

**PART C – Decision under Appeal**

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 5 December 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.

**PART D – Relevant Legislation**

Employment and Assistance Act (EAA), section 9.

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under s. 86(b) of the Employment and Assistance Regulation.

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

- The appellant was an employable recipient of assistance who had fled an abusive relationship and who was considering filing an application for a Person with Disabilities designation (PWD) in November 2013.
- An EP dated 26 June 2014, signed by the appellant with the following conditions that she accepted:
  - Will attend first appointment with the Employment Program of BC (EPBC) contractor on 27 June 2014 at 12:45 at [location];
  - 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, location 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.
- The appellant failed to attend the orientation session of 27 June 2014.
- On 22 July 2014, the appellant's monthly assistance cheque for August was held at the ministry for non-compliance with her EP.
- A letter from the contractor dated 23 July 2014 to the effect that the appellant attended her orientation session that day and was registered for a workshop series set for September 2014 and that she would meet with her case manager bi-weekly. It also indicated the next appointments was scheduled for 5 August 2014 to review her Action Plan.
- On 24 July 2014, the appellant attended the ministry's office and presented the 23 July 2014 letter from the contractor and was asked why she missed her orientation session and she stated that her ex-spouse had broken her windshield and she could not go to the session. The appellant was advised that her cheque would be held until she attends the session scheduled for 5 August 2014.
- A 3-page Action Plan dated 25 July 2014 and signed by the appellant indicating she would attend workshops on 31 July and 7 August 2014 and a workshop series for September 2014. It also stated that participation in the workshop series was a mutually agreed upon intervention between the case manager and the appellant as a necessary first step to return to work. It also mentioned that after those first steps, the appellant and the case manager would review next steps for a commitment for another workshop series for October 2014.
- An undated appointment slip by the contractor titled "Your Next Appointment" indicated 2 appointments for 31 July and 7 August at 10 AM until noon and stating: "Pre support workshop addressing personal barriers".
- On 7 August 2014, the contractor advised the ministry of the Action Plan while the appellant did not submit that updated plan to the ministry herself, as requested.

- On 12 September 2014, the contractor informed the ministry the appellant had only attended ½ day of workshops and would be taken out of this series.
- On 16 or 17 September 2014, the contractor advised the ministry that the appellant indicated she was unable to attend the workshop series due to major factors and personal barriers affecting her life at that time. She was advised that she was still required to meet with her case manager bi-weekly. On the same day, the case manager left a message on the appellant's voice mail but the appellant did not return the call.
- On 30 September 2014, the appellant did not attend her bi-weekly appointment with her case manager.
- On 29 September or 1 October 2014, the contractor reported that their staff had tried at least 3 phone contacts (17, 22 and 25 September) and left voice messages to the appellant but the appellant did not return those calls. The contractor also reported the appellant had only attended one half day of the first week of the workshop series she had undertaken to attend.
- A letter was sent to the appellant on 7 October 2014 indicating the case worker had tried to contact her on at least 3 occasions and indicating she had not made contact since 16 September 2014.
- Part of the information submitted by the ministry indicated that on 20 October 2014, the appellant did not attend to an appointment booked by letter from the contractor of 17 October 2014 while another part stated that a letter was mailed to the appellant on 6 October 2014 with a booked appointment for 17 October 2014 that the appellant failed to attend.
- On 28 October 2014, the ministry worker tried to contact the appellant by telephone but that phone number was not in service.
- A letter dated 28 October 2014 to the appellant from the ministry indicating that her next income assistance cheque will be held at their office until she provides job search information and review her EP. She was asked to contact the ministry's office at a given phone number.
- On 24 November 2014, the appellant attended the ministry's office for her December income assistance cheque. She stated she had not received the letter dated 28 October and that she did not know why she had not attended the required workshops and appointments, that she was not ready then but that by that time she was ready and that she was working on a PWD designation application but had not had her doctor complete the forms and that she had not submitted or did not plan to submit a Medical Report – Employability.
- In her request for reconsideration dated 26 November 2014, the appellant indicated that she was dealing with a lot of personal issues stemming from an abusive situation and that her ex-spouse had thrown something at her vehicle, smashing a window. It was only one of the things that happened and she wondered how could someone be ready to go back to work after only 6 months being away from an abusive relationship.

In her Notice of Appeal dated 23 December 2014, the appellant indicated: " I disagree because I don't [know] who made it were all people who were in a abusive relationship is better after 6 months everyone is different".

At the hearing, the ministry testified that according to the contractor's file, the appellant failed to attend an appointment on 20 October booked by letter from the contractor sent on 17 October 2014 and the panel accepts this evidence since the other version that the letter was sent on 6 October for a meeting on 17 October is not supported by any other evidence. The ministry indicated that when a

person deals with an abusive relationship, there is a 6 month period when there is no obligation to participate in an EP but that after that period of time, participation becomes mandatory. The ministry further testified that there was no note on file as to whether any date other than 30 September was determined for the bi-weekly meetings as well as no note as to whether the appellant had received the letter dated 17 October 2014. The panel determined the additional oral evidence was admissible under s. 22(4) of the EAA as it was in support of the records before the ministry at reconsideration and clarifies some inconsistencies.

## 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 and workshops 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 for bi-weekly appointments and that she did not respond to 3 attempts to reach her by phone on 17, 22 and 25 September 2014. Given those circumstances, the ministry argued that the appellant failed to demonstrate reasonable efforts to participate in the program. Further, the ministry argued that while the appellant considered applying for a PWD designation, she did not provide any evidence of a medical condition that would preclude her from participating in the program.

The appellant's position, based on the Record, is that she had been dealing with a number of personal issues including having been the victim of an abusive relationship and that she missed one of her appointments because of her having been the victim of damages to her vehicle. She further stated that after 6 months of being away from an abusive relationship, it is too soon to be ready to go



back to work and that she was not ready to participate in her EP.

The panel notes that on 16 September 2014, the contractor accepted the appellants' reasons for not attending the workshops scheduled for September and allowed her to withdraw until the following session and thus, at that point, forgave her lack of attendance to previous appointments provided she would attend a bi-weekly meeting with her case manager between mid-September and 24 November. The appellant missed at least one bi-weekly appointment with the contractor and did not contact the contractor or the ministry about fulfilling her obligations under the EP or the Action Plan on which she had agreed with the contractor. She did not respond to 3 attempts by the contractor to contact her and she only contacted the ministry on 24 November 2014 to get her December assistance cheque. The panel realizes that 6 months is perhaps a short period of time for a victim of an abusive relationship to go back to work but the panel finds that here the ministry was trying to support her in providing workshops that would help her recognize, understand and overcome the impact of abuse; far from being an obligation to go back to work, those workshops were intended to facilitate her eventual return to work. Likewise, the bi-weekly meetings with the contractor were not in any shape or form "going back to work" but rather a chance to discuss her issues and find ways to improve her chances of eventually getting back on the labour market.

Although, at the appellant's request, the ministry provided her with forms to apply for PWD designation, the Record contains no evidence that she made the application or, if she did apply, indicating that the application process or any medical condition prevented her from participating in EPBC as directed.

The panel finds that as a result of the appellant failing to communicate with the contractor or respond to the contractor's efforts to communicate with her simply because she was "not ready" and because she wanted to apply for a PWD designation, it was reasonable for the ministry to determine that the appellant had not demonstrated reasonable efforts to participate in the EPBC as she had agreed in the EP. The panel notes that the appellant did not provide any medical evidence that would preclude her from participating in the program. Consequently, the panel finds the ministry could reasonably determine she was ineligible for income assistance because she had failed to comply with s. 9(4)(a) of the EAA.

Therefore, the panel concludes that the ministry's decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.