

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 4, 2014 which held the appellant ineligible for income assistance due to non-compliance with her employment plan.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 9.

PART E – Summary of Facts

The ministry was not in attendance at the hearing. Upon confirming that the ministry was notified, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The information before the ministry at reconsideration included:

From ministry files:

- The appellant is a sole recipient of income assistance with 2 dependent children ages 10 and 14.
- On September 12, 2013 the appellant signed her Employment Plan for the Employment Program of BC (EPBC).
- On April 7, 2014 the appellant was advised that she was employment obligated and had to make other arrangements for her father's care. She asked the ministry for ideas on help with her father and she was referred to community resources for assistance. The ministry listed 4 different organizations.
- On April 16, 2014 EPBC advised the ministry of the appellant's non-compliance: she last attended the program on January 2 and missed the scheduled appointments on January 21, March 25 and April 2. She advised the ministry that she is now caring for her sick father.
- On May 16, 2014 the appellant submitted a medical note confirming that she was providing full-time care for her father. Because the appellant was employment obligated she was given until June 20, 2014 to get back in compliance with the program and make other arrangements for her father's care.
- On May 28 the ministry received a phone call from EPBC: If the appellant does not make contact and attend an appointment with EPBC by May 30, 2014, EPBC will close her file due to chronic nonparticipation.
- On May 29, 2014 the appellant was advised of her obligations to EP/EPBC and that she must attend or assistance would be denied due to chronic EP non-compliance. The appellant agreed and advised that she would seek alternative care for father and contact EPBC. The ministry advised her that she must make contact with the EPBC and attend an appointment by Friday 30 May.
- May 30, 2014 was the appellant's deadline to contact EPBC or her file would be closed.
- On June 17, 2014 the appellant's EPBC file was closed for chronic non-participation with a history of non-compliance since her referral in September 2013. Ministry notes state that there seems to be a pattern of non-participation. It appears the appellant will attend an appointment, pick up one assistance cheque, then miss the next appointment. The appellant was denied further income assistance due to non-compliance. The ministry attempted to contact the appellant as per her request calling the phone number on file but received a "not in service" recording. When the ministry tried to call an alternate number they received a message that this is a Magic Jack number and because the appellant has never called the ministry from this number they cannot get through to her.
- On June 24, 2014 the appellant spoke with the ministry and was advised of the decision. [In the request for reconsideration the ministry wrote "July" 24 by mistake.]

In her request for reconsideration dated June 30, 2014, the appellant states that

- Within the last year (2014) she has been caring for her father who has mental and physical needs.

- She has been dealing with her own medical issues – she has seizures and she is now taking a medication that helps control her seizures.
- In June 2013 she had a seizure while going down her stairs and sustained a head injury which required 14 staples, as well as 2 fractured ribs and a concussion.
- She has been the only care-giver to her 2 minor children.
- She was receiving \$128 per month child support which has now run out.
- She would like to start school in fall to complete her degree as a social worker.
- She is trying to find someone to care for her dad so she can find employment.
- Her father has episodes of confusion and has forgotten the frying pan on the stove which left her home filled with smoke. She takes her father to doctor's appointments, gives him his daily medication, cooks and cleans his room.
- She is afraid he may burn down the house or have an accident when he is unattended.
- Watching her dad is the same situation as having a young child that cannot be left home alone without supervision.
- She cannot afford to hire someone to watch him when she is not at home.
- Her natural gas has been disconnected since 4-5 weeks and she has no heat and hot water at home for her children.
- She has attended a workshop with the contractor specified in her employment plan.
- She was put on a medical pause which she had to provide a doctor's note for.
- While her dad was sick with pneumonia her 10 year old son was diagnosed with whooping cough and missed a few weeks of school.
- Her monthly cheque is the only income she has and she needs it to feed and care for her kids as an unemployed single parent.

A letter from the ministry dated June 17, 2014 informed the appellant that she is not eligible for income assistance because she did not follow through with her Employment Plan requirements; specifically, she did not follow through with participating in the Employment Program of BC (EPBC), attending appointments with EPBC and completing all tasks they assign including activities in her action plan.

A doctor's note dated May 16, 2014, says that the appellant is caring for her father on a full time basis and that she is unable to leave her father on his own.

The Employment Plan signed by the appellant on September 12, 2013 includes the following provisions:

- Conditions of the Plan: The appellant will participate fully and to the best of her ability in the activities required by the ministry or contractor.
- End date of Employment Plan: September 11, 2015.
- Name of program: Employment Program of BC.
- The contractor's name, address, 2 phone numbers including a toll free number, and fax number.
- Details: "...As a condition of continued eligibility for assistance I will participate in EPBC 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 ... I will notify the contractor ...if I am unable to attend a session ... I understand that if I fail to comply with the conditions of my employment plan, I will be ineligible for assistance...."

In her Notice of Appeal the appellant states that she has no means of support for her 2 young children or herself.

At the hearing the appellant stated that she was on medical pause as a result of her last seizure in June 2013 medical issue - that was before she signed her employment plan in September 2013.

In response to the question whether she had contacted any of the organizations the ministry referred her to find alternative care for her father the appellant responded that she had contacted 1 of them around 2 months ago – a nurse was going to come but it did not work out in the end. She is now looking into daycare for seniors.

She said she went to the ministry on May 29 and tried to make an appointment but her case manager was busy and could not talk to her at the moment so she asked to be called back and left. She believes that the ministry tried to call her back but did not get through to her as her telephone was disconnected and her magic jack connection would not accept the ministry's call because the ministry had not called her magic jack number before.

She does not know how to deal with her dad but she does not want to put him in a home. She has no relations who could help her look after her father. She is an only child and has 2 older sons. One of them does not live at home, but the 10 year old is currently home on holiday and looking after her father when she is out at work. She has worked all her life and attended several programs in the past. She has full-time employment now from 7:30am to 4:30pm and often works until 7 or 9pm.

She doesn't recall missing appointments on January 21, March 25 or April 2. She was sick for one of these appointments.

Pursuant to section 22(4) of the EAA the panel admits the appellant's oral testimony as being in support of the information that was before the ministry at the time of reconsideration. Her testimony provides additional details and background of her situation.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision which found the appellant ineligible for income assistance due to non-compliance with her 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 following section of the EAA applies to this appeal:

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 argues that she has been trying her best to participate in the program – she has attended workshops in the past – but she cannot be expected to participate in the program while she is caring for her sick father full-time. She cannot afford to hire someone to watch him when she is not at home and is trying to find someone to care for her dad. She is now working full-time but cannot afford to pay back assistance money that was issued to her prior to this decision.

It appears the appellant is also attempting to make a case for medical exemption due to her own medical issues: she states that she had submitted a doctor's note to that effect on a previous occasion but has not included it this time.

The appellant argues she was misinformed and unaware: she was under the impression she would have an oral hearing before the reconsideration was decided, and she would like to know what her denial at reconsideration is based on. The panel notes that the appellant had her oral hearing on appeal, and that the reasons for her denial at reconsideration are stated in the reconsideration decision which she has received.

The ministry argues that caring for an ill parent is not an allowable exemption; therefore the appellant is considered employment-obligated and required to enter in an employment plan and comply with the conditions of this plan.

The ministry argues further that the appellant has not made reasonable efforts to participate in the program named in her employment plan because of the following reasons:

The appellant did not attend any appointments in the program since January 2, 2014.

The appellant did not contact the program as required.

The appellant did not provide any details of her efforts to find some care for her father, despite the fact that the ministry had told her she needed to make other arrangements and referred her to several community resources.

Lastly, the ministry argues that it cannot be concluded that the appellant ceased to participate in the program due to her own medical reasons, as she has not submitted any medical records since June 2013 and has not indicated the current severity and frequency of her medical condition.

Section 9 of the Employment and Assistance Act affirms that to be eligible for income assistance, each recipient in the family, when required to do so by the ministry, must enter into an employment plan and comply with the conditions in the employment plan. If an employment plan includes a condition requiring an applicant or recipient to participate 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 panel finds that there is evidence that the appellant has not made reasonable efforts to participate in the program under her employment plan:

She did not attend any appointments in the program since January 2, 2014.

She was advised on several occasions (May 7, 16, 29) that she needed to work with the program and find other arrangements for her father's care, and she was referred to several community resources.

Even though the appellant said she contacted 1 of these resources there is not sufficient evidence that the appellant exerted reasonable efforts to find alternative care for her father.

The panel further finds that there is not enough evidence in support of a medical exemption for the appellant herself; she has reported medical issues but has not provided any medical evidence.

For these reasons the panel finds that the ministry's decision was reasonably supported by the evidence and is a reasonable interpretation of the applicable legislation and confirms the decision.