

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated January 2, 2014, which held that the appellant is not eligible for income assistance due to a failure to enter into an Employment Plan (EP) or provide confirmation of a medical condition that prevented her from entering into an EP as pursuant to Section 9 of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 9

PART E – Summary of Facts

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

- 1) Request for Reconsideration signed and dated December 17, 2013, which states the following:
 - That the appellant did not have time left on her phone to call the office, she couldn't make the appointment and had no bus fare;
 - It also snowed in her area, she tried to walk but it was too cold so she turned back;
 - She has medical problems (e.g. stomach and back pain) and only received one of the ministry's letters which advised her of the appointments.
- 2) A letter to the appellant from the ministry dated October 28, 2013 advising her of an information and planning session to be held Wednesday, November 27, 2013. The letter informs the appellant that she can call to reschedule the appointment if she cannot attend and that after this meeting she will meet one on one with a worker to create her personalized EP and an up-to-date EP is a requirement for ongoing eligibility.
- 3) A letter to the appellant from the ministry dated December 2, 2013 advising her that because she failed to attend the information session on November 27, 2013 she has been scheduled to attend a new session on December 12, 2013. The letter informs the appellant that she can call to reschedule the appointment if she cannot attend, an up-to-date EP is a requirement for ongoing eligibility for assistance, and if she does not have an up-to-date EP her cheque may be delayed.
- 4) A letter to the appellant from the ministry dated December 2, 2013 stating that her Employment and Assistance cheque will be held at the office until an EP review is completed and that she must enter into an EP to be eligible to receive continued assistance.
- 5) A letter to the appellant from the ministry dated December 12, 2013 advising her that she has failed to meet the legislative requirement set out in Section 9 of the EAA for eligibility for income assistance. Ministry clients who are expected to work are required to enter into an EP. Since she has not done this, she is no longer eligible for income assistance.

In the Notice of Appeal, signed and dated January 8, 2014, the appellant states that she did not receive any mail as her mail box was broken into; this includes the December 12th mail. She further states that she did not have a telephone to cancel her appointment or bus fare to go to the office, and could not walk with her disability (stomach and back pain) as she could slip on the snow.

At the hearing, the appellant reiterated what was said in her request for reconsideration and notice of appeal. To this she added that:

- She had no minutes left on her phone so she could not contact the ministry;
- She attempted walking to the ministry office, which is a mile away, but had to turn back after walking half a block as it was too cold and she does not have proper winter clothes. Although it did not snow that day, there was still snow on the ground and she was not going to risk the ice and snow. The ministry gave her a \$50 crisis supplement for clothes on November 12, 2013 with which she bought boots;
- The ministry staff has repeatedly disrespected her;

- She used her landlord's phone to call on December 13, 2013, and after repeated attempts, she got through to a worker but was not advised that her assistance was denied;
- Once she made it to the office, one worker told her that her next cheque would be issued and another worker took information from her phone that showed that she did not have any minutes to call the ministry office;
- For the past two months she has not received medical and pharmacare benefits or her \$45 nutritional supplement that she needs for her Irritable Bowel Syndrome (IBS);
- She received both December 2, 2013 letters but nothing prior to or following that date as her mailbox was broken into; later she stated that she only received the December 2, 2013 letter that advised her that her cheque will be held at the office, but not the December 2, 2013 letter that advised her of her rescheduled appointment on December 12, 2013;
- She did not receive the letter dated December 12, 2013 but had no explanation for why that letter was not received;
- Her community mailbox was broken into approximately at the end of November 2013;

At the hearing the appellant submitted an undated newspaper clipping from a local newspaper that cites problems of community mailbox break-ins in a specific neighbourhood. The article states that due to the volume of break-ins, as of January 20, 2014, Canada Post no longer delivers mail in this area and residence are required to drive several kilometers to another part of the city to collect their mail.

The appellant also stated that she was "on a medical leave of absence", or qualified as PPMB (Person with Persistent Multiple Barriers), still is supposed to be on PPMB qualification and that she submitted medical documents regarding her PPMB qualification to the ministry in February 2013. This should allow her PPMB qualification for two years (2013-2015). Therefore she should not be required to enter into an EP. The appellant stated that she has IBS, chronic back-pain and asthma. As a result of these conditions, last year, she spent 7 months in hospital, for 3 days at a time. She stated that her problems are so severe that she is usually in bed and cannot sit for long periods of time without having to go to the bathroom.

At the hearing, the ministry relied on its reconsideration decision and added that:

- Both December 2, 2013 letters would likely have been sent together in one envelope;
- The December cheque would be held by the ministry until the issue is resolved;
- The appellant was made aware of her November 27, 2013 appointment as she was reminded on November 12, 2013 when she came in for a crisis supplement for clothes, and this is reflected in the ministry's original denial decision on December 13, 2013;
- Although appointments had been scheduled for the appellant on November 27 and December 12, 2013 for the purposes of preparing an EP, she could attend at a ministry office any time and an EP would be prepared for her;
- If the appellant has medical conditions that restrict work, these conditions would be considered and an EP would be drafted to accommodate these conditions;
- The denial is not based on medical issues; it is because the appellant did not attempt to establish an EP. The ministry has made reasonable efforts to give the appellant opportunity to begin the process of EP but she failed to do so.

At the hearing the ministry also stated that in January 2013 a letter would have been sent to the appellant advising her that her PPMB status was being reviewed and that is why she submitted

medical documentation from a clinic in February 2013. The ministry considered these documents and denied her continued PPMB qualification in April of 2013. A letter stating such was sent to her. She resubmitted documents, this time from her own doctor, and she was denied PPMB qualification in June 2013. A letter was sent advising her that she no longer qualifies for PPMB. However, she continued to receive her \$45 nutritional supplement until she failed to enter into an EP, at which point she was only eligible for limited assistance. Since she no longer has PPMB qualification, she is considered an employable person and required to enter into an EP or is not eligible for assistance. Since she failed to enter into an EP, she was denied her assistance.

Admissibility of New Evidence

The ministry did not object to the admissibility of the newspaper article or raise an objection to the new oral evidence.

The panel found that the newspaper article submitted by the appellant provided additional detail or disclosed information regarding the theft of mail in her community, which is in support of the issues addressed in the reconsideration. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

The panel found that the evidence regarding PPMB, her PPMB qualification or the appellant's medical conditions as they pertain to the issue of whether or not she is required to enter an EP, was not in support of the issues addressed in the reconsideration. Accordingly, the panel did not admit this new evidence 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*.

PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the ministry's reconsideration decision dated January 2, 2014, which held that the appellant is not eligible for assistance pursuant to Section 9 of the EAA. The ministry determined that the appellant failed to meet the requirements of Section 9 of the EAA by not entering into an EP, nor did she provide confirmation of a medical condition that prevented her from entering into an EP, explained to her by the ministry.

Section 9 of the EAA states that:
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's position is that she could not enter an EP because she did not receive the notification that advised her of the scheduled appointments since her mailbox was broken into, or call the ministry office because she had no time left on her phone. She attempted to go to the office in person but had to turn back as it was too cold to walk and she did not have bus fare.

The Ministry's Position

The ministry argues that the appellant is considered an employable person was advised that she was required to enter an EP in order to be eligible receive assistance. The ministry also argues that it is not satisfied that the appellant was not aware of her scheduled appointments or that she was unable to attend due to the weather or medical problems. After two attempts to schedule appointments for the appellant to begin the process of creating an EP failed, the ministry denied her assistance.

Panel Decision

Section 9 of the EAA sets out that to be eligible for assistance, the recipient must, when required by the ministry, enter into an EP, and comply with the conditions of the EP. The panel finds that evidence establishes that the appellant was advised of the ministry's requirement that she enter into an EP and of the consequences of not entering into an EP. The panel finds that the evidence establishes that the appellant's community mailbox was broken into and as a result, she did not receive all of her mail. However, the panel also finds that the evidence establishes that the appellant was verbally reminded of the November 27, 2013 appointment which she admits she did not attend, and that she was also aware of the December 12, 2013 appointment since she stated that she started walking and turned back as a result of the cold. She has stated that she did receive both the December 2, 2013 letters and then later said she only received the letter advising her that her December assistance cheque would be held until the issue with EP had been resolved. The panel finds that both letters from the ministry dated December 2, 2013 include statements that the appellant must enter into an EP to be eligible to receive continued assistance.

The appellant stated that she did not have sufficient minutes on her phone to call the ministry to advise she was unable to attend the December 12, 2013 appointment. The panel finds that the appellant acknowledges that she called the ministry from her landlord's telephone on December 13, 2013 to inquire about her January cheque, and she offered no explanation for why she did not previously use the landlord's telephone to call the ministry to either explain why she was unable to attend the appointment or to inquire about entering into the EP. The panel finds that once the appellant was advised of the ministry's requirement to enter into an EP, it was necessary for her to take all the steps within her control to enter into the EP. The panel finds that the ministry reasonably determined that the appellant was advised that she was required to enter into an EP in order to be eligible for assistance, and that the appellant failed to enter into an EP despite being given opportunities to do so by way of scheduled appointments with the ministry. The evidence establishes that the appellant did not make reasonable efforts to begin the process of creating an EP or provide confirmation of a medical condition that prevented her from entering into an EP, which she required to

do under section 9 of the EAA.

Conclusion

The evidence establishes that the appellant has not met the criteria set out in Section 9 (1)(a) of the EAA. The panel therefore finds that the ministry's decision to deny the appellant's request for income assistance was a reasonable application of the legislation and was supported by the evidence. The panel confirms the ministry's reconsideration decision.