

PART C – Decision under Appeal

The appellant appeals the June 12, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (the Ministry) in which the Ministry denied the appellant's request for income assistance as a result of her failure to comply with the conditions of an employment plan required by section 9 of the *Employment and Assistance Act*.

PART D – Relevant Legislation

Employment and Assistance Act, section 9 ("EAA")

PART E – Summary of Facts

The appellant did not attend the hearing although the panel delayed the start time of the hearing for 15 minutes. The panel received confirmation from the Tribunal that the appellant had been notified of the date, time and location of the hearing. Accordingly, under s. 86(b) of the *Employment Assistance Regulation*, the panel heard the appeal in the appellant's absence.

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

- an employment plan ("EP") (2 pages) signed by the appellant and dated October 22, 2013 the details of which are set out below;
- a copy of the appellant's hand-written work history search log (10 pages) for the period from February 23, 2014 through June 2, 2014 stamped received by the Ministry on June 6, 2014; and
- the appellant's request for reconsideration with her handwritten submission dated June 2, 2014.

As noted in the reconsideration decision, the appellant entered into an EP on October 22, 2013. The term of the EP is two years, from October 17, 2013 to October 16, 2015. The section on the first page of the EP, "A note about your employment plan", 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." In section 3 of the EP, Conditions of the Plan, it states, "I will participate fully and to the best of my ability in the activities required by the ministry or contractor as set out in sections 3(1) to (f)." The name of the EPBC contractor and its telephone number is provided in section 3(c) and the following details are set out in section 3(d):

As a condition of continued eligibility for assistance I will participate in EPBC programming regularly and as directed by the EPBC contractor. I will work with the EPBC contractor to address any issues that may impact my employability and will complete all tasks assigned including any activities that may be set out in an action plan. I will notify the contractor [name and address of contractor] if I am unable to attend a session or when I start or end any employment. I understand that if I fail to comply with the conditions of my employment plan, I will be ineligible for assistance under the Employment and Assistance Act or the Employment and Assistance for Persons with Disabilities Act. I will declare all income and report any changes to the ministry and I will attend all ministry review appointments as required.

The second page of the appellant's EP contains section 5, Compliance with Employment Plan and Actions for Non-Compliance, which provides that to be eligible for assistance, each applicant must, when required to do so, enter into an EP and comply with the conditions set out in the EP. The second page of the appellant's EP also contains the following acknowledgement above the appellant's signature and date of October 22, 2013:

I acknowledge that it is a condition of eligibility that I sign this employment plan and that I comply with the conditions set out in this plan, including any condition to participate in a specific employment-related program. ...

I further acknowledge and understand that, if the ministry refers me to a specific employment-related program, I will participate fully and to the best of my ability in the activities required by

the ministry contractor. ...

The appellant signed the EP on October 22, 2013. As stated in the original decision and repeated in the submissions of the Ministry at the hearing, on November 29, 2013, the appellant attended a Ministry office and advised she did not go to the orientation at the EPBC contractor because she had been ill and she had rescheduled her orientation for December 2, 2013. On November 29, 2013, the Ministry requested confirmation from the EPBC contractor that the appellant had rescheduled her orientation due to sickness and to confirm that the appellant attended her upcoming appointment. On December 11, 2013, the EPBC contractor advised the Ministry that it did not schedule orientation sessions on Mondays – December 2, 2013 was a Monday – and that the appellant had not yet contacted the EPBC contractor. On January 27, 2014, the Ministry contacted the appellant – she told the Ministry her medical condition precluded her from attending at the EPBC contractor and that she had submitted a medical report, but the Ministry could not locate a medical report confirming the appellant's medical condition. The Ministry advised the appellant she had to submit a medical form by February 12, 2014 confirming she has a medical condition which precludes her from attending at the EPBC contractor and mailed her the form. On February 21, 2014, the appellant contacted the Ministry and advised she would be attending a meeting at the EPBC contractor on the following Monday. On this date (February 21, 2014) the Ministry advised the appellant that compliance with the EP is a condition to be eligible for assistance and that she had the onus to report to the Ministry that she has a medical condition which precludes her from attending at the EPBC contractor. On March 20, 2014, the EPBC contractor reported to the Ministry that the appellant was booked for orientation that day, but did not attend. On April 3, 2014, the EPBC contractor reported to the Ministry that the appellant was rescheduled for orientation that day, but did not attend. On April 4, 2014, the Ministry advised the appellant by letter that she was no longer eligible for assistance as she was not in compliance with her EP. The appellant was scheduled for orientation with the EPBC contractor on May 8, 2014, but did not attend. At the hearing, the Ministry representative confirmed that the Ministry had no information confirming that the appellant suffers from a medical condition which precludes her from attending at the EPBC contractor – the appellant never completed and returned the medical form sent to her by the Ministry on February 21, 2014.

PART F – Reasons for Panel Decision

The issue on this appeal is the reasonableness of the ministry's reconsideration decision of June 12, 2014, denying the appellant income assistance for non-compliance with an employment plan (EP), as required by section 9 of the *Employment and Assistance Act* ("EAA").

Section 9(1) of the EAA states that in order for a family unit to be eligible for income assistance, each applicant, when required to do so by the minister, must (a) enter into an employment plan, and (b) comply with the conditions of the employment plan. Subsection 9(3) provides that the minister may specify the conditions in an employment plan including, without limitation, participation in a specific employment-related program that will assist the applicant in finding employment or becoming more employable. Subsection 9(4) of the EAA also requires that if an employment plan includes a condition requiring an applicant 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.

The Ministry's position is that the denial of income assistance was reasonable. The Ministry says that the appellant entered into and signed an EP on October 22, 2013 and agreed to the conditions in the EP, which included attending at the EPBC contractor's office as required, and that she knew she was obliged to comply with the conditions of the EP in order to receive income assistance. At the hearing, the Ministry said the appellant knew that she was required to attend appointments with the EPBC contractor in order to receive income assistance as this had been explained to her on October 22, 2013 when she signed the EP and again on February 21, 2014 when the appellant reported she had medical issues to the Ministry. The ministry says that the appellant failed to comply with the terms of the EP because she did not show up for the scheduled appointments, or contact the EPBC contractor to reschedule the appointments, in October/November 2013, and on March 20, 2014 and April 3, 2014.

In her submissions with the request for reconsideration, the appellant wrote that after several months of medical issues, the nature of her illness "could not be determined." She wrote that she continued her job search. She wrote that when she visited the office of the EPBC contractor, the receptionist told her that the 2 hour class was focused on job search and resumes and that, because the appellant had a current resume and was already actively looking for work, she was "ahead of the game." The appellant wrote that she "perceived that as being able to continue [her] job search without attending" the orientation session, an error on the appellant's part. The appellant wrote that despite her mistake, she has been actively searching for employment and would attend an orientation session at the EPBC contractor if the Ministry required it. In her notice of appeal, the appellant wrote that due to her own mistake, she didn't realize that attending an orientation session at the EPBC contractor was essential, that she assumed that as she was looking for work and recording her search activities, she was fulfilling her obligations. She wrote that she had booked an appointment with the EPBC contractor for the following week. The Ministry representative at the hearing confirmed that there was no record of the appellant attending at the EPBC contractor prior to the date of the hearing.

The Ministry noted that the appellant said in her submissions on reconsideration that she suffered from a medical condition and had been too sick to attend at the EPBC contractor, but that the appellant had not provided the Ministry with confirmation of a medical condition which precludes her from attending at the EPBC contractor or complying with the conditions of her EP. The Ministry

submits that the appellant is well aware of the requirement to comply with the conditions of the EP to receive assistance and says that the appellant did not explain what prevented her from keeping her scheduled appointments with the EPBC contractor in October/November 2013, on March 20, 2014 or April 3, 2014, or from contacting the EPBC contractor to reschedule, as required by the legislation.

The panel finds that the appellant was aware of the conditions of her EP, including that she was required to contact the EPBC contractor and attend scheduled appointments with the EPBC contractor, including its orientation session. The panel finds that the appellant did not provide any evidence that a medical condition caused her to miss her appointments with the EPBC contractor in October/November 2013, or on March 20, 2014 or April 3, 2014 or prevented her from contacting the EPBC contractor on or before the appointments, as she was required. The panel finds that the Ministry's decision to deny the appellant income assistance for failing to comply with the conditions of the EP as per section 9 of the EAA is reasonably supported by the evidence and is a reasonable application of section 9 in the appellant's circumstances. The panel confirms the reconsideration decision.