



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 January 16, 2014, which denied the Appellant Income Assistance (IA), as the Ministry determined that the Appellant was non-compliant with the conditions of her employment plan, (EP), contrary to Sec. 9 of the Employment Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Sec. 9

PART E -- Summary of Facts

A summary of the evidence before the Ministry at the time of the reconsideration is as follows:

1. A copy of the appellant's employment plan (EP) signed by the Appellant on September 24, 2012. The appellant's EP included the following components:

Plan Conditions

Conditions of the EP require that the appellant participate fully to the best of her ability in the activities required by the ministry or EPBC contractor as set out in sections 3(a) to (f) of her EP.

Section 3(a) sets a start date of September 7, 2012; (b) lists the name of the Program/ Service as Employment Program of BC (EPBC); (c) provides the name of the contractor and a telephone number; (d) states that as a condition of continued eligibility for IA the appellant will participate in EPBC programming regularly and as directed by the EPBC contractor. She must also work with the EPBC contractor to address any issues that may impact her employability and will complete all tasks assigned including any activities that may be set out in an action plan. The appellant agreed to contact the contractor at the telephone number listed in part (c) of her EP if she is unable to attend a session or when she starts or ends employment. If the appellant fails to comply with the conditions of her EP she understands that she will be ineligible for IA under the EAA. The appellant also understands that she must report all income, and report any changes to the ministry and attend all ministry review appointments as required; (e) date referred September 24, 2012; (f) reporting requirements as per contractor.

Section 5: Compliance with EP and Actions for Non-Compliance

To be eligible for assistance, each applicant or recipient in a family unit must, when required to do so, enter into an EP, and comply with the conditions set out in the EP. The purpose of an EP is to help a person a) find employment, or b) become more employable. Assistance will be discontinued if a person a) fails to demonstrate reasonable efforts to participate in a program in which he or she is required to participate or b) ceases except for medical reasons, to participate in the program.

Section 6: Acknowledgments

The appellant acknowledges that it is a condition of eligibility that she sign her EP and that she comply with the conditions set out in her EP, including any conditions to participate in a specific employment-related program. The appellant understands that ministry contractors have the ability to report back on her activities. She also understands that she may be required to provide verification of her compliance with the conditions of her EP, including proof of active work search and/or records of attendance or participation in an employment related program as required by the ministry.

The appellant further agrees that she acknowledges and understands that, if the ministry refers her to an employment-related program that she must participate fully and to the best of her ability in the activities required by the ministry contractor.

In accordance with the conditions of the EAA the appellant acknowledges that she understands that if she does not comply with the conditions of her EP, the assistance issued to her or her family will be discontinued. The appellant also acknowledges that she understands that participation in an EP is not open to appeal.

2. A copy of the appellant's Request for Reconsideration signed by the appellant December 24, 2013.

In section 2 of this document, which was completed by the ministry, provides a record of interactions between the appellant, the EPBC contractor, and the ministry which reports among other things the following:

- Numerous entries made by the ministry between September 24, 2012, and December 10, 2013, directing the appellant to reconnect with her EPBC contractor, reminding her that this condition is set

out in her EP, and failure to do so will result in her ineligibility for continued benefits.

- Numerous entries made during the same time period reminding the appellant of her obligation to report any earnings to the ministry in a timely manner.
- An entry made April 23, 2013, reports that the appellant advised the ministry that she may require surgery for carpal tunnel. The appellant was advised by the ministry that at this time she is required to participate in the EPBC program and if a doctor states she is unable, that this will be taken into account when the information is received. However, at this time she is expected to work. On April 28, 2013, the appellant met with her EPBC contractor and submitted a medical report that indicated she has carpal tunnel but did not indicate an inability to seek or accept employment or confirm upcoming surgery. The appellant was advised by both the ministry and her EPBC contractor that she was employment obligated and she must continue to participate as a condition of eligibility.
- An entry made on October 15, 2013, reports that the appellant contacted the ministry and stated that her brother is back in hospital and that she is emotionally unable to look for work. She reported that she has an appointment with her EPBC contractor this day and will discuss with them.
- An entry made on December 10, 2013, reports that the appellant's EPBC file was closed due to habitual non-compliance. The appellant has taken cash jobs over the course of her EP but has not demonstrated a sincere attempt to participate in EPBC programming to find gainful employment that would enable her to become financially independent, and has not produced medical information that would confirm an inability to seek or accept employment or participate in EPBC programming. The ministry attempted to contact the appellant by phone but was not successful. A denial letter was then sent to the appellant.

In Section 3 of the Request for Reconsideration the appellant is asked to provide her reason for making her request. In this section the appellant reported that because of her mental state she is not able to deal with people and that the worker from the employment place told her she was writing a letter stating she found her to be unemployable at this time.

The Reconsideration Decision found that the appellant had failed to comply with the conditions of her EP. The decision noted the following, among other things;

- Section 9(1) of EAA states that for a family unit to be eligible for IA, each member of the family unit must comply with the conditions in the EP. One of the conditions in the appellant's EP was to participate in EPBC programming regularly and as directed by her EPBC contractor. Another condition was that the appellant would work with the EPBC 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.
- The ministry reports that the appellant has a history with warnings of non-compliance with her EP, attached in section 2 of the appellant's Request for Reconsideration, and that while this alone does not establish that the appellant is currently in non-compliance, it does establish that the appellant was made well aware, on numerous occasions, of the requirement to attend appointments with her EPBC contractor, provide evidence of work search, and/or to provide medical documentation to establish that she is unable to participate in the programming.
- On January 16, 2014, the ministry contacted the appellant's former EPBC contractor who reported that they had not offered to write a letter stating that they found the appellant to be unemployable. They reported that the appellant had stopped participating in the program and had not attended appointments as required. They reported that the appellant had advised them that she could not attend appointments because she was pet sitting and was attending counseling for some mental health issues which were

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included in as an activity within her action plan. The contractor also reported that when the appellant was asked to provide confirmation that she was attending counseling or taking steps to address her mental health, she refused to do so.

The ministry Reconsideration Decision concluded that the conditions of the appellant's EP were reasonable and that she had been given numerous opportunities to comply. Furthermore, the appellant's action plan took into consideration her declared mental health concerns and she was given an opportunity to provide medical confirmation that she was unable to participate in EPBC programming. Consequently the ministry found that the appellant had not complied with the conditions of her EP and that she was therefore not eligible to receive IA under Section 9 of EAA.

In the appellant's Notice of Appeal dated January 21, 2014, submitted to the Tribunal office by the appellant after the Reconsideration Decision, and prior to the hearing, she reports that she does not feel herself that she is able to deal with people on a regular basis until she starts speaking with a counselor and gets her emotions and her depression and anxiety under control. She also states that she is trying to get into low income housing in another city so she is able to see a counselor regularly and to get out of the horrible living conditions of her current residence. The Notice of Appeal was signed by the appellant January 21, 2014.

At the hearing the appellant reported that she was seeing an employment counselor and was told that she would write a letter stating that she was unemployable. The appellant reported that she has serious mental health problems and that she has been diagnosed with manic depression and is currently taking anti depression medication. The appellant reported that she could have submitted medical evidence to verify this but did not do so as she thought she had to send it to the Tribunal 3 days in advance of the hearing. The appellant then reported that she was being seen for assistance with her mental health and when question further by a panel member about this stated that she had paperwork for a referral but had not completed it as there were 15 pages to complete which she only received last week.

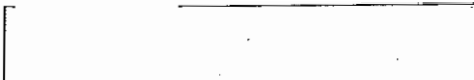
When asked the date of her last appointment with her EPBC contractor by a panel member the appellant was uncertain but said it was the same day that she informed the ministry that her brother was back in hospital and that as she was very close to him she was very upset and emotionally unable to work. The appellant reported that her brother also suffers from mental health problems. In conclusion the appellant reported that she didn't understand how she could be found in non-compliance one month and not the next as she has been sick and unable to do anything for the past month and is hoping to find a better place for her and her two children to move to.

The ministry stood by the record and reported that as the appellant failed to provide confirmation of seeing a counselor for mental health issues the appellant had failed to demonstrate reasonable efforts to participate in the program and that she ceased participating in the program without providing verification of medical reasons for doing so. The ministry also informed the appellant that it may be possible for her EP to be amended if she is able to provide new medical information to the ministry regarding her mental health.

The panel determined the appellant's oral testimony was admissible as evidence under section 22(4) of the EAA as it was in support of the records before the minister at reconsideration and particularly because it helped the panel to clarify the date and the content of the appellant's last meeting with her EPBC contractor. The ministry did not object.

Findings of Facts:

- The appellant is a single employable recipient with two dependent children under the age of 10.
- On September 7, 2012, the appellant entered into an EP with conditions.
- The last time the appellant met with her EPBC contractor was October 15, 2013.



- On December 10, 2013, the appellant's EPBC contractor file was closed for non-compliance.
- On December 10, 2013, the ministry attempted to contact the appellant by phone but was not successful.
- On December 10, 2013, the ministry sent a denial letter to the appellant.



PART F – Reasons for Panel Decision

The issue to be determined is whether the Ministry reasonably denied the Appellant IA, as the Ministry determined that she was non-compliant with the conditions of her EP, contrary to Sec. 9 of the Employment Assistance Act.

The Legislation states the following;

Employment and Assistance Act

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 was found to be non-compliant with the conditions of her EP, contrary to Sec. 9 of the Employment Assistance Act and is therefore ineligible to receive IA. The appellant's position is that she ceased participation with her EPBC contractor because the contractor agreed to write a letter to the ministry stating that they found her to be unemployable at that time as she was unable to get her emotions, depression and anxiety under control.

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The appellant argued in her Request of Reconsideration, her Notice of Appeal and at the hearing, that the reasons she ceased participation with her EPBC contractor were because a) her EPBC contractor had agreed to write a letter stating that they found her to be unemployable at this time and b) that she was unable to deal with people on a regular basis until she is able to get her emotions, depression and anxiety under control, however no documental evidence was presented to substantiate either argument.

The ministry argued in their Reconsideration Decision dated January 16, 2014, that the appellant's EPBC contractor denied ever having agreed to write a letter for the appellant stating that she was unemployable at this time, and when given an opportunity to provide documental evidence in support of her claim that she was seeing a counselor for her mental health, as provided for in her contractor action plan, she refused to do so. As to the appellant's decision to cease participation with the EPBC contractor for medical reasons, the ministry argued that both the contractor and the ministry had made the appellant well aware of the requirement to provide documental medical evidence to substantiate such a claim, and furthermore that she has been through this process before as documented in part 2 of her Request for Reconsideration. For these reasons the ministry argued that as the appellant failed to comply with the conditions of her EP as set out in EAA section 9(1)(b) by failing to demonstrate reasonable efforts to participate in the program by refusing to provide her EPBC contractor with required verification that she was attending counseling for her mental health, set out in EAA section 9(4)(a), and ceasing to participate in the EPBC program with out providing documented medical reasons for doing so as set out above in EAA section 9(4)(b), she is ineligible for IA.

Under EAA section 9(1), to be eligible for IA, the recipient, when required to do so by the minister, must enter into an employment plan, and comply with the conditions in the employment plan. Under sub-section (4), if an employment plan includes a condition requiring the recipient 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 ceases, except for medical reasons, to participate in the program.

The panel finds that on September 7, 2012, the appellant entered into an EP with conditions. One of the conditions required for continued eligibility for IA is that she participates in EPBC programming regularly and as directed by the EPBC contractor. Another condition is that she will work with the EPBC 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.

The panel finds based on the evidence presented that the ministry was reasonable in determining that the appellant's EPBC contractor did not promise to write a letter to the ministry stating that they found her to be unemployable at this time. The panel also finds that the ministry was reasonable in determining that as the appellant failed to provide verification of her participation in an activity identified as being listed in her contractor action plan, (mental health counseling) when required to do so by her EPBC contractor, she failed to meet the requirements set out in her EP and in the legislation set out above in EAA section 9(1)(a). The panel further finds that as the appellant ceased to participate in her EPBC program on October 15, 2013, and without the provision of the required documental medical evidence, the ministry was reasonable in determining that the appellant did not meet the legislative requirement set out in EAA section 9(4)(b).

Therefore the panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and is a reasonable application of the legislation based on the circumstances of the appellant and confirms the decision. The appellant is not successful in her appeal.