



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision of February 7th, 2014 wherein the ministry denied the appellant further income assistance for failing to comply with the conditions of his employment plan by failing to demonstrate he made reasonable efforts to participate in his employment program or ceased to participate in the program, due to medical reasons, in accordance with section 9 of the Employment and Assistance Act (EAA);

The ministry determined that the appellant did not provide any information to the ministry regarding any circumstances that would interfere with his ability to meet his employment-related obligations as set out in section 29 Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9
Employment and Assistance Regulation (EAR), section 29

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Medical Report – Employability (MRE) completed by a physician on February 7th, 2013. Responding to a question on restrictions specific to medical conditions, the physician states “I know of no restrictions at this time”;
- Employment Plan (EP) dated February 1st, 2013.
- EP dated February 13th, 2013.
- Job Search Tracker forms showing contacts between December 1st to January 27th – 5 pages;
- Request for Reconsideration dated January 25th, 2014;

On February 1st, 2013 the appellant was deemed eligible for income assistance and the ministry worker (EAW) completed an “Activities Toward Independence” employment plan to enable the appellant to have the MRE form completed by his physician and returned to ministry office. The EAW and the appellant reviewed his obligations outlined within the EP and he signed the EP acknowledging that he understood his obligations and the consequences of being deemed non-compliant. On February 13th, 2013 the appellant returned to the ministry office with the MRE form completed by his physician. The EAW reviewed the MRE form noting that his physician had not identified any restrictions on the appellant’s employability. The EAW then completed a new EP. Again, the EAW reviewed the appellant’s obligations stated in the EP and the consequences of him being deemed non-compliant. The EAW then referred the appellant to the Employment Program of BC’s (EPBC) sub-contractor. The appellant signed the EP indicating that he understood his obligations and the consequences of being deemed non-compliant. On March 20th, 2013 the appellant attended the ministry office on an unrelated matter and the EAW took the opportunity to remind him of his obligations to attend and participate in the contractor’s services and the consequences of being non-compliant. The appellant stated that he understood.

The conditions set out in the EP signed by the appellant on February 13th, 2013 state, “I will participate fully and to the best of my ability in the activities required by the ministry or contractor as set out in sections 3(a) to (f) of the EP. Section 3(a) to (f) states:

- a) Term: 2013-Feb-12 to 2015-Feb-13
- b) Name of Program/Service: Work BC Employment Services
- c) Name of Contractor: Work BC Employment Services
- d) Details: I am aware I will be contact by the contractor within 5 business days to schedule an Orientation Session. I am aware that should I not be contacted by the contractor within the 5 stated business days; I will attend their office within 5 business days thereafter. As a condition of continued eligibility for assistance, I will attend and participate in the contractor's program as directed by the contractor. I will work with the contractor to address any issues that may impact my employability and will complete all tasks assigned, including any activities that may be set out in my action plan. I will notify the contractor if I am unable to attend a session, or when I start or end any employment. I will declare all income and report any changes to the ministry. I understand that if I fail to comply with the conditions of my employment plan, I will be ineligible for assistance under the Employment and Assistance Act. I am fully aware of my employment plan obligations signed by appellant
I am fully aware of the consequences of ineligibility should I be non-compliant with my employment plan signed by the appellant
- e) Date of Referral: 2013-Feb-13
- f) Client Reporting Requirements: blank

On January 14th, 2014 the EAW received communication from the contractor that the appellant has not been attending and/or participating in the program since November 28th, 2013.

The following is the contractor’s record of the communication with the appellant:

Communication	Occurred at	Result
Telephone to Client	Wed Jan 15 2014 9:41am	Compliance reminder
Telephone to Client	Wed Jan 15 2014 9:41am	Compliance reminder
Telephone to Client	Tues Dec 31 2013 10:32am	Compliance reminder
Telephone to Client	Tues Dec 17 2013 8:46am	Left Message
Telephone to Client	Fri Dec 13 2013 3:26pm	Left Message
Telephone to Client	Thurs Dec 12 2013 9:52am	Left Message
Telephone to Client	Wed Nov 27 2013 3:39am	Answered
Telephone to Client	Tues Nov 19 2013 11:41am	Left Message
Telephone to Client	Fri Oct 25 2013 3:24pm	Left Message
Telephone FROM Client	Wed Oct 23 2013 1:00pm	Answered
Telephone to Client	Wed Oct 23 2013 9:32am	Left Message
Telephone to Client	Thu Aug 29 2013 3:49pm	Left Message
Telephone to Client	Wed Aug 14 2013 9:50am	Answered
Telephone to Client	Thu May 30 2013 3:27pm	Left Message
Telephone to Client	Mon May 27 2013 11:16am	Left Message
In Person	Thu May 2 2013 11:13am	Successful
Telephone From Client	Thu Mar 28 2013 9:00am	Answered
Telephone to Client	Fri Feb 22 2013	Answered

The following is the contractor's record of the appellant's attendance to appointments/programs:

Summary	Start Time	Category	status/Outcome
Group	Thu Nov 28 2013 1:00pm	Workshop	No-show
Contractor	Thu Nov 28 2013 12:30pm	Appointment	No-show
Group	Thu Nov 07 2013 1:00pm	Workshop	No-show
Contractor	Tue Oct 29 2013 12:00pm	Appointment	Attended
Contractor	Mon Oct 28 2013 1:00pm	Employment Support Services	Attended
Group	Thu Oct 10 2013 1:00pm	Workshop	No-show
Contractor	Fri Sep 27 2013 1:30pm	Appointment	Attended
Contractor	Fri Sep 27 2013 10:30am	Appointment	Rescheduled
Group	Thu Sep 26 2013 1:00pm	Workshop	Attended

On January 22, 2014 the appellant contacted the ministry office to inquire about his income assistance cheque and he was advised of his non-compliant status. Later this same date the appellant attended the ministry's district office and the EAW advised him the contractor had advised the ministry that he had not been in attendance since November 28th, 2013. The EAW asked for an explanation of his non-attendance and the appellant stated that he had moved on December 1st, 2013; had spent a couple of days in another community in early December attending a funeral; had spent two weeks, in another community, with his family at Christmas; and had babysat a cat for two weeks. The EAW then asked the appellant if he had anything further to add as to why he did not follow the contractor's program in compliance with his EP. When he did not, the EAW advised the appellant his explanation was not satisfactory and he was being denied further income assistance for non-compliance.

In the Notice of Appeal the appellant stated, "I disagree with the ministry's decision because I have been searching for a job my very hardest and I've had no luck yet. I attend school Tuesdays and Thursdays. Also I attend the workshops available with [the contractor]."

The panel finds that the statements in the appellant's Notice of Appeal contain information in support of the information and records that were before the minister when the decision being appealed was made. As the statements provide information on the appellant's position regarding his appeal, the panel finds that the item is admissible as evidence in accordance with section 22(4) EAA.

[Redacted]

Before the hearing commenced a memo dated February 25th, 2014 from an adult education facility was faxed to the Employment and Assistance Appeal Tribunal (EAAT). The memo provided an attendance report in the appellant's name. The report was printed February 25th, 2014 and states the appellant was in attendance 3 days – February 11th, 13th and 18th of 2014.

The panel finds this document provides information that occurred after the reconsideration decision of February 7th, 2014 was made and therefore, is not admissible as evidence under section 22(4) EAA as this information is not relevant to the issue under appeal and was not before the ministry at the time the reconsideration decision under appeal was made.

The appellant testified that he has been working very hard to find a job. The appellant told the panel that he didn't have a dedicated telephone line where he was living and he did not have a cellphone and so he was using his grandparent's phone line as a contact number. The appellant stated when his grandparents are away he has no access to the house and cannot get his phone messages. He testified he would ask his grandfather if he had any received any messages and he would be told no. The appellant testified that he is very reliable in doing his job searching; that he understands "that to get one you need to work at it". The appellant testified that in early December he moved; then he was in another community for two days assisting a friend's family who had a medical emergency; then he returned to home to look after his girlfriend's cat for two weeks; and then he went to visit his parents, who live in another community, for a couple of weeks; to celebrate Christmas.

In response to questions from the ministry the appellant testified that he didn't look for work while in his friend's community or when he was visiting his parent's home because he didn't live in those communities and didn't want to refuse a job interview or accept work as he didn't live there. He testified that he didn't think to discuss the option of working in another community with the EAW. The appellant acknowledged that he did not do the required 5 job searches each and every day of every week as required in his action plan of the EP; that he lost his initial job search record book and then tried to complete the job search report from memory. The appellant acknowledged that he missed appointments with the contractor and now understands that he should have gone into the contractor's office in person but he didn't have bus passes for travelling. The appellant also acknowledged that he did not inform the contractor that he was going to assist his friends in another community or was going to visit his parents for two weeks during Christmas and that he would not be available to participate in the program.

The panel finds the appellant's testimony is relevant to the issue under appeal and that his testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) EAA.

The ministry relied on the facts as stated in the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision of February 7th, 2014 wherein the ministry denied the appellant further income assistance for failing to comply with the conditions of his employment plan by failing to demonstrate he made reasonable efforts to participate in his employment program or ceased to participate in the program, due to medical reasons, in accordance with section 9 of the Employment and Assistance Act (EAA);

And further, that the appellant did not provide any information to the ministry regarding any circumstances that would interfere with his ability to meet his employment-related obligations as set out in section 29 EAR.

The legislation considered:

EAA

Section 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.

- (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.

EAR

Consequences of failing to meet employment-related obligations

Section 29

- (1) For the purposes of section 13 (2) (a) [*consequences of not meeting employment-related obligations*] of the Act,
 - (a) for a default referred to in section 13 (1) (a) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each of 2 calendar months starting from the later of the following dates:
 - (i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation; (B.C. Reg. 304/2005)
 - (ii) the date the default occurred, and (B.C. Reg. 263/2002)
 - (b) for a default referred to in section 13 (1) (b) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each calendar month until the later of the following occurs:
 - (i) the income assistance or hardship assistance provided to the family unit has been reduced for one calendar month;
 - (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment. (B.C. Reg. 263/2002)
- (2) The reduction under subsection (1) applies in respect of each applicant or recipient in a family unit who does anything prohibited under section 13 (1) [*consequences of not meeting employment-related obligations*] of the Act.
- (3) For the purposes of section 13 (2) (b) [*consequences of not meeting employment-related obligations*] of the Act, the period of ineligibility for income assistance lasts
 - (a) for a default referred in to section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:
 - (i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation; (B.C. Reg. 304/2002)

- (ii) the date the default occurred, and (B.C. Reg. 263/2002)
 - (b) for the default referred to in section 13 (1) (b) of the Act, until the later of the following has occurred:
 - (i) the family unit has been ineligible for income assistance for one calendar month;
 - (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment. (B.C. Reg. 263/2002)
- (4) Section 13 [*consequences of not meeting employment-related obligations*] of the Act does not apply to a family unit of an applicant or recipient who is in any of the following categories:
- (a) Repealed (B.C. Reg 116/2003);
 - (b) sole applicants or sole recipients who have at least one dependent child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
 - (c) Repealed (B.C. Reg. 48/2010);
 - (d) sole applicants or sole recipients who have a foster child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment;
 - (e) persons who receive accommodation and care in a special care facility or private hospital;
 - (f) applicants or recipients admitted to hospital because they require extended care;
 - (g) persons who reside with and care for a spouse who has a physical or mental condition that, in the minister's opinion, precludes the person from leaving home for the purposes of employment;
 - (h) applicants or recipients in a family unit that includes only applicants or recipients who are
 - (i) Repealed. (B.C. Reg. 160/2004)
 - (ii) persons who are participating in a treatment or rehabilitation program approved by the minister, if their participation in that program, in the minister's opinion, interferes with their ability to search for, accept or continue in employment,
 - (iii) persons who have separated from an abusive spouse or relative within the previous 6 months, if, in the minister's opinion, the abuse or the separation interferes with their ability to search for, accept or continue in employment,
 - (iv) persons not described in section 7 (2) [*citizenship requirements*], or
 - (v) persons who have persistent multiple barriers to employment;
 - (vi) persons who have reached 65 years of age; (B.C. Reg. 116/2003)
 - (i) Repealed (B.C. Reg. 48/2010);
 - (j) sole applicants or sole recipients who are providing care under an agreement referred to in section 8 [*agreements with child's kin and others*] of the Child, Family and Community Service Act for a child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment; (B.C. Reg. 331/2003)
 - (k) sole applicants or sole recipients who are providing care under an agreement referred to in section 93 (1) (g) (ii) [*other powers and duties of directors*] of the Child, Family and Community Service Act for a child who
 - (i) has not reached 3 years of age, or
 - (ii) has a physical or mental condition that, in the minister's opinion, precludes the sole applicant or recipient from leaving home for the purposes of employment. (B.C. Reg. 331/2003)

In reference to section 9 EAA, the ministry's position is that the contractor tried to contact the appellant several times without success; that the appellant did not respond to the telephone messages and missed scheduled workshops in October 2013 and November 2013 without notifying the contractor. The ministry argued the appellant had no contact with the contractor between November 28th 2014 and January 22nd 2014 and only contacted the ministry to inquire about his assistance cheque. The ministry argued that on this visit to the ministry office on January 22nd, 2014, the EAW spoke with the appellant seeking an explanation on why he did not respond to the contractor's messages and for missing scheduled workshops. The ministry stated the

appellant informed the EAW that he had attended a funeral in friend's community; was caring for a friend's cat and had spent two weeks with his parents during Christmas. The ministry argued the appellant's reasons for non-compliance with his EP should not be deemed to be reasonable. The ministry argued that the appellant could have been doing his job search responsibilities while in the other community and while visiting his parents but he chose not to; and babysitting a cat is not a reasonable explanation either. The ministry further argued that neither the appellant nor his family physician identified any restrictions that would affect his employability. The ministry argued the appellant made no contact with the contractor or the ministry between November 28th, 2013 and January 22nd, 2014 and it is his responsibility to inform the contractor or the ministry if he cannot make any appointments or for any reason is not able to meet the obligations set out in his EP.

The appellant argued that he does not have a landline or a cell phone that would provide him with reasonable access to the contractor's messages or to communicate with the contractor. The appellant argued that he was utilizing his grandparent's phone line for contact and messages but if they were not home he didn't have access to their home and didn't get the messages. The appellant argued that he tried to comply with his EP by doing his job searches but lost his initial job search book and then tried to complete his job search record from memory. The appellant also argued that he felt it was important to assist his friend's with their medical emergency; to care for his friend's cat and to visit his parents at Christmas time.

The obligations in the EP require that the appellant will: 1) attend and participate in the program as directed by the contractor; 2) work with the contractor to address any issues that may impact on his employability and will complete all tasks assigned; 3) notify the contractor if I am unable to attend a session, or when I start or end my employment.

The evidence is that the contractor made several attempts to contact the appellant between November 28th, 2013 and December 31st, 2013 but there was no response from the appellant and he did not attend the workshops. The appellant testified he was away in December 2013, except when he was babysitting a friend's cat, and did not advise the contractor that he would not be available, an obligation set out in his EP. The appellant told the panel that in early December he was assisting a friend with a medical emergency and he told the EAW he was attending a funeral.

The panel does not accept the appellant's argument that he made reasonable efforts to comply with his EP when he did not have any contact with the contractor between November 28th and January 14th, 2014 because he did not have a dedicated telephone line and was caring for his friend's cat and visiting his parents. The panel finds there is a conflict in the evidence regarding the reason for the appellant's visit to his friend's community; initially he told the EAW that he was attending a funeral and his evidence before the panel was that he was assisting friends with a medical emergency.

The panel finds the appellant's explanation for not being available to the contractor between November 28th, 2013 and January 14th, 2014 is not reasonable and therefore he did not demonstrate that he made reasonable efforts to participate in his EP.

The appellant's physician, in the Medical Employability- Report, stated he was not aware of any medical restrictions that would affect the appellant's employability and there is no other medical evidence before the panel.

The panel finds that the ministry's decision that appellant did not comply with his EP by demonstrating reasonable efforts to participate in his employment-related program or ceased, to participate in the program because of medical reasons was reasonable.

While the ministry's reconsideration decision references section 29 of the EAR, the appellant has been denied income assistance for failing to comply with the conditions of his employment plan for failing to make reasonable efforts to participate in his employment program and for not having ceased to participate in the

program due to medical reasons in accordance with s. 9 of the EAA. Section 29 of the EAR sets out the consequences related to a failure to meet the employment-related obligations set out in s. 13 of the EAA which is not at issue in this case.

The panel finds that the ministry's decision that the appellant did not comply with his EP, as set out in section 9 of the EAA, was a reasonable application of the legislation in the circumstances of the appellant, and confirms the ministry's decision pursuant to section 24(1)(b) EAA and section 24(2)(a) EAA.