



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”), reconsideration decision dated January 23, 2014, which held that the Appellant was not eligible for Income Assistance for failure to comply with the terms and conditions of her employment plan (EP) pursuant to Sections 9 (1) (b) and 9 (4) of the *Employment and Assistance Act – EAA*. The ministry determined that the appellant ceased to participate in an employment program for reasons other than medical reasons.

PART D – Relevant Legislation

Employment and Assistance Act – EAA – Sections 9 (1) and 9 (4)

PART E – Summary of Facts

The relevant evidence before the ministry at the time of the reconsideration decision included the following:

1. An Employment Plan dated May 24, 2013 signed by the appellant (EP). The terms of the EP include provisions requiring the appellant to make an appointment with the service provider for an intake assessment visit, attend the intake appointment, complete all tasks assigned by the service provider, work with the service provider to address issues that may be impacting the appellant's ability to secure and sustain employment, and attend all review appointments as required. By signing the contract, the appellant also confirmed that she has read, understood and agreed to the conditions specified in the EP;
2. A Work Search Activity Record dated May 22, 2013 signed by the appellant (the "First Report"), which among other matters states that during the month of May: (a) the appellant had searched an online "List" to for jobs and emailed her resume/cover letter to prospective employers through her personal online mail account; (b) called an employment agency for employment opportunities and updated copy of her resume and cover letter; and (c) he was actively and daily looking for work;
3. A Work Search activity Record dated May 22, 2013 signed by the appellant (the "Second Report"), which among other matters states that during the month of May: (a) the appellant contacted several specifically named employers on the Second Report and supplied her resume and cover letter to them to obtain a job in various capacities;
4. A letter dated December 11, 2013 from the ministry to the appellant stating that the appellant's next income cheque will be held in office until job search information is received and Employment Plan review is complete;
5. Ministry's original decision dated January 1, 2014;
6. A Request for Reconsideration dated January 9, 2014 signed by the appellant, which among other matters states that: (a) the appellant was unable to comply/attend with her employment program/plan and look for work due to personal family and health issues, depression, addiction issues, stress and anxiety; (b) the appellant has no other means of financial support and has no assets; and (c) her goals are to seek counseling and secure fitting employment

Subsequent to the date reconsideration decision, the appellant filed a Notice of Appeal on January 28, 2014 together with a submission that among other matters states that (a) the appellant is still in need of financial assistance and support; (b) she was unable to comply with the Employment Action Plan Program (Program) due to personal family and health issues, job loss, anxiety, stress, and relationship breakdown; (c) she has reconnected with the Program again; (d) her goal is to secure fulltime employment and seek counseling, and to stay compliant relating to the Program; and (e) she was requesting continuance of her monthly support once again as she has no other means of financial support until she achieves her goal of securing a fitting employment.

The teleconference hearing began at 10:00 am with the announced participation of the panel members and the ministry representative. The panel chair called out the name of the appellant

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several times to check whether the appellant was on line. In view of a lack of response to such manual (verbal) roll call and after confirming that the appellant was notified of the date and time of the hearing, the hearing proceeded under section 86(b) of the EAR. At some stage of the teleconference hearing, the appellant apparently joined the hearing but without making her presence known to the panel members. At the end of the hearing, the teleconference system firstly announced the departure of the ministry representative from the teleconference and secondly of the departure of the appellant from the teleconference. Soon thereafter, the appellant reconnected in to the teleconference call and stated that she had been late in joining the call. The panel therefore took a short recess to facilitate the re-participation in the ministry representative and the appellant agreed to re-join the teleconference hearing "sharp at 11:00". The teleconference hearing was reinitiated at 11:00 am with the panel members and the same ministry representative. The appellant did not rejoin the conference and after waiting for her again for ten minutes, the panel determined to proceed and conclude the hearing under section 86(b) of EAR as stated hereinbefore.

At the commencement of the hearing, the panel reviewed the submission of the appellant filed with her Notice of Appeal dated January 28, 2012, which among other matters states that: (a) the appellant is still in need of financial assistance; (b) she was unable to comply with the requirements of her employment action plan program due to personal family and health issues (anxiety, stress, relationship breakdown); (c) she has reconnected with her Employment Program again, her goal is to secure full time employment and seek counseling, and stay compliant with the employment program. The ministry did not object to the additional written testimony of the appellant, which was partially also before the ministry at reconsideration. The panel admitted this additional written testimony of the appellant pursuant to section 22(4)(b) of the Employment Assistance Act and finds that it was in support of the information and records before the ministry at reconsideration.

At the hearing, the ministry stated that all income assistance recipients are required to enter into an employment plan and to sign the agreed employment plan to confirm that they have understood the obligations under the plan and the consequences of non-compliance with the plan. This procedure was followed with the appellant. In particular, the ministry staff reviewed the provisions of the EP (signed on May 24, 2013) with the appellant (who does not have any dependent children) on several occasions to make sure that the appellant understood all the requirements of the EP and the consequences of non-compliance with the requirements.

The ministry further stated that the appellant had not met with the conditions of the EP and her monthly income assistance cheque was withheld for the month of August 2013 for non-compliance. The appellant then re-commenced her participation in the employment program and her income cheque was released to her. At that time, the appellant was also requested by the ministry to provide to the ministry confirmation of her medical condition on a specific form prescribed by the ministry for completion by a medical practitioner. A ministry staff member also informed the appellant that the ministry would pay the cost of completion of the prescribed medical form by a medical practitioner.

According to the ministry, the ministry staff was advised by the employment program that the appellant had not attended the program since October 2013. The appellant had also not submitted information regarding any medical conditions preventing her participation in the program.

The panel finds that:

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- The appellant signed the EP on May 24, 2013;
 - Required activities were that (a) the appellant contact the service provider, attend the program as scheduled and provide the ministry office written confirmation of acceptance into the next Program; and (b) continue to work with the program upon completion, for job search and program assistance;
 - The appellant did not attend the program after October 23, 2013 and did not provide to the ministry any medical evidence that indicates that the appellant suffers from any medical issues that would impact her ability to attend the program.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry reasonably concluded that the appellant did not meet all of the terms and conditions of her employment plan as required by section 9 of the EAA.

The relevant sections of the EAA, provide as follows:

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.

(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.

(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 issue on appeal is whether the ministry reasonably concluded that the appellant failed to complete the requirements of her EP and did not submit any evidence of any medical reasons for not being able to attend the EP, and is therefore ineligible for income assistance.

Section 9(1) of the EAA provides that, when the ministry requires, a person must enter into an EP and comply with the conditions in the EP in order to be eligible for income assistance.

Under Section 9(3) of the EAA, the ministry has the authority to specify conditions in an EP, including a requirement that the person participate in an employment-related program.

Pursuant to Section 9(4) of the EAA, if an EP includes a condition requiring a person to participate in a specific employment-related program, that condition is not met if the person fails to demonstrate reasonable efforts to participate in the program or if the person ceases, except for medical reasons, to participate in the program.

From the record of appeal and her submission after reconsideration, the panel notes that the appellant's position is that she was unable to comply with the employment program and look for work due to:

- "*personal family and health issues, depression/addiction issues, stress, anxiety*" (submission dated January 9, 2014 before reconsideration decision), and
- "*personal family and health issues ... anxiety, stress, relationship breakdown*" (submission dated January 28, 2014 after reconsideration decision)

The ministry's position is that the appellant entered into an EP dated May 24, 2013 for a period of one year. The appellant was referred to an employment-related program in which she was required to participate, and that she did not comply with the conditions of the EP, as she did not demonstrate reasonable efforts to participate in the program. The appellant did not attend appointments with the service provider since October 2013 and failed to provide any medical documentation that the appellant was unable to participate in the implementation of her EP for medical reasons.

The panel notes that section 9(4) of EAA requires that the appellant demonstrate reasonable efforts to participate in the program under the EP signed by the appellant, or to provide a medical reason for ceasing to participate in the program. The appellant was provided a prescribed medical form by the ministry to obtain confirmation of her medical condition, but has not provided such information from a medical practitioner to the ministry.

Based on the evidence before it, including the *Findings of Facts* made by the panel in *Part E* of this decision, the Panel finds that the appellant has not provided evidence to support her position that her medical condition precludes her from participating in her employment program. Therefore the panel finds that the ministry reasonably concluded that appellant is not eligible for assistance under the provisions of section 9 of the EAA.

The panel finds that the ministry's decision to deny the appellant income assistance for failing to comply with the terms and conditions of her Employment Plan as required by Section 9 of the EA Act was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry's decision.