

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated March 25, 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 her Employment Plan (EP), due to her failure to participate in her employment-related program.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 9

PART E – Summary of Facts

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

- 1) EP signed by the appellant dated October 30, 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. She will work with the contractor to address any issues that may impact her employability and complete all tasks assigned including any activities that may be set out in an action plan. She will notify the contractor if she is unable to attend a session or when she starts or ends any employment;
- 2) Contractor appointment information reminder for an appointment Monday, February 17, 2014 at 1:00 p.m.;
- 3) Copy of the appellant's resume; and,
- 4) Request for Reconsideration dated March 11, 2014 with attached letter.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Note dated April 15, 2014 in which a medical practitioner wrote that the appellant is "unfit to work [times] 4 months; going through treatment;"
- 2) Page of notes handwritten by the appellant in which she wrote that she is dealing with a number of mental issues, including "...dissociative identity disorder, dysthymia, hypomania, cyclothymia, mixed state mania, major depressive disorder, borderline personality, post traumatic stress disorder, generalized anxiety disorder, obsessive compulsive disorder, social anxiety disorder, bruxism, bipolar personality, attention deficit hyperactive disorder, agoraphobia and (illegible)."

In her Notice of Appeal dated April 15, 2014 the appellant expressed her disagreement with the ministry's reconsideration decision because she has an addiction and medical conditions. She is unable to work, see the doctor's note, and [the list of] mental issues she is dealing with.

In her Request for Reconsideration dated March 11, 2014 the appellant wrote that:

- She feels it is unfair that the ministry misjudged her over the telephone and she would like to correct a statement made in the Request for Reconsideration that on February 27, 2014 she called the ministry to ask about her cheque, which had been held since she did not meet compliance requirements, and she was advised to attend the appointment booked with the contractor for later that day.
- The ministry is saying that she did not show up for her appointment and she thinks the ministry was mad at her for rescheduling her appointments due to family and personal matters.
- The second time she was there on time but then she got a call from a family member saying her grandpa had a heart attack so she left to go to the hospital and make sure everything was alright because he is the only family member that she has.
- She is still homeless and living on the street and seeking help to better herself because she is a recovering drug addict and looking for a suitable roommate to share a place with and be drug free and she has found one.
- She is planning to ask the contractor to help her get into a carpentry course and to figure out her career options because she loves tools and working with her hands, but she would need the skills and qualifications. She will see the contractor later in the day.
- She plans to see her family doctor this week to get her disability forms filled out and the

multiple barriers as well.

- She has to see a psychiatrist because she suffers from major depressive disorder, bi-polar, obsessive compulsive disorder, ADHD, social anxiety disorder and generalized anxiety disorder.

At the hearing, the appellant's friend stated that:

- On the dates that the appellant was supposed to be attending appointments, she was under her drug addiction but, since then, she has been through a 2-week treatment program.
- The appellant has been attending meetings and she is doing a lot better.
- She saw her doctor who wrote a note to confirm that she has been in treatment.
- She also has some mental problems, but she is trying to better herself.
- Her treatment started around the time that she went in to see the doctor.

At the hearing, the appellant stated that:

- She does not remember much about the dates that are set out in the ministry's decision.
- Although she said she had to go to the hospital on February 21, 2014 because her grandpa had a heart attack, she lied because she was high at the time.
- She is pretty sure she went to the appointment on February 27, 2014. She met with the contractor 2 or 3 times.
- She went to a walk-in clinic to get the prescription note from a doctor and he said she is unable to work while she is in treatment.
- She is still working on herself. She has a sponsor and she is going to meetings and "going to everything."
- She is in the process of getting in to see a psychiatrist.
- She has the forms to apply for Persons With Disability (PWD) designation.
- Although she said that she understood the conditions of her EP when they were explained to her, she said a lot of things when she was in her addiction.
- The whole process of signing the EP and afterwards are all "a blur" to her. She was not looking for work. She was in her addiction.

The ministry did not object to the admissibility of the doctor's note but commented that this was not information that was available to the ministry at reconsideration. The ministry did not raise an objection to the admissibility of the information in the oral testimony of the appellant or her friend. The panel admitted the information as it provided more detail relating to the appellant's previously disclosed drug addiction and mental health conditions and is in support of information before the ministry on reconsideration, pursuant to Section 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision. The facts included:

- The appellant signed an EP on October 30, 2013, thereby agreeing to participate in employment programming through a contractor. The conditions of her plan require that the appellant complete all tasks assigned and to notify the contractor if she is unable to attend a session.
- On January 22 2014, the contractor advised the ministry that the appellant had not made contact with them since signing her EP.
- The ministry had discussions with the appellant and explained the benefits of the contractor to the appellant's work search and that it is a requirement of her EP to work with them. The

appellant provided the ministry with an appointment confirmation form issued by the contractor with a date of February 17, 2014.

- On February 21, 2014, the appellant's cheque was held because she was reported to have not shown up for the February 17, 2014 appointment. The appellant then re-scheduled her appointment for February 21, 2014.
- The appellant showed up for the February 21, 2014 appointment early but stated that she was not able to stay and she re-scheduled for February 27, 2014.
- On February 28, 2014 the appellant contacted the ministry and stated that she forgot about the February 17, 2014 appointment and was not able to stay for the February 21, 2014 appointment because she had a family emergency.
- The contractor advised the ministry that the appellant failed to attend the appointment scheduled for February 27, 2014 and first met with her for a full appointment on March 11, 2014.

At the hearing, the ministry stated that:

- The appellant had been referred to a contractor who specializes in helping clients overcome barriers to employment and making them more employable.
- The appellant had been denied status as a Person with Persistent Multiple Barriers to employment, but the ministry was aware that there were barriers to her employment.
- No confirming information was received by the ministry regarding an inability to attend the program due to medical conditions.
- The appellant agreed to attend the program and stated that she was looking for work.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant did not comply with the conditions of her EP, due to her failure to participate in her employment-related program, 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.

Ministry's Position

The ministry's position is that the appellant failed to demonstrate reasonable efforts to participate in her EP and she has not provided any information of circumstances that prevented her from being compliant with her EP. The ministry argued that the appellant entered into an EP dated October 30, 2013 and, by signing her EP, confirmed that she read, understood and agreed to the conditions specified. It is a requirement in the appellant's EP to complete all tasks assigned by the contractor

and notify the contractor if she is unable to attend. The ministry argued that the appellant was aware of the consequences for failing to comply with the conditions of her EP. The ministry pointed out that the appellant did not complete her first appointment with the contractor until 4 ½ months after signing her EP. The ministry argued that the appellant failed to attend appointments scheduled with the contractor for February 17 and February 27, 2014 without providing circumstances that would prevent her from attending. The ministry argued at the hearing that the doctor's note dated April 15, 2014 is not sufficient as a medical reason for ceasing to participate in the program because it relates to the appellant's ability to work and the requirement at this stage is that she participate in a specific program to address her barriers and make her more employable and not that she work.

Appellant's Position

The appellant's position as set out in her Notice of Appeal is that she has an addiction and medical conditions which constitute a medical reason to cease to participate in the program as she is unable to work. The appellant argued that her doctor confirmed in his note that she is in treatment and is unfit to work for 4 months. The appellant argued that she is suffering from a number of listed mental issues, for which she is in the process of consulting a psychiatrist.

Panel's Decision

The panel finds that the appellant signed her EP on October 30, 2013 and the EP includes conditions that she will work with the contractor to address any issues that may impact her employability, complete all tasks assigned, and notify the contractor if she is unable to attend a session. It is not disputed that the appellant did not schedule an appointment with the contractor until February 17, 2014, which was several months after having signed the EP, and she missed that appointment. For the appointment scheduled for February 21, 2014, the appellant admitted that she lied when she stated that she had to leave because of a family emergency and, although she believed she attended on February 27, 2014, the contractor advised the ministry that she did not attend and the appellant admitted that this time was "a blur" to her and her memory of the events was not good.

The panel finds that, after signing her EP, the appellant did not schedule an appointment with the contractor for several months and then failed to attend two of the appointments scheduled and left early from a third. To 'participate' is to take part in or to be actively involved in, and the panel finds that the ministry reasonably determined that the appellant failed to make reasonable efforts to participate in the program.

The appellant argued in her Notice of Appeal that she has an addiction and medical conditions which constitute a medical reason to cease to participate in the program as she is unable to work. Her doctor confirmed in his April 15, 2014 note that she is going through treatment and is unfit to work for 4 months and the appellant listed a number of mental health issues for which she stated she is in the process of consulting a psychiatrist. While the doctor wrote that the appellant is unfit to work, the ministry explained that the requirement of the program is for the appellant to address barriers to her employment and to make her more employable, not necessarily to secure employment at this stage. The panel finds that there is no information provided by the appellant's doctor as to the nature of her treatment or the associated restrictions in order to demonstrate that there is a medical reason for her ceasing to participate in her program. There was also no information from her doctor regarding the appellant's stated mental health issues and any associated restrictions to participating in her program. 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.

Conclusion

The panel finds that the ministry decision, whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the EAA, was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.