

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Innovation (the ministry) reconsideration decision dated May 22, 2014 which held that the appellant was not eligible for income assistance pursuant to section 9 (1)(b) because he did not comply with the conditions of his employment plan (EP) and because he did not make reasonable efforts to participate in the employment program under section 9(4)(a) and did not provide any medical reasons for non-compliance under section 9(4)(b) of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 9.

PART E – Summary of Facts

With the consent of parties, this hearing was conducted in writing pursuant to section 22(3) (b) of the Employment and Assistance Act.

The evidence before the Ministry at the time of reconsideration included: an Employment Plan (EP) dated December 7, 2012, a letter from the contractor to the ministry dated October 23, 2013, a letter dated November 29, 2012 concerning a training course, and the appellants request for reconsideration dated May 14, 2014.

A letter, dated November 29, 2012 to the ministry requesting permission for the appellant to attend a pre-employment skills program from January 14 to February 8, 2013. He was directed to the ministry to discuss and received confirmation to attend.

On October 8, 2013, the contractor reported to the ministry that the appellant had found employment. The November assistance payment was held pending an earning income review.

On October 23, 2013 the appellant informed the ministry that he was not hired due to a criminal record from 20 years ago, that he met with his case manager, was actively searching for work but had not submitted a search report. He was advised to keep a record of searches and submit it when asked and to attend regular contact meetings. Non-compliance consequences were also discussed.

On October 24, 2013 the appellant wrote to the ministry confirming that he was not hired. He was placed back in case management and scheduled for an appointment on October 29, 2013.

On April 14, 2014, the contractor reported that the appellant had not been in contact since February, 2014 and had not responded to many attempts to contact him. On clarification the contractor reported that there were on going issues of compliance:

- work searches were minimal, and sporadic
- contact was expected every couple of weeks
- very few of the workshops scheduled in January were attended
- the appellant did have a reliable message number but neither the contractor nor the ministry was able to contact him.

The contractor did not give a negative report until April even although he had ongoing concerns as he was trying to help and allow time to show progress. After several attempts to contact the appellant by phone as numbers were no longer in service on April 22, 2014, the ministry wrote to the appellant that job search information and EP review were required, they were holding the May 28, 2014 assistance payment and future eligibility will be determined once all the documentation was reviewed.

On April 28 the appellant phoned the ministry asking about the letter he received holding his assistance payment and when asked about his failure to attend a meeting on April 11, 2014 replied "I don't know, I just forgot". He stated that he had contacted the contractor on April 25, 2014 and booked an appointment for May 6, 2014.

In the appellant's Request for Reconsideration dated May 14, 2014 he writes that:

- o he has attended throughout the duration of the EP only missing one appointment that was to be rescheduled which he failed to attend due to a misunderstanding.
- o He diligently followed the EP and even found a job through his hard work but it unfortunately fell through due to the criminal record check.
- o He attended appointments and meeting obligations, thriving in the environment; through his hard work.

and dedication he found a job.

o Missing one appointment should not lead to denial of income assistance as he will be on the street and not be able to see his daughter.

A reconsideration decision was completed by the ministry on May 22, 2014 denying further assistance. The appellant filed a Notice of Appeal June 5, 2014. A written hearing was requested.

In his notice of Appeal, the appellant wrote that he has open custody of his daughter and if he has no place to live he won't be able to see her. He states that the counselor changed an appointment date and he forgot to write it down and that is why he missed the appointment, that he "will do whatever it will take to get back on assistance" as he cannot live without being able to see his daughter, that he needs another chance as it's the first time this has happened.

Findings of Fact

The appellant is the sole recipient of income assistance.

The appellant signed an EP December 7, 2012 covering the period November 27, 2012 to November 27, 2014 agreeing to participate in the Employment Program of BC (EPBC) regularly, to complete all tasks assigned, to attend all appointments, to address any barriers to employment, to notify them if unable to attend and when starting and stopping work. Program reporting frequency and method of reporting were not detailed but checked as "other".

In signing the EP plan the appellant acknowledged that complying with the EP conditions was required for continued income assistance and that failure to comply will result in loss of income assistance.

The appellant did not attend a scheduled appointment with the contractor for April 11, 2014.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant income assistance because the appellant failed to comply with the conditions of his EP pursuant to section 9 of the EAA. The panel must decide whether the ministry's decision to deny the appellant income assistance due to his non-compliance with his EP is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant.

Relevant legislation

Section 9 of the EAA provides:

Employment Plan

EAA details the ministry's authority to specify conditions in an EP.

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 canceling 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's position is that the appellant entered into and signed an EP in December 2012 requiring him to participate in the EPBC. By signing the EP the appellant agreed that he understood the conditions, activities, his responsibilities and the consequences of failure to comply. The ministry determined that the evidence reported by the contractor shows that the appellant did not complete all tasks assigned by the contractor, did not attend an appointment, did not keep a job search record nor submit it to his case manager. He made no contact from February to April 28, 2014 when he called about the June letter concerning your assistance payment. The contractor and ministry efforts to contact him failed because the phone numbers he provided were not in service. The ministry concluded that the appellant did not demonstrate reasonable efforts to participate in the program, he had no medical reason for non-attendance and he was well informed of consequences and had access to the contractor if he had any questions.

The appellants position, in a letter dated May 14, 2014 accompanying his appeal wrote that he was an active and successful participant in the EP that he had found a job but was rejected due to a criminal record, attended appointments, and the one missed appointment was due to a date change and a misunderstanding. He was diligent in searching for a job, had one lined up by his hard work and that his progress shows he was attending appointments and thriving in the environment, that missing one appointment should not mean loss of assistance. He asks that the totality of the situation be considered as it shows he was active and successful in participating in his EP and that missing one appointment was an anomaly, that his hard work and dedication be considered. Further, loss of assistance will affect being able to see his daughter regularly.

Panel Decision

In determining the reasonableness of the ministry's reconsideration decision, the panel finds that the appellant entered into an EP on December 7, 2012 agreeing to comply with its conditions to the best of his ability. Section 9(1) of the EAA, provides that when the ministry requires it a person must enter into an EP and comply with the conditions in order to be eligible for income assistance. In section 9(4) of the act if an EP includes a condition requiring a person to participate in a specific employment program, that condition is not met if a 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 panel finds that by signing the EP the appellant understood the conditions of the EP and that there is no evidence that he failed to comply for medical reasons. While the appellant argues that he was compliant, and was actively searching for work; the panel finds that the evidence does not support that he met the conditions of the EP. Though the appellant stated that he had attended throughout the duration of his EP requesting that the totality of his situation be considered. There is no evidence to support the appellant's claim that he undertook activities as specified in the EP and specifically he did not meet with the contractor regularly and as a result reported non-compliance in April 2014. The panel accepts the contractors report as credible, that the appellant had issues with ongoing compliance of the EP. It is clear to the panel that the appellant had adequate information and understood the consequences of non-compliance as he signed the original EP acknowledging his understanding, plus in a phone call with his case manager in October 23, 2013 non-compliance was again discussed. He had adequate opportunity to question and clarify the non-compliance terms, and further in his letter of appeal he writes that he "will do whatever it takes to get it (income assistance) back" thereby admitting non-compliance and its consequences.

Between February, 2014 and April 2014 the appellant failed to contact the contractor and did not respond to many efforts to contact him. He had not attended the program in over 2 months, missed an appointment in April and said he didn't know why he missed it. The panel finds that the appellant hadn't been in touch with the contractor or the ministry for over 2 months, does not explain what he misunderstood when he missed the appointment in April, and he only contacted the ministry when his payments were being held. The evidence shows that the appellant did not make reasonable efforts to participate in the EP. The panel also notes that the appellant did not report any medical reasons for non-compliance.

The panel finds that the ministry reasonably determined that the appellant did not make a reasonable effort to participate in his EP pursuant to section 9(4) of the EAA to be eligible for income assistance pursuant to section 9(1). The panel therefore confirms the ministry's decision.