

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision dated June 25, 2014 which held that the appellant is not eligible for income assistance pursuant to section 9(1)(b) as she has not complied with the conditions of her employment plan (EP) because she failed to demonstrate reasonable efforts to participate in the program pursuant to section 9(4)(a) and has not provided any medical reason to substantiate that she is unable to participate in the program pursuant to section 9(4)(b) of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration included:

- (a) an Employment Plan (EP) dated October 23, 2013;
- (b) an EP Action Plan (AP) signed by the appellant dated November 8, 2013 which outlined the following Action Steps: 1. Continue to look for work and keep a job search record, 2. Attend all ESS workshops as scheduled, 3. Explore possible short term training for Food Safe and Serving It Right, and 4. Contact case manager for the next action step upon completion of the workshops; - the AP follow-up schedule indicated – maintain contact with case manager to update job search progress at least once a month and advise case manager when employment outcome has been achieved - the appellant acknowledged her responsibility with her signature;
- (c) a Medical Certificate written February 14, 2014 indicated that the appellant had been given a note on January 31 as she told the physician that she had been unwell since January 2, 2014 and she presented with pain on her right ring finger and right shoulder with restriction of right shoulder movements- she had worked on February 2 but left due to pain – advised to stay off work until further notice;
- (d) a Patient Appointments list dated April 24, 2014 which showed the appellant's appointments on October 18 & 29, November 8, and December 10, 2013, and January 3 and March 13, 2014;
- (e) a Specialist Referral Advice Notification dated May 1, 2014;
- (f) a Court Appearances Log dated May 6, 2014 which indicated that the appellant appeared with her legal representative in court on March 27 and April 29, 2014;
- (g) the appellant's Request For Reconsideration dated May 23, 2014; and
- (h) a letter handwritten by the appellant dated May 28, 2014.

On October 23, 2013, the appellant entered into an EP with conditions as follows:

Participate fully and to the best of the appellant's ability in the activities required by the ministry or contractor as set out:

- Make contact with Work BC within 5 business days;
- Attend all appointments with the employment contractor;
- Participate in EP programming regularly and as directed by the contractor;
- Work with the contractor to address any issues that may impact the appellant's employability;
- Complete all tasks assigned including any activities that may be set out in an action plan;
- Notify contractor if unable to attend a session or when starting or ending any employment;
- Declare all income, report any changes to the ministry;
- Attend all ministry review appointments; and
- Provide job search lists if required.

By signing her EP, the appellant acknowledged that;

- it is a condition of eligibility for income assistance,
- she must comply with the conditions as set out in this plan including any condition to participate in a specific employment - related program,
- the contractors have the ability to report back on the appellant's activities,
- she may be required to provide verification of her compliance with the conditions of this plan, including proof of active work search and/or records of attendance and participation in an employment-related program as required by the ministry,
- she understands that if she fails to comply with the conditions of his EP, she will be ineligible for assistance under the Act.

In the appellant's letter dated May 28, 2014, she wrote that;

- she continues to need assistance due to medical reasons,
- she has been compliant considering her circumstances, always cooperated and complied with every

- request given - while balancing her fragile health issues and lack of money,
- she is confused why this decision wasn't made back in January rather than 5 months later,
 - she also had to meet personal demands from doctors, surgeons, court, workshops, and the ministry office, etc., and
 - she argues that she wasn't informed about her denial of income assistance.

Appeal Record Chronology

A chronologic list of interactions regarding the appellant's obligations to the employment contactor over the course of time from November 2013 to April 2014 noted that the appellant attended 2 scheduled workshops and missed numerous workshops without offering mitigating circumstances including November 18-19, 2013 and January 16, 20 & 22, 2014.

The ministry noted on file that all appointments including those at the medical clinic, surgery clinic and court appearances were checked against commitments with the contractor to conclude that none conflicted with scheduled appointments or workshops except for November 8, 2013 when the appellant was able to attend both of them.

Oral Testimony by the Appellant

At the hearing, the appellant testified that:

- she had intended to attend school in March – Women in Trades Program;
- her mother passed away in March;
- she is awaiting surgery on September 29 and an MRI on November 26;
- bus fare was not provided for places that she had to go (school, medical and court appointments);
- she had worked at a local charity;
- she had declared all income and received letters from the Ministry in August regarding her finances and inheritance;
- she was back and forth to the ministry office;
- she needed to get rent records and personal documentation;
- she has always kept good work records;
- she uses the food bank;
- she is waiting for her tax assessment;
- she was told that income assistance would not support a full time student;
- she has barriers to employment;
- she received support from her sister for her cell phone;
- her brother will purchase a ticket for her to return home in order to settle her mother's estate; and
- she admits that she didn't comply with the ministry because she wasn't getting the Food Safe and Serving It Right training that she had been promised or the bus fare she needed to make her appointments - "I chose not to attend EP because the ministry was not compliant so why should I."

Oral Testimony by the Ministry

The ministry representative testified that the appellant attended 2 appointments over a 7 month period, and that the ministry's efforts to keep the appellant in the program were consistent. The ministry representative indicated that it was the appellant's case worker who would have the knowledge about the financial support and not the in-take worker or anyone else and that the appellant's records were well documented. A pre-requisite for the program was to complete the workshops before Food Safe and Serving It Right training would

be available. The ongoing issue since 2013 has been the appellant's making and breaking of appointments. The ministry representative stated that the ministry has done its due diligence and the appellant has not been compliant. The ministry representative confirmed that consideration was given to the appellant considering her medical certificate about not working; however, that did not apply to attending appointments or workshops/courses.

Admissibility of Evidence

The panel has admitted the testimony from the appellant and the ministry as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the Employment and Assistance Act.

Findings of Fact

The appellant is a single, employable recipient.

On November 23, 2013, the appellant entered into an EP with specific requirements and by signing her EP, the appellant agreed that she acknowledged and understood compliance with the EP and actions for non-compliance.

The appellant failed to show for the following scheduled appointments;
November 18-19, 2013, January 16, 20, and 22, 2014 and March 24, 25 and 26, 2014.

On, April 30, 2014, the appellant spoke with the ministry worker by telephone who advised that she was denied assistance for failure to comply with the conditions of her EP.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision to deny the appellant income assistance because the appellant failed to comply with the conditions of her EP pursuant to section 9 of the EAA.

Relevant Legislation

Section 9(1) of the EAA states that 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. Section 9(3) states 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. Section 9(4) states, 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. Section 9(6) states the minister may amend suspend or cancel an employment plan.

The legislation, Section 9(1) of the EAA provides that, when the ministry requires, a person must enter into an EP and comply with its conditions in order to be eligible for income assistance. Under section 9 (3) of the EAA the ministry has the authority to specify the conditions in the EP including that a person must participate in an employment – related program. Under 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 would not be met (a) if a person fails to demonstrate reasonable efforts to participate in the program or if the person ceases, except for medical reasons (b) to participate in the program and its conditions.

Based on the appeal record, the ministry maintains that the appellant failed to make reasonable efforts to participate in the EP. Between November 2013 and April 2014, the appellant attended only 2 scheduled workshops and missed numerous workshops without offering mitigating circumstances including November 18-19, 2013 and January 16, 20 & 22, 2014. While the appellant may not have been employable on or about January 2014 due to right finger and shoulder pain, the information provided by her physician does not substantiate that her medical condition would severely impact her compliance with the EP. The appellant was not deemed medically exempt from employment obligations. For these reasons the ministry found the appellant not eligible for income assistance due to non- compliance with her EP.

The appellant's position is that she has been compliant considering her circumstances, always cooperated and complied with every request given, while balancing her fragile health issues and lack of money. She also argues that she had to meet personal demands as well as those from doctors, surgeons, court, workshops, and the ministry office, and is confused why this decision wasn't made back in January rather than 5 months later. The appellant argues that her doctor has told her to stay off work until further notice and that the ministry was not compliant with her EP.

Panel's Findings

In determining the reasonableness of the ministry's decision, the panel finds that the appellant entered into an EP on October 23, 2013 which required her to participate fully and to the best of her ability in the activities required by the contractor. While the appellant argues that she was compliant considering her circumstances and other personal demands from doctors, surgeons and court; the panel finds that the evidence does not

support that she demonstrated reasonable efforts to participate in the program by attending all the appointments scheduled with the contractor or notifying the contractor each time she was unable to attend. The panel accepts that the appellant had been restricted with her right finger and shoulder pain; however, this would not have prevented her from attending scheduled workshops or maintaining contact with her case manager to update job search progress or explore possible short term training for Food Safe and Serving It Right, as specified in the Action Plan.

By signing the EP, the appellant acknowledged that she understood the conditions as set out and agreed to them; however the panel finds that she failed to comply. The evidence is that the appellant was aware of the consequences of not complying with the conditions of her EP and there is no evidence that she did not comply due to medical reasons. Therefore, the panel finds that the ministry reasonably determined that the appellant had not made a reasonable effort to participate in her employment program pursuant to section 9(4) of the EAA, to be eligible for Income assistance pursuant to section 9(1).

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision.