

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 7, 2014 to deny the appellant income assistance because he failed to comply with the conditions of his Employment Plan (EP) as required under Section 9 of the Employment and Assistance Act (EAA). The ministry determined that the appellant failed to attend his appointments with the Employment Program of British Columbia (EPBC) contractor.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 9

PART E – Summary of Facts

The evidence before the minister at reconsideration consists of the following:

1. The appellant is an employable recipient with an employable spouse and two dependent children.
2. February 21, 2013 the appellant signed an EP agreeing to the following conditions:
 - a) attend his first appointment with the Employment Program of British Columbia (EPBC) contractor within 5 business days of signing his EP
 - b) participate in EPBC programming regularly and as directed by the EPBC contractor
 - c) work with the EPBC contractor to address any issues that may impact his employability and complete all tasks assigned including any activities that may be set out in an action plan
 - d) notify the contractor if he is unable to attend a session or when he starts or ends any employment
 - e) understand that if he fails to comply with the conditions of his EP, he will be ineligible for assistance under the EAA
 - f) declare all income and report any changes to the ministry and attend all ministry review appointments as required
 - g) advise the ministry if he is unable to follow through with the conditions of his EP.
3. November 26, 2013 the EPBC contractor reported that the appellant did not attend his appointments on November 7 and November 13, 2013. The contractor attempted to contact the appellant on November 8, 19, 20 and 21, 2013 but did not receive a response to their calls. The ministry left the appellant a message requesting him to contact the ministry to discuss non-compliance with his EP.
4. November 26, 2013 the ministry sent the appellant a letter advising that his cheque was being held on December 18, 2013 because the EPBC contractor reported that he failed to attend his scheduled appointments. The ministry asked the appellant to contact them as soon as possible to avoid having his cheque held, to discuss his EP, to submit his job search and to discuss continued eligibility for income assistance.

December 23, 2013 the appellant in his Request for Reconsideration (RFR) states that they need income assistance until he gets a job or completes his real estate exam which costs about \$1150. He said he will continue to work with the EPBC contractor and attend all appointments in the future. He will continue his job search as required by the ministry and the contractor. He believes that his poor decision-making has been hindered by stress and depression. He will seek medical advice on this and report back to the ministry.

January 14, 2014 the appellant in his Notice of Appeal (NOA) indicated that he did not fully understand the process and that he is working with a case manager at EPBC contractor.

At the hearing the appellant stated that he had to seek income assistance because about a year ago he and his wife fell on hard times and lost everything they had built. They are now trying to re-establish themselves and will need the ministry's help for just the next couple of months. They were

both assigned to the same ministry worker and completed their assignments without incident. The appellant stated that he tried to re-establish himself in the hospitality industry but found no work. He felt that real estate was his best option and he plans to sell establishments related to the hospitality industry as this is his area of expertise. He explained that he thought his first worker was on board with this plan and that perhaps the ministry would help him out by paying for the \$1100 exam he has to take to be certified as a real estate agent. In October, the appellant was assigned to another worker. The appellant did not know that he would be required to do anything different from what he had been doing all along, but suddenly with the new worker things changed. The appellant stated that he currently has a mentor who is helping him get established and that he will take over his mentor's clients when he retires. On November 7, 2013, the day he missed his appointment he was with his mentor, out of town, trying to get a listing. The appellant explained that he called his worker to get permission to miss his November 7, 2013 appointment for his business trip on November 6, 2013. He stated that the worker may have told him about the November 13, 2013 appointment at that time but he does not remember. The appellant explained that he did not receive the contractor's telephone messages in November because he got a new phone number and may not have updated that information with the ministry or the contractor, but he did receive the November 26, 2013 letter. The appellant stated that he thought he had an understanding with the contractor that he could do whatever necessary to establish himself as a real estate agent and would have done things differently if he had known that the expectations were different. Lastly, the appellant stated that in the past, he had been on medication for stress and depression, and lately, even his wife noticed that he was not the same once again. He explained that he did not initially tell the worker of this problem because he felt it was too personal and was not comfortable sharing this information. He also stated that his doctor was out of the country for 4 months but is returning soon and he will see him about this issue.

The ministry stood by its reconsideration record and added that the second worker that was assigned to the appellant informed the appellant that work, other than real estate, must be pursued as well.

The Admission of New Evidence:

At the hearing, the appellant submitted a letter dated January 27, 2014 from the EPBC contractor which states that the appellant attended his regularly scheduled appointments on January 9 and January 27, 2014, and a scheduled computer workshop on January 15, 2014. The ministry did not object to the admittance of this letter. The panel found that the letter pertained to a period that is not in question and does not speak to the appellant's efforts to comply with his EP prior to the December 19, 2013 original denial of income assistance. Accordingly, the panel did not admit this new information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with s.22(4) of the *Employment and Assistance Act*.

At the hearing, the appellant also stated that on November 6, 2013 he called the EPBC contractor to obtain permission to miss his November 7, 2013 scheduled appointment. The panel found that this new evidence did not provide additional detail or disclose information that was in support of the issues addressed in the reconsideration dated January 7, 2014. This evidence was not raised in the appellant's request for reconsideration or in the notice of appeal. Accordingly, the panel did not admit this new information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with s.22(4) of the *Employment and Assistance Act*.

The panel makes the following findings of fact from the evidence presented:

- The appellant signed an EP agreeing to the requirements therein
- The appellant did not attend his scheduled appointments with EPBC contractor on November 7 and 13, 2013
- The appellant did not contact EPBC contractor in response to their calls on November 8, 19, 20 and 21, 2013
- The appellant did not contact the ministry in response to its November 26, 2013 letter
- The appellant did not provide any medical documentation confirming that he suffers from stress and depression
- The appellant pursued plans for a career as a realtor during the period of his EP

PART F – Reasons for Panel Decision

The issue is whether the ministry's decision to deny the appellant income assistance because he failed to comply with the conditions of his EP as required under Section 9 of the EAA is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the applicant.

Legislation considered:

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 Appellant's Position:

The appellant argues that he was pursuing a path that he is certain will, in the next few months, lead to a career and he will no longer need assistance. He did not realize that his new worker had expectations that were different from his previous worker, and had he known he would have done things differently. He also argues that prior to being assigned to a new worker, there were no complaints from the ministry about his ability to comply with his EP. Lastly, the appellant argues that he is stressed and depressed about his employment situation which has hindered his ability to make decisions.

The Ministry's Position:

The ministry argues that the appellant was aware of and agreed to the conditions of his EP, as is evident by him signing the EP. Specifically, the ministry argues that the appellant did not attend his scheduled appointments, did not contact the EPBC contractor in response to his repeated phone calls and did not respond to the ministry's November 26, 2013 letter advising him to contact the EPBC contractor. Lastly, the ministry argues that the appellant has failed to provide verification to establish that mitigating circumstances prevented him from complying with his EP that he agreed upon and signed.

The Panel's Decision:

Section 9 of the EAA sets out that to be eligible for assistance, the recipient must, when required to, enter into an EP, and comply with the conditions of the plan. The panel notes that evidence establishes that the appellant was aware of the requirements of his EP, aware of the consequences of not complying with the EP and had no reason to believe that the requirements of the EP would differ depending on the worker he was assigned. The panel also finds that the evidence establishes that the appellant missed two scheduled appointments with the EPBC contractor, November 7 and November 13, 2013, failed to contact the EPBC contractor after he left messages for the appellant on November 8, 19, 20 and 21, 2013, and failed to contact the ministry in response to its November 26, 2013 letter. The panel acknowledges that the appellant stated he is stressed and depressed as a result of his employment situation but notes that, according to the appellant's oral testimony, these conditions did not prevent him from pursuing his plans for his chosen career as a realtor during the same period he states these conditions affected his ability to comply with his EP. Though the appellant plans to see his doctor regarding his stress and depression, the panel finds that the evidence establishes that the appellant has failed to provide confirmation of mitigating circumstances that prevented him from complying with his EP that he agreed upon and signed.

The evidence establishes that the terms and conditions set out in the appellant's EP have not been met, and as a result, the criteria set out in Section 9 of the EAA have not been met by the appellant. The panel therefore finds that the ministry's decision to deny the appellant income assistance due to the failure to comply with the conditions of his EP was a reasonable application of the legislation and was supported by the evidence in the circumstances of the appellant. Thus, the panel confirms the ministry's reconsideration decision.