APPEAL

PART C – Decision under Appeal

The Decision under Appeal is the Ministry of Social Development and Social Innovation, (Ministry), Reconsideration Decision, dated Dec. 3, 2014, which denied the Appellant Income Assistance (IA), as the Ministry determined the Appellant was non-compliant with her 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

APPEAL

PART E – Summary of Facts

The evidence before the ministry at reconsideration showed that the Appellant signed an EP on Dec. 31, 2013 acknowledging she understood and agreed to participate in an employment program through a program contractor, to participate regularly and as directed by the contractor, and to attend a first appointment within 5 business days. She also agreed to notify the contractor if she was unable to attend a session or if she started or ended employment. By signing the EP she acknowledged that failing to comply with the conditions of the EP meant she would be ineligible to collect IA. The appellant was a single parent in receipt of IA since Jan. 2010 with four dependent children under 13 years of age.

The evidence showed the following:

- March 26, 2014 she was accepted into an employment program, "the program."
- The appellant had no daycare so the program contacted her each week to check on progress regarding daycare.
- Workshops were booked for May 12-15 but she did not attend as she had no daycare. An appointment was booked for May 22 but she did not attend or call to cancel.
- On June 2 the ministry contacted her to discuss the lack of participation and it was pointed out she had since Dec. 31, 2013 to arrange daycare, she had an employment obligation to fulfill and she must make all efforts to obtain daycare. She was reminded that non-compliance with the EP would result in discontinuance of IA.
- She was in contact with the program on June 9 and booked an appointment for June 16 and registered for workshops on June 23 as she had someone to watch her children. She did not attend for either. The program tried to contact her June 23 but got no answer.
- The ministry attempted to contact her in early July to no avail and her IA cheque was held and a letter sent to her advising she was non-compliant and needed to contact the ministry.
- The program advised that she attended workshops July 7-11, and that she had an appointment for July 17, however this appointment was missed. The program called but her phone was not in service and an email was sent for which no response was received.
- On Aug. 27 she spoke to the ministry as her cheque was being held. The ministry was advised that daycare is an issue sometimes and that is why she missed appointments. The appellant was advised that failing to attend an appointment, or contacting the program ahead to time to cancel and reschedule would result in a denial of IA for non-compliance. The appellant advised she understood.
- The appellant did not attend workshops on Sept 10-11 and missed an appointment on Sept. 18. No contact was made cancelling or rescheduling before the missed appointments.
- Sept. 19 the ministry attempted to contact the appellant to discuss the non-compliance and a non-compliance letter was mailed.
- Sept. 22 the program received an email apologizing for missing the Sept. 18 appointment as she had forgotten about it. An email was sent back setting an appointment for Sept. 29 which

was also missed. The appellant's phone was not in service and an email was sent by the program.

- Oct. 28 the ministry spoke with the appellant she advised it had been a hard month; she now had daycare, which she did not have in the summer. She had now applied for the Child Care Subsidy. In Sept. her children had lice and that took a week or more to deal with. When asked why she had missed Sept. and Oct. appointments with the program she advised it was a stressful month due to the head lice. The ministry advised that IA would be discontinued due to non-compliance with the EP.

The appellant sought reconsideration. In her request for reconsideration she advised she was a single mother of four young children which keeps her very busy. She knew she was obligated to look for work but complications arise as a single parent. Summer was difficult as kids were home every day and prior to that there was a teacher's strike. When school started her children got head lice which took at least a week to get rid of. The children now had a regular schedule, someone was helping her with daycare and she had obtained a part-time job. However, she still required assistance.

The Reconsideration Decision determined the appellant had failed to demonstrate reasonable efforts to participate in the employment program. The decision noted that the appellant had been referred to the program on Dec. 31, 2013 but it took until March 26, 2014 before she completed her intake with the program. Then she did not participate in the program regularly or as directed by the program. The decision found the ministry had given her ample opportunity to resolve her daycare issues to improve compliance. Further, the head lice issue did not justify a break for medical reasons.

The appellant appealed. On the Notice of Appeal the appellant wrote that she would be evicted from her home. She had a part time job at minimum wage working less than 20 hours per week. She could not pay her bills, rent or buy food. Her youngest child is watched and taken to pre-school each day. She tries her best to shuffle and do as well as possible. She is two months behind in her rent. She provided further details of her financial situation and a copy of an eviction letter.

The appellant at the hearing advised that she had missed appointments due to issues with daycare. As an example, she missed the June 16 date because a friend who had agreed to watch her children that day cancelled at the last minute. Now that school is back in session, she has 3 children in school full-time, last school year it was only 2, and she has someone to watch her preschooler before the half day of pre-school in the afternoon. She currently works 10 am to 2 pm. She is a single mom and gets no help from her children's father. The lice at the beginning of the school year also caused problems.

The appellant's father also attended the hearing. He advised that the appellant was a great mother; very family oriented and had little spare time. She resides in the basement suite of the house where he and her mother occupy the upstairs. Even getting to the corner store was difficult as she looked after 4 children. She has been a mother for 12 years, since she was in her teens, and has never had

a job before her current part-time one. She has problems sometimes even getting to appointments as she is very busy with the children. He and her mother are not really able to assist due to work commitments.

When asked, the appellant advised that once she had daycare in place she applied for the Child Care Subsidy. It was very difficult to find daycare. She advised that when she signed the EP no one discussed with her any barriers to complying, i.e. finding daycare, she was simply asked to sign the EP. Initially in Dec. 2013 she did not know she could even apply for the Child Care Subsidy. Some daycare she has paid for out of her own pocket, rather than pay rent or food. If she was cut off of IA she would be put on the street as she had not paid rent now for three months.

The ministry adopted the reconsideration decision and argued the material showed that the appellant had not been compliant with the EP. She had been given many chances, being warned on several occasions but continued to miss appointments and not contact the program when she could not make appointments. She did not apply for the Child Care Subsidy until late in the day.

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.

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 her EP, contrary to Sec. 9(1)(b) and 9(4)

The Appellant argues that she is now compliant, has a part-time job and daycare. If she is denied IA she will be on the street with her children

The ministry adopts the reconsideration decision and argues the appellant was given warnings but still did not comply with the EP.

DECISION

The panel acknowledges the appellant's argument that she is a busy and dedicated mother. In relation to the argument that if she is cut off IA she will be evicted from her basement suite, the panel hopes that this is not the result and notes as the ministry pointed out at the hearing the appellant is free to apply for IA again if her appeal is unsuccessful. In either case, the panel is bound by the governing legislation and is not entitled to take these arguments into consideration. 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. If she has not then according to the legislation she is not entitled to IA.

When the appellant signed the EP, she acknowledged that she understood, agreed to participate in and make reasonable efforts participating in the program so that she 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. Also, her initial intake into the program did not occur for three months.

On Aug. 27 the ministry warned the appellant that if she could not make appointments she had to call ahead. Her very next appointments on Sept. 10, 11 and 18 were missed. Further, the appellant did not contact the program ahead of time to cancel. On Sept. 22 the program received an email advising the appellant forgot the Sept. 18 appointment. It is noteworthy that the explanation was not that she had no child care, or, that the children's head lice were causing problems. Further, no explanation was provided for the missed workshops on Sept. 10 and 11. The program then set an appointment for the appellant on Sept. 29 for which she did not attend, did not call ahead to cancel and did not provide an explanation for missing the appointment. An email was sent to her about this appointment and by Oct 28 no response had been received explaining the missed appointment.

The appellant blames the failed appointments, except for the head lice issue, on her daycare problems. If one accepts that the daycare was a significant issue for the appellant, it does not explain the repeated failure of the appellant to contact the program ahead of her appointments if she had to cancel. The EP specifically provides she is to contact the program if she cannot make any appointments. Further, after receiving prior warnings of non-compliance by the ministry at the end of Aug., she was reminded of the consequences of non-compliance and that she must call ahead to cancel. She not only missed the next appointments, she did not call ahead to cancel when issues arose. After she sent an email to the program to say she forgot her Sept 18 appointment, she was sent an email rescheduling the appointment for Sept. 29; she once again did not attend or call ahead to cancel. This demonstrates a repeated failure to comply with the EP even after several warnings.

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. The panel finds that a reasonable person, demonstrating reasonable efforts to comply, would ensure that they kept in contact with the program if they had to miss appointments. The panel finds that a reasonable person, after being warned on several occasions, would call ahead if problems arose regarding attendance. Based on all of the evidence the panel finds that the reconsideration decision was a decision that could be reasonable found based on all of the evidence. The panel confirms the reconsideration decision.