

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated November 13, 2014 whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA) for not complying with the conditions of his Employment Plan (EP).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 9

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Unsigned information by the appellant dated March 11, 2014 regarding parties making false documents and committing forgery.
- 2) Letter dated March 13, 2014 from the police department to the appellant advising that the files under the appellant's name and at his address have been searched and no files as referenced in the appellant's request have been located. At no time on December 11, 2013 did a named constable attend at the appellant's home or search his residence.
- 3) Unsigned information by the appellant dated April 29, 2014 regarding a person uttering threats to cause the appellant bodily harm.
- 4) Employment Plan (EP) signed by the appellant and dated May 30, 2014 requiring that the appellant participate in employment program regularly and as directed by the contractor.
- 5) Medical Report- Employability dated July 15, 2014 in which a general practitioner lists the appellant's primary medical condition as depression and anxiety and his secondary medical condition as chronic pain in his arms and hands. The restrictions associated with the medical conditions are described as: "He is unable to perform any work that requires repetitive movement of hands and arms. He cannot lift any heavy weight. He has problem remembering."
- 6) Email from the appellant dated August 1, 2014 regarding "Friday appointment."
- 7) Information sworn by the appellant August 21, 2014 regarding parties making false allegations which was intended to cause the appellant to be suspected of having committed an offence.
- 8) Information sworn by the appellant August 21, 2014 regarding parties impersonating a police officer,
- 9) Employment Plan (EP) signed by the appellant and dated September 3, 2014. The terms of the EP include provisions that if the appellant is unable to follow through, that he is to advise the ministry. The terms also require the appellant to:
 - Complete work-related activities.
 - Record all activities he does that help make him more employable and to overcome any barriers that he may have, e.g. counseling sessions, medical appointments, etc. and he understands that these activities fall within his work-related activities requirements;
 - Record his monthly work-related activities on the ministry form (SD0077) and provide these to the ministry.
 - Acknowledge that the ministry expectation is that he spends 25 hours minimum per week on work-related activities;
 - Submit his work-related activities record by the 5th of every month;
 - Acknowledge: "I am aware I can contact the Employment Program of BC for self serve services to determine if their resources could assist me to achieve my work search goals and assist me to overcome my barriers";
- 10) Undated note to the appellant requesting that he bring his family file and applications and meet him in court. The writer requested that the appellant to write his history in an email message advising of his fight for his child, his current access, the efforts his ex-spouse to extricate the appellant from his child's life, what it is like being a father, and what happened on the day he was accused of the assault. The appellant noted that the request is 1,000 man hours of work gathering and organizing research for his trial date which is April 30, 2015. There is civil election November 14, 2014 and a federal election sometime in 2015. He formed a political party and the police are trying to prosecute him for any reason. In the last two years he has

been charged with assault and abduction, and investigated for fraud, rape and child abuse. None of the allegations are true or proven in court and have been proven false in court.

- 11) Unsigned information by the appellant dated October 30, 2014 regarding an employee of the police department refusing to return the appellant's B.C. identification, Canada identification and immigration documents.
- 12) Print out of the appellant's personal calendar for the month of September 2014 including his handwritten notations;
- 13) Copy of advertisements in "The Business Exchange."
- 14) Request for Reconsideration- Reasons dated November 3, 2014.

In his Request for Reconsideration, the appellant wrote that:

- The May 30, 2014 EP was not workable and the ministry was aware of this but insisted that it was a suitable plan.
- The Medical Report dated July 15, 2014 clearly stated that the more pressure he is under, the more the stress reflects in memory loss and muscle problems that cause pain and paralysis. He cannot handle more stress.
- On August 1, 2014 an email refers to the appellant having been to the contractor the day before to advise that he could not make the appointment because of attending court.
- The second EP did not take into account his personal situation. The police want to arrest him and put him in jail and they continue to harass him.
- He was a witness in a prosecution by the law society for a trial set for November 3 to 5, 2014.
- The police attend his home without a warrant and will attend his place of business if he does not stop them from harassing him. It is foolish to return to work without dealing with the harassment by the police.
- He is running for city council and that should count as looking for work. He has to make speeches and go to meetings asking for people to vote for him.
- The plan does not take into account all the walking he has to do to go to meetings, considering his physical limitations.
- He looks for work since every month he reads and follows leads in the Business Exchange, which are the kinds of jobs he can do with his physical limitations and business experience. He is trying to buy the business and that is more realistic for him.
- The police will cause him to get fired if they know where he worked, he has physical limitations, he has court all of the time unannounced, he has no phone or glasses or identification, and the only real job search must include stopping the police and others from harassing him.
- The police and the Ministry of Children and Family Development (MCFD) were in on the harassment.
- Running for public office should count as looking or searching for work.
- His job search or business plan has resulted in him making a few hundred extra dollars and it will increase. (October- \$100, November will be \$250 income from the law society and a donation).

In his Notice of Appeal, the appellant indicated that he disagreed with the ministry's decision and wrote that:

- The EP in Part B allows for activities that help him become more employable and excuses for medical reasons.

- Getting his identification back from the police and defending himself against false charges should be a priority to becoming more employable.
- He has income, which has helped with a bus pass.
- He got sick in the first place because of stress and exhaustion. He cannot walk anymore. It is too exhausting and he is not physically capable anymore.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Undated, unsigned informations by the appellant regarding allegations against third parties;
- 2) Google map directions from the appellant's residence to a local food bank and indicating the route takes 1 hour and 22 minutes to walk;
- 3) Letter dated June 10, 2014 to the ministry in which a physiotherapist wrote that he has been treating the appellant for neck and back pain with radiculopathy into his arms and legs. He has seen the appellant 10 times in the clinic and he has been responding well to treatment, with decreased pain and increased functional mobility; however, he is not back to baseline in terms of symptoms and still struggles with daily pain and disability. The appellant would benefit from an addition 10 sessions and the long term goal is for the appellant to return to work.
- 4) Undated resume for the appellant;
- 5) Print out of the appellant's personal calendar for the month of October 2014 with his handwritten notations;
- 6) Letter dated December 10, 2012 from the CEO and director of a company regarding a conditional offer of employment for the appellant;
- 7) Documents regarding dispute resolution hearings September 16, 2014 and October 24, 2014 and October 30, 2014 before the Residential Tenancy Branch; and,
- 8) Handwritten receipt dated November 28, 2014 for \$570 for December 2014 rent and indicating \$400 as an outstanding balance.

At the hearing, the appellant provided the following additional documents:

- 1) Written submission with argument on his behalf;
- 2) Excerpt of Section 433 of the Criminal Code of Canada;
- 3) Letter dated July 12, 2012 from the MDFD to the ministry advising that the appellant is actively working towards having his child in his care and has applied for custody. He has court dates set for November and December 2012;
- 4) Print out of June 2, 2014 article in a local newspaper regarding a third party being charged with personating a peace officer;
- 5) Police Department occurrence reports for September 4, 2014 and September 7, 2014 regarding a dispute between the appellant and his landlord and the landlord's family and indicating that the parties were advised to go through the proper channels with the landlord tenancy branch as it was not a police issue.

At the hearing, the appellant stated that:

- He has tried to comply with the ministry's requirements and although he did not put his work-related activities on the ministry's form, he always asks if there is anything else that is needed. He is prepared to explain anything that the ministry did not understand with what he submitted.
- He told the ministry on September 3, 2014 that the landlord requires the rent be paid on time and he attended the ministry office with the landlord's adult daughter to collect the cheque.

- Later on September 3, 2014, the landlord's son tried to assault the appellant and the police were called, as set out in the police report.
- It took him about 70 days to prepare the charges against the landlord's son, since the police refused to file charges, and to prepare for the RTB [Residential Tenancy Branch] hearings.
- The monthly cheque for September was paid by the ministry on September 4, 2014 and only included assistance in the amount of \$235 and it was like "throwing gasoline on the fire" in his relationship with his landlord.
- There were 2 applications by his landlord to the RTB to evict him and get damages paid and the 3rd application was the appellant's request to have the landlord's applications overturned.
- The Google map shows how far he has to walk to the food bank and to the ministry office and that reduces the number of hours he has available each day. He cannot move closer to the ministry office because it is not that simple. The rent would be more expensive and he needs his identification to do so.
- The ministry told him he had to file the paperwork for the RTB application before he would receive a full cheque to pay his rent. All the stress and walking was causing problems for him.
- He reported a hurting back and being sick between September 18 and 25, 2014. In response to a question, the appellant stated that he is not claiming that his medical condition prevented him from engaging in work-related activities for the month.
- He reported the hearings with the RTB on September 16, 24 and 30, 2014 and 2 days to file the paperwork, being September 11 and 12, 2014.
- He spent 200 man hours for the RTB applications and 150 hours for this appeal.
- His child's mother is complaining so he needs to keep a 2-bedroom apartment for when his child is with him and the rent is \$600. He gets \$590 per month in assistance and it is not enough to pay the rent. He needs a part-time job because he has no help for daycare, child support or food.
- He needs to go to a resource centre to access the internet and his email and he attended on September 11 and 12, 2014.
- He spent 38 hours traveling to and from the ministry office trying to file the appeal and get his cheque for pay the September rent and that should count for something. He gets worn out with all the walking and he still needs to take care of his child, rest and clean his place.
- He was also running for city council and he had a busy schedule and got some donations, which he needed to get a bus pass so he would not have to walk everywhere.
- Since he cannot do physical work, he needs a special job where he can work at home. He does not have a degree but he still wants to do management work.
- He reads the Business Exchange every month and did so for September and October 2014 trying to find a business in trouble that needs some advice.
- He had an interview with one company in 2012 and another on September 17, 23 and 28, 2014. He ran into difficulties because he was not qualified to become bonded without identification. He has been trying to find a way to create his own job.
- He also reported visits from MCFD regarding false reports on September 15, 2014 and October 6, 2014. The rumour about him killing his son was a malicious attack.
- He needs to get his identification back. In response to a question, the appellant stated that the police took his identification from him 5 years ago and have not returned it. He has a court date at the end of January 2015 that should result in a court order for the police to return his identification to him. He did obtain a copy of his birth certificate but he lost it sometime within the last 4 or 5 months.

- His ex-girlfriend keeps calling the police. The second time, they will not give him bail and if he is arrested he will likely be in jail for 100 days.
- In 2015, he has over 26 days of court appearances which include charges against him by the police, 5 days of a trial with his ex-girlfriend and 6 days for prosecuting his private informations against third parties.
- The article in the newspaper confirms the third party who was charged with personating a police officer.
- The dispute with the landlord ended up being successful because the landlord lowered the rent and agreed not to bother him.
- He earned a bit of money doing some 'business consulting' in the city.
- His life for September until the middle of October 2014 has been chaotic. The police have been harassing him and searching his place without a warrant.

Admissibility of New Information

The ministry did not raise an objection to the appellant's oral testimony or the information provided in his Notice of Appeal and did not object to the admissibility of the documents provided prior to or at the hearing. The appellant provided additional information regarding his activities prior to and after signing the EP. The panel admitted this additional information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4)(b) of the *Employment and Assistance Act*. The panel considered the appellant's written submission as argument on his behalf.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry's stated that:

- The appellant had previously entered into 3 different EP's with the ministry. The ministry recognized that there were many things going on in the appellant's life and the terms of the subject EP were made as flexible as is possible, requiring only that the appellant show the required time spent on activities towards independence.
- Medical appointments and confirmed mandatory court appearances can be included as activities. The ministry does not accept verbal information and requires some written confirmation of the court dates.
- The appellant submitted copies of his personal monthly calendars for September and October 2014 and while the form is acceptable to the ministry the content was not sufficient to meet the required time spent on work-related activities.
- Although the appellant may have had meetings with business representatives, if minimal requirements are not met such as possessing identification and an ability to travel, then the meetings have no reasonable likelihood of resulting in employment.
- While the police may have confiscated the appellant's identification, it has been several years and the appellant has not pursued other means of replacing his identification, although these methods have been previously explained to him by the ministry. Activities to apply for a birth certificate and pursuing other means of getting identification would constitute work-related activities.
- The time spent walking back and forth to the ministry office is not considered a work-related activity.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's conclusion that the appellant did not comply with the conditions of his EP, and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA) is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

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].

Ministry's position

The ministry's position is that the appellant entered into an EP dated September 3, 2014 and the conditions of his EP require that he submit a work-related activities report by the 5th of each month and the appellant did not comply with these conditions. The ministry stated at the hearing that the appellant's personal calendars for the months of September and October 2014 were acceptable to the ministry in form, but that the content of the calendars was not acceptable in terms of the minimum requirements for the amount of work-related activity. Although the appellant stated that he looked in the business exchange for employment and, as part of running for council, he has been attending meetings and asking for people's vote, the appellant has not listed any of these activities on the work-related activities record, as required. The ministry argued that preparing for court appearances is not considered as a work-related activity. The ministry argued that the appellant failed to demonstrate efforts to comply with the conditions of his EP and has not shown any mitigating circumstances that prevented him from complying with the conditions of his EP.

Appellant's position

The appellant's position is that he provided copies of his personal calendar for the months of September and October 2014, which include notations of the many activities he has been involved with. The appellant argued that there are only so many hours in a day and he has been involved with many activities which include: managing disputes with his landlord, trying to stop the police and third parties from harassing him and preparing for upcoming court appearances, managing disputes with his ex-girlfriend and preparing for an upcoming court appearance, managing false reports made with the MCFD, running for city council and attending meetings to secure votes, looking for work consulting to businesses, getting a few hours work and attending a couple interviews, and walking back and forth from his residence to the ministry office and to the food bank. The appellant argued that his other responsibilities, such as caring for his child 3 days per week, and his medical conditions restrict the type of work he can do and also leaves him exhausted after walking great distances and limited in how many other activities he can pursue. The appellant argued that he reported that his back was hurting and he got sick from the stress between September 18 and 25, 2014.

Panel's decision

Section 9(1) of the EAA provides that, when the ministry requires, a person must enter into an EP and comply with the conditions in the EP in order to be eligible for income assistance. The appellant signed an EP on September 3, 2014 for an independent work search which included conditions that he record his monthly work-related activities on the ministry form and provide these to the ministry. The ministry further expected the appellant to spend 25 hours minimum per week on work-related activities, and that the reporting requirements are by the 5th of every month. The EP also included an agreement by the appellant that he is "...aware that I can contact the Employment Program of BC for self serve services to determine if their resources could assist me to achieve my work search goals and assist me to overcome my barriers." The panel finds that the appellant's EP does not include a condition requiring the appellant to participate in a specific employment-related program to assist the appellant to find employment or to become more employable, as covered by Section 9(3) of the EAA, as the appellant's involvement with the Work BC program was voluntary and, therefore, Section 9(4) of the EAA does not apply.

The ministry acknowledged that the appellant submitted copies of his personal calendars for the months of September and October 2014 and stated that this form is acceptable to the ministry but maintained the position that the content in the calendars was not sufficient to meet the requirements of the appellant's EP. The requirement in the appellant's EP is for the appellant to spend 25 hours minimum per week on work-related activities. While the appellant outlined the many hours he has dedicated to preparing for court and tribunal attendances, the panel finds that the ministry reasonably determined that these activities are not work-related. The ministry stated that mandatory court appearances are accepted by the ministry as reasons for not engaging in work-related activities during this time, but clarified that the ministry requires some written confirmation of the appointments and these were not provided by the appellant. Although the appellant showed the distance and long walk from his residence and the ministry office and food bank, the panel finds that the ministry reasonably concluded that this does not qualify as work-related activities.

The panel finds that some of the activities described by the appellant could be reasonably considered work-related activities, such as running for city council and attending meetings to secure votes, looking for work consulting to businesses, getting a few hours work and attending a couple interviews, but that the ministry reasonably concluded that there was insufficient information provided

by the appellant to establish that a minimum of 25 hours per week had been spent on these activities. The appellant argued that his other responsibilities, such as caring for his child 3 days per week, and his medical condition make it extremely difficult to find enough hours and energy in the day to dedicate so many hours per week to work-related activities, as required by the condition in his EP. The panel notes that Section 9(7)(c) of the EAA stipulates that the ministry's decision 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 appellant stated that his back was hurting and he got sick from the stress between September 18 and 25, 2014 but he did not provide details of any medical appointments in his calendar or written confirmation from a medical professional of an inability for him to engage in his work-related activities during this time. The appellant did not maintain a position that his medical condition prevented him from engaging in work-related activities for the month.

The panel finds that while the ministry has the discretion to accept the appellant's work-related activities as presented in his work activities reports, which in this case were copies of his personal calendars, the ministry reasonably concluded that the appellant failed to comply with the conditions of his EP when he did not submit work-related activities reports that conformed to the terms of his EP, being a minimum of 25 hours per week dedicated to work-related activities.

The panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the EAA.