

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated May 28, 2014 which held that the appellant was not eligible for income assistance for failure to comply with the terms and conditions of his employment plan as required by section 9(1)(b) and section 9(4) of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 9(1)(b)
Employment and Assistance Act (EAA) section 9(4)

PART E – Summary of Facts

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

- 1) The appellant's Request for Reconsideration (RFR) dated May 6, 2014 in which the appellant states that he can now job hunt more efficiently because he recently attended a program that tells him how to do this;
- 2) A copy of the employment plan signed by the appellant on September 3, 2013;
- 3) A letter from the ministry dated February 18, 2014 stating that the appellant had not followed through with the conditions of his employment plan and the worker would like to talk to him. He was asked to contact the contracted service provider by February 26, 2014 or his assistance may be delayed; and
- 4) A letter from the ministry dated April 1, 2014 stating that this was the second time the appellant did not attend scheduled appointments and workshops or demonstrate any efforts towards job seeking. As a result, the appellant is no longer eligible for income assistance.

The ministry states that:

- January 31, 2014- Employment Programs of British Columbia (EPBC) tried to call the appellant but since his phone was not in service, they emailed him requesting an appointment;
- February 7, 2014- EPBC mailed the appellant a letter regarding his compliance, but no response was received;
- February 18, 2014- the ministry sent the appellant a letter advising him that he must comply with the terms of his employment plan in order to remain eligible for assistance and asking the appellant to contact EPBC by February 26, 2014.

The EPBC reported to the ministry:

- February 18, 2014- the last time the appellant was in was October 29, 2013;
- March 4, 2014- the appellant attended his appointment on March 3, 2014;
- April 1, 2014- at the March 3, 2014 appointment, the appellant had not been looking for work and did not submit a job search;
- March 10-13, 2014 the appellant failed to attend scheduled workshops;
- March 17, 2014 the appellant attended his appointment and had not been looking for work;
- March 31-April 4, 2014 the appellant failed to attend scheduled workshops.

In his Notice of Appeal (NOA), dated May 30, 2014 the appellant stated:

- 1) He did not attend training from EPBC, but did take similar training from another service provider from May 1, 2014 – May 23, 2014;
- 2) After taking this training he can now do a job search and has developed a "presentable resume";
- 3) He has a job search log of jobs he has applied for; and
- 4) In 2001, he was in a motor vehicle accident that makes it difficult for him "to be on his feet for a period of time".

In his NOA, the appellant submitted:

- 1) A note from a physician dated June 10, 2014 stating that the appellant is not able to do physical labor for medical reasons;
- 2) A letter from a service provider other than EPBC stating that the appellant was enrolled in a job program from April 7, 2014 – May 16, 2014, but he exited the program on May 5, 2014 due to personal issues. The appellant received a \$1,000.00 training allowance for the program; and
- 3) A certificate stating that the appellant has successfully completed FOODSAFE Level 1.

At the hearing the appellant stated that he thought the program he took was better for him than the EPBC program that was in his employment plan. He had not been able to comply with his employment plan because he became depressed. He was not in compliance with his employment plan but he did not really understand the conditions of non-compliance as outlined in the plan – “it contains a lot of big words”.

The ministry stated that EPBC has not contacted them to let them know that the appellant was receiving programming from another provider.

The appellant's representative stated that the appellant has a grade 10 education and this is restricting him to jobs involving physical labor, which he can't do because of the injuries sustained in a car accident. She stated that these circumstances were contributing to the appellant's depression, but he was not seeing a doctor about the depression.

The ministry did not object to the appellant's additional evidence. The panel has accepted the additional documentation and the oral submission as it provides further information about the appellant's medical condition and the program he was enrolled in. This evidence is in support of the information and records before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue to be determined at appeal is whether the ministry's reconsideration decision which found the appellant ineligible for income assistance due to non-compliance with his employment plan under section 9(1)(b) and section 9 (4) 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:

EAA

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 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 argued that on September 3, 2013 the appellant signed an employment plan confirming he read, understood and agreed to the conditions listed in the employment plan and he understood that failure to comply with the conditions would result in ineligibility for assistance. Those conditions stipulated that the appellant was to participate in an employment program as directed by EPBC, to work with EPBC to address issues that may impact his employability, to complete all tasks assigned to him and to notify EPBC if he is unable to attend a session or if he starts or ends employment. The ministry's position is that the appellant failed to demonstrate a reasonable effort to participate in that employment program. EPBC reported in February 2014 that the last time the appellant attended was October 2013 and that while he attended on March 3, 2014 he had not been looking for work and did not submit a job search. Further, the appellant failed to attend scheduled workshops. The ministry wrote the appellant on February 7 and 17, 2014 requesting an appointment but no response was received. They were not informed the appellant was receiving programming from another provider other than the EPBC program that was stipulated in his employment plan. Although the appellant submitted a note from a physician with his NOA, the note does not indicate that he suffers from any medical issues that would impact his ability to attend his employment program and complete the tasks asked of him by EPBC.

The appellant argued that he was not able to go to many jobs prior to February 18, 2014 because he was working on completing his grade 12. In April, he found a program that he felt was very similar to the EPBC program, but would give him the skills he needed. Through this program he has received a Food Safe certificate and a Level One First Aid certificate. The appellant stated that he has not been attending any program since May 5, 2014. Further, he argued that he did not really understand the conditions of non-compliance as outlined in the plan, stating "it contains a lot of big words".

Panel Decision

Section 9(1)(b) of the EAA directs that an individual must comply with the terms of an employment plan to maintain eligibility for income assistance. Section 9(4) states that if an employment plan includes a condition requiring participation 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 ceases, except for medical reasons, to participate in the program.

The appellant's employment plan stipulated that he was to participate in an employment program as directed by EPBC. While the appellant feels that the program he chose gave him the skills he needed and was better suited to him, he admits that he did not regularly participate in either of the programs.

The evidence indicates the appellant missed appointments with EPBC, did not attend regularly, missed scheduled workshops, was not searching for work or submitting job searches and did not respond to requests for appointments from the ministry.

While the appellant argued he did not understand the employment plan as it contained a lot of big words, he signed the employment plan indicating that he understood and agreed with the conditions. The conditions of the plan and the consequences of non-compliance with the plan were explained to the appellant by the ministry at the time and in letters sent to him. As such, the panel finds that the ministry's decision that the appellant did not demonstrate reasonable efforts to participate in the employment related program was reasonably supported by the evidence.

Section 9(4) of the EAA, however, recognizes that medical reasons may prevent a person from demonstrating reasonable efforts or continuing to participate in an employment program. The appellant argues that he could not comply with his employment plan because he is “down on himself and suffering from a personal depression.” He was in a motor vehicle accident that makes it difficult for him to be on his feet for a period of time”. He has a grade 10 education and this could restrict him to jobs involving physical labour. The appellant submitted a note from a physician that stated the appellant was not able to do physical labour for medical reasons.

The ministry recognized that these circumstances may be contributing to the appellant’s depression, but he was not seeing a doctor about the depression. Although he submitted a note from his physician, the note does not indicate he suffers from any medical issues that would impact his ability to attend his employment program and complete the tasks asked of him by EPBC.

The appellant’s employment program required him to attend appointments and scheduled workshops and to submit job searches, none of which require physical labour. There is no documentation from a physician that indicated the appellant suffers from depression and that this condition affected his ability to comply with these tasks. Therefore, the panel finds the ministry’s decision that medical reasons did not prevent the appellant from making a reasonable effort to participate in his employment program is reasonable supported by the evidence.

The panel finds the ministry’s decision that the appellant is not eligible for income assistance pursuant to section 9(1) of the EAA as he did not comply with the conditions of his employment plan is reasonably supported by the evidence and confirms the decision.

The appellant is not successful in his appeal.