

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of September 11, 2014 which resulted in the discontinuance of the appellant’s income assistance. In particular, the ministry found that the appellant ceased to be eligible for income assistance as provided by section 9 of the *Employment and Assistance Act* (“EAA”) since she had not demonstrated reasonable efforts to comply with her employment plan, and that there were no mitigating circumstances.

PART D – Relevant Legislation

EAA, section 9

PART E – Summary of Facts

With the consent of the parties, the hearing was held as a written hearing in accordance with EAA section 22(3)(b).

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

- The employment plan signed by the appellant dated June 10, 2013 (the “EP”).
- The appellant’s Request for Reconsideration, dated August 27, 2014. The Request for Reconsideration contained information from a ministry worker and a handwritten reconsideration submission from the appellant.

The EP is a two page document. On the first page, in a section titled “A Note About Your Employment Plan”, is the statement that “It is important that you follow through with the conditions of the EP. If you are unable to follow through please advise the ministry. If you fail to comply with your EP you will be ineligible for assistance.”

In the section of the EP headed “Conditions of the Plan” is the statement “I will participate fully and to the best of my ability in the activities required by the ministry or contractor as set out in sections 3 (a) to (f).”

In section 3(d) of the EP the appellant acknowledges:

- “As a condition of continued eligibility for assistance I will participate in programming regularly and as directed ...
- I will notify the contractor...if I am unable to attend a session...
- I understand that if I fail to comply with the conditions of my employment plan, I will be ineligible for assistance...”

The second page of the EP also contains the following acknowledgement above the appellant’s signature and date of June 10, 2013:

“I acknowledge that it is a condition of eligibility that I sign this employment plan and that I comply with the conditions set out in this plan ...I understand that if I do not comply with the conditions of this employment plan, the assistance issued to me and/or my family will be discontinued...”

The reconsideration decision indicates that:

- A signal was placed on the appellant’s file in March 2014 for non-compliance.
- On April 9, 2014 the appellant acknowledged to the ministry that she had not been in contact with the ministry’s contractor.
- On April 11, 2014 the appellant scheduled a “reconnect appointment” for April 16, 2014.
- The appellant failed to show up for appointments on June 2, 16, 30 and July 7, 2014 and did not contact the contractor.
- The contractor attempted to contact the appellant on July 7 and 14, 2014 to reschedule and informed the ministry on July 15 that there had been no contact from the appellant.

- The appellant advised the ministry that she was unsure why she had missed so many appointments, that she hadn't realized she'd missed so many, and that her child had been sick for some of that time.

In her written reconsideration submission the appellant stated that:

- She requires assistance for herself and her child.
- There are no excuses for her non-compliance.
- If allowed to continue to receive assistance, she will guarantee the non-compliance will not be repeated.
- She has made arrangements for child care, and has obtained a cell phone so that she won't miss any messages.
- It should not have taken a denial of assistance, but she considers it to be a wake-up call as to the seriousness of the non-compliance.

In her written appeal submission the appellant stated that:

- There are no excuses, only her error in judgment.
- Her child is the reason she is requesting more time with assistance.
- She has reconnected with the ministry's contractor and has completed two workshops since her last writing.
- She had a follow-up meeting scheduled with her case-worker.
- She now has a cell phone, since she previously often did not get messages from the land line she had been using, which was not her own.
- She does not dispute the evidence and does not say the ministry was wrong, but she has taken steps to correct her non-compliance and has learned from this experience.

The appellant's written submission reiterates and corroborates information that had been before the ministry at the time of reconsideration. The panel accepts this information into evidence as written testimony in support, in accordance with section 22(4) of the EAA.

The ministry relied on its reconsideration decision and made no submissions on appeal.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision of September 11, 2014 which resulted in the discontinuance of the appellant's income assistance. In particular, the ministry found that the appellant ceased to be eligible for income assistance as provided by section 9 of the EAA since she had not demonstrated reasonable efforts to comply with her employment plan, and that there were no mitigating circumstances.

The relevant legislative provision is as follows:

Employment and Assistance Act,

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.

* * *

The appellant's position is that, while she acknowledges that she has no excuse for her non-compliance, she has taken steps to ensure that she will remain in compliance if the ministry will continue to provide her with assistance. She has arranged for child care as appropriate, has obtained a cell-phone, and is currently attending workshops with the ministry's contractor. She argued that she would not appeal if it was only for her, but she requires income assistance for her child's future.

The ministry's position, as set out in its reconsideration decision, is that the appellant was clearly advised of the attendance and participation requirements of the EP, and that she was given a second chance in March 2014 to comply with the EP. The ministry stated that the appellant missed over 6 weeks of the program and did not contact the program or the ministry. The ministry argued that the appellant has no mitigating circumstances that prevented her participation in the program.

Panel Decision

The panel is satisfied that the language of the EP is clear when it specifies that the appellant must

participate in a program offered through the ministry's contractor. The appellant was aware of the requirement and of the consequences for non-compliance, but did not fulfill it.

Based on the evidence that the appellant missed several weeks of appointments without excuse and without contacting the ministry or its contractor, the panel finds that the ministry reasonably concluded that the appellant did not demonstrate that she'd made reasonable efforts to participate in the program. There is no supporting evidence to show that the appellant had a medical reason for her non-compliance. While acknowledging that there are "no excuses" for the non-compliance, the appellant did raise factors such as her previous telephone arrangements and her child's needs as reasons for the ministry to continue providing her with assistance. These are not mitigating factors recognized by the legislation.

Based on the undisputed evidence of several weeks of the appellant's non-compliance, and the lack of evidence of a medical reason for her non-participation, the panel finds that the ministry's reconsideration decision is a reasonable application of the legislation in the circumstances of the appellant.

Accordingly, the ministry's decision is confirmed.