

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated June 11, 2014 which held that the appellant was not eligible for income assistance because he failed to comply with the terms and conditions of his employment plan as required by Section 9 of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 9

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation (EAR).

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

- An Employment Plan (EP) signed by the appellant and dated October 22, 2013. The terms of the EP include that the appellant:
 - Will schedule his first appointment with the EPBC within five business days;
 - Will participate in EPBC programming regularly and as directed by the EPBC contractor;
 - Will work with the EPBC to address any issues that may impact his employability;
 - Will complete all tasks assigned including any activities that may be set out in an action plan;
 - Will notify the EPBC if he is unable to attend a session or when he starts or ends any employment;
 - By signing, acknowledges that if he fails to comply with the conditions of the EP he will be ineligible for assistance.
- A letter to the appellant from the Ministry dated November 13, 2013 informing the appellant that he has not complied with the terms and conditions of his EP which state that he must:
 - Participate in the Employment Program of BC (EPBC);
 - Attend appointments with EPBC; and
 - Complete all tasks they assign, including activities in the action plan.

The letter requests that the appellant set up an appointment with EPBC immediately and advises him that his December income assistance cheque will be held at the office until he provides proof that he is working with EPBC.
- A letter dated February 18, 2014 informing the appellant he has not complied with the conditions of his EP and that he must book an appointment with EPBC, attend that appointment and be in full compliance by the cut-off date of the next cheque issue of February 21st or his file will be closed.
- A letter dated May 6, 2014 informing the appellant that as he has not followed through with the activities of his EP and has failed to be in compliance with activities as set out in the EP, he is not eligible for income assistance.
- A letter from an advocate in support of the appellant that included a list of work search activities from May 2 to May 31, 2014.

Also before the Ministry was the following list of actions and activities, including discussions between the Ministry and EPBC:

- Activities and discussions:
 - November 1 – The appellant called EPBC to reschedule his Assessment (2nd) appointment to November 13 because he did not have a ride.

November 13 – The appellant did not attend the appointment and the EPBC left messages requesting the appellant call to reschedule. The Ministry held the December assistance due to non-compliance and mailed the appellant a letter and subsequently

- spoke with him by phone. The Ministry advised the appellant that he must comply with the conditions of the EP to be eligible for assistance.
- November 14 – The appellant called to rebook his Assessment appointment for November 25.
- December 10 – The appellant did not attend an Employment Strategy Session (ESS).
- December 17 – EPBC contacted the appellant to invite him to attend an Employment (ESS) in January
- December 23 – EPBC attempted to contact the appellant; left a voice message
- January 29 – EPBC mailed an appointment reminder
- February 18 – The Ministry contacted the appellant to ask why he was not in attendance at a scheduled session; he stated he had an appointment tomorrow on the 18th. He was advised that this was the 18th; he stated he would call back and make another appointment. He was asked why he did not attend the other appointments – he stated that he went to another community to visit his family with his child for his child's birthday which he stated was more important than any work thing. He stated that his child's birthday was December 25 and he was there until January 2. The Ministry advised him that none of the appointments he missed were within that time frame. The appellant said that he didn't have any money to get anywhere, no gas money. He said he will call EPBC and book an appointment. A case closure letter for March 4 was mailed.
- The appellant subsequently attended EPBC and scheduled an appointment for March 6. He was advised that he was required to attend EPBC sessions every two weeks and that his case would close if he did not attend the March 6 appointment. The hold on the March assistance was removed.
- April 10 – The appellant attended an appointment but was not able to demonstrate job search activities nor was he open to suggestions to review his resume to tailor it for the jobs he wanted to apply to. An appointment was scheduled for May 1.
- May 1 – The appellant did not attend the scheduled appointment despite an appointment reminder sent. Because his contact number was out of service, a reminder notice was sent to the appellant asking him to book an appointment.
- May 6 – The appellant attended an appointment but did not bring a resume or job search record and did not provide any documentation that he was actively looking for work.
- May 7 - The Ministry determined that the family unit was not eligible for assistance because the appellant had not complied with the conditions of his EP. The Ministry mailed a letter advising the appellant of this decision.

On May 29, the appellant attended the office and was again advised that he had been denied assistance because he had not complied with the conditions of his EP. The appellant stated he had been going and participating and requested a reconsideration of the decision.

The appellant filed a Request for Reconsideration on June 3, 2014 in which he stated that:

- He has found it difficult meeting the demands of the EP;
- He is a new father of a 1 year old child for whom he has to balance looking after and attending EPBC sessions;
- His child has been regularly sick due to mold in their home, and therefore he has had to unexpectedly look after him on his EPBC appointment dates;

- He missed an EPBC session in December because he went to another community to introduce his child to his family located there;
- He missed two appointments in January because he could not afford gas money.
- In February, his phone was cut off and so he was not aware of his February 11 and May 1 EPBC appointments;
- He is employed on call with a company and he worked instead of attending EPBC sessions;
- He is making an attempt to find work as demonstrated in a Job Search form for May 2 to May 31; and
- He is enrolled in a training program, other than EPBC.

Admissibility of New Information

The appellant filed a Notice of Appeal which was received by the Employment and Assistance Appeal Tribunal on June 18, 2014. In the Notice of Appeal, dated June 14, 2014 the appellant states:

- He and his wife have had hard times with their landlord making them pay rent and wait for proper help;
- Their baby boy has gotten sick from the mold issues;
- They have found a job but it's on call for both of them; [were] even lucky to get 25 hours;
- He would like to keep getting a bit more help till work kicks in more;
- We [are] still having a hard time.

The panel determined the additional documentary evidence that is part of the Notice of Appeal was admissible under s. 22(4) of the EAA as being in support of the information before the Minister at reconsideration and provides more information on his situation.

PART F – Reasons for Panel Decision

The issue under 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 pursuant to section 9 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:

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

The appellant reported that he has missed appointments because he has had to balance looking after his new child and attending EPBC appointments, he unexpectedly had to look after his sick child on his EPBC appointment dates, he took his new child to another community to meet his family, he could not afford gas money and that he was working. He reported that he was enrolled in another training program to develop skills to work in the pipeline industry and he provided with the Request for Reconsideration, a list of job search activities for the month of May to demonstrate that he has been actively searching for employment.

The Ministry's Position

The Ministry's position is that the appellant entered into an EP dated October 22, 2013 and by signing his EP, confirmed that he read, understood and agreed to the conditions specified. The Ministry argued that it is a requirement of the appellant's EP that he completes all tasks assigned by the EPBC contractor and the information establishes that the appellant was aware of the requirements to participate with the contractor and to report his job searches.

Appointments were scheduled and despite reminders, the appellant did not attend any sessions with EPBC between signing the EP on October 22 and February 18.

The appellant did not attend bi-weekly sessions as required during the month of April and did not attend an appointment scheduled for May 1 even though the EPBC had mailed a reminder notice. The appellant attended sessions on April 1 and May 7 but was not able to demonstrate job search activities, and was not open to suggestions to tailor his resume for jobs he wanted to apply for at either time.

While the appellant reported that he had to unexpectedly look after his sick child on his EPBC appointment dates, the Ministry's position is that the appellant and his spouse can schedule and reschedule with the EPBC so that one of them is with the sick child while the other is busy. The appellant stated that he was employed on call and that he worked instead of attending EPBC appointments but the Ministry notes that EP conditions require that the appellant report the start of end of any employment and that was not done. The appellant stated that he was enrolled in another training program to develop skills to work in the pipeline industry but again, the Ministry argues the enrollment in that program is not part of the terms and conditions of the appellant's EP.

The Panel's Decision

In determining the reasonableness of the Ministry's decision, the panel finds that the appellant entered into an EP on October 22, 2013 and by signing the EP, was aware of the terms and conditions of eligibility. These conditions include that he participate in the EPBC program as directed by the EPBC contractor, attend scheduled sessions, complete all tasks and activities assigned, and advise EPBC if he is unable to attend a session or if he becomes employed.

Section 9(1) of the EAA provides that, when the Ministry requires, a person must enter into an EP and

comply with the conditions of the EP in order to be eligible for income assistance. Section 9(3) of the EAA details the Ministry's authority to specify conditions in an EP including a requirement that the person participate in an employment related program such as EPBC. Section 9(4) of the EAA provides that if the 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, or if the person ceases to participate, except for medical reasons.

The panel finds the ministry reasonably determined the evidence establishes that the terms and conditions set out in the appellant's EP have not been met and as a result, the criteria set out in Section 9 of the EAA have not been met.

The evidence of record shows that the appellant failed to demonstrate reasonable efforts to participate in the program by not attending appointments as required, not providing proof of job search efforts and not reporting work that he had obtained. The panel finds the appellant had opportunities to amend his EP by notifying the ministry of the training program he was undertaking but he did not make any effort to do so. Between October 22, the date of signing the EP and February 18, an initial appointment and five others were missed despite reminder notices and phone calls. Biweekly sessions were not attended as required in April and the May 1 appointment was missed. The appellant attended on May 7 but did not bring a resume or provide any documentation to demonstrate that he was actively looking for work.

The panel notes that evidence further establishes the appellant was aware of the requirements of his EP and of the consequences of non-compliance.

The panel therefore finds that the Ministry's decision to deny the appellant income assistance due to the failure to comply with the conditions of his EP was a reasonable application of the legislation and supported by the evidence in the circumstances of the appellant. The panel finds that the Ministry reasonably determined that the appellant failed to demonstrate reasonable efforts to participate in his EP pursuant to Section 9(4) of the EAA, that there is no evidence he was prevented from participating to the program due to illness, and accordingly, that he was not eligible for assistance pursuant to Section 9(1) of the EAA.

Therefore, the panel confirms the Ministry's decision.