

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 29 April 2014 determined that the appellant was not eligible for continued income assistance because she failed to demonstrate reasonable efforts to comply with the conditions of her Employment Plan (EP) as required under section 9 of the Employment and Assistance Act by failing to attend the scheduled orientation session and workshops.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9.

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- On 13 January 2014, the appellant applied for income assistance.
- On 14 February 2014, the appellant was deemed eligible for income assistance and discussed with the ministry an EP, with referral to a sub-contractor that she had to contact within 10 business days and was advised that she might become ineligible for income assistance should she fail to comply with the EP.
- A 2-page EP dated 14 February 2014 signed by the appellant on 17 February 2014 for the period starting 14 February 2014 until 12 February 2016 with the Employment Program of British Columbia (EPBC). At the outset the EP states: "It is important that you follow through with the conditions of the EP. If you are unable to follow through please advise the ministry. If you fail to comply with your EP you will be ineligible for assistance." Among the details of the EP, the following parts are relevant:
 - "I am aware that if I am not contacted by [the contractor] I must attend their office by (February 27, 2014) located at [address]. As a condition of continued eligibility for assistance, I must attend and participate in [the program] as directed by the... contractor or subcontractor... I must notify the... sub/contractor if I am unable to attend a session... I understand that if I fail to comply with the conditions of my [EP], I will be ineligible for assistance under the [EAA]."
- On 12 March 2014, communication from EPBC to the ministry with information from the subcontractor that the appellant had not made contact with them.
- On the same date, the sub-contractor contacted the ministry reporting that:
 - Telephone calls to the appellant on 21 (9:34 AM), 25 (9:32 AM), 28 February (8:49 AM) and 3 March 2014 (4:26 PM).
 - Orientation: 4 March, 9:00 AM rescheduled and 11 March 2014, 9:00 AM "No-show".
- On 13 March 2014, the program's electronic communication indicates that the appellant has yet to make contact with EPBC. The ministry places a hold on the appellant's April income assistance cheque.
- On 25 March 2014 the ministry was advised by EPBC that the appellant moved to another community.
- On 26 March 2014, the appellant attends the ministry's office to enquire about her April benefits and when asked why she did not attend the program, she indicated she had no phone and was in the midst of moving, effective 1 April 2014. She also indicated that she had rescheduled one appointment but did not attend additional appointments thereafter.
- A one-page "Medical Report Employability" report completed and signed by the appellant's physician on 24 April 2014 indicates that the appellant suffers from dental caries and abscesses, onset Feb. 2014 and depression, onset 2011, her medical condition being described as "severe". The expected duration of that medical condition is expected to last 1 to 3 months. Part of the document is illegible but another part mentions that the appellant is not able to eat properly because of pain and depression.
- On 28 March 2014, the appellant filed with the ministry a Request for Reconsideration.
- In a letter dated 28 April 2014, the appellant's advocate indicated that shortly after signing her EP the appellant made the decision to move to another community to be closer to family. She has considerable barriers to employment and her doctor confirmed that she is living with severe depression since 2011 and a severe dental abscess since February 2014, thus experiencing

significant medical concerns that prevented her from searching or obtaining employment.

At the hearing, the appellant's mother testified that, because she wanted to help her daughter get a job, she suggested that the two of them get an apartment, which they did as of 1 April 2014. The apartment was in the mother's community so her daughter had to move from her previous community. She and the appellant contacted the ministry to have her file moved from the appellant's previous community to her new one. She said she went in person to the ministry's office a couple of times in March to get the appellant's file transferred and once she (the mother) went to get a damage deposit for her new apartment and she received it so that she could rent it. On 26 March 2014, she and the appellant got a ride with a friend and went back to the appellant's former community to attend to the ministry's office to get the appellant's monthly assistance payment. Once there, they waited ½ hour before meeting with an agent about 10 minutes before closing time, who advised them the appellant's income assistance had been cancelled but did not tell them the reason and sent them out, as it was closing time. Once they were back in their community, they contacted an advocacy organization that helped them get some assistance while the matter was sorted out. The appellant's mother stated that the fear that her daughter would not be able to pay her portion of the rent was very difficult on her as she was afraid to be homeless. She also stated that her daughter was on antibiotics because of her problems with a tooth and she is still waiting to get that dental problem addressed because of a waiting list.

The appellant testified that at the time she signed the EP, she had not decided to move to her mother's community and did not know that she would be evicted shortly after from the apartment she was sharing with another individual. The electricity in the apartment had been cut off earlier that week for failing to pay bills and they ended up being without a cell phone for a few weeks. She said that her co-tenant evicted her from that apartment and she needed a new residence urgently and went to her mother's place to get shelter but she was moving back and forth between those 2 communities. She testified that she went to the sub-contractor in person to have the orientation session rescheduled to 11 March and then she called the sub-contractor to advise she was sick and would not be able to attend the new date. She also asked that her file be transferred to her new community and she thought she could follow up those sessions in her new community where it could be rescheduled. She testified that when she signed the EP she already was depressed and mentioned that to the worker who advised her that she would need to fill out another form but that did not go any further; at that date, she did not yet have the abscess in her mouth but was on anti-depressants. She hitchhiked to her former community on 24 April 2014 to see her doctor who completed the "Medical Report – Employability" and gave it to her so that she could bring it back with her and give to the ministry. She did not get any letter from the ministry to the effect her income assistance would be terminated and why.

The panel determined the additional oral evidence was admissible under s. 22(4) of the EAA as it was in support of the records before the minister at reconsideration, in particular that it was additional information about the events described in the various documents.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for continued income assistance because she failed to demonstrate reasonable efforts to comply with the conditions of her EP as required under section 9 of the EAA by failing to attend the scheduled orientation session and workshops, was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation in this matter is s. 9 of the EAA:

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...

(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...

(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 initially argued that the appellant had failed to contact the sub-contractor and the ministry and failed to comply with her EP by not going to any meeting and orientation session. Referring to the medical report provided by the appellant's physician, the ministry argued that it did not provide evidence that she could not participate in the activities of her EP and that she completed a work search for the period 24 January – 4 February 2014. Further, the ministry argued that she had ample time to contact them about her medical condition between 17 February and 26 March 2014 when she got her medical report. Thus, she had not made reasonable efforts to participate in her employment program. However, at the hearing, the ministry took a different position and argued that according to normal practice, more weight should have been given to the medical report and the decision should have been overturned at the reconsideration level and thus, the ministry would not contest it should the panel rescind that decision.

The appellant argued that she and her mother had made lots of efforts, contacting the ministry and the sub-contractor on many occasions to have her file transferred to her new home community and that she was difficult to reach at the time because she had no phone, given the lack of power in her apartment and the fact she could not re-charge her cell phone. Further, she argued that she became ill because of a dental abscess and, as a result was unable to attend a session and called in to let them know and to re-schedule it. She thought her file would be transferred to her new community and that she could continue her EP there. She is still ill and her doctor told her not to work for about 3 months.

The panel must assess the reasonableness of the reconsideration decision in terms of the evidence and the applicable legislation. That the ministry took a different position at the hearing is to be considered by the panel but is not determinative of the issue that is before the panel. The panel must interpret the relevant legislation and apply it to the facts of the appellant's case.

The panel notes that the ministry's entries in their documents are inconsistent when determining whether the appellant contacted them or the sub-contractor. The entry on 12 March 2014 states that the appellant "had yet not made contact with" the sub-contractor while a few lines below, it states that the appointment scheduled for 4 March 2014 was "rescheduled" (the appellant testified she went to their office to have it re-scheduled). Further, the ministry's evidence does indicate the appellant had contacted EPBC prior to 25 March 2014 because on that date EPBC notified the ministry that the appellant was moving to her new community, which confirms the appellant's testimony that she had contacted them to get her file transferred. The panel finds that the fact the March 4, 2014 appointment with the contractor had been rescheduled, together with the evidence that the appellant had contacted EPBC at some time prior to March 25, 2014, supports the appellant's statements that she had made contact with EPBC and therefore finds the ministry unreasonable in relying on its assertion that the appellant had not attended the EPBC office by February 27, 2014 as part of its rationale for denial.

Further, the panel finds the ministry was unreasonable in not giving much weight, if any, to the medical report on the grounds the appellant should have mentioned to the ministry her medical condition before 26 March and because the fact that the physician stated she could not work for 3 months did not amount to "comment regarding [her] ability to participate in [her EP]". The doctor clearly stated that the condition was severe and was expected to last to 1 – 3 months, during which the appellant could not work. The panel finds that the medical condition that prompted the physician to state that the appellant could not work for 3 months was the abscess in her mouth and not the depression because the onset of depression was in 2011 and is an ongoing condition while the abscess started after the EP was signed (according to the appellant) and is an ailment that needs to be medically addressed in the short term (the physician mentions that she "is not able to eat properly" which is obviously connected to the abscess and is something that should not last long). Additionally, the panel notes that in her testimony, the appellant stated that she called the sub-contractor to postpone her orientation session scheduled for 11 March 2014 because she was sick. Thus, the panel finds the appellant did mention a medical reason for not attending a session before 26 March 2014, at least incidentally.

The panel also accepts the appellant's testimony that she contacted the sub-contractor by phone to

re-schedule the 11 March orientation session and advised them she was ill despite the fact that the ministry's or sub-contractor's records did not mention that call, given the ministry's explanation at the hearing that the appellant probably contacted someone who was responding to the phone but not an agent and if that was the case, there would be no mention on her file. The panel also notes that no copy of the ministry or the sub-contractor's files or logs was provided for this appeal.

Given the evidence presented, the panel concludes that the appellant did contact the ministry and / or the sub-contractor to re-schedule her initial appointment and for the transfer of her file to her new community. Further, the panel finds more weight should have been given to the physician report that indicated she could not work for 3 months – the panel finds it was unreasonable to dismiss this because it did not refer to participation in an EP. The physician referred to a medical condition that he described as severe which prevented the appellant from working and to require a physician to make a distinction between work and participation in an employment plan is unreasonable. Thus, the panel finds the evidence shows the appellant made reasonable efforts to comply with her EP and get her file transferred and, additionally, she had medical reasons to cease to participate in the program under s. 9(4) of the EAA, and therefore the ministry unreasonably determined she failed to comply with her EP and was ineligible for income assistance under s. 9(1) of the EAA.

The panel finds the ministry decision was not reasonably supported by the evidence and rescinds the decision. Therefore, the ministry's decision is overturned in favour of the appellant.