

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated December 5, 2013, denying the appellant continuing income assistance because he did not comply with his Employment Plan (EP) and was not eligible for an exemption for medical reasons pursuant to section 9 of the *Employment and Assistance Act (EAA)*. Specifically, the ministry found that: a) the appellant failed to comply with the conditions of his EP by not demonstrating reasonable efforts to submit a satisfactory work search as required by section 9(4)(a) of the EAA; and b) he did not provide "sufficient medical documentation" to establish that he ceased to participate in the work search for "medical reasons" pursuant to section 9(4)(b).

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. Appellant's Request for Reconsideration dated November 22, 2013, in which he states the following:
 - "I don't want to be on welfare. It's so boring. I don't like doctors' offices or hospitals (I am afraid of them)."
 - "I am stupid and tired, and life goes against me so I never got the medical form issue resolved."
 - "I was feeling emotionally better after living (elsewhere), even though it's harder with way less money because of high rent, but food bank and soup kitchens help it be worth it."
 - "I thought it was agreed that I could try to look for work one more time and if it did not work out I would have to get medical forms filled out for sure."
 - "My attention span and memory are failing. Now I am really depressed again and tired. I was so tired (and sick) and could not do very much looking. Quite frankly, an hour or two of anything and I am exhausted for the day."
 - "So guess there was a problem how I wrote out my job list search form, because I'm stupid and I forget some things and can't concentrate."
 - "I feel that if I can't even look for work much, then I'm probably too tired to even work at a job", and
 - illegible sentence.
2. Employment Plan dated October 1, 2013, which is signed by the appellant and states in part that the appellant will:
 - participate fully and to the best of his ability in the activities required by the ministry;
 - update and distribute his resume to all potential employers;
 - seek out and pursue all available resources including government and community agencies, electronic and print media, and cold-calling potential employers;
 - record his monthly work search activities on the ministry form to be provided to the ministry upon request;
 - use personal contacts to assist him with his work search;
 - spend a minimum of 25 hours per week on work search activities;
 - submit his work search record by the 5th day of every month, showing 5 activities per day, 5 days per week; and
 - contact the Employment Program of BC and WorkBC if their resources could assist him with his work search goals.
3. Work Search Activities Record dated November 20, 2013 in which the appellant has listed the date, type, location, contact, and results for one work search activity per day on sixteen dates in October and one date in November. For three other dates in October he was sick, and on two dates he was "too tired to do anything". At the end of the form he wrote: "I am too tired to keep doing this. I will have to see my doctor and get on PPMB for next month."

Appellant's Submission

In his Notice of Appeal dated December 19, 2013, the appellant states that he was supposed to see his doctor and get back on PPMB. The ministry kept giving him 30 days, then another 30 days, etc. for a year, so he must have not thought it was urgent. He moved to a different community far away from his doctor and the ministry office. He had no phone and tried getting to the doctor "quite a few times" but did not make it in time. When he got there, the doctor had already filled his quota for the day, was working an earlier shift, or was on away on holidays. The appellant was feeling better from chronic depression and tried to do the job search but filled it out incorrectly.

The appellant states that he told the worker that he probably wouldn't be able "to do it right" but would try anyway. He realizes that he is too tired after looking for work for a couple of hours due to chronic fatigue, and probably would not be able to work for more than a couple of hours anyway. Now he is more depressed than ever because he got cut off assistance. His landlord said he will find out when the doctor is in and drive the appellant there, "to get back on PPMB, or I will have to get on permanent disability."

In his oral testimony, the appellant added the following:

- he has problems concentrating from smoking too much marijuana and staying up too late;
- living at his previous address brought him down and he felt better after he moved;
- a worker told him how to do the job search but he didn't do it right;
- he has been on and off welfare all his life and filled out the work search form the way he used to do it (when he had an EP in the past). Even though the ministry explained it, he is very forgetful and can't even remember what he just said;
- his last application for PPMB (in 2012) was denied because he needed more information from the doctor. He tried a few times to make it to the doctor but his doctor wasn't there;
- he has no incentive to make it to the doctor now because the ministry still pays his rent (Appeal Benefits until this appeal is decided);
- it was a waste of time moving and he got more depressed thinking he'd be homeless if the ministry cut him off;
- he doesn't need money for anything except rent because he goes to the soup kitchen and picks up cigarette butts;
- he thought he would try and look for work but he has chronic fatigue and chronic depression, procrastinates too much, and puts things on the back burner when still getting his rent cheque;
- the doctor not being there frustrated him;
- he would not be able to work; he has to lie down after an hour and a half;
- he had thought he could work in construction or clean up, or doing the dishes in a restaurant in exchange for free food, but the restaurant business was slow after the summer;
- it was tough for him to make it to the hospital to see the doctor (two hours away by bus) and he has no phone;
- his landlord has offered to help him get on PPMB by calling the medical centre to make sure the doctor is there to fill out the form, but the appellant can't do it now unless he is back on assistance because the ministry won't give him the forms; and

PART C – Decision under Appeal

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The evidence before the Ministry at the time of reconsideration was:

1. Appellant's Request for Reconsideration dated November 22, 2013, in which he states the following:
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 - spend a minimum of 25 hours per week on work search activities;
 - submit his work search record by the 5th day of every month, showing 5 activities per day, 5 days per week; and
 - contact the Employment Program of BC and WorkBC if their resources could assist him with his work search goals.
3. Work Search Activities Record dated November 20, 2013 in which the appellant has listed the date, type, location, contact, and results for one work search activity per day on sixteen dates in October and one date in November. For three other dates in October he was sick, and on two dates he was "too tired to do anything". At the end of the form he wrote: "I am too tired to keep doing this. I will have to see my doctor and get on PPMB for next month."

- he tried to see if he could do the work search but he obviously can't; he is going to apply for PWD or PMMB and get help with getting things done if he gets back on assistance.

In response to questions from the panel, the appellant stated that he didn't appeal the ministry's refusal of PPMB in 2012 because the ministry keep paying his rent and all he wants is his rent paid. He has been on regular income assistance for about a year. When he did the PPMB application (that the ministry refused), he told the doctor he was feeling better. The doctor put down "chronic fatigue" as a barrier but the appellant was refused PPMB and a year later he agreed to look for work.

The appellant added that when he signed the EP, the ministry wanted more details and more activities but he could not comply and does not think he is capable of following an EP. He did not ask the ministry to modify the EP because "right when I gave them the form (for continuing entitlement) they cut me off."

As the appellant's appeal submission and oral testimony relate to his attempt at obtaining a report from his doctor; his contact with the ministry; and his physical symptoms and medical conditions, the panel admits them as information that is in support of the records that were before the ministry at the time the reconsideration decision was made pursuant to section 22(4)(b) of the *EAA*.

Ministry's Submission

In its reconsideration decision dated December 5, 2013, the ministry states that the appellant is a sole recipient of income assistance with no dependants. His file has been open since 2007 and he was approved for PPMB from 2009 until 2012. He was denied PPMB in December 2012 due to a lack of detail from his doctor and did not appeal. He has been on regular income assistance since then. The ministry states that when it contacted the appellant's doctor in 2012 to obtain more detail for the appellant's PPMB application, the doctor's office said that they had sent the appellant's file to storage as the appellant had had no contact with them for 18 months.

From June through September 2013, the ministry required the appellant to submit a medical report as he stated that he was still dealing with medical problems and was unable to work. He failed to submit the report, stating he had anxiety. He nevertheless signed an EP in October, agreeing to make reasonable efforts to do a Supervised Independent Work Search. He agreed to demonstrate 25 hours per week of job search activity, including 5 activities per day, 5 days per week. In October, he submitted a work search that did not fulfill the required EP activities. He noted that he was sick for part of the month and too tired to continue with the work search, and would have to see his doctor about getting PPMB.

The ministry notes that it has three medical reports on file for the appellant. The most recent, from April 2012, indicated "depression, restrictions noted as can't work precludes". Another report from December 2011 indicated "anxiety, depression, restrictions as unemployable", and the third report from October 2009 indicated "chronic depression, restrictions as significant fatigue."

The ministry states that it found the appellant ineligible for income assistance due to non-compliance with his EP and that section 9 of the *EAA* requires a recipient to enter an EP and comply with its conditions "when required to do so by the minister." The ministry adds that the appellant has "a history of depression and anxiety" and his April 2012 medical report confirmed his condition as

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depression, "expected to last another 2 years". The appellant's physician reported the appellant's restrictions as "can't work precludes", and the treatment section of the report was left blank. The ministry states that it does not have sufficient documentation to support that the appellant is medically exempt from looking for work, and not enough detail was provided in the last medical report to satisfy the ministry that the appellant is currently "totally unemployable and unable to look for work", or that the work search efforts he demonstrated in October "were to the best of your ability at the time."

The ministry adds that the appellant has neither supplied it with an updated medical report over the past six months, nor a copy of any ongoing prescriptions for depression or anxiety so that it can make "a more informed decision in respect to your medical condition and eligibility for assistance." The ministry states that it must deny assistance due to the appellant's non-compliance with his EP. It recommends that he see his doctor to discuss possible treatment options to improve his medical condition. Further, he should submit an updated medical report to the ministry or to the tribunal on appeal.

At the hearing, the ministry relied on its reconsideration decision and elaborated by stating the following:

- It is sympathetic to the appellant, but bound by the law in making its decision. When the appellant signs an EP he is agreeing to comply;
- section 9 of the *EAA* requires compliance, and assistance is discontinued if no reasonable efforts are made to follow the EP;
- the law directs the ministry to deny further income assistance "unless the appellant ceases for medical reasons to follow his EP";
- it gave the appellant information on what constitutes a reasonable work search; accepted activities are listed on the work search form; and the appellant had the information;
- the appellant told the ministry he was feeling better and "agreed to try it.";
- between June and September, the ministry asked the appellant for a "medical justification" so that it could do a "soft EP" to address the appellant's mental health issues that kept him from being employable;
- being cut off assistance is "a situation of his own making" considering the appellant came to them and said that he wanted to do a work search.

In response to a question from the panel, the ministry explained that it applies the medical exemption in *EAA* section 9(4)(b) by requiring medical documentation pursuant to "ministry policy." For example, if the appellant "came to us and said he was feeling awful and couldn't do the job search, he should have brought a medical note saying 'unable to work'; then we'd give him a 3069 medical report form to take back to the doctor...A note on a prescription pad is all that we need initially."

However, in the appellant's case, the ministry stated that it couldn't do anything to exempt him as he had not contacted them or provided a medical note. The ministry added that in June and July, the appellant told them he was trying to get the medical form (for PPMB) filled out, and in October he stated that he has anxiety but wanted to look for work. The appellant never got his doctor to sign anything and since he did not appeal his PPMB denial from 2012, his medical conditions were not followed up on. The ministry stated that it "showed good faith" by asking the appellant month to

month to obtain the proper medical documentation, and that it had to "go with what the client told us - that he wanted to look for work."

In response to a question from the appellant, the ministry stated that if the appellant had refused to sign the EP he would have been found non-compliant and cut off assistance, but he could still get Appeal Benefits. The appellant replied that he thought he had to sign the EP no matter what, and no one told him that the ministry would still pay his rent.

In response to a further question from the panel, the ministry stated that despite the appellant's medical history and the appellant agreeing to "try" and do the work search, the ministry is bound by law. It could have looked at modifying the EP, but only if the appellant had approached the ministry office. The ministry is empathetic but the legislation is directive. The appellant should call them no matter what once he receives the panel's decision.

The panel makes the following findings of fact:

1. The appellant is a sole recipient of income assistance with no dependants.
2. He was on PPMB for approximately three years, was denied in 2012 and did not appeal, and has been on regular assistance since then;
3. The appellant has a history of chronic fatigue, anxiety and depression;
4. The ministry has three medical reports relating to the appellant's medical conditions and restrictions, dating from 2009 – 2012; the 2012 report indicated that the appellant's depression was "expected to last another two years"; and the treatment section was left blank;
5. Between June and September 2013 the ministry requested a medical report from the appellant and the appellant did not submit one;
6. The appellant has not obtained any medical reports or doctor's notes since 2012 and the doctor's office sent the appellant's file to storage in 2012 due to the appellant having no contact with the office for 18 months;
7. The appellant signed the EP in October agreeing to a work search; the consequences of non-compliance are stated in the EP;

PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the ministry's reconsideration decision of December 5th which held that the appellant is not eligible for continuing assistance pursuant to section 9 of the *EAA*. The ministry determined that: a) the appellant failed to comply with the conditions of his EP by not demonstrating reasonable efforts to submit a satisfactory work search as required by section 9(4)(a); and b) he did not provide "sufficient medical documentation" to establish that he ceased to participate in the work search for "medical reasons" pursuant to section 9(4)(b).

Section 9 of the *EAA* states:

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].

Analysis

The panel notes that section 9(4) of the *EAA* addresses two separate circumstances that constitute failing to meet the condition of participating in a "specific employment related program". Such a program includes a work search.

First, section 9(4)(a) raises the question of whether the client made reasonable efforts to participate in the program. To determine whether the ministry was reasonable in finding that the appellant did not make reasonable efforts, the panel must consider all of the evidence presented regarding the appellant's work search; any direction he received regarding what constitutes a satisfactory work search; and any evidence that the appellant was aware of the requirements, and the consequences of non-compliance.

Second, section 9(4)(b) sets out that ceasing to participate in a specific employment-related program (work search) "except for medical reasons" amounts to failure to meet the condition of the EP to participate in the program. As such, the panel's analysis under 9(4)(b) is limited to determining whether the ministry reasonably found that the appellant did not have "medical reasons" for ceasing his work search and thereby failing to comply with the conditions of his EP.

Reasonable Efforts to Participate in EP, *EAA* section 9(4)(a)

The Ministry's position is that the appellant did not make reasonable efforts to participate in the work search because he did not fulfill the "amount of activity" required for the work search; i.e., he did not list 5 activities per day, 5 days per week on his work search record. The panel notes that the appellant's record includes one activity per day. The ministry argues that it had explained how to complete a satisfactory work search, and the work search record also contains instructions and examples of acceptable activities. The ministry further argues that the appellant came to it wanting to do the work search, stating that he was feeling better. He signed the EP, agreeing to comply with the condition of a satisfactory work search and acknowledging that failing to comply would result in being denied further income assistance.

The appellant's position regarding the work search record is that he filled it out incorrectly. He was "too tired (and sick) to do very much looking"; is very forgetful so he could not remember how to do it even though the ministry explained it to him; and he filled out the work search the way he used to do them in the past.

Given that the appellant acknowledges his work search was not to the ministry's satisfaction as required in the EP, that the ministry explained how to fill out the work search record, and that he understood the consequences of non-compliance when he signed the EP, there is no dispute regarding whether he made reasonable efforts to participate. As the evidence indicates that the appellant did not demonstrate reasonable efforts to fulfill the work search requirement of his EP as directed by the ministry, the panel finds that the ministry reasonably determined that he did not meet the conditions of his EP as required by section 9(4)(a).

Exemption for Medical Reasons, section 9(4)(b)

The ministry's position is that the appellant did not provide documentation to establish that "medical reasons" prevented him from complying with the conditions of his EP and satisfying the work search requirement. At the hearing, the ministry explained that it applies the medical exemption through its "policy" of requiring a medical report and that initially, a doctor's note on a prescription pad is sufficient. As the appellant did not submit a doctor's note and had not provided "an updated medical report over the past six months", the ministry argues that it does not have enough information to support that the appellant has "medical reasons" for ceasing to participate in the work search.

The Appellant's position on not complying with his EP for medical reasons is that although he tried to do the work search, he was not able to continue because "I am too tired to keep doing this. I will have to see my doctor and get on PPMB for next month". The appellant argues that he has chronic depression, anxiety, and chronic fatigue and cannot sustain any activities for more than an hour or two. His attention span and memory are failing, and when he made an effort to obtain a doctor's report his doctor was not there. He argues that he should have gone back on PPMB because even though he was feeling better when he signed the EP and agreed to try and look for work, he "obviously can't do it", would not be able to work anyway, and needs to see his doctor to get on PPMB or permanent disability.

With respect to what information the ministry had in its possession regarding the appellant's medical conditions and symptoms as of the date he ceased following his EP on November 1, 2013, the panel summarizes the following:

- appellant's statements in his Request for Reconsideration that he was too sick and tired to do much looking for work, that he suffers from exhaustion, is forgetful, and cannot concentrate;
- appellant's statements on his Work Search Activities Record: "too tired to do anything", and "too tired to keep doing this...will have to see my doctor and get on PPMB";
- information from the ministry's contact with the appellant indicating that between June and September he was still dealing with medical problems, was unable to work, and failed to submit a medical report "due to anxiety";
- three medical reports on file for the appellant, covering the period 2009 – 2012: diagnosing anxiety and chronic depression, and restrictions of significant fatigue, unable to work, and unemployable; in his April 2012 medical report the doctor indicated the appellant's depression was expected to continue for two more years;
- information from the appellant's 2012 PPMB application that the appellant's doctor's office had sent his file to storage as the appellant had not had contact with the office in 18 months; and
- information from ministry's contact with the appellant that the appellant has "a history of depression and anxiety" and as recently as September, the ministry was considering doing a "soft EP" to address the mental health issues that were keeping him from being employable.

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While the panel notes that the some of the medical information does not relate to the specific date on which the appellant ceased participating in the work search, i.e., November 1,, 2013, the panel also notes that the ministry's evidence is that the appellant's conditions are "chronic" conditions, and that he had a history of PPMB status because he was not able to work due to his medical conditions. The appellant argues that his symptoms include depression, anxiety, and fatigue; he attempted to obtain a new medical report but failed to do so partly due to anxiety and fatigue; and he was sick and "too tired to keep doing this" while participating in the work search.

At the same time, the appellant's lifestyle factors such as "smoking too much marijuana and staying up too late" could reasonably contribute to his memory, attention, and fatigue problems. Also, the appellant indicated that he doesn't need money for food because he goes to the food bank and soup kitchen, suggesting that he is out and about in the community. It appears that he can get to these places at scheduled times but could not do likewise when it came to seeing his doctor. Further, there is no evidence that he is taking any treatment for his medical conditions, a reasonable expectation considering the chronic nature of his depression and anxiety.

The panel notes that while section 9(4)(b) does not require a medical report or doctor's note to confirm "medical reasons" for ceasing to participate in a (work search) program, the ministry explained that it asks for such documentation per its policy requirements. Policy is a statement issued by the decision makers indicating the considerations that will guide their exercise of discretion or explain how they interpret the legislation. The panel finds that while the ministry did not provide a copy of its policy for this appeal, it is not unreasonable for the ministry to ask for a doctor's report or prescription pad note, especially as the appellant had stated he was feeling better and agreed to participate in the work search and had not provided updated medical information since 2012 despite numerous requests from the ministry.

With regard to the ministry's arguments that the appellant's last medical report (2012) did not provide enough detail to satisfy the ministry that the appellant is "totally unemployable"; that it needed further medical information to make "a more informed decision" regarding the appellant's medical condition and eligibility for assistance; and that the appellant told the ministry that he felt better and wanted to do a work search, the panel notes that none of these arguments specifically address whether the appellant ceased participating in the work search for medical reasons on November 1st. While the 2012 report indicated that his depression was expected to last for two more years, this was two years ago and does not address the appellant's current health status.

Given that there was no current medical information regarding the appellant's depression and anxiety and how they were affecting him in November when he ceased participating in work search activities, and that his conditions appear to fluctuate as he was feeling better when he signed the EP in October, the panel finds that the ministry was reasonable in requesting an up to date medical note or report. While the chronic nature of the appellant's depression, anxiety, and fatigue; and the appellant's history of being restricted from employment for medical reasons, suggest that he would still have these conditions during the work search period, and that they would impact his ability to participate or continue with the program, there is no current medical information to confirm such. Although the last medical report stated that the appellant's conditions were expected to last for two more years that report was prepared two years ago and the ministry would not know whether the

doctor would have the same opinion in November 2013 unless the appellant provided a current note or report.

The panel therefore finds that the ministry reasonably determined that the appellant did not cease participating in his job search for "medical reasons" pursuant to section 9(4)(b). Accordingly, the panel finds that the reconsideration decision was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision.