

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 9 July 2014 determined that the appellant was not eligible for continued income assistance because she failed to demonstrate reasonable efforts to comply with the conditions of her Employment Plan (EP) as required under section 9 of the Employment and Assistance Act by failing to attend scheduled appointments and workshops.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9.

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant's family unit was a recipient of income assistance for herself and her dependent child.
- An EP dated 18 July 2013, signed by the appellant with the following conditions that she accepted:
 - Will attend appointments with the Employment Program of BC (EPBC) contractor.
 - As a condition of continued eligibility for assistance, will participate in EPBC programming regularly and as directed by the EPBC contractor.
 - Will work with the EPBC contractor to address any issues that may impact her employability and will complete all tasks assigned including any activities that may be set out in an action plan.
 - Will notify the contractor [name and phone number] if she is unable to attend a session or when she starts or ends any employment.
 - She understands that if she fails to comply with the conditions of her EP, she will be ineligible for assistance.
 - She will declare all income and report any changes to the ministry and will attend all ministry review appointments as required.
- She attended the following Employment Strategy sessions: 13-14 & 27 January, 10 & 24 March 2014 but did not attend the scheduled sessions on 24 February and 7 April 2014.
- On 4 March 2014, she did not attend an appointment and called to say that her child was sick and her grandfather was also sick and she had to go to another community.
- On 25 March 2014 she did not attend an appointment and called to re-book. An appointment reminder was sent to her.
- On 15 April 2014, she did not attend an appointment and called to cancel as a member of her immediate family had passed away.
- A letter dated 16 April 2014 by the ministry to the appellant stating that she had not complied with some of the conditions of her EP and was asked to set up an appointment with an EPBC case manager immediately, with address and phone number. It also states: "You need to book an appointment with EPBC, attend that appointment and be in full compliance by cut off date of next cheque issue which is May 23, 2014 or your file will be closed." It concludes: "Your cheque will be held at the office until you provide proof that you are working with EPBC."
- A note dated 24 April 2014 in the appellant's file mentions that a ministry worker spoke with her, reviewed missed appointments, compliance and advised her that if she missed more appointments she will no longer be eligible for assistance. It states that the appellant stated her health was better and that she would be attending her appointments and that she understood the repercussions of non-compliance.
- On 25 April 2014, the appellant called to book an appointment for 16 May. A note on her file dated 2 June 2014 indicates she did not attend any Employment Strategy Sessions in April and May.
- On 8 May 2014, ministry worker called the appellant who advised that she was going to see a doctor to get a medical note and she also cancelled the appointment set for 16 May.
- 29 May 2014, the appellant is advised to reconnect with the contractor and has until 20 June 2014 to book, attend and be in full compliance with the program or assistance will be denied.
- A note on file by the contractor dated 2 June 2014 indicates the appellant delivered a medical note that day (no copy provided) and that her file is closed due to lack of participation.

- A letter dated 2 June 2014 by the ministry to the appellant indicating she did not comply with 3 conditions of her EP:
 - Participate in the EPBC
 - Attend appointments with EPBC.
 - Complete all tasks assigned, including activities in her action plan.
- She is asked to set up an appointment with an EPBC case manager immediately with address and phone number. It also states she must be in full compliance with her EP by the cut-off date of the next cheque issue which is on 20 June 2014 or her file will be closed.
- On 4 June 2014, the appellant booked appointments for 12, 13 and 16 June 2014.
- On 12 June 2014, the appellant did not attend her appointment.
- On 13 June 2014, a note in her file states that a worker tried to call her that day but there was no answer.
- A letter dated 16 June 2014 by the ministry to the appellant advising her that she failed to comply with 3 conditions of her EP and that consequently she is not eligible anymore for income assistance.
- A doctor's certificate dated 27 June 2014, signed by a physician, states that the appellant "is under medical care + unfit for employment for next 3 weeks."
- In her request for reconsideration dated 2 July 2014, the appellant indicated she hurt her knee and her side and had to take painkillers and stay home to heal. She then felt better and was ready to go to attend the program. She stated she and her child need food and felt awful for not having been able to look after him as well as she should. She spent her child tax benefit on rent and needed another chance to show that she can and will do it. She still owed money on her rent.

In her Notice of Appeal dated 15 July 2014, the appellant indicated that she could not help being hurt and that she did like going to the employment centre and hoped to find employment for herself and her child. She wrote: "I am willing to do whatever is required of me to find a job" and that she planned to get counseling.

At the hearing the appellant testified that she was in a difficult situation and that it was hard for her to attend any appointments because of having hurt her leg and stomach. She suffers from addictions and it has been hard on her and she advised she needed help and counseling. She stated that when she could not attend the appointments, she called the front desk to let them know but she did not suggest her EP should be put on hold. She testified she had this addictions problem when she signed the EP but that she thought it could work nonetheless and she did not advise the ministry of that condition. She also presented a doctor's note dated 31 July 2014 stating that she had chronic addiction problem and she is unable to work. The doctor wrote: "She will need help to pay her rent and get some counseling and long term support. She is also in an abusive relationship and very fragile." The ministry did not object to the admissibility of that new evidence.

The panel determined the additional oral evidence, other than the evidence about her addiction problem, was admissible under s. 22(4) of the EAA as in support of the records before the minister at reconsideration. However, the panel determined that the additional oral evidence at the hearing about her addiction problem as well as the additional documentary evidence by the appellant's physician dated 31 July 2014 were not admissible under s. 22(4) of the EAA as they were not in support of the records before the minister at reconsideration since the panel finds the evidence shows that at no

time before the appeal the issue of addiction had been raised with the ministry and the ministry had no opportunity to consider it and therefore is not in support of the information and records before the ministry when the decision being appealed was made.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for continued income assistance because she failed to demonstrate reasonable efforts to comply with the conditions of her EP as required under section 9 of the EAA by failing to attend the scheduled appointments and workshops, was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation in this matter is s. 9 of the EAA:

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 ministry argued that despite the fact that the appellant was advised a number of times of how important attendance was, she nonetheless missed a number of appointments without contacting the contractor and on occasions the contractor was unable to reach her. The only doctor's note the ministry acknowledged having received was dated 27 June 2014, indicating the appellant was unfit for work for the following 3 weeks and that on 2 July the appellant indicated that she had hurt her knee and side but was then better and ready to participate. The ministry further argued that the appellant did not make any efforts to work with the contractor to address barriers that impacted participation and employment. The ministry indicated that it did not have any previous medical report to show that she had a medical condition in the past several months when she failed to participate in her EP and that there was not enough evidence to show that she had medical reasons for not participating in her EP.

The appellant argued that she hurt her knee and side and that she had to stay home and take painkillers and could not work. She claimed she needed the assistance to pay her rent and food for her and her child. She argued that she found the program interesting and would have liked to continue but her health condition did not allow her to do so and that she did her best to comply with the EP.

The panel notes that the only medical evidence provided at the time of reconsideration was an indication that the appellant had hurt her knee and side and that she would not be able to work for the following 3 weeks after 27 June 2014. This does not address the appellant's situation prior to June 2014, in particular when she missed her appointments during the period February to June 2014. While the June doctor's note indicates she should not work for the following 3 weeks, a few days later the appellant mentioned in her request for reconsideration dated 2 July 2014 that she then felt okay and was "ready to go to the employment program", contradicting the doctor's opinion that she should not work at that time. The appellant did not challenge the ministry's evidence that she had not attended the appointments that the ministry claimed she missed. The panel finds she was given many opportunities to participate in her EP and the evidence shows she did not request any changes to it. Thus, the panel finds the ministry reasonably determined that she had not demonstrated reasonable efforts to participate in the program and reasonably determined there was no evidence supporting any valid medical reasons not to participate in it.

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.