

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the "Ministry") dated June 18, 2014, which denied the appellant Income Assistance (IA), as the Ministry determined that he was non-compliant with the conditions of his Employment Plan, (EP), contrary to Section 9 of the Employment and Assistance Act (EAA). Specifically the Ministry determined that the appellant failed to attend scheduled appointments to update the EP as requested.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 9.

PART E – Summary of Facts

The Panel reviewed the written material contained in the Appeal Record. The evidence before the Ministry at reconsideration was:

On April 26, 2013 the appellant signed an employment plan. The details of that plan were to submit a medical report to the Ministry by May 13, 2013, and to provide verification, upon request, of medical condition(s) that affect the appellant's ability to find or continue work. The appellant agreed to attend required Ministry appointments. The end date of this Employment Plan was 2014 April 25.

On May 15, 2013 the Appellant submitted a medical employability report from his doctor, stating he was unable to work or look for work for 12 to 18 months due to lumbar pain.

On March 12, 2014, the Ministry sent the appellant a letter booking an appointment on Thursday, April 3, 2014 to review and update the Employment Plan. The letter states that if the appellant does not attend this appointment, assistance may be delayed or denied for non-compliance. The appellant did not attend this appointment and did not contact the Ministry to reschedule it.

On April 14, 2014, the Ministry sent the Appellant another letter advising that a new appointment time had been set for April 29, 2014, as the Appellant did not attend or reschedule the previous appointment. The letter advises that an up-to-date Employment Plan is a requirement for ongoing eligibility for assistance, and that if the Appellant does not have an up-to-date plan, the cheque may be delayed. The appellant did not attend this appointment and did not contact the Ministry to reschedule it.

On May 2, 2014, the Ministry sent the Appellant a letter advising that as the appellant did not attend the appointments on April 3 and April 29, the appellant was not eligible for Income Assistance.

On June 3, 2014, the Appellant advised the Ministry that his doctor had lost his PPMB report and that it had been faxed to the Ministry. The Ministry advised him that they had not received it and the appellant requested another PPMB form.

June 15, 2014 - A Medical Report – Persons with Persistent Multiple Barriers is signed and dated on June 15, 2014 by the Appellant's physician (general practitioner) indicating the appellant suffered from back pain, weakness, and referred pain in right leg. A Medical Report on Employability is signed and dated June 15, 2014 by the same physician. It states that the Appellant has a severe medical condition which is expected to continue for another 12 – 18 months.

June 16, 2014 – the Appellant signed an Employment and Assistance Request for Reconsideration in which he indicated that his doctor had faxed a PPMB report to the Ministry and that he had several doctor's appointments during that time and that he was in the process of applying for disability due to deteriorating discs in his back, tingling and numbness in his legs, and that his left ankle is very sore and swollen and he is unable to walk more than a block without pain.

On June 18, 2014, the Ministry's Reconsideration Officer reviewed the Request for Reconsideration and confirmed the Ministry's decision to deny income assistance for failure to comply with the terms of the employment plan.

For the Written Tribunal Hearing, the appellant provided the following evidence:

On July 2, 2014 the Appellant signed a Notice of Appeal, stating that he is unable to walk more than a block due to the severity of pain in his back and left leg. He indicates he does not have a phone, and that when he was able to borrow a phone he called and talked the Ministry. The Ministry sent him a form to have his doctor complete, which his doctor did and faxed it to the Ministry. He stated that the day he was able to get a ride, he went to the Ministry's office where he was told they had not received the fax sent by his doctor. The appellant advised them he would bring a new form/booklet to the doctor.

On July 21, 2014 the Appellant submitted a letter for the written hearing stating that he was unable to attend the appointments due to the severity of his disabilities, which includes forgetting things, severe pain in the lower back and left leg, concentration issues and isolation. The Appellant states that on June 15, 2014 he resubmitted the medical report, and there is a Medical Report included in the evidence to substantiate this. The Panel accepts this letter as it is in support of information provided by the Appellant at Reconsideration.

The Panel Makes the Following Findings of Fact:

1. The Appellant signed an Employment Plan on April 26, 2013, terminating April 25, 2014.
2. As part of the agreement, the Appellant agreed to attend required appointments, and to provide verification, upon request, of medical condition(s) that affect the appellant's ability to find or continue work.
3. The Panel finds that the Appellant did not attend two scheduled appointments with the Ministry, on April 3 and April 29, 2014, or contact the Ministry to reschedule.
4. The Panel finds that the Appellant submitted two Medical Reports completed by his physician on June 15, 2014.

While the appellant stated his doctor had faxed a PPMB report to the Ministry and then had lost his copy, the Panel notes that this evidence is contradicted by the Ministry's evidence to the effect that it had not received that faxed report from the doctor. In the absence of any corroborating evidence presented by the appellant about his doctor faxing the form, the panel accepts the Ministry's evidence that it was not. The Panel also finds that this evidence would not be relevant to the fact that the appellant did not attend the two appointments that he had been requested to attend.

PART F – Reasons for Panel Decision

The issue before the Panel is whether the Ministry's decision that the appellant was not eligible for continued income assistance because he failed to comply with the conditions of his EP by attending appointments as requested, was a reasonable application of the legislation, or reasonably supported by the evidence.

The Employment Assistance Act, Section 9, states:

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.

(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 employability of the Applicant is not the issue under appeal. The legislation provides that recipients, when required to, must enter into an employment plan. The Appellant entered into an Employment Plan on April 26, 2013, agreeing to comply with the conditions set out in the Plan. He signed the acknowledgement that he understood the conditions of the plan, including the requirement to attend all appointments.

The legislation provides that in order to be eligible for income assistance, recipients must comply with the conditions in the employment plan. The Ministry argues that the Appellant failed to comply with the conditions of his employment plan, because he missed appointments on April 3, 2014 and April 29, 2014, to update the Employment Plan. The Appellant does not dispute this. The Appellant argues that he was unable to attend the scheduled appointments or contact the Ministry to discuss the appointments for medical reasons. The Panel found that the Appellant did not attend the two scheduled appointments nor did he attempt to reschedule the appointments to update his Employment Plan. The Panel notes that there is no evidence to support his argument that he could not attend meetings or call to notify the Ministry as this statement is inconsistent with the appellant's ability to make and attend medical appointments and to attend the Ministry's office when he was able

to get a ride, as stated in his Notice of Appeal.

Based on the material in the written Appeal Record, the Panel finds that the Reconsideration Decision was reasonably supported by the evidence and is a reasonable application of the legislation based on the circumstances of the appellant and confirms the Decision.