APPEAL #

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 21 October 2014 determined that the appellant was not eligible for continued income assistance because she failed to demonstrate reasonable efforts to comply with the conditions of her Employment Plan (EP) as required under section 9 of the Employment and Assistance Act by failing to attend scheduled appointments and workshops and keep in contact with the program.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9.

APPEAL #

PART E – Summary of Facts

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

- The appellant was an employable recipient of assistance with 2 dependent children.
- An EP dated 25 October 2013, signed by the appellant with the following conditions that she accepted:
  - Will attend first appointment with the Employment Program of BC (EPBC) contractor within 5 business days;
  - As a condition of continued eligibility for assistance, will participate in EPBC programming regularly and as directed by the EPBC contractor.
  - Will work with the EPBC contractor to address any issues that may impact her employability and will complete all tasks assigned including any activities that may be set out in an action plan.
  - Will notify the contractor [name and phone number] if unable to attend a session or when she starts or ends any employment.
  - She understands that if she fails to comply with the conditions of her EP, she will be ineligible for assistance.
  - She will declare all income and report any changes to the ministry and will attend all ministry review appointments as required.
- On 12 November 2013, she attended her first appointment with the contractor. She indicated that she had been out of the labour market for over 7 years and that she did not know why she was not getting a job. She agreed to an action plan and to complete a job search workshop the following week and a pre-assessment on 15 November 2013. A follow-up appointment when she was to bring a new resume and job search material was set for 26 November 2013.
- An Action Plan dated 12 November 2013 for 1 month, with end date 12 December 2013, and signed by the appellant listed those tasks and in terms of follow-up schedule, it stated: "keep in touch with [the worker] via phone / email every 2 weeks.
- The appellant completed her tasks and attended appointments until 9 January 2014 when she missed an appointment because she had an interview.
- On 25 March 2014, the contractor tried to contact the appellant by phone and left a message to call back for follow-up.
- On 18 June 2014, the contractor left a second phone message to the appellant to call back and follow-up.
- On 10 July 2014, the contractor left a third message to the appellant and the next day a letter dated 11 July 2014 was sent to the appellant stating that the contractor attempted to contact her and that if she did not want her file to be closed, to please contact the contractor's phone number on the letter. It also stated that if the contractor did not hear from her within 10 days, her file would be closed.
- On 12 August 2014, the contractor sent a notification to the ministry that the appellant had stopped participating in her EP.
- On 14 August 2014, an Employment and Assistance Worker (EAW) sent a letter to the appellant requesting her to contact the ministry about her cheque.
- On 26 August 2014, the appellant contacted the contractor stating that she did not know she had to keep contact with them, that her cheque had been held and that the ministry had no record of her contacts with the contractor. She booked an appointment for 28 August.
- On 28 August 2014, the appellant called the contractor, wanting to reschedule her appointment

because she was busy with her daughter's dance. The appointment was re-booked for the following week and was told that meanwhile, her cheque would be held. The appellant got angry and the conversation ended.

- On 4 September 2014, the ministry determined the appellant had failed to comply with her EP and was ineligible for income assistance.
- In her Request for Reconsideration dated 8 September 2014, the appellant acknowledged she signed the EP on 25 October 2013 and an Action Plan on 12 November 2013. She went to a job search workshop on 2-6 December 2103, followed-up on 17 December 2013 advising that he course she wanted to attend to had been cancelled and the contractor indicated to her that there was nothing more to offer. The appellant understood this as meaning that she was through with the contractor worker but still had access to job postings and their computers. She does not believe the EAW asked her if there were any mitigating circumstances precluding her from attending EPBC and the last time she attended their office was in late April 2014 to print more resumes. She believed that as of 17 December 2013 there were no further follow-up activities given to her other than continuing with her job search. She stated that while her daughter was in school, her son was home schooled for medical reasons and that she had the responsibilities of a mother, father and teacher, and at the same time trying to attain suitable employment. She also indicated she suffered from anxiety and depression for which she is being treated and that it can suddenly and without warning become very crippling.

In her Notice of Appeal dated 31 October 2014, she stated she had been to her family doctor and obtained a medical report regarding her anxiety and depression.

With her Notice of Appeal, is a Medical Report Employability dated 30 October 2014 and signed by a physician indicating that the appellant suffered from anxiety and depression for over a decade, that she has been on medication for all that time and her condition is expected to last for more than 2 years. In terms of restrictions, he wrote: "No physical restriction – anxiety / panic attacks episodic"

At the hearing the appellant testified that she suffers from anxiety and depression and tends to put things on the side. She stated that she had not received any voice messages on her answering machine and that the first contact she had with the contractor after 9 January 2014 was the letter dated 11 July 2014 that she acknowledged having received; she added that she did not respond to that letter because she thought that since she was told there was nothing more the contractor had to offer, her file had been closed back in January and she concluded that she did not have to do anything at that point and that her file should be closed. It is only when she realized she did not receive her assistance payment in August that she contacted the ministry and was told that the ministry did not have any information about what happened with the contractor, only that the contractor had advised them that she had not complied with her EP and that if she wanted more information, to contact the contractor. She confirmed having contacted the contractor on 26 August 2014 to get an explanation since the ministry did not have the record of the details of her non-compliance. She also confirmed having contacted the contractor on 28 August 2014 because she could not attend the scheduled meeting but testified that the worker was rude with her and that she hung up on her without scheduling another meeting. She testified that the same day she called the worker supervisor to complain about her behaviour and he confirmed that her file was mishandled but he would not confirm that in writing.

The ministry testified that the duration of the Action Plan was not only for 1 month but for the duration of the EP and that the 1 month timeframe was for the first 2 activities that were completed on time. The ministry was not informed of the non-compliance until August 2014 when the contractor advised them and the appellant's cheque was held. She testified that the contractors have no obligation to tape the calls they make to the clients but must log them on file and that is standard procedure as that information is then put in their system. In this case, she confirmed the contractor did log those phone calls.

The panel notes there is a significant discrepancy between the evidence provided by the ministry to the effect that on 3 occasions the contractor left a phone message to the appellant while the appellant testified she did not get any of those messages on her answering machine. The panel considered carefully the evidence and prefers the evidence of the contractor, noting that:

- The contractor has a process that is common to all contractors and to the ministry that phone calls are logged and then put in the system – this is the only way to track those phone calls;
- The contractor has no incentive to fabricate those entries or the fact that those calls were made;
- The appellant had opportunities to let the ministry and the reconsideration officer know that she had not received those calls but did not mention that to the EAW when she contacted them, nor to the contractor on both 26 and 28 August 2014 when she called to discuss her EP and the fact that her cheque had been held because the contractor had advised the ministry of her non-compliance;
- The appellant did not raise that issue that she had not received those messages in her request for reconsideration while the documents clearly mentioned that those calls were made on 3 occasions;
- The first time the appellant mentioned she had not received those calls was at the hearing.

With respect to the new evidence presented, the panel determined the additional oral and documentary evidence was admissible under s. 22(4) of the EAA as it was in support of the records before the minister at reconsideration, providing clarification on a number of issues that were before the reconsideration officer. The panel notes that although the medical report while confirms the appellant's ailments, it does not comment on whether she could participate or not in an employment program and, in particular, it specifies that she has no physical restriction.

APPEAL #

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for continued income assistance because she failed to demonstrate reasonable efforts to comply with the conditions of her EP as required under section 9 of the EAA by failing to attend the scheduled appointments, workshops and keep in contact with the program was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation in this matter is s. 9 of the EAA:
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...

(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 ministry argued that the appellant failed to comply with her EP because she did not contact the contractor as required in her action plan every 2 weeks, she did not contact them since 9 January 2014 and did not respond to 3 phone messages as well as a letter dated 11 July 2014. Given those circumstances, the ministry argued that the appellant failed to demonstrate reasonable efforts to participate in the program. In terms of medical exemption, the ministry argued that her medical condition subsequently confirmed by a physician did not preclude her from participating in the program.

The appellant argued that she was led to believe her action plan with the contractor ended when the contractor told her that there was no program available that could assist her in finding employment and she believed that she could continue to use the contractor's facilities to do her job search and update and print her resume. She argued that the first time she realized that something was wrong

was when she did not receive her assistance cheque at the end of August and that prompted her to contact the ministry to understand what had happened. She also argued that she had not received the phone messages that the contractor said was left on her answering machine and argued that it was a situation of "he says she says" since neither she nor the ministry was able to provide proof of those phone messages. She took the position that it was highly unreasonable for the ministry not to advise her of her alleged non-compliance for 10 months, since 9 January 2014, claiming not having received the phone messages. Finally, she argued that she did not respond to the 11 July letter because she thought her file had been closed by the contractor since they had nothing more to offer and there was no consequence for her file to be closed with them. She stated that the contractor supervisor who confirmed to her that her case had been mishandled supported her position.

The panel's jurisdiction is limited to determining the reasonableness of the ministry decision and cannot substitute a decision of its own. The panel accepts the evidence of the contractor that after 9 January 2014, despite attempts to reach her, the appellant did not contact the contractor or the ministry. Additionally, the appellant acknowledges receipt of the 11 July letter but still did not contact the contractor. The ministry could reasonably determine that the appellant knew what she was signing when she entered into her EP and her Action Plan. The panel acknowledges that the wording on both documents could have been improved, in particular the action plan that seems to suggest it was valid for only 1 month, and the EP does not mention regular mandatory reporting to the contractor other than stating "will attend all ministry review appointments as required" and in particular that the "client reporting requirements" is simply checked as "Other".

Nonetheless, while the contractor could have been more proactive and clearer in its communications with the appellant – it waited 3 months for the first call, another 3 months for a second call and another month for a third call and sending a letter for a total of 7 months – the ministry could reasonably conclude that the appellant was non-compliant with her EP. The onus was on her to demonstrate the unreasonableness of the ministry's decision but by her actions during those 8 months after 9 January 2014, when she failed to contact the contractor and the ministry, she did not demonstrate reasonable efforts to participate in the program. In fact she waited until her assistance payment was held before contacting them. Additionally, she did not raise the issue that she had not received those phone messages asking her to contact the contractor in any of her discussions and documentation to the ministry and the contractor until the actual hearing before this tribunal. Finally, she did not provide any medical reason for not participating in the program as the physician noted that she had no physical restriction and given that she had been suffering from depression for many years, it did not prevent her previous participation in the program during the period between 23 October 2013 and 9 January 2014. In those circumstances, the ministry could reasonably determine she had failed to demonstrate reasonable efforts to participate in her EP according to s. 9(4)(a) of the EAA thereby failing to comply with it.

Therefore, the panel finds the ministry's decision was reasonably supported by the evidence and confirms the decision.