



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) July 25, 2014 reconsideration decision denying the Appellant income assistance due to non-compliance with an employment plan under section 9 of the Employment and Assistance Act.

### PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 9.

## PART E – Summary of Facts

The Appellant did not attend the hearing. As the Panel has confirmed the Appellant was notified of the date, time and place of the hearing, the hearing proceeded in the absence of the Appellant as per Employment and Assistance Regulation section 86 (b). The Panel heard evidence from the Ministry representative in attendance, and reviewed the evidence submitted in the written record.

The Ministry provided the following evidence:

1. Information from its records that the Appellant signed an Employment Plan (EP) on June 11, 2013, which identified that the Appellant was expected to attend the Employment Program of BC ("EPBC"), and that the consequences of not participating in the EPBC programming as directed by the EPBC contractor would be that the Appellant would not be eligible for income assistance. The EP also states that if the Appellant has any issues that may impact her employability she must work with the EPBC contractor to address these issues.
2. On July 22, 2013, the Appellant asked to have her file transferred to another city to which she had moved, and indicated she was waiting for a Doctor's note, and was advised that until the medical employability form was received from the Ministry which excused her from the terms of the EP, she needed to comply with the EP and was reminded she would be ineligible for assistance if she failed to do so.
3. On July 25, 2013 the EPBC contractor in the Appellant's previous city advised the Ministry that she had not connected with them.
4. On September 19, 2013, the Appellant was advised to contact the EPBC contractor in the city to which she had moved
5. On September 25, 2014 the Appellant advised the Ministry that she had an appointment at the EPBC contractor booked for October 9, 2013.
6. On October 22nd 2013 EPBC Contractor advised the Appellant did not attend her appointment. It was rescheduled for October 24, 2013.
7. On November 7, 2013 the EPBC Contractor advised the Ministry that the Appellant had called and left a message that she was sick; they had returned the call, left a message, but she did not call back.
8. On November 14, 2013, the Appellant attended the EPBC Contractor and booked an appointment for November 19, 2013. The EPBC Contractor confirmed she attended this appointment.
9. On January 2, 2014, the EPBC Contractor reported that the Appellant had not attended since November.
10. On January 6, 2014, the Ministry sent the Appellant a letter advising that she would be sanctioned for non-compliance.
11. On January 15, 2014 the Appellant attended an appointment with the EPBC Contractor. Her action plan was revised and signed and another appointment booked for January 31, 2014.
12. On March 6, 2014 the Appellant submitted a doctor's note which stated that the Appellant was unable to work last week, and will be unable to do so for one more week, because of a fall she had last week. She was advised by the Ministry that if she missed any appointments with the EPBC she would be in non-compliance and her file would close.
13. On May 9, 2014, the Appellant's EPBC file was closed due to non-participation.
14. On June 2, 2014, the EPBC Contractor advised the Ministry that the Appellant's file had been closed due to not participating.

At reconsideration, the Ministry reviewed the following corroborating evidence:

- A copy of the Employment Plan, dated June 12, 2013.
- A copy of the letter dated June 3, 2014, in which the Ministry advised the Appellant that as she did not comply with the requirements of her EP, she is no longer eligible for assistance.

At the hearing, the Ministry submitted a copy of the doctor's note dated March 6, 2014 which was referred to by the Ministry in the reconsideration decision, but was not included in the panel's appeal materials. As per Section 22 (4) (a) of the Employment Assistance Act, a panel may admit information as evidence if it was before the Minister when the decision being appealed was made. The Tribunal admitted this evidence as it was information that was before the Ministry at the time of the Reconsideration (the document was directly referred to in the Reconsideration Decision). The note states the Appellant, "is a patient of this clinic. She was unable to work last week, and will be unable to do so for 1 more week, because of a fall she had last week. As such she cannot do any heavy lifting. If you have any questions please contact this office."

The Appellant's Notice of Appeal states that she had "significant and valid reasons" for not following through with the terms of the EP, including housing and landlord issues, her son being hospitalized this summer, significant memory loss issues, great difficulty with the EPBC Contractor's programs (comprehension and literacy issues, grade 9 education), her mother being elderly and ill, as well as other health issues (injuries, arthritis, chronic pain, trauma).

On the Request for Reconsideration dated July 2, 2014, the Appellant stated that she has a physiotherapy appointment, injured back lower rib from snow and ice on the basement steps and she fell 2 times since February 2014. She states her back, bone and hips are arthritic, that she wants to look for work but needs more experience, training, and upgrading. She states she would like to get involved with the community drop-in center. She states her old injuries on her rib came back when she tried to reach a 20lb bag; she thought it was a pulled muscle and she was laid up in bed for a week and a half. She also stated she couldn't go home because someone broke her windows.

To support her position, the Appellant submitted the following corroborating evidence: A doctor's note dated July 21, 2014, stating that the Appellant has osteoarthritis and finds it difficult to mobilize, and requires time to recover from physical activity. It states she is working with a physio and as she has recently undergone a "flare", she is unable to look for work at this time. The Ministry did not object to the admissibility of the evidence. Pursuant to section 22(4)(b) of the Employment and Assistance Act, the Panel admits the note as it is in support of the information before the Ministry at the time of reconsideration, as the Appellant referenced her arthritis on the Request for Reconsideration form. The Panel finds that this note does not address the capacity of the Appellant to attend her EP appointments and workshops, and does not pertain to the time period being considered in this hearing.

## PART F – Reasons for Panel Decision

The issue before the Panel is whether the Ministry reasonably denied the Appellant income assistance because the Appellant did not comply with the conditions of her Employment Plan as required by section 9 of the EAA.

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.
- (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 Parties' Positions

The Ministry's position is the Appellant failed to make a reasonable effort to comply with the terms of her EP as required by subs. 9(4), as she did not regularly attend her appointments with the EPBC Contractor and did not maintain regular contact with them. The Ministry also argues that the Appellant did not provide sufficient medical information to the Ministry to excuse her from the conditions of her EP, as required by subs. 9(4). The Ministry notes that although the Appellant submitted one doctor's note in March 2014, it only excused her from heavy lifting, and only for a period of 2 weeks. The second doctor's letter was submitted after the Appellant's file was already closed, and although it states that the Appellant is "unable to work at this time", it provides no

indication that the Appellant was unable to comply with the terms of her EP during the time in question (June 2013 to June 2014).

The Appellant's position is that she has not been healthy enough to comply with the terms of her EP and has other issues that she is dealing with including her mother's illness, her son's illness, as well as issues with her landlord. She has submitted two doctor's notes, one dated March 8, 2014, which confirms she fell (either late February or early March) and another, submitted July 21, 2014, which confirms she has osteoarthritis.

The Panel Makes the Following Findings of Fact:

- The Appellant signed an Employment Plan on June 12, 2013, agreeing to participate in EPBC programming regularly and as directed by the EPBC contractor. The terms of the EP state, "As a condition of continued eligibility for assistance I will participate in EPBC programming 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 including any activities that may be set out in an action plan."
- The Panel finds that during the period of June, 2013 to June, 2014, the Appellant only attended the EPBC twice: November 19, 2013, and January 15, 2014.
- The Panel finds that the medical evidence submitted by the Appellant did not establish that the Appellant was unable to comply with the conditions of her EP during this period of time, as the note dated March 2014 referred only to a two week period, and the note dated July 2014 does not relate to the period of time being considered in this hearing, and it also does not address her capacity to attend appointments and workshops with the EPBC Contractor.

Panel Decision:

Section 9(4) of the EAA sets out that if an EP includes a condition requiring an applicant 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 (subs. 9(4)(a)) or ceases to participate in the program except for medical reasons (subs. 9(4)(b)). The Appellant does not deny that she failed to attend appointments with the EPBC Contractor, as required in the terms of her EP.

The Panel finds that the Ministry's reconsideration decision denying the Appellant income assistance for failing to comply with the terms of her EP as required by s. 9 of the EAA was reasonably supported by the evidence. Therefore, the Panel confirms that decision.