

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 25 September 2014 that found that the appellant was not eligible for income assistance pursuant to section 9 of the Employment and Assistance Act. The ministry determined that the appellant has not demonstrated that she has made a reasonable effort to participate in her employment related program and has therefore not complied with the conditions of her employment plan (EP) and did not demonstrate that she has a medical condition that has prevented her from complying with those conditions.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 9.

PART E – Summary of Facts

The appellant did not appear at the hearing. After confirming that the appellant was notified of the hearing, the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration included the following:

1. An employment plan (EP) signed by the appellant on 01 April 2014. In her EP, the appellant agreed to the following conditions:
 - attend appointment with the Employment Program of BC (EPBC) contractor by April 07 2014,
 - participate in EPBC programming regularly and as directed by the contractor,
 - work with the contractor to address any issues that may impact her employability,
 - complete all tasks assigned including any activities that may be set out in an action plan,
 - notify the contractor if unable to attend a session or when starting or ending any employment.
 - declare all income and report any changes to the ministry and attend all ministry review appointments as required.

By signing her EP, the appellant acknowledged that:

- it is a condition of eligibility for income assistance,
 - she must comply with the conditions as set out in this plan including any condition to participate in a specific employment - related program,
 - she may be required to provide verification of her compliance with the conditions of this plan, including proof of active work search and/or records of attendance and participation in an employment-related program as required by the ministry,
 - she understands that if she fails to comply with the conditions of her EP, she will be ineligible for assistance under the Act.
2. From the ministry's files, as summarized in the reconsideration decision:
 - 16 April 2014: the appellant's EPBC case manager (CM) received the program referral from the ministry. The CM left the appellant a voice message requesting that she make contact to book appointments.
 - 22 April 2014: the CM called the appellant again. Her voicemail was full and the CM was not able to leave a message. The CM advises the ministry that the appellant was not participating. The ministry sent the appellant a letter to advise her that she was not complying with the conditions of her EP and had until 23 May 2014 to book and attend appointments with the EPBC contractor and participate as required or she would no longer be eligible for assistance.
 - 09 June 2014: the appellant advised the ministry that she had booked appointments with the EPBC contractor.
 - 11 June 2014: the EPBC contractor confirmed with the ministry that the appellant has attended and booked appointments for 18 June, 19 June and 20 June 2014.
 - 18 June, 19 June and 20 June 2014: the appellant did not attend her appointments with the EPBC contractor.
 - 02 July 2014: the EPBC contractor, noting that reasonable attempts have been made to engage the appellant and that she had not made any further contact, closed the

appellant's file.

- 01 August 2014: a ministry worker advised the appellant that she was required to comply with the conditions of her EP or would be denied assistance.
- 08 August 2014: the ministry sent the appellant a letter advising her to reconnect with the EPBC contractor and be in full compliance with the conditions of her employment plan by 22 August 2014 or she would not receive September assistance.
- 13 August 2014: the EPBC contractor returned the appellant's EP service request to the ministry.
- 20 August 2014: the ministry sent the appellant a letter advising her that she had failed to comply with the conditions of her EP and as a consequence she was no longer eligible for assistance.

3. The appellant's Request for Reconsideration dated 05 September 2014. The appellant writes that she was under the impression that she would no longer be required to look for work while pregnant. She states that she is 27 weeks pregnant and has a lot on her plate at the moment including getting her young child back, difficulties with transportation as her rides aren't always reliable and she doesn't always have money for the bus, and dealing with charges with the trial already started. She states that the ministry's letters of 08 August and 20 August 2014 were sent to her old address and she did not know that she was denied assistance until 27 August 2014.

In her Notice of Appeal, dated 16 October 2014, the appellant writes that she disagrees with the ministry's decision because Work BC won't case manage her as it's very unlikely that she would be hired so far into pregnancy. She states that the letters sent on 08 August and 20 August 2014 were to an old address – the fault of the ministry, not her, as the ministry had her new address on file. If she had received these letters at her proper address, she would have taken the steps necessary to not be denied assistance. She is 32 weeks pregnant and needs help.

At the hearing, the ministry stood by its position at reconsideration.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in finding that the appellant was not eligible for income assistance pursuant to section 9 of the *EAA*. More specifically, the issue is whether the ministry determination, that the appellant has not demonstrated that she has made a reasonable effort to participate in her employment related program and has therefore not complied with the conditions of her EP and did not demonstrate that she has a medical condition that has prevented her from complying with those conditions, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the *EAA*:

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 position of the ministry, as set out in the reconsideration decision, is that under section 9(1)(b) of the *EAA* a person must, when required to do so by the Minister, a) enter into an EP, and b) comply with the conditions in the EP in order to be eligible for income assistance. The ministry held that the information before the ministry establishes that the appellant did not attend all of her appointments

with the EPBC contractor and her file was closed due to non-participation and noncontact. The appellant has not indicated that she was unable to participate with the EPBC contractor due to medical reasons. Further she has not provided any information to establish that she notified the EPBC contractor that she would be unable to attend any of the appointments she missed. The ministry further notes that she did not have an open file with EPBC.

At the hearing, the ministry representative noted that EPBC programming is aimed at helping the client not only find employment but also to become more employable. Thus the initial stage of participation with the EPBC contractor involves classroom time as appropriate. Unless a pregnant client provides the ministry with confirmation from a medical practitioner that the pregnancy is high-risk or she requires bed rest, the ministry expects pregnant clients to participate in EPBC programming up to the end stage of pregnancy. The ministry representative noted that the appellant had not provided the ministry with any documentation from a physician that she was pregnant and that her condition precluded EPBC program participation.

As to the 08 August 2014 letter sent to the wrong address advising the appellant to reconnect with the EPBC contractor and be in full compliance with the conditions of her employment plan by 22 August 2014 or she would not receive September assistance, the ministry representative noted that this letter was simply a reconfirmation of the telephone conversation with the appellant the week before, on 01 August, to the same effect.

The appellant's position, as the panel understands from her Request for Reconsideration and Notice of Appeal, is that she is pregnant and that as a result she should not be expected to look for work as no employer would hire her, given that she would have to quit work soon after starting work to have her baby. Moreover, she had pressing personal issues and difficulties with transportation that precluded her attendance at the EPBC contractor. The letter of 08 August 2014 was sent to the wrong address – if she had received it she would have taken steps to not be denied assistance.

Panel decision

The panel notes that under section 9(7) of the EAA, a ministry decision to require the client to enter into an EP and specifying the conditions of the EP is not open to reconsideration or appeal to the Tribunal. Thus the panel does not have the jurisdiction to make a determination respecting the ministry's requirement as set out in the EP that she participate in EPBC programming regularly and as directed by the contractor. The panel's jurisdiction is limited to whether the ministry was reasonable in determining that she was ineligible for income assistance because of her failure to comply with the conditions set out in the EP.

The evidence is that the appellant signed an EP on 11 April 2014. In doing so, she committed to participate in EPBC programming regularly and as directed by the contractor as a condition of eligibility for income assistance. She did not make initial contact with the EPBC contractor by 18 April 2014 as required in the EP. After several weeks, when the appellant had not made an appointment with EPBC contractor and the contractor had not been able to contact the appellant, the contractor advised the ministry that the appellant was not participating. The ministry then sent the appellant a letter advising her that she had until 23 May 2014 to book and attend appointments with the EPBC contractor and participate as required or she would no longer be eligible for assistance. In early June 2014, the contractor advised the ministry that the appellant had been in contact and arranged

appointments for 18 June, 19 June and 20 June. However, she failed to attend any of these appointments, with no record that she contacted the contractor giving reasons for her non-attendance.

In light of this chronology of missed appointments and non-participation with the EPBC contractor, the panel finds the ministry was reasonable in determining that the appellant had failed to comply with the conditions of her appointment plan requiring her to participate in EPBC programming as directed by the contractor. As compliance with her EP is a condition for continued eligibility for income assistance, the panel finds the ministry was reasonable in determining that the appellant was not eligible for income assistance.

Conclusion

Based on the foregoing, the panel finds that the ministry's decision that the appellant was not eligible for income assistance because of her failure to comply with the conditions of her EP was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.