

PART C – Decision under Appeal

The Decision under Appeal is the Ministry of Social Development and Social Innovation, (Ministry), Reconsideration Decision, dated June 11, 2014, which denied the Appellant Income Assistance (IA), as the Ministry determined the Appellant was non-compliant with the conditions of his employment plan, (EP), contrary to Sec. 9(1) (b) and 9(4) of the Employment Assistance Act, (EAA).

PART D – Relevant Legislation

EAA Employment and Assistance Act – Section 9

PART E – Summary of Facts

The evidence before the ministry at reconsideration showed that the Appellant signed an EP on Dec. 17, 2013 acknowledging he understood and agreed to participate in an employment program through a program contractor; he agreed to participate regularly and as directed by the contractor. He also agreed to notify the contractor if he was unable to attend a session or if he started or ended employment. By signing the EP he also acknowledged that failing to comply with the conditions of the EP meant he would be ineligible to collect IA.

On Dec. 30 the contractor advised the ministry that the appellant had made no contact with them. On March 5, 2014 a letter was sent to the appellant from the ministry asking him to attend the ministry office and discuss his non-compliance. On March 27, 2014 the appellant attended the ministry and advised he had contracted the flu shortly after Dec. 17, 2013 and then forgot about the EP requirements. He also advised that in Feb, 2014 he was in and out of hospital due to a spider bite. The ministry accepted these explanations; they advised the appellant of the consequences of failing to comply with the EP, reviewed the EP with him and told the appellant he must attend the contractor immediately. The appellant returned to the ministry office and showed them an appointment slip for the next day. The appellant's April cheque was then released to him.

The next day, March 28, the appellant did not show for his appointment; he called and rescheduled for April 11. This appointment was missed and rescheduled for April 14; however, the appellant did not attend this appointment and it was rescheduled for April 15. This appointment was also missed and contact with the contractor then ceased. On April 28 the appellant met with the ministry and the worker recorded in the file the appellant had no mitigating circumstances for his failing to comply. He was then denied IA.

In his Request for Reconsideration the appellant acknowledged missing appointments in the past but he always had good reason and he always called the contractor. He advised he had been hospitalized for a spider bite requiring daily IV treatments, he had the flu for 3 to 5 weeks and he had also left town to look for work. The appellant also advised he had recently been stabbed and was now not able to work for at least six months.

The Reconsideration Decision determined the appellant had failed to demonstrate reasonable efforts to participate in the employment program. He had scheduled and missed 5 appointments and did not show any effort to participate in the program. In relation to the medical claims, the ministry had received no verification from a physician confirming these claims. The ministry determined the appellant had not demonstrated reasonable efforts to comply with the EP and did not have a medical condition, confirmed by a physician, which prevented him from participating in the program.

On the Notice of Appeal the appellant wrote that he was physically unable to work and that he had handed in doctor's forms.

The appellant at the hearing advised that he had missed some appointments at the beginning of the EP without good reason, but since then he had been compliant and except with good reason he had

attended. He advised that he had been stabbed at the end of May, he had moved and he was having a difficult time accessing the information he needed to conduct the appeal. He advised he had only received the appeal package from the Tribunal the day before. He had been away from the address he lived at and his sister had given it to him only yesterday. He could not establish dates without being able to look at his material. He also advised that he had given a letter to the ministry from his step-father confirming for approximately 1.5 to 2 weeks he had gone out of town to try to get a job in a mill. His step-father had arranged the opportunity but he was not successful. The appellant was unsure the dates when all of the things discussed above occurred. He was unsure of the dates he required hospitalization for the spider bite and unsure of the dates he left town to go find work. He advised that the letter from the step-father had been given to the ministry when they were having problems with their computer system and believed they should have the letter. He advised that he could provide a letter from his step-father confirming his attempt to obtain the job out of town if given an adjournment.

The ministry adopted the reconsideration decision and argued the material showed that the appellant had not been compliant with the EP. He had been given a second chance in April, after the ministry accepted his excuses for prior problems, but then immediately failed to comply again. The appellant's situation in May was irrelevant to this matter as he had been denied based on events in April. The ministry was opposed to any adjournments and took the position that even if the appellant had missed appointments with the contractor in April because he was out of town looking for work, it was irrelevant.

The panel determined that they would adjourn the hearing to allow the appellant an opportunity to obtain the letter from his step-father and provide time for the appellant to review his documents. The panel also asked the ministry to search their files for such a letter.

The matter was adjourned and the hearing was reset giving the appellant an opportunity to provide the letter from his step-father. On the next hearing date, the appellant did not attend. After confirming the appellant had been advised of the new hearing date, the matter proceeded under section 86(b) of the Employment and Assistance Regulation.

At the hearing the ministry advised they had checked their records and could not find any letter confirming the appellant had left town to look for work.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry decision reasonably concluded that the appellant did not comply with the conditions of his EP by failing to demonstrate reasonable efforts to participate in the employment program and further that he did not have a medical condition precluding him from participating in the program.

The Legislation states the following;

Employment and Assistance Act

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.*

Under Sec 9(1), to be eligible for income assistance, each recipient, when required to do so by the minister, must enter into an employment plan, and comply with the conditions in the employment plan. Sec. 9(4) requires a recipient to demonstrate reasonable efforts to participate in the program and not to cease participating in the program except for medical reasons. The issue here is whether the Appellant was properly denied IA as being non-compliant with the conditions of his EP, contrary to Sec. 9(1)(b) and 9(4)

The Appellant argues that in April, he was out of town trying to get a job in a mill and this provides a reasonable excuse for failing to participate in the program. The ministry adopts the reconsideration decision and argues the appellant was given a warning but still did not comply with the EP. Further there was no excuse for not attending the appointments with the contractor even if he was out of town looking for work.

DECISION

In relation to the evidence of the appellant being stabbed in May and unable to work, the panel agrees with the ministry that this is irrelevant to the decision which found him non-compliant due to his actions in April. The relevant time-frame is April, not May. The appellant offered no medical evidence or medical excuse to explain his non-participation in the EP in April. As such, the appellant does not fall within Sec.9(4)(b).

When the appellant signed the EP, he acknowledged that he understood, agreed to participate in and make reasonable efforts participating in the program so that he could receive IA. The EP notes in several different places the effects of non-compliance and that compliance by the appellant is a condition to receiving IA. The appellant was warned on March 27 of the consequences of non-compliance and given an opportunity to comply and make reasonable efforts to participate in the program.

The issue in this matter is whether the appellant failed to demonstrate reasonable efforts to participate in the program, contrary to Sec. 9(4)(a) of the EAA, during the month of April. The appellant attempts to explain his non-participation in April, by stating he was out of town looking for work. The panel does not accept this. If the appellant had been out of town for 1.5 to 2 weeks, he would have been able to attend at the program for that portion of April he was in town. He would have been available for 2 to 2.5 weeks. If one accepts, for the purpose of argument, that this did excuse his non-participation in April, it covers at most only 2 of the 4 weeks in April. It does not excuse the non-participation for the full month.

Further, when given an opportunity to obtain a letter from his step-father, confirming the story that he was out of town, no letter is provided and the appellant does not attend at the hearing. The panel notes that the appellant should not have difficulty obtaining a letter from his step-father, especially considering the appellant's story that the step-father was trying to assist the appellant by getting him an interview at a mill. The appellant failed to provide any evidence supporting his claim that he was out of town looking for work. The panel finds that the appellant had not been out of town looking for a job. If he had, he would have so advised the ministry on April 28.

As such, the panel finds that the appellant did not comply with the terms of his EP. In April he made no efforts to participate in the program. As such, contrary to Sec. 9(4)(a) he failed to demonstrate reasonable efforts to participate in the program. As no medical excuse was offered for April, Sec. 9(4)(b) is not applicable to excuse the appellant for ceasing to participate in the program in April.

The panel finds that the ministry determination that the appellant he had not demonstrated reasonable efforts to comply with the EP and did not have a medical condition preventing him from participating in the program was reasonable based on all of the evidence. The panel confirms the decision.