

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) reconsideration decision dated April 14, 2014, whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA) for not complying with the conditions of his Employment Plan (EP), due to his failure to participate in his employment-related program with no medical reason for ceasing to participate.

PART D – Relevant Legislation

Employment and Assistance Act Section 9

PART E – Summary of Facts

The written evidence before the Ministry at the time of the reconsideration decision included:

- 1) Letter to the appellant from the Ministry dated March 6, 2014, advising him that his next income assistance cheque to be issued on March 26, 2014, will be held at the office until he provides information regarding his job search and that a further review of his employment plan was required.
- 2) Employment Plan (EP) signed by the appellant dated January 23, 2013. The terms of the EP include provisions requiring the appellant to participate in the Employment Program of B.C. program regularly and as directed by the contractor. He will 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. He will notify the contractor if he is unable to attend a session or when he starts or ends any employment. The appellant acknowledges that if he fails to comply with the condition of the EP that he will be ineligible for assistance.
- 3) EP dated September 29, 2011, and signed by the appellant in which he confirms that he will make an appointment with the contractor, complete all tasks assigned by the contractor, work with the contractor to address issues that may be impacting his ability to secure and sustain employment, and declare all income and report any changes to the Ministry caseworker, and to attend all review appointments as required. Further the appellant acknowledges that he must comply with all conditions set out in the EP, including provision of proof of active work search and records of attendance and participation in an employment-related program as required by the Ministry.
- 4) EP dated November 8, 2012, and signed by the appellant in which he agrees to participate to the best of his ability in the EP by accessing community resources, that upon request he will provide the Ministry with verification of medical condition(s) that affect his ability to find or continue work, to keep the Ministry informed of his plans and progress, and by declaring all income and report any changes to the Ministry. Further the appellant acknowledges that if he does not comply with the conditions of the EP the assistance issued to him or his family will be discontinued.
- 5) Request for Reconsideration signed and dated March 31, 2014, in which the appellant wrote that he did not know that he would need to submit a job search record or go to the contractor's office, that he was constantly looking for employment opportunities but did not keep a record of it because he did not know he was required to do so, and that there was a special situation where his wife was sick and that he had to take care of the family needs.

The Appellant's Evidence

The appellant attended the hearing alone, without a person to assist with language translation, as he explained that he had arrived directly from his work. The panel was concerned that the appellant's ability to understand English was somewhat limited but after conversing with the appellant the panel was satisfied that he was able to understand the proceedings and during the hearing he was able to express himself well. It was clear to the panel that he understood the reasons given by the Ministry for its decision and that the hearing was his opportunity to provide a response.

The appellant said that he was well aware of the reporting requirements during his first two EPs but after his attendance with a language interpreter at the Ministry office, he experienced a series of personal problems that caused him difficulty in reporting to his contractor for a three-month period. He said that he and his wife have four young children. He said that one child had to have an operation for what the panel understood to be a hernia and that this required taking his child to the doctor in December of 2013 and to the hospital for an operation in January 2014. His child was now recovered from the operation. The appellant further said that his wife had been injured in a motor vehicle accident about 2.5 years ago and that she was applying for what

the panel understood to be Persons With Disability (PWD) designation in January of 2014. Further the appellant said that his wife had a baby in August of 2013 and that because of his wife's physical problems he was required to assume more responsibilities at home including taking his older children to school in the morning. As well the appellant said that he had lost his cell phone and it was a few days before he was able to replace it. The appellant also added that he had to spend a lot of time practicing to obtain his Class 5 B.C. Driver's License which he needed in order to be able to get a job as a driver and that several evenings per week he was studying English. He has since obtained his Class 5 B.C. Driver's License. The appellant stated that he believed the contractor was not assisting him at all, in either improving his employability or with his job search. He acknowledged that he knew he had to cooperate with the contractor but he was "too busy" at that time.

The appellant said that since the beginning of April, 2014, he has been working 4-6 hours per day as a delivery driver and that he had reported that income to the Ministry. He also said that he was taking four or five medications daily due to personal stress. The appellant said that he had reported these personal problems to the Ministry when his wife was in the process of applying for disability assistance. He says that he did mention them at his most recent meetings at the Ministry office on March 20, 2014, and March 25, 2014, but he acknowledged that he had not provided any letters from doctors or medical professionals to the Ministry.

The Ministry's Evidence

The Ministry relied principally on its reconsideration decision dated April 14, 2014, which included evidence that the appellant is an employable male with a spouse and 4 dependent children. On September 29, 2011, the appellant signed his first EP in which he stated that he understood and agreed to the conditions listed which included working with the contractor. During the life of that EP the appellant worked with the contractor.

The Ministry noted that the appellant attended the Ministry office on November 8, 2012, with a language interpreter and advised that the local office of the contractor had been closed. The appellant advised that he had completed a forklift-training course but that he was unable to find work because he could not speak, read, or write English. He signed a second EP on that date requiring him to perform activities towards independence to make him more employable. No contractor was stipulated.

On December 28, 2012, a third EP was created, with the contractor. The appellant was called to the Ministry office to discuss his participation requirements and he stated that he understood and agreed. On January 23, 2013, the appellant attended the Ministry office to sign the new EP and in it he confirmed that he had read, understood and agreed to the conditions listed. Those conditions included the participation of the appellant to the best of his ability and the consequences of failure to comply. On October 16, 2013, the contractor informed the Ministry that the appellant was required to submit his job search records monthly to his case manager and job searches had not been submitted for one month. The appellant was contacted and he stated that he had been doing his job searches from home as his wife was ill and needed help caring for their newborn child. The appellant was advised that attending programming was a requirement in order to remain eligible for income assistance.

On October 24, 2013, the contractor advised the Ministry that the appellant had reconnected with them and that he had an appointment to see his case manager that day. On December 6, 2013, the appellant informed the Ministry that he was attending English language classes in the evenings four days per week. The Ministry explained that he was still required to comply with the EP and the appellant confirmed that he understood this. On March 6, 2014, the contractor advised the Ministry that the appellant had not been participating in their programming and that his last job search had been submitted on November 22, 2013.

On March 20, 2014, the appellant attended the Ministry office. The appellant explained that he had been studying for his Class 5 driver's license to become a taxi driver for the last two weeks and that he was studying English. The appellant told the Ministry that although his last contact with the contractor had been in November, 2013, he had still been searching for jobs but had not had time to connect with the contractor. Further the appellant said that his wife had been ill and that he needed to take the children to school. The

appellant was advised that he was longer eligible for income assistance due to non-compliance with the EP.

The Ministry was uncertain that the appellant understood so an appointment was booked for March 25, 2014, with a language interpreter. The appellant attended on March 25, 2014, with an interpreter present. It was confirmed that the appellant did not have any medical issues that would prevent him from participating in his EP. However the appellant stated that he was not able to attend the programming because his wife was ill and that they had small children. He added that he was still attending school to study English and to be a taxi driver. He said he had no phone and no email. The Ministry asked if the appellant was able to demonstrate his job search efforts and he was unable to answer. The Ministry advised him that on two previous occasions the appellant was advised that he was required to participate in programming and the appellant demonstrated that he understood this by reconnecting with the contractor on October 24, 2013, in order to remain compliant with his EP. The Ministry determined that based on information provided by the appellant he was no longer eligible for income assistance due to his failure to comply with the EP. The appellant then requested reconsideration.

In its reconsideration decision the Ministry noted that on September 29, 2011, an interpreter was present during the interview and that during this EP the appellant worked with the contractor. In the most recent EP he was required to work with the same contractor but then he stopped in September 2013. At that time the appellant was once again reminded of his obligations to participate in programming and that he demonstrated that he understood by making an appointment with the contractor on October 24, 2013, and participating for another month. However November 22, 2013, was the last time the appellant participated with the contractor. Since that time appellant said that he participated by doing his own work search but did not participate with the contractor after November 22, 2013.

At the hearing the Ministry said that during the course of the first two EPs the appellant was well-aware of his obligations and that it was only when he ceased to report after November of 2013 that he was called to a meeting and advised that he was no longer eligible for income assistance. The Ministry said that the recipients of income assistance have a certain amount of flexibility in their reporting to the contractors and that the appellant was well-aware of this since he had been on two previous EPs. She said that the decision to end the eligibility for income assistance was based on the appellant's failure to report to the contractor in any way for the three-month period. The Ministry representative noted that an interpreter was present when EPs were signed, that the conditions of the EPs were read to the appellant, and that he acknowledged that he understood.

Regarding the application for provincial disability assistance by the appellant's wife, the Ministry said that this particular application had not been provided to the Ministry office so it had no way of knowing about it. The Ministry added that at the interview of March 25, 2014, the appellant did mention some personal issues but that there was no record that he provided documentation.

PART F – Reasons for Panel Decision

The issue on appeal is whether the Ministry reasonably concluded that the appellant did not make reasonable efforts to comply with the conditions of his EP, with no medical reasons for not participating, and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA).

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 in 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.

The Ministry's Position

The Ministry's position is that the appellant entered into an EP dated January 23, 2013 and by signing his EP, confirmed that he read, understood and agreed to the conditions specified. The Ministry argued that the conditions of the appellant's EP and the requirement to participate with the contractor were provided to the appellant in writing and were also discussed with the appellant during previous EPs with an interpreter present to make sure he understood. The Ministry argued that it is a requirement of the appellant's EP that he complete all tasks assigned by the contractor and the information establishes that the appellant was aware of

the requirements to participate with the contractor and to report his job searches. This was supported by the cooperation of the appellant with previous EPs which confirmed his awareness of his obligations. The failure of the appellant to report to his contractor during the three-month period beginning in November, 2013, resulted in the decision of the Ministry that the appellant was no longer eligible for income assistance due to non-compliance with his EP. Regarding any possible exemption from the consequences of not meeting employment-related obligations, the Ministry did not receive any documentation that supports an exemption under one of the listed categories.

The Appellant's Position

The appellant acknowledged that he was aware of his reporting requirements during previous EPs but that commencing in November of 2013, he had a series of personal challenges that resulted in him not reporting to the contractor. Those challenges include his child's operation, his wife's health, a newborn child, a need to help out more at home, loss of his cell phone, practice for his driver's license test, studying English, and his personal stress.

The Panel's Decision

The panel finds that when the appellant's file was opened on September 15, 2011, an interpreter was present and that he understood the conditions of his first EP that he later signed on September 29, 2011. The appellant did comply with those conditions, which confirms that he did understand those conditions. Further the appellant attended the office on November 8, 2012 with an interpreter, which led to the creation of a second EP. During his second EP the appellant indicated that he understood the importance of complying with the conditions of the EP by making an appointment with the contractor on October 24, 2013, and at that appointment he once again participated for one month.

Regarding the third and most recent EP, the appellant attended the Ministry office on March 25, 2014, with an interpreter and the appellant confirmed that he did not have medical issues that would prevent him from participating in the EP. He did state that his wife was ill and that he had small children who required his help but he did not provide any medical evidence to support that he was unable to participate in his employment program. While the appellant stated that his spouse is physically ill and has applied for disability assistance, he acknowledged that he is not required to remain at home to care for her. The panel notes that the appellant has four dependent children but the conditions of the EP in accordance with Section 9 of the EAA state that the consequence for non-compliance with the EP is ineligibility for assistance.

In the end the panel finds that despite some limitations in his ability to speak English, the appellant did understand the conditions of his EP and that he did know the consequences for failure to comply. He had complied with two previous EPs which showed that he understood. The legislation requires that the appellant demonstrate reasonable efforts to participate in the program, or to provide a medical reason for ceasing to participate in the program, and the panel finds that the Ministry reasonably concluded, pursuant to Section 9 of the EAA that the requirements have not been met in this case.

The panel finds that the Ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.