

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated August 7<sup>th</sup>, 2014 which held that the Appellant was not eligible for income assistance due to non-compliance with the employment plan as required by section 9 of the Employment and Assistance Act (EAA).

#### **PART D – RELEVANT LEGISLATION**

Employment and Assistance Act (EAA) Section 9

## PART E – SUMMARY OF FACTS

The Appellant requested that a representative attend the hearing to provide him with support and assistance in making his presentation.

The evidence before the Ministry at the time of reconsideration consisted of:

- An Employment Plan (EP) signed by the appellant and dated December 27th, 2013. The details of the EP include that the Appellant:
  1. Will attend his first appointment with the EPBC contractor within 10 business days;
  2. Will participate in EPBC programming regularly and as directed by the EPBC contractor;
  3. Will work with the EPBC contractor to address any issues that may impact his employability;
  4. Will complete all tasks assigned including any activities that may be set out in an action plan;
  5. Will notify the contractor if unable to attend a session or when starts or ends any employment;
  6. Will declare all income and report any changes to the Ministry;
  7. Will attend all Ministry review appointments as required;

By signing the EP the Appellant acknowledged he would participate fully and to the best of his abilities in the activities required by the Ministry contractor and further that if he failed to comply with the conditions of the EP he would be ineligible for assistance.

- Also before the Ministry was information that attempts had been made by the contractor to contact the Appellant on February 24<sup>th</sup>, 2013 (by telephone and email), on March 2<sup>nd</sup>, 2014 (by email), and on May 2<sup>nd</sup>, 2014 (by letter requiring contact by June 6<sup>th</sup>, 2014);
- A letter to the Appellant from the Ministry dated June 25<sup>th</sup>, 2014 (attaching an Employment Plan brochure and Reconsideration and Appeals brochure) informed the Appellant that he did not follow through with the EP requirements, and specifically that the Appellant:
  1. Did not participate regularly with EPBC;
  2. Did not attend or participate by June 9<sup>th</sup> as specifically requested;and indicated that as requirements were not met the file would be closed.

On July 23<sup>rd</sup>, 2014 the Appellant was informed of the decision to deny further assistance.

The Appellant filed a Request for Reconsideration on July 25<sup>th</sup>, 2014 in which he stated that:

- He is looking for work
- He has business cards to show where he had dropped off resumes
- He did not understand that he had to attend Work BC
- He does not read or write English well

5 business cards were attached to the Request for Reconsideration.

- July 29<sup>th</sup>, 2014 notes on Ministry file indicate a phone call between the Ministry and the

Appellant wherein the appellant confirmed he spoke another language and some English, did not require an interpreter, and understood the discussion perfectly.

At the hearing, the Appellant and his representative stated:

- He has been looking for work by himself, and he met with Work BC for the first time last week, and had an appointment scheduled with them following today's appeal hearing.
- He agreed that he signed the EP on December 27th, 2013 at an appointment with the Ministry and that he had a copy of it in his possession.
- He did not respond to any emails or the letter he received from EPBC and he did not phone them because he states that he "didn't understand well".
- The Appellant was not aware that the EP was binding and the Appellant had a lack of understanding as he was not aware that he had to go to Work BC.
- The Appellant confirmed his email address which had been provided to the Ministry at the time of his application and also that he had agreed that he did not require an interpreter.
- The Appellant stated that he has a certificate saying he has basic computer skills but says he does not currently have access to a computer to check email and "really doesn't know how to use a computer much"

The Ministry relied on its reconsideration decision, as summarized at the hearing. At the hearing, the Ministry also stated:

- The Ministry confirmed that the normal practice of the Ministry who spoke by telephone with the Appellant on December 27th, 2013 is to state every time that it is really important to connect with Work BC and to comply with the plan, and to ask if the person has any questions.
- The Ministry also confirmed that the normal practice of the Ministry, who was present when the Appellant signed the EP on December 27th, 2013, is to point out important particulars of the plan and to ensure the person understands that by signing they are agreeing to the conditions.

#### *Admissibility of New Information*

The Appellant filed a Notice of Appeal which was dated and received by the Employment and Assistance Appeal Tribunal on August 20<sup>th</sup>, 2014. In the Notice of Appeal the Appellant states that he would like reconsideration of his request for income assistance because he has no income.

There were no objections raised to the oral testimony provided on behalf of the Appellant or the Ministry. The Appellant and the Ministry provided further detail of the circumstances of the Appellant's entering into and complying with his EP. The panel determined that additional evidence provided was admissible under s. 22 (4) of the Employment and Assistance Act (EAA) as being in support of the information before the Minister at reconsideration.



**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the Ministry’s reconsideration decision dated August 7<sup>th</sup>, 2014 which held that the Appellant was not eligible for income assistance due to non-compliance with the employment plan as required by section 9 of the EAA was reasonably supported by the evidence or a reasonable application of the legislation in the Appellant’s circumstances.

The relevant legislation is as follows:

**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 canceling 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 Appellant's Position***

The Appellant's representative said the Appellant was not aware that the EP was binding and the Appellant had a lack of understanding as he was not aware that he had to go to Work BC. The Appellant reported that he has been looking for work by himself, and he met with Work BC for the first time last week, and had an appointment scheduled with them following today's appeal hearing. He agreed that he signed the Employment Plan on December 27<sup>th</sup>, 2013 at an appointment with the Ministry, and that he had a copy of it in his possession. He did not respond to any emails or the letter he received from EPBC and he did not phone them because he states that he "didn't understand well". The Appellant confirmed his email address which had been provided to the Ministry at the time of his application and also that he had agreed that he did not require an interpreter. The Appellant stated that he has a certificate saying he has basic computer skills but says he does not currently have access to a computer to check email and "really doesn't know how to use a computer much".

### ***The Ministry's Position***

The Ministry's position is that the Appellant entered into an EP dated December 27<sup>th</sup>, 2013 and by signing the EP confirmed that he read, understood, and agreed to the conditions specified.

The Ministry had confirmed the normal practice of the Ministry who spoke by telephone with the Appellant on December 27<sup>th</sup>, 2013 is to state every time that it is really important to connect with Work BC and to comply with the plan, and to ask if the person has any questions.

The Ministry also confirmed that the normal practice of the Ministry who was present when the Appellant signed the Employment Plan on December 27<sup>th</sup>, 2013 is to point out important particulars of the plan and to ensure the person understands that by signing they are agreeing to the conditions.

It is the Ministry's position that if the Appellant did not understand the Employment Plan he should not have signed it, and is satisfied that the Appellant understood the necessity to respond. The Ministry argued that the Appellant failed to demonstrate reasonable efforts to participate in the program as he did not contact the contractor over several months despite the repeated attempts to contact him.

### ***The Panel's Decision***

In determining the reasonableness of the Ministry's decision, the panel finds that the Appellant entered into an EP on December 27<sup>th</sup>, 2013 and by signing the EP was aware of the terms and conditions of eligibility. These conditions included that he

- attend his first appointment with the EPBC contractor within 10 business days;
- participate in EPBC programming regularly and as directed by the EPBC contractor;
- work with the EPBC contractor to address any issues that may impact his employability;
- complete all tasks assigned including any activities that may be set out in an action plan; and
- attend all Ministry review appointments as required.

Section 9(1) of the EAA provides that to be eligible for assistance, when the Ministry requires, the applicant must enter into an employment plan and comply with the conditions in the employment plan. Section 9(3) of the EAA gives the Ministry's authority to specify conditions in an EP, and Section 9(4) of the EAA provides that if an EP includes a condition requiring the person to participate in an employment-related program, that condition is not met if the person fails to demonstrate reasonable efforts to participate in the program or ceases, except for medical reasons to participate in the program .

The panel finds that the Appellant had opportunities to clarify the EP if he did not understand it. The panel finds that the Appellant did not attend an appointment with the EPBC contractor within 10 business days of signing his EP on December 27, 2013 and did not contact the EPBC contractor despite efforts to contact him by various methods in February, March and May 2014. , Although the Appellant stated that he did not respond to any emails or the letter he received from EPBC and he did not phone them because he "didn't understand well", he also did not demonstrate an effort to clarify his understanding over this period of several months. The panel finds that the Ministry reasonably concluded that the Appellant failed to demonstrate reasonable efforts to participate in his EP, and so did not meet the conditions of the Employment Plan.

The panel therefore finds that the Ministry's decision to deny the Appellant income assistance due to the failure to comply with the conditions of his EP was a reasonable application of the legislation and reasonably supported by the evidence in the circumstances of the appellant.

The panel confirms the Ministry's decision.