

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the Ministry) reconsideration decision, dated January 15, 2015, which denied income assistance to the Appellant under section 9(1) of the Employment and Assistance Act for non-compliance with the terms and conditions of his employment plan because he failed to demonstrate reasonable efforts to participate in his employment program.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 9(1) and 9(4)

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 section 86(b) of the Employment and Assistance Regulation.

The evidence before the Minister at reconsideration included the following:

- The Appellant's employment plan, dated November 6, 2014, detailing the conditions of the plan as well as the consequences for non-compliance. One of the conditions of the employment plan is that the Appellant will notify the employment services contractor if unable to attend scheduled appointments. The employment plan states that failure to comply with the employment plan will result in ineligibility for assistance. The employment plan is signed by the Appellant.
- The Request for Reconsideration form, Section 3, dated January 15, 2015, in which the Appellant writes that he did what he agreed to do and he apologizes for his language during a Ministry telephone call.

At the hearing, the Appellant's Advocate provided evidence that that the Appellant was in contact with the employment services contractor, but was unable to make a December 3, 2014 appointment because he had the flu. The December 3rd appointment was re-scheduled to December 8th and the Appellant was scheduled for 3 additional appointments on December 17th, 18th, and 19th. The Advocate did not know whether the Appellant attended the appointment on December 8th, but stated that the Appellant did not attend the December 17th, 18th, or 19th appointments because he was out of town spending Christmas with his estranged family. The Appellant's relatives arranged for him to travel to visit them before the scheduled appointment. Because the Appellant had no fixed address and no telephone, it was difficult for him to connect with the Ministry and with the employment services contractor. The Advocate explained that because the Appellant was estranged from his family, this visit was very important to him. Finally, the Advocate stated that the Appellant met with the employment services contractor in January 2015, and is therefore now in compliance with the employment plan.

The panel determined that this additional oral evidence was admissible under section 22(4) of the EAA as it was in support of the records before the Ministry at reconsideration.

The Appellant's Advocate submitted additional documentary evidence during the hearing; she read from two documents describing the Appellant's mental and physical health. The panel determined that this additional documentary evidence was not admissible under section 22(4) of the EAA as the documents were new evidence that was not available to the Ministry at reconsideration, and this documentary evidence was not in support of any documents before the Ministry at reconsideration.

The panel finds that the Appellant signed his employment plan on November 6, 2015 acknowledging that he read and understood the conditions and consequences for non-compliance with the employment plan. The panel also finds that the Appellant did not attend a scheduled appointment as part of his employment plan on December 3, 2014 due to illness, and that the Appellant did not attend later appointments on December 17th, 18th, and 19th, 2014 because he was not in town.

PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision to deny income assistance to the Appellant for non-compliance with the terms and conditions of his employment plan under section 9(1) and 9(4) of the EAA was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the Appellant.

The legislation provides the following:

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...

The Ministry argues that the employment plan was signed by the Appellant, and although it is unclear whether he attended any appointments in November or the December 8th appointment, he did not attend the appointments on December 17th, 18th, or 19th. He did not contact the employment services contractor, and when they contacted him, he was out of town. The Ministry further argues that there is no medical evidence to show that he could not attend those appointments.

The Appellant's Advocate argues that because the Appellant has no fixed address or telephone, it is difficult for him to connect with the Ministry and with the employment services contractor. She further argued that the Appellant's family arranged for his travel and that it was very important for the Appellant to make the trip, so he did not attend the December 17th, 18th, or 19th appointments. Because he met with the employment services contractor after the reconsideration decision, he is now in compliance with his employment plan.

The panel finds that the Ministry's decision was reasonably supported by the evidence as section 9(4) of the EAA states that the conditions in the employment plan are not met if the Appellant (a) fails to demonstrate reasonable efforts to participate in the program, or (b) ceases, except for medical reasons, to participate in the program. The panel finds that because the Appellant did not attend or attempt to contact the employment services contractor for the December 17th, 18th, and 19th appointments, the Ministry reasonably determined that the Appellant did not demonstrate reasonable efforts to participate in the employment program. The panel also finds that as the Appellant did not have, or mention, evidence of a medical issue at the time of reconsideration decision and because

the Appellant was capable of traveling at the time of the missed appointments, the Ministry reasonably determined that he was not exempt from the scheduled appointments for medical reasons.

The panel therefore confirms the Ministry's reconsideration decision to deny income assistance for non-compliance with the employment plan as it was reasonably supported by the evidence at the time of the reconsideration decision.