

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) reconsideration decision dated June 5, 2014, whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA) for not complying with the conditions of his Employment Plan (EP), due to his failure to make reasonable efforts to participate in his employment-related program.

### PART D – Relevant Legislation

*Employment and Assistance Act Section 9 (EAA).*

## PART E – Summary of Facts

The material before the ministry showed that the Appellant was a single employable recipient of IA with no dependents. On September 4, 2013 he signed an EP, acknowledging he understood and agreed to participate in an employment program. He was required to attend his first appointment with the EP contractor within 5 business days, to participate in EP programming regularly and as directed by his contractor, work with the contractor to address any issues that may affect his employability, and complete all tasks assigned including any activities that may be set out in an action plan. He was also obliged to notify the contractor if he was unable to attend a session or when he started or ended any employment. He agreed that he understood that if he failed to comply with the conditions of his employment plan, he would be ineligible for assistance under the Employment and Assistance Act (EAA) or the Employment and Assistance for Persons with Disabilities Act (EAPDA).

On October 25, 2013, the appellant made his first contact with the program. He attended his first appointment on November 5, 2013, which was an orientation and on November 6, 2013, his orientation was complete and he was accepted into the program.

A full week of workshops was scheduled for November 12-15, 2013, but the appellant did not attend and on November 22, 2013, he missed an appointment with the Case Manager. A week of workshops was scheduled for November 25-29, 2013, but the appellant advised the program on November 25, 2013, that he was unable to attend.

On December 4, 2013, the Ministry left a message and sent the appellant a letter to contact the Ministry to discuss his compliance with his EP.

On December 19, 2013, the appellant advised the EP worker that he was unable to attend workshops on November 12-15, 2013, since he was sick, that he was not aware of the appointment on November 22, 2013, that he did not attend on November 25, 2013, since he had a job interview, and that he was in jail during part of the time.

On December 24, 2013 the appellant provided a note from his landlord that he had been ill from November 22-28, 2013, and he provided confirmation that he had been in jail from November 8-19, 2013. Mitigating circumstances were accepted and the appellant was advised to reconnect with the contractor and that it was his responsibility to advise the contractor and the Ministry and to provide confirmation if he was unable to attend his EP in the future.

On March 10, 2014 the EP sent the appellant a no-contact letter, as attempts to reach him by telephone were unsuccessful as his phone was not in service.

On May 9, 2014 the EP advised the Ministry of non-compliance and its attempts to contact the appellant and on May 28, 2014 the appellant was advised that he was ineligible for income assistance due to his non-compliance.

On May 30, 2014 the appellant submitted his request for reconsideration indicating that he had attended the contractor and set up a new appointment, that he had been attacked on February 21, 2014, hit unconscious, that money was stolen, that he required stitches, and that he has had headaches and neck pain since. The contractor confirmed that the appellant had made contact and

that it has agreed to work with the appellant again and he has a good job lead and is prepared to work with them on an Action Plan.

The reconsideration decision determined that the appellant was ineligible for IA due to his non-compliance with the EP. The decision notes that the appellant did not comply with his EP and that he did not make reasonable efforts to participate in his EP. The appellant did attend the orientation session and intake a month after being referred but he failed to attend workshops or contact the Ministry to address the issues he was having.

Further the decision notes that the appellant did not attend within 5 days as initially required, did not complete the workshops as directed, and did not reconnect with the program in December or later after being advised by the Ministry to do so. The decision acknowledges that the EP contractor did not contact the Ministry until May 2014 but that it was the appellant's responsibility to reconnect and actively participate in the EP. The decision says that it had not received any evidence that the appellant stopped participating in the EP from December 2013 to May 2014 for medical reasons despite the appellant's explanation that he had been attacked on February 21 or 22, 2014. As well the appellant had not submitted any evidence that he was medically unemployable.

#### *The Appellant's Evidence*

The appellant stated at the outset that he is a heroin addict and that he is using heroin on a regular basis. Nonetheless the appellant spoke clearly and explained his situation to the best of his ability.

The appellant acknowledged that he was fully aware of his obligations under the EP he signed on September 4, 2013, but that he had not complied with the conditions of his EP due to his addiction. He said that when he is not using drugs he is drug-sick. He said that when he signed the EP on September 4, 2013, he was told to report to an EP provider within five days. However the appellant also told the intake worker that he was a heroin addict. In response to this information, the appellant said that he was then given a medical form to take to a methadone clinic for an evaluation of his addiction. He understood that his reporting date to the EP would be delayed until he provided the completed evaluation. He was also told that based on the outcome of this evaluation he might be directed to a different kind of program than an EP but that in order to be considered for an alternative to an EP this form would have to be completed.

The appellant said that he attended the methadone clinic but for various reasons including lack of proper identification documents he was not accepted for evaluation. He has not received methadone and he continues to use heroin. He did not provide any evaluation to the Ministry.

Since the appellant had not provided any evaluation from the clinic, he was then expected to enter the EP. He did attend an orientation on November 6, 2013, at the EP and was accepted into the program, but he did not attend any workshops.

The appellant received a letter from the Ministry that he had not been compliant and he spoke to a Ministry worker. He advised that he had been ill in November and that he had also been in jail during that month.

The appellant said his explanations for failure to comply were accepted and on December 24, 2013, he was given another chance to begin an EP.

From the beginning of January 2014 the appellant did not attend his EP and he did not communicate with the Ministry due to his heroin addiction. He said that for financial reasons he lost his cell phone service a few times and that he was unable to call the Ministry or the EP office and that he was unable to receive mail regularly. His mail was delivered to the house of his landlord who lived in a separate structure on the property from his. She had been out of town so that he did not receive his mail.

The appellant further said that he had been attacked on February 21 or 22, 2014, and that he was robbed and hospitalized.

At the end of May the appellant did not receive his cheque and he then called the Ministry office. He says that he attended the Ministry office and was told that he was no longer eligible for IA. He says with the assistance of Ministry staff he filed his request for reconsideration and that he was told that since he had begun an appeal process he would continue to receive benefits during the appeal period.

When his request for reconsideration resulted in a denial the appellant attended the Ministry office and filed a notice of appeal. He says a worker told him that even though his IA had been denied for non-compliance, since he had appealed he would continue to receive it although it would have to be paid back if the final outcome was not in his favour. He also says he was told to report to the EP program. He did this on May 30, 2014, and he was given an appointment even though his file had been closed on May 6, 2014. At that time he was given an appointment for June 5, 2014.

The appellant did not provide any confirmation or documentation of his heroin addiction, of his attendance at the methadone clinic, the injuries he says he suffered during an attack in February of 2014, or a police report regarding that attack.

#### *The Ministry's Evidence*

The Ministry relied principally on its reconsideration decision dated June 5, 2014. The Ministry said that the appellant was very aware of his obligations and that he had signed an EP on September 4, 2013, which confirmed those obligations

The Ministry did not have knowledge of whether the appellant had told the intake worker of his addiction when he applied for IA. However the Ministry said that if an applicant for EA disclosed an addiction at the time of an application, there are alternatives to usual programs. If an applicant fails to provide evidence from the methadone clinic, for example, the only alternative is for the applicant to begin the EP. In this situation an appellant who has failed to provide the medical evidence is then directed to the EP.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the Ministry reasonably concluded that the appellant did not make reasonable efforts to comply with the conditions of his EP, with no medical reasons for not participating, and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA).

Section 9 of the EAA provides:

**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].

Section 9(1) of the EAA provides that, when the Ministry requires, a person must enter into an EP and comply with the conditions in the EP in order to be eligible for income assistance. Under Section 9(3) of the EAA, the Ministry has the authority to specify conditions in an EP, including a requirement that the person participate in an employment-related program. Pursuant to Section 9(4) of the EAA, if an EP includes a condition requiring a person 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 if the person ceases, except for medical reasons, to participate in the program.

### *The Appellant's Position*

The appellant acknowledged that he was aware of his reporting requirements but that he was unable to report due to his addiction when using drugs and being drug-sick when he did not have drugs. He attributed his lack of consistent communications to his loss of telephone service and failure to receive mail regularly due to the inability get the mail from his landlord.

### *The Ministry's Position*

The Ministry's position is that the appellant entered into an EP September 4, 2013, and by signing his EP, confirmed that he read, understood and agreed to the conditions specified. The Ministry argued that the conditions of the appellant's EP and the requirement to participate with the contractor were provided to the appellant in writing and were also discussed with the appellant. The Ministry argued that it is a requirement of the appellant's EP that he complete all tasks assigned by the contractor and the information establishes that the appellant was aware of the requirements to participate with the contractor and to report his job searches.

The Ministry noted that it had accepted the mitigating circumstances raised by the appellant in November of 2013 and that he had been directed to reconnect with the contractor after December 24, 2013. Starting in January of 2014 the appellant failed to reconnect and did not provide any medical evidence about why he was unable to comply. The Ministry made numerous attempts to contact the appellant by letter and telephone without any reply from the appellant until the appellant attended the Ministry office and learned that he was ineligible for IA due to non-compliance.

The Ministry acknowledges that after he learned that he was ineligible for IA the appellant did contact the contractor and that the contractor did agree to work with him and gave him an appointment, but that because of his history or non-compliance he remained ineligible for IA.

### *The Panel's Decision*

The panel finds that when the appellant's file was opened on September 4, 2013, he understood the conditions of his EP. The appellant did not comply and due to his problems with illness and jail in November 2013, he was given a second chance to commence an EP. The appellant did not comply starting in January of 2014 and only contacted the Ministry office when he did not receive his cheque.

The appellant alleges that he has a drug addiction. He says he was given the option of seeking an evaluation at a methadone clinic, which may have led to an alternate program. However he did not follow through with this evaluation that led to him being obliged to follow an EP, which he was also unable to complete.

The appellant stated that he was unable to comply because he is a heroin addict and that his time is spent either looking for drugs or being drug-sick. At the same time the appellant spoke clearly about his situation and he had a good recall of the basic facts of his appeal. In the panel's view the

appellant could have communicated over the period from September 2013 to May 2014 regarding his situation but he did not communicate with any regularly and he did not report to his EP.

In the end the panel finds that despite the appellant's alleged heroin addiction and other issues of communication by telephone and mail, he was well aware of his obligations under the EP and that and that he did know the consequences for failure to comply. As well he provided no confirmation of any of his circumstances including his addiction from September of 2013 and his injuries in February of 2014. The legislation requires that the appellant demonstrate reasonable efforts to participate in the program, or to provide a medical reason for ceasing to participate in the program. Since the appellant did not make reasonable efforts and he did not provide medical reasons, the panel finds that the Ministry reasonably concluded, pursuant to Section 9 of the EAA that the requirements have not been met in this case.

The panel finds that the Ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.