dated 12 December 2013, the appellant writes that the reconsideration decision is unreasonable.

At the hearing, the appellant passed around photographs of her face taken after the assault, showing bruises and lacerations. The appellant also submitted the following documents:

- A note from a friend who writes that she has noticed changes in the appellant since the assault. She seems depressed and has lost her self-confidence. She has a difficult time speaking due to her teeth being broken; she also suffered a broken nose and now has difficulty breathing. She isn't the same anymore. It seems like she is suffering from post traumatic stress disorder.

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- Physician notes dated 15 June 2013, the day after the assault, noting the nose tender and bruised and “raccoon eyes,” and calling for an x-ray the next Monday.
  - A diagnostic x-ray report dated 17 June 2013. Impression: there is a fracture across the nasal bone, uncertain if it is acute. No other abnormalities seen.
  - Physician notes dated 22 November 2013 reporting on the note to the ministry referred to above and provided that date.
  - A letter to the appellant's physician from a brain injury society dated 23 December 2013. The writer wonders whether the appellant's injury is serious enough that she should be applying for PWD status instead of trying to do job search and asks the physician to consider referring her for a neuropsychological exam.
  - Physician notes dated 27 January 2014, recording the referral of the appellant to a hospital for a neuro – neuropsychological exam, with a copy of a health authority referral form to this effect.

In her presentation and in answer to questions the appellant provided the following testimony:

- Since the assault she is not the same person she used to be. She is forgetful, is easily confused, has bad headaches and is always fatigued due to lack of sleep.
- She attended the job search workshops on Fridays on a regular basis but did not get much out of them as it was mostly younger people sitting around having coffee and donuts and she had done this program before; she frequently had to excuse herself and leave early.
- She does not remember receiving the e-mail from her case manager about discontinuing her job search workshops and being enrolled in the “Personal Mapping” program. She stated that her Internet connection was unreliable.
- She stated that she did not go to the meeting with the counselor on 25 October 2013 because she had the flu.

The appellant and the ministry clarified that the appellant applied online for income assistance at the end of May 2013. The assault took place on 14 June and the appellant's intake appointment was on 03 July. The ministry stated that there was no indication in the ministry's files that the appellant expressed any reservations, medical or otherwise, at that time about signing the EP or about her ability to comply with her EP obligations.

The ministry stood by its position at reconsideration.

The ministry objected to the admissibility of the physician notes regarding referral of the appellant for a neuropsychological exam, as this was new information not before the ministry at reconsideration. The panel finds that the documents submitted by the appellant at the hearing, including those referring her for a neuropsychological exam, and her oral testimony are in support of the evidence before the ministry at reconsideration, elaborating on and clarifying the material concerning the assault and her medical condition submitted with her Request for Reconsideration. The panel therefore admits the appellant's documents and oral testimony as evidence under section 22(4) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in finding that the appellant was not eligible for income assistance pursuant to section 9 of the Employment and Assistance Act. More specifically, the issue is whether the ministry determination that the appellant has not demonstrated that she has made a reasonable effort to comply with the conditions of her employment plan (EP) or that she has a medical condition that has prevented her from complying with those conditions was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the *EAA*:

- 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...

The position of the ministry, as set out in the reconsideration decision, is that by signing her EP the appellant confirmed that she had read, understood and agreed to the conditions specified in the plan. If she was unable to comply with the conditions of her plan she was required to contact the ministry. Although the appellant has submitted information to confirm that she suffered trauma in June 2013 and states that she has post traumatic stress disorder (PTSD), she has not provided any medical documentation to confirm her diagnosis or that she is unable to participate in programming, especially seeing a registered clinical counselor which had been set up for her with the EPBC contractor. Therefore the ministry found that she is not demonstrated that she has made a reasonable effort to comply with the conditions of her EP, or that she has a medical condition that has prevented her from complying with the conditions of her EP.

The appellant's position is that as a result of the assault she is a changed person: she is forgetful, is easily confused and is always fatigued due to lack of sleep. She does not remember being advised of the change from job search workshops to being enrolled in the "Personal Mapping" program. Around that time she had the flu and that is also why she could not attend the session with the counselor. She believes she is suffering from PTSD as a result of the assault. She argues that under these circumstances it would be unfair and unjust to deny her income assistance.

*Panel findings*

The evidence shows that, as summarized by her CM, the appellant "has a history of no-shows and reschedules, reschedules with no-shows, cancellations without rescheduling, and arriving late for workshops and leaving early etc." She did not attend any sessions of the "Personal Mapping" program, or attend the appointment with the counselor, both moves arranged by the CM as "last ditch" efforts to get her back on track.

Except for a couple of occasions when she called in sick with the flu, the appellant did not provide the EPBC contractor any information regarding any medical condition that would explain these absences and cancellations. As the ministry noted at the hearing, it was only after the appellant had been sent a letter by the ministry concerning non-compliance with her EP and the implications for eligibility for income assistance that the appellant provided some background information about assault and the physician's note. While the legislation does provide for mitigating circumstances ("ceases, except for medical reasons, to participate in the program"), the panel notes that in her EP she agreed to work with the contractor to address any issues – which the panel takes to include medical issues – that that may impact her employability and to notify the contractor if unable to attend a session. To the panel, this placed an obligation on the appellant to bring to the attention of the ministry or its EPBC contractor as soon as possible any medical issues that may have impacted her participation in the employment-related program. The panel further notes that the physician's note describes only symptoms ("poor sleep, ↓focus, headache 2<sup>o</sup> to trauma"), not a formal diagnosis of PTSD, nor does it, or any other medical document submitted by the appellant, set out any recommended restrictions to daily activities, such as employment, looking for work or participating in workshops.

Based on the foregoing, the panel finds that the ministry's decision that determined that the appellant was not eligible for income assistance, because she had not demonstrated reasonable efforts to comply with her EP, was reasonably supported by the evidence. The panel therefore confirms the ministry's decision