

**PART C – Decision under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated March 28, 2014, in which the Ministry determined that the Appellant is ineligible for further income assistance due to non-compliance with her employment plan (EP) pursuant to section 9(1)(b) of the Employment and Assistance Act.

**PART D – Relevant Legislation**

Employment and Assistance Act (EAA) section 9

## PART E – Summary of Facts

There was an interpreter present for the Appellant.

Information before the Ministry at reconsideration included:

- A blank Work Search Activities Record, undated, with the Appellant's name at the top.
- A copy of an Employment Plan signed by the Appellant, dated November 5, 2013, and containing conditions that included "I will record my monthly work search activities on the ministry form and provide these to the ministry upon request".
- A copy of a Work Search Activities Record signed by the Appellant on March 17, 2014, listing one activity dated March 14, 2014, stating "cleaning and serving" as the type of activity and "continuing volunteering" as the results of the activity.
- A copy of the Appellant's Request for Reconsideration, dated March 17, 2014, in which she stated that her English is still at a minimum level, that she is not confident or comfortable with her English at the moment and cannot handle any normal daily activity such as doctors' appointments without the help of someone who knows English. She stated that any places or organizations she has applied to for either volunteering or employment have denied her application because "my English was not enough for the work environment." The Appellant cited an example of an employment interview that was terminated after about five minutes when she was informed that her English was not sufficient, and that her friends and relatives have been helping her to search online, but all of her resumes were denied because she has "no experience and minimum English in all the sectors for employment." She stated that she feels she should fully focus and concentrate on improving her English and have full confidence with her language when seeking employment.

In her Notice of Appeal dated April 8, 2014, the Appellant stated that she is in extreme need of financial assistance as she is currently not working; therefore she is dependent on the money for her monthly rent. She stated that the applications for work she has applied for in the last few months have been denied due to her level of English.

In her oral testimony at the hearing, the Appellant stated:

- that she has a language barrier; that she has tried to look for work as much as possible and did her best, but she cannot even see a doctor without an interpreter.
- that she did apply to some places, but she has not heard from them, so she has no results to report.

In response to questions from the Ministry, the Appellant stated that she did not record her work search activities because she had no results to report. She stated that she only applied to places she knows, and that she is not computer literate. She stated that she might have failed to report her activities, but she did search for work, mostly kitchen work, and she gave her resume to relatives to distribute for her. In response to questions from the Ministry about the EP, the Appellant stated that she has no information about Work BC English language training programs, and that she has been to Work BC, but did not get a job because her English was not sufficient.

In response to questions from the Panel, the Appellant stated that she has been attending English language classes since she arrived in Canada, and she is attending now from 9:15 AM to 12:15 PM daily. She stated that she did volunteer work for one day, then she was told that she would be contacted by email, but there has been no contact, although she has looked at her email. The Appellant stated that her sister-in-law wrote the Notice of Appeal using her words. She stated that it may appear due to the level of her courses that her English is good, but she cannot express herself. She stated that someone assists her with telephone conversations.

As the appellant's statements in her Notice of Appeal and at the hearing relate to her knowledge of English and her work search activities and reporting, the panel admits them pursuant to section 22(4)(b) of the *Employment and Assistance Act* as testimony in support of information that was before the ministry at the time the decision being appealed was made.

In its reconsideration decision dated March 28, 2014, the Ministry stated that the Appellant signed an employment plan on November 5, 2013, confirming that she had read, understood and agreed with the conditions listed in the plan, and the consequences of not complying with the plan were discussed. The Ministry stated that the Appellant was required to distribute her resume to employers, seek out available resources, record monthly work search activities on a form (Work Search Activities Record), and use personal contacts to assist in work search activities. The employment plan required a minimum of 25 hours per week to be spent on work search activities.

The Ministry stated that the Appellant was advised that she could continue to study English part-time, but that she must enter into an employment plan and comply with its conditions if she wished to remain eligible for income assistance. The Ministry stated that they received confirmation on November 13, 2013 that the Appellant was enrolled in English language classes from 9:14 AM to 2:45 PM Monday to Friday. The Ministry added that they did not receive any work search activity reports for the months of November, 2013 to February, 2014, and on March 11, 2014 the Appellant advised them that she had not looked for work because she was attending school. The Ministry stated that in conversations with the Appellant and in considering the higher level of English classes the Appellant is enrolled in, it found that her ability to speak English was sufficient to perform work searches.

At the hearing, the Ministry stated that section 9, EAA requires that every recipient without a medical condition that precludes employment must have an employment plan, and there are English classes that can form part of the plan if the person is referred to them through an agency that the ministry contracts to offer English language assessments and training.

In response to questions from the Panel, the Ministry stated that the Appellant was expected to work around her class schedule and perform 25 hours per week of work search activities and record her work search activities on the Work Search Activities Record even where she did not have a result to record on the form. The ministry added that the appellant had an interpreter with her when she signed the EP and acknowledged that she understood the requirements. The Ministry stated that employment programs are able to refer clients to English language classes if they are needed. The client must follow all of the details in their employment plan, and a work search can include writing resumes, as an example.

With respect to the Appellant's English language ability, the Ministry stated that if they are unable to speak to the client in English, the client is referred to an employment service agency where they can be further referred to school, or to employment where English is not a requirement. If a client is referred to English language training through the employment service agency, it counts as part of the employment plan, but the appellant's English program was one that she was taking on her own.. The Ministry stated that the Appellant had interacted with several workers in the past and had acted as an advocate to assist her mother-in-law with English at a Ministry office.

The Panel makes the following findings of fact:

- The Appellant signed an employment plan on November 5, 2013, in which she agreed to spend 25 hours per week on work search activities and record those activities monthly on a Ministry form (Work Search Activities Record) to be provided to the Ministry on request.

- The Appellant provided no work search activity forms for the months of November, 2013 to February, 2014 inclusive.

**PART F – Reasons for Panel Decision**

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision dated March 28, 2014, in which the Ministry determined that the Appellant is ineligible for further income assistance due to non-compliance with her employment plan pursuant to section 9 of the Employment and Assistance Act.

Legislation

EAA

**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 is that she is in extreme need of income assistance, and that she has a language barrier that prevents her from finding employment. She has applied for jobs, but since she has heard nothing back, she didn't report the applications on the Work Search Activities Record.

The Ministry's position is that the appellant did not comply with the conditions of her employment plan and did not submit the required evidence of her efforts to find employment; therefore she did not demonstrate a reasonable effort to comply with her employment plan and is ineligible for further income assistance.

The panel notes that section 9(1) of the EAA requires a client to enter into an EP and comply with its conditions. To determine whether the ministry was reasonable in finding that the appellant did not make reasonable efforts, the panel must consider all of the evidence presented regarding the Appellant's work search; any direction she received regarding what constitutes a satisfactory work search; and any evidence that the Appellant was aware of the requirements, and the consequences of non-compliance.

The Ministry holds that the appellant did not make reasonable efforts to participate in a work search because she did not fulfill the requirement of her employment plan to spend at least 25 hours per week on work search activities and did not provide a record of her work search activities. The Panel notes that an interpreter was present when the Appellant signed her employment plan and the Appellant stated in response to a question from the Ministry that she did understand her obligation to record her work search activities on a Ministry form, however she did not record activities when there were no results to report. The Appellant also confirmed that she continued to attend English classes daily although she had been advised that she must perform work search activities for a minimum of 25 hours per week. The Appellant argued that her level of English is not adequate for employment; however, the Panel notes that the work search activities listed in the Appellant's employment plan include pursuing available resources, not just applications to employers, and that there are some types of employment as described by the ministry that do not require fluency in English.

The Appellant acknowledges her work search was not to the ministry's satisfaction as required in the employment plan, that the ministry explained how to fill out the work search record, and that she understood the consequences of non-compliance when she signed the employment plan. As the evidence indicates that the appellant did not demonstrate reasonable efforts to fulfill the work search requirements of her employment plan as directed by the Ministry and as required by section 9(4)(a) of the EAA, the Panel finds that the ministry reasonably determined that she did not comply with the conditions of her employment plan pursuant to section 9(2)(b).

The Panel therefore confirms the Ministry's decision as reasonably supported by the evidence.