

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 24 July 2014 determined that the appellant was not eligible for continued income assistance because he failed to demonstrate reasonable efforts to comply with the conditions of his 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 is an employable recipient of assistance with a dependent employable spouse.
- An EP dated 19 September 2013, signed by the appellant the next day with the following conditions that he accepted:
 - Will attend a workshop with the Employment Program of BC (EPBC) contractor on Tuesday 24 September 2013 at 9:00am.
 - 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 his 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 unable to attend a session or when he starts or ends any employment.
 - He understands that if he fails to comply with the conditions of his EP, he will be ineligible for assistance.
 - He will declare all income and report any changes to the ministry and will attend all ministry review appointments as required.
- On 11 February 2014 the ministry received a note from the contractor to the effect that his file was closed as they had not heard from the appellant since 8 October 2013.
- A 1-page letter from the ministry to the appellant dated 11 February 2014 stating that their records indicate he had not complied with his EP and to contact the contractor to schedule an appointment.
- On 21 February 2014, the appellant called the ministry to indicate he had made an appointment with the contractor for 6 March 2014 at 9:30am and that he planned on attending this appointment.
- On 26 March 2014, the appellant went to the ministry's office and it was confirmed that he had made contact with the EPBC contractor but had missed a workshop. The appellant was advised that if he missed another appointment, he would no longer be eligible for income assistance.
- On 16 June 2014, the contractor confirmed to the ministry that the appellant had not complied with his EP as he had not attended an appointment.
- A 1-page letter from the ministry to the appellant dated 16 June 2014 indicating he had not followed through on the conditions of his EP to attend and participate in ongoing programs and workshops. He was asked to contact the ministry's office by 20 June 2014 and if he did not make contact by then, his assistance might be delayed.
- On 26 June 2014, the appellant went to the ministry's office and stated he had received the letter and that he had no mitigating circumstances for not attending appointments and workshops. He was advised he was not eligible for income assistance.
- In his request for reconsideration dated 27 June 2014, the appellant indicated the last appointment he missed was because he had attended the ministry's office on 26 March 2014. He missed the previous appointments because he was living in a rural area where buses don't run often.

In his Notice of Appeal dated 29 July 2014, he stated that because he was looking for employment, he was penalized for having bad organizational skills and not keeping records of job search and for

missing appointments to attend the ministry's office. With his Notice of Appeal the appellant included:

- An undated, unsigned letter from the appellant indicated that he did not believe he was entirely non-compliant with his EP. He has been looking for employment, handing out resumes and going to construction sites but he is not an organized person and was not used to keeping a list of those activities on paper. He really wanted to work but he just does things differently from what the contractor wants him to do.
- A 5-page document detailing the appellant's job search activities between 6 and 29 July 2014 as follows:
 - 1 entry for each of July 9, 10, 11, 12, 17 (went to the contractor's office for job search on computers), 19, 20, 21, 23, 24, 25 and 26.
 - 2 entries for each of July 6, 8 and 27.
 - 3 entries for 18 July.
 - 28 July: He indicated he sat at home waiting for ministry's call.
 - 29 July: He wrote: "Again wasting my time coming to MSD office for check issues that are not real issues. Because I have always been looking for work just haven't been writing them down until now."

At the hearing, the appellant testified that on 1 March 2014 he moved from a rural area where there was little bus service to the adjacent community where there was better bus services and a contractor's office. On 26 March 2014, he had an appointment scheduled with the contractor but he contacted the ministry to find out what had happened with his cheque and was told to go to the ministry's office and he called the contractor to let them know. He testified he went to the ministry's office in the city and they contacted the contractor to confirm that he could not attend his appointment with them that day and it should be re-scheduled. He then went back to the contractor's office within a couple of weeks to re-schedule his appointment but was told that his file was closed. He could not remember the date but thought it was before 17 April. He testified that he did not miss any appointment or workshop between 26 March and 17 April. He said he had previously gone to the contractor's office about every 2 weeks after he had moved to the community to discuss his job searches. Finally, he testified that since then he has been looking for employment despite that he was not receiving income assistance anymore.

The ministry testified that it did not have the contractor's log on file or in the Appeal Record, and did not know what appointments or workshops the appellant had missed. The ministry confirmed that at the meeting on 26 March, a worker called the contractor to indicate the appellant was at the ministry's office and the appointment should be re-scheduled and advised the appellant that if he missed one more appointment or workshop he would cease to be eligible for income assistance. On 16 June 2014, the ministry was advised that there was a note in the contractor's file dated 17 April 2014 stating the appellant's file had been closed but no indication at what actual date it had been closed.

The panel determined the additional oral and documentary evidence was admissible under s. 22 (4) of the EAA as it was in support of the records before the minister at reconsideration, providing more information as to what happened during the timeframe of the appellant's EP. However, the panel finds that no weight can be given to the documentary evidence provided by the appellant – the job search activities in July 2014 - as it was not relevant to the issue of the compliance with the EA since it had already been terminated and was not related to any missed appointment or workshop.

In the absence of any evidence from the contractor or the ministry – no appointment or workshop log was made available to the panel - the panel finds the appellant did attend to the contractor's office after the ministry's appointment of 26 March 2014 on one occasion on or before 17 April 2014 to re-schedule his appointment but was told that his file was closed.

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 he failed to demonstrate reasonable efforts to comply with the conditions of his 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 the appellant had not been in contact with the contractor according to his EP since October 2013 until February 2014 when he was advised to schedule appointments with the contractor. The appellant was given another chance on 26 March 2014 to re-schedule his appointments but failed to do so and therefore had not made reasonable efforts to comply with his EP and ceased to be eligible for income assistance.

The appellant argued that initially he could not attend all the appointments and workshops because he was living in a rural area but that once he moved to the community he attended to his appointments and he missed his appointment on 26 March 2014 because he was told to go to the ministry's office on an unrelated matter – regarding cheque deposit. He argued that he had called the contractor to let them know he would miss that appointment because he was going to the ministry's office and at the ministry, they also contacted the contractor to re-schedule the appointment. He

further argued he went to the contractor's office in his community but instead of re-scheduling his appointment, they simply told him his file was closed. He argued that given his circumstances, he made reasonable efforts to comply with his EP and attend appointments and workshops but that he was precluded when he learned that his file was closed.

The panel notes that the evidence shows that on 26 March 2014, the ministry indicated to the appellant that he was given another chance at complying fully with his EP but that if he missed another appointment or workshop he would not be eligible for income assistance. Yet, the panel finds that when the appellant went to the contractor's office, on or before 17 April 2014, he was denied the option of re-scheduling his appointment but was instead told his file was closed.

The ministry argued that the appellant had missed an appointment or workshop between 26 March and 17 April 2014 but was unable to offer any particulars as to what appointment or workshop that was nor when this was alleged to have happened. The panel notes that there might have been a misunderstanding or miscommunication between the ministry and the contractor but finds that the evidence is that the ministry was not able to show that the appellant was not making reasonable efforts to attend his appointments and comply with his EP while it was the contractor that decided to close his file without giving any particulars as to why it did so. Thus, the panel finds the ministry unreasonably determined the appellant had not made reasonable efforts to comply with his EP under s. 9 (4)(a) of the EAA while the ministry had given the appellant an opportunity to comply with it.

The panel finds the ministry's decision was not reasonably supported by the evidence and rescinds the decision. Therefore, the ministry's decision is overturned in favour of the appellant.