

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) September 8, 2014 reconsideration decision denying the Appellant income assistance due to non-compliance with an employment plan under section 9 of the Employment and Assistance Act. The Ministry specifically found that the Appellant had not made reasonable efforts to participate in an employment program, and did not stop participating due to medical reasons and is therefore ineligible for income assistance.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 9.

PART E – Summary of Facts

The Appellant did not attend the hearing. As the Panel has confirmed the Appellant was notified of the date, time and location of the hearing, the hearing proceeded in the absence of the Appellant as per Employment and Assistance Regulation section 86 (b). The Panel heard evidence from the Ministry representative in attendance, and reviewed the evidence submitted in the written record.

The Ministry had the following evidence at the time of the reconsideration based on information in its records:

1. On November 12, 2013 the Appellant signed an Employment Plan (EP) which stipulated that the Appellant was expected to attend the Employment Program of BC ("EPBC") regularly and as directed by the contractor, and that the consequences of not participating in the EPBC programming would be that the Appellant would not be eligible for income assistance. The EP also states that the Appellant must contact EPBC within 5 business days, and if the Appellant has any issues that may impact her employability she must work with the EPBC contractor to address these issues.
2. On December 24, 2013 EPBC reported the Appellant had not attended any appointments.
3. On January 9, 2014, the Appellant completed her orientation with EPBC.
4. On January 10 and 13, 2014, the Appellant completed an assessment with EPBC.
5. On January 27, 2014, the Appellant completed her 2nd orientation appointment and was transferred to the ESS team at EPBC.
6. On July 16, 2014, EPBC reported the Appellant had not been in contact since June 13th and missed appointments on June 18, June 19, and July 2nd. A letter was sent advising the Appellant of an appointment on July 25th.
7. Only July 21, 2014 the Ministry put a hold on the Appellant's September assistance (which was to be issued at the end of August).
8. On July 25, 2014 EPBC reported that the Appellant did not attend the appointment, and that her EPBC file was closed.
9. On August 6, the Ministry sent the Appellant a letter advising that she was not eligible for assistance due to non-compliance with the employment plan.
10. On August 13, 2014, a Request for Reconsideration package was prepared for the Appellant.
11. On August 26, 2014 the Appellant submitted a Request for Reconsideration
12. On September 8, 2014, the Ministry reviewed the reconsideration request and confirmed the original decision.

The Ministry provided the following corroborating evidence in the appeal record:

- A copy of the Employment Plan, dated November 13, 2013 .
- A copy of the letter dated August 6, 2014, in which the Ministry advised the Appellant that as she did not comply with the requirements of her EP, she is no longer eligible for assistance.

The Appellant provided the following evidence:

A note from the Appellant, date stamped August 25, 2014 and attached to her reconsideration request, stating the following:

1. Computers are very hard for her;
2. Her son has asthma and she needed to take him to the hospital twice and he is very sick, and

- she does not have anyone to look after him;
3. Her roommate had two strokes and she cannot leave him alone.
 4. She needs financial support as she does not receive steady family maintenance.

The Ministry provided the following evidence in response to questions from the panel:

- An Employment Plan is a legal contract, the purpose is to help clients become more employable. The consequences of not complying with the EP are clearly described in the document and discussed with the client.
- During the time in question, there is no record of the Appellant contacting EPBC or the Ministry to discuss her circumstances, and no medical information was provided to the Ministry by the Appellant as a reason for her non-compliance.
- If the Appellant had called to discuss her circumstances, the Ministry takes into account unexpected situations. For example, a sick child would be taken into consideration. The Ministry would have had a conversation with her to review options and discuss the Ministry's expectations.
- The Appellant is not responsible for the care of her room-mate, and her room-mate may have needed to come up with other care options so that the Appellant could participate in her EP.
- The process for contacting a client is to attempt to call them, and then send a letter. There is no indication that mail was not received, as no mail was returned to the Ministry and the Appellant did respond to the Ministry's last letter by requesting a Reconsideration package.
- When a client does not respond to a letter the Ministry will "signal" (hold at the office) income assistance cheques so that clients will contact them.
- When a client is working with EPBC, they assign a case manager and monitor the participation; if they believe they can't work with someone, they will either refer them to another agency or "return" them to the Ministry. In this case EPBC determined that they could work with the Appellant.
- When a client requests an Appeal to the Tribunal, they can request an "Appeal Supplement" which is the same amount as their income assistance, with the condition that if the Ministry's decision is upheld by the Panel, the supplement must be repaid to the Ministry.

PART F – Reasons for Panel Decision

The issue before the Panel is whether the Ministry reasonably denied the Appellant income assistance because the Appellant did not comply with the conditions of her Employment Plan as required by section 9 of the EAA.

The Employment Assistance Act, Section 9, states:

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].

The Parties' Positions

The Ministry's position is the Appellant failed to make a reasonable effort to comply with the terms of her EP as required by subs. 9(4)(a), as she did not regularly attend her appointments with the EPBC Contractor and did not maintain regular contact with them. The Ministry also argues that the Appellant did not provide sufficient medical information to the Ministry to excuse her from the conditions of her EP, as required by subs. 9(4)(b).

The Appellant's position is that her son has been sick and she has to look after her room-mate, so

she has been unable to comply with the terms of her EP but will comply if she is given another chance.

The Panel Makes the Following Findings of Fact:

- The Appellant signed an Employment Plan on November 12, 2013, agreeing to participate in EPBC programming regularly and as directed by the EPBC contractor. The terms of the EP state, "Any changes to your plan will require an amendment agreed to by the Ministry. 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." It also states, "I will work with the EPBC contractor to address any issues that may impact my employability and will complete all tasks assigned including any activities that may be set out in an action plan."
- During the period of June, 2014 to August, 2014, the Appellant did not participate in EPBC programming regularly and as directed by the EPBC contractor.
- The Appellant did not work with the EPBC contractor to address any issues that may impact her employability.

Panel Decision:

Section 9(4) of the EAA sets out that if an EP includes a condition requiring an applicant 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 (subs. 9(4)(a)). The Appellant does not deny that she failed to attend appointments with the EPBC Contractor, or contact them regarding her issues as required in the terms of her EP.

The Panel finds that the Ministry's reconsideration decision denying the Appellant income assistance for failing to comply with the terms of her EP as required by s. 9 of the EAA was reasonably supported by the evidence. Therefore, the Panel confirms that decision.