

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated March 3, 2014 which held that the appellant was not eligible for income assistance for failure to comply with the terms and conditions of his employment plan as required by section 9(1)(b) of the Employment and Assistance Act (EAA). The reconsideration decision also states that the appellant failed to demonstrate reasonable efforts to participate in an employment related program as required by section 9(4) of the EAA.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 9(1)(b)
Employment and Assistance Act (EAA) section 9(4)

PART E – Summary of Facts

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

The request for reconsideration dated February 28, 2014 (RFR) which included:

- a doctor's note dated February 20, 2014 explaining that the appellant suffers from mental illness and is not able to work for the next month;
- an employment plan signed by the appellant and dated June 19, 2013.

In the Notice of Appeal, dated March 7, 2014 the appellant states:

- he is suffering from a mental illness;
- he was hospitalized in the psychiatric ward on April 30, 2013;
- he has been unable to work for the period in question.

The appellant attached a copy of the record of his hospitalization.

In a fax dated March 24, 2014, an advocate provided:

1) a seven page written submission stating:

- the appellant was brought to a hospital by police on April 30, 2013;
- he was certified under the *Mental Health Act* and held until May 15, 2013;
- at discharge, the psychiatrist had a "working diagnoses of a possible delusional disorder and substance abuse";
- the appellant "refused treatment with an anti-psychotic as he has no insight into his difficulties or need for treatment";
- after discharge, the appellant was referred to Mental Health Services, but did not attend as he felt the group sessions were not appropriate for him;
- June 2013 the appellant began working at a business;
- September 2013 the appellant was no longer able to continue with his employment plan;
- the appellant received income assistance in December 2013, but not in January 2014;
- the appellant has not had a physician or psychiatrist since May 15, 2013;
- the appellant applied for income assistance while in the hospital; therefore, the ministry had knowledge that the appellant was suffering from mental health problems;
- it is not clear what happened to the request for the appellant to be temporarily excused from work search obligations;
- the appellant is aware of the possibility for applying for persons with a disability status, but has not been offered any guidance with the process.

2) Attachment A – Psychiatric Consultation Report dated May 1, 2013

3) Attachment B – Psychiatric Discharge Summary dictated on May 14, 2013

4) Attachment C – Notes by a social worker at the hospital dated May 13, 2014 and stating that "the writer will provide the income assistance Medical Certificate to the psychiatrist to complete for the appellant to be temporarily excused from work search obligations."

5) Attachment D – Note from a doctor at the walk-in clinic dated February 20, 2014 stating "the patient suffers from mental illness and is not able to work for the next month."

The ministry relied on the reconsideration decision and submitted no new information.

The panel has admitted the written submission of the appellant and the additional documentation into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the EAA. In particular, the new information relates to the appellant's mental health since April 2013 and includes information regarding his employability.

PART F – Reasons for Panel Decision

The issue to be determined at appeal is whether the ministry's reconsideration decision which found the appellant ineligible for further income assistance due to non-compliance with his employment plan under section 9(1)(b) and section 4 of the EAA was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

The relevant legislation is as follows:

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 ministry's reconsideration decision states that section 9(1)(b) of the EAA directs that an individual must comply with the terms of an employment plan to maintain eligibility for income assistance.

The ministry's position is that on June 19, 2013 the appellant signed an employment plan confirming that he had read, understood and agreed to the conditions listed in the employment plan. At that time the ministry reviewed with the appellant the requirement to comply with the conditions of the employment plan and the consequences of not complying.

The ministry's position is that the employment plan stipulates that the appellant is to work with his contractor and advise them of any issues that may impact his employability and that the appellant did not communicate any mental health concerns that would impact employability.

The appellant's position is that he was required to enter into an employment plan about one month after his release from the psychiatric unit, despite the fact that his mental illness was not being treated and that the social worker at the hospital had provided the psychiatrist with the income assistance Medical Certificate to complete so that he could be temporarily excused from work search obligations.

The ministry's reconsideration decision stated that under section 9(4) of the EAA an individual is considered not to have met the conditions of an employment plan if they fail, except for medical reasons, to demonstrate reasonable efforts to attend or participate in an employment related program as stipulated in the employment plan.

The ministry's position is that it is the responsibility of the client to provide information regarding any circumstances that interfere with the ability to meet employment-related obligations. The ministry was not aware that the appellant was not going to work until they were contacted by the contractor on January 24, 2014.

The ministry's position is that the doctor's note dated February 20, 2014 explains that the appellant is not able to work for the following month, but this information does not confirm that the appellant was suffering from mental illness months earlier when he quit his job. The note does not confirm that this was the reason the appellant quit his job and did not comply with his employment plan.

The appellant's position is that the reasons for quitting his job are his own business and he will not share those reasons with the ministry. When the appellant was reminded of the requirement to comply with his employment plan in order to remain eligible for income assistance he replied, "do whatever you people do" and hung up the phone.

The appellant's position is that the intake and discharge notes written by his psychiatrist dated May 2013 is evidence of his mental health problems and his inability to comply with this employment plan. The appellant's position is that it is reasonable to assume that the ministry knew of his hospitalization for mental health concerns in May of 2013 since he applied for income assistance at that time.

The appellant's position is that the note from the doctor dated February 20, 2014 stating that he has a mental illness and is not able to work for the next month is sufficient evidence of a medical reason for not participating in his employment program.

Panel Decision

The panel notes that its jurisdiction is limited to a determination of whether the reconsideration decision was reasonable. The reconsideration decision relates to the finding that the appellant is ineligible for further income assistance due to non-compliance with his employment plan.

Under section 9(1)(b) of the EAA an individual must comply with the terms of an employment plan to maintain eligibility for income assistance.

While the appellant was under the impression that the psychiatrist submitted a Medical Certificate to excuse him from work search obligations; the panel finds that there is no evidence that the psychiatrist completed or submitted the Medical Certificate to the ministry. Under the terms of the employment plan the appellant was to advise the contractor of any issues that may impact his employability. The appellant signed the employment plan indicating that he understood and agreed with the conditions. The conditions of the plan and the consequences of non-compliance with the plan were explained to the appellant by the ministry. There is no evidence that the appellant communicated any mental health concerns to the contractor. There is no evidence that the appellant informed the ministry of his hospitalization or made an inquiry if the ministry was aware of the mental health problems that could impact his employability. There is evidence that the appellant did work at a job from June 2013 until September 2013 indicating that he was able to work.

The panel finds the ministry's determination that the appellant did not comply with the terms of the employment plan to maintain eligibility for income assistance pursuant to section 9(1)(b) of the EAA was reasonably supported by the evidence.

Under section 9(4) of the EAA, an individual is considered not to have met the conditions of an employment plan if they fail, except for medical reasons, to demonstrate reasonable efforts to attend or participate in an employment related program as stipulated in the employment plan.

The panel finds that there is no evidence that the appellant made any attempt to inform the contractor or the ministry that he was not able to go to work. In fact, the ministry did not know that the appellant was not at work until the ministry was contacted by the contractor on January 24, 2014. There is no evidence that the appellant provided a reason for quitting his job or made an attempt to discuss the situation with the ministry. The medical evidence provided in the Notice of Appeal stating that in May 2013 the appellant had a "working diagnoses of a possible delusional disorder and substance abuse" is not supportive of his mental health condition for the period after he quit working. There is evidence that shortly after this diagnosis, the appellant was able to go to work in June and maintain employment for a period of time. The medical note dated February 20, 2014 addresses employability for the next month; however, there is no medical evidence to address the time period that the appellant was out of work prior to February and after quitting his job in September. While the appellant assumed the ministry should know about his hospitalization due to mental health problems, under the legislation, it is his responsibility to inform the ministry of his circumstances and provide a reason for quitting his employment. There is no evidence that the appellant did so.

Therefore, the panel finds the ministry's determination that the appellant did not to meet the conditions of his employment plan because he failed to demonstrate reasonable efforts to attend or participate in his employment related program pursuant to section 9(4) of the EAA was reasonably supported by the evidence.

Accordingly, the panel finds the ministry's reconsideration decision that the appellant was not eligible for further income assistance due to non-compliance with his employment plan under section 9(1)(b), section 9(4), of the (EAA) was reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances.

The panel therefore confirms the ministry's reconsideration decision.