

PART C – Decision under Appeal

The Decision under Appeal is the Ministry of Social Development and Social Innovation, (Ministry), Reconsideration Decision, dated Sept. 9, 2014, which denied the Appellant Income Assistance (IA), as the Ministry determined the Appellant was non-compliant with the conditions of his employment plan, (EP), contrary to Sec. 9(1) (b) and 9(4) of the Employment Assistance Act, (EAA).

PART D – Relevant Legislation

EAA Employment and Assistance Act – Section 9

PART E – Summary of Facts

The evidence before the ministry at reconsideration showed that the Appellant signed an EP on April 4, 2013 acknowledging he understood and agreed to participate in an EP through a program contractor. He agreed to; participate regularly and as directed by the contractor; to work with the contractor to address any issues impacting employability; to complete all tasks and assignments; and, to notify the contractor if he was unable to attend a session or if he started or ended employment. By signing the EP he acknowledged that failing to comply with the conditions of the EP meant he would be ineligible to collect IA.

The original ministry decision noted that on three separate occasions, between April 2013 and June 2014, the appellant had missed appointments or failed to follow through with programming. It also noted that the effect of non-compliance and the importance of following through with the program were brought to the appellant's attention. The June 2014 incident resulted in the appellant eventually admitting to the ministry he had lied about his absence from the program as he had relapsed into drugs and alcohol. The appellant advised that he could continue with the program and he did reconnect with the program and attended some workshops in July. He also once again missed some workshops in July, however he rescheduled the missed workshops to July 30 and 31. He failed to attend these.

On Aug. 6, 2014 the contractor reported to the ministry that the appellant had failed to attend the workshops on July 30 and 31, and, that his file was being closed due to lack of participation. On Aug. 22 the appellant advised the ministry he failed to attend the two workshops due to alcohol and drug issues. The appellant was denied IA by the ministry.

In his Request for Reconsideration the appellant advised he had a 20 year addiction to crack cocaine. It is difficult to keep employment or to be accountable. He has contacted treatment programs, which have lengthy waiting lists, and has been in contact with a community addiction service where he can't get an appointment for 10 days. He wants to get better.

The Reconsideration Decision determined the appellant had failed to demonstrate reasonable efforts to comply with the conditions of the employment plan. Further, the ministry determined the appellant had not demonstrated he had a medical condition, confirmed by a medical documentation, which prevented him from participating in the program. As such, the decision found the appellant was not eligible for IA.

In his Notice of Appeal the appellant advised that his previous records show his long-term addiction problem and that it is impossible for him to keep appointments/jobs. He needs help.

The appellant at the hearing advised that he has been battling addiction for many years. He has been to treatment three times and has had periods of sobriety. When he is in addiction he cannot control himself. It would be the same even if he had a job. He could work for a couple of weeks but then would quit. He understands that rules are rules and that he can't use his addiction as an excuse, but when he is using he can't function; drugs are the only things that matter. He is currently over a

month clean and plans to continue. Although he is going to AA and has an addiction counselor he has not made any further efforts to get into any treatment programs. If he is unsuccessful in his appeal he will go find a job, but he would rather work, get sober and get his head cleaned up. He was not always forthright about his situation because he is embarrassed.

The ministry adopted the reconsideration decision and argued the material showed that the appellant had not been compliant with the EP. He was required to comply with the conditions. He could not be excused except for medical reasons and the ministry had never been provided any medical information to show he could not comply. The ministry also noted that if a client advises of addiction issues an EP can be structured to assist with these issues, but the ministry needs to be informed of the problems.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry decision reasonably concluded that the appellant did not comply with the conditions of his EP by failing to demonstrate reasonable efforts to participate in the employment program and further that he did not have a medical condition precluding him from participating in the program.

The Legislation states the following;

Employment and Assistance Act

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.*

...

(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.*

Under Sec 9(1), to be eligible for income assistance, each recipient, when required to do so by the minister, must enter into an employment plan, and comply with the conditions in the employment plan. Sec. 9(4) requires a recipient to demonstrate reasonable efforts to participate in the program and not to cease participating in the program except for medical reasons. The issue here is whether the appellant was properly denied IA as being non-compliant with the conditions of his EP, contrary to Sec. 9(1)(b) and 9(4).

The appellant argues that he is fighting addiction and can't properly participate in the program. The ministry argues that the appellant was non-compliant, did not advise of any issues and provided no medical proof he could not participate.

DECISION

The issue in this matter is whether the appellant failed to demonstrate reasonable efforts to participate in the program, contrary to Sec. 9(4)(a) of the EAA.

When the appellant signed the EP, he acknowledged that he understood, agreed to participate in and make reasonable efforts participating in the program so that he could receive IA. The EP notes in several different places the effects of non-compliance and that compliance by the appellant is a condition to receiving IA. The appellant was warned on several occasions of the consequences of non-compliance and given an opportunity to comply and make reasonable efforts to participate in the program. The ministry did not immediately terminate the appellant when he failed to comply, he was given several opportunities and the effect of non-compliance was brought to his attention.

In June 2014, the appellant advised after disclosing the addiction issue that he could comply with the program. He started the program but again quickly missed appointments and the contractor closed his file. For 3-4 weeks he failed to contact the ministry or the program. On Aug. 22 he advised the ministry that he could find a job if he wanted, but he needed to get sober. In his reconsideration request he advised he had made inquiries about treatment. But at the hearing he advised he had taken no further steps. Once again he advised he could get work if he wanted.

The legislation requires the appellant to make reasonable efforts to comply unless he has a medical excuse. The appellant provided no medical documentation to prove a medical excuse, something which the panel finds would be reasonable for the ministry to request in these circumstances. The appellant was warned on many occasions and given several opportunities to comply. On the last occasion, after advising the ministry he could comply, he failed again to attend re-scheduled workshops and made no further contact for several weeks.

The panel finds that the ministry determination that the appellant had not demonstrated reasonable efforts to comply with the EP, and did not have a medical condition preventing him from participating in the program, was reasonable based on all of the evidence. The panel confirms the decision.