

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated March 18, 2014 which held that the appellant's family unit was not eligible for income assistance because he did not comply with the conditions of his Employment plan under s.9 of the Employment and Assistance Act.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA) section 9.

PART E – SUMMARY OF FACTS

With the consent of the parties, this hearing is conducted in writing pursuant to section 22(3) (b) of the Employment and Assistance Act.

The evidence before the ministry at the time of the reconsideration included:

- The appellant was added to his common-law spouse's ministry file as of January, 2012.
- An updated Employment plan (EP) was signed by the appellant on January 20, 2014; the terms of the EP include the provision that the appellant attend his first appointment with an Employment Program of British Columbia (EPBC) contractor by January 27, 2014. The appellant would then work with the 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. The appellant would notify the contractor if he was unable to attend a session, or when he started or ended any employment.
- By signing the EP the appellant acknowledged that it was a condition of continued eligibility that he both signs the plan and comply with the conditions set out in the plan, and that non-compliance with the conditions would result in the discontinuation of income assistance to the appellant and his family.
- The appellant did not attend his first EP intake appointment with the EPBC contractor, and this was rescheduled to February 13, 2014.
- The appellant did not attend the appointment on February 13, 2014, and his spouse called to reschedule this appointment. The reason given for not attending was that the appellant was unable to wake up.
- The appellant did not attend the next scheduled appointment on February 18, 2014, and his spouse called to reschedule this appointment as well. The spouse was advised that if the appellant missed the next appointment, no further appointments would be scheduled.
- The appellant did not attend the appointment on February 27, 2014.
- On February 27, 2014 the appellant's family unit was denied further assistance by the ministry due to the appellant's non-compliance with the EP requirements and the EPBC Program; this was communicated in person to the appellant and his spouse.
- On February 27, 2014 the appellant's spouse advised the ministry that the missed appointments with EPBC were due to the appellant being too tired to attend. No clarification was provided by the appellant, but the spouse stated that one child had been sick and another child had night terrors.
- On March 5, 2014 the appellant submitted a request for reconsideration.
- On March 18, 2014 the EPBC contractor confirmed with the Ministry that the appellant did not attend any sessions or completes an action plan and the contractor's file was closed.
- A reconsideration decision was completed on March 18, 2014 by the ministry.

The appellant filed a Notice of Appeal of the reconsideration decision, received by the Employment and Assistance Appeal Tribunal (EAAT) on March 27, 2014. A written hearing was requested.

The written submissions of the appellant and the ministry contained no new evidence.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant's family unit income assistance because the appellant failed to comply with the conditions of his EP pursuant to section 9 of the EAA. Specifically, the Panel must determine whether the ministry's decision to deny income assistance to the appellant's family unit due to non-compliance with the EP is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 9 of the EAA provides:

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*].

Section 9(1) of the EAA provides that, when the ministry requires, a person must enter into an EP and comply with the conditions of 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.

Position of the Parties

The ministry's position is that the appellant entered into an updated EP on January 20, 2014 requiring the appellant participate in EPBC, and to attend his first appointment with an EPBC contractor by January 27, 2014. The appellant signed the updated EP, agreeing that he understood the conditions, activities, and consequences of non-compliance with the EP; the decision summary contained within the March 5, 2014 request for reconsideration noted the appellant's stated understanding of his obligations. The ministry confirmed that the appellant did not attend the initial meeting with the assigned EPBC contractor by January 27, 2014 as agreed. The appellant did not attend 3 rescheduled meetings, including the last one on February 27, 2014. Based on the appeal record, the ministry maintains that the appellant did not comply with the conditions of the EP and did not demonstrate reasonable efforts to participate in the program. Furthermore, the appellant did not provide sufficient evidence confirming that he was unable to participate in the EP due to medical reasons. The ministry was not satisfied that the appellant didn't understand the conditions of the EP; the appellant and his spouse were well informed, and the appellant could have contacted the ministry directly if he had any questions.

The appellant's position, as laid out in his Notice of Appeal to the EAAT signed on March 25, 2014, is that he did not understand the terms of the EP. He misunderstood what 'complying' meant and believed that if he had valid reasons for missing appointments, this would be sufficient to comply with the signed EP. The reasons given for his missed appointments were his son having night terrors, and a job interview (February 27, 2014).

Panel Decision

In determining the reasonableness of the ministry's decision, the panel finds that the appellant entered into an EP on January 20, 2014 that included the condition that he attends his first appointment with the EPBC contractor by January 27, 2014. A condition of continued eligibility for assistance was that he participates in the EPBC program and as directed by the EPBC contractor; this included the completion of all tasks assigned. The EP clearly states that if the appellant failed to comply with the conditions of his EP, he would be ineligible for 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 of the EP in order to be eligible for income assistance. Section 9(3) of the EAA details the ministry's authority to specify conditions in an EP, including a requirement that the person participate in an employment related program. Section 9(4) of the EAA provides that 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.

By signing the EP, the appellant acknowledged that he understood the conditions as set out and agreed to them.

Between January 20, 2014 and February 27, 2014 an initial (and timely) appointment with the EPBC contractor was cancelled, as were three further scheduled appointments. The appellant's spouse, who cancelled and rescheduled the last appointment, was told that if the February 27, 2014 appointment was missed, there would be no further scheduled appointments. The evidence of record shows that although required to do so, the appellant did not meet with the EPBC contractor resulting in the contractor closing his file, reporting that no sessions were attended and no action plan completed.

No medical evidence has been provided that the appellant was unable to participate in the EP due to illness.

The panel finds that the ministry reasonably determined that the appellant failed to comply with the conditions of his EP. The appellant failed to meet the condition that he meet with his EPBC contractor by the required date of January 27, 2014, and had not met with the contractor by February 27, 2014 in spite of 3 additional scheduled, and subsequently canceled, appointments. Therefore, the panel finds that the ministry reasonably concluded that the appellant failed to demonstrate reasonable efforts to participate in the employment program and was not in compliance with the conditions of his employment plan.

The panel also finds that the appellant has not provided evidence that illness prevented him from complying with the conditions of the EP.

The panel finds that the ministry reasonably determined that the appellant had not made a reasonable effort to participate in his employment program pursuant to section 9(4) of the EAA, and was not prevented from participating due to illness, and accordingly was not eligible for assistance pursuant to section 9(1) of the EAA.

The Panel finds that the ministry's decision denying the appellant's family unit income assistance was a reasonable application of the applicable legislation in the circumstances of the appellant and confirms the ministry's decision.