

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of March 2nd, 2015 wherein the ministry determined the appellant was not eligible for income assistance as set out in section 9(1)(b) Employment and Assistance Act (EAA) because she did not comply with the conditions stated in her Employment Plan (EP) as she failed to demonstrate reasonable efforts to participate in her employment program and did not cease to participate in the program for medical reasons as set out in section 9(4) EAA.

PART D – Relevant Legislation

EAA - section 9

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- EP signed by appellant on December 2nd, 2013;
- Letter to appellant dated January 7th, 2014 advising the appellant she must comply with the conditions in her EP conditions and to contact the service provider by January 14th, 2014;
- Note from the appellant's doctor dated February 17th, 2015 stating "Seen for a medical condition causing temporary unemployability. Reassess in 90 days. Thank you."
- Request for Reconsideration signed by appellant on February 20th, 2015;

On December 2nd, 2013 the appellant signed an EP referring her to Employment Program of British Columbia (EPBC) and acknowledging that it is a condition of eligibility for income assistance that she comply with the conditions set out in her EP.

Specifically, in her EP, she agreed to:

- Attend the EPBC orientation session within 10 business days of November 27th, 2013;
- Attend and participate in EPBC program regularly as directed by the EPBC contractor;
- work with the EPBC contractor to address any issues that may impact her employability and complete all tasks assigned including any activities that may be set out in the action plan;
- notify the sub/contractor if she is unable to attend a session or when she starts or stops any employment;
- declare all income and report any changes to the ministry;
- attend all ministry review appointments;
- She understands that if she fails to comply with the conditions of her EP, that she will be ineligible for assistance under EAA.

Upon review the panel notes that the dates of December 10th, 2014 and the rescheduled intake date of January 2nd, 2015 shown in the Summary of Facts of the Reconsideration Decision appear to be in error and should be read as December 10th, 2013 and January 2nd, 2014.

The appellant signed her EP on December 2nd, 2013, missed her intake appointment scheduled for December 10th, 2013 which was re-scheduled to January 2nd, 2014. The appellant's February, April, August and November 2014 assistance cheques were held by the ministry due to the appellant's non-compliance issues with the EPBC program. The appellant was advised on more than one occasion that non-compliance with her EP without confirmation of mitigating circumstances would result in denial of income assistance. On November 6th, 2014 the appellant spoke to the ministry and advised that transportation was her only barrier but that issue had been resolved. Again, the appellant was advised that any further non-compliance with the program would make her ineligible for income assistance. EPBC reported to the ministry that the appellant's file was being closed due to non-compliance, that the appellant has stated that she could not participate in program due to illness. On December 31st, 2014 a ministry worker left the appellant a voice mail message advising her that she must submit confirmation of mitigating circumstances that prevented her from participating in EPBC; that a medical report was being mailed and requested the appellant to contact the ministry to discuss the matter. On January 27th, 2015 the appellant contacted the ministry advising she could not submit confirmation of mitigating circumstances as her doctor was out of town until February 16th, 2015. On February 3rd, 2015 the appellant spoke to a ministry worker but could not provide any mitigating circumstances that prevented her from attending EPBC. The appellant was asked what restricted her from participating and she stated that she was participating and capable of attending the program. A review of the appellant's file by the ministry showed the appellant had 2 weeks of part-time employment from May 30th to June 15th, 2014. On February 18th, 2015 the appellant submitted a note from her doctor to the ministry. The doctor's note, dated February 17th, 2015 states, "Seen for a medical condition causing temporary unemployability. Reassess in 90 days. Thank you."

Attached to the appellant's Notice of Appeal was a note dated March 9th, 2015. The appellant stated that her spouse has medical issues, her doctor retired in 2014 and only recently has she been able to obtain another doctor. The appellant stated that she was unable to attend the program because she was ill, still is, and this should not held against her because she cannot provide a doctor's note when there was no doctor available. The appellant states that if her family is cut off assistance and she is forced to pay back the funds the ministry "will be putting a hardship on my family that we will not be able to overcome".

The panel accepted this evidence under section 22(4) Employment and Assistance Act as it tends to corroborate the appellant's evidence at the time of reconsideration. The appellant did not provide any further documents or submissions.

The ministry's submission in this matter is the reconsideration summary provided in the Record of Ministry decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry determined the appellant was not eligible for income assistance as set out in section 9(1)(b) EAA because she did not comply with the conditions stated in her EP as she failed to demonstrate reasonable efforts to participate in the employment program and did not cease to participate in the program for medical reasons as set out in section 9(4) EAA.

The legislation considered:

Section 9 EAA

- (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.

- (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 errors in the dates in the Summary of Facts, as stated above, had no effect on the panel's determination of the reasonableness of the ministry's reconsideration decision.

The ministry's position is that the appellant was referred to the EPBC program at intake in December of 2013 and it took the appellant 2 months to complete the initial intake; that the appellant failed on several occasions to attend the program and demonstrated repeated non-compliance issues with her EP. The ministry argued that between December 2013 and November 6th, 2014 the appellant did not provide any information that she was having problems in meeting the conditions set out in her EP. The ministry argued that when the appellant spoke to the ministry worker on November 6th, 2014, because her November 2014 assistance cheque was withheld, the appellant stated that transportation was the only barrier to her non-compliance in attending the program, but that issue had been resolved. The ministry stated the appellant was advised then that any further non-compliance with her EP would make her ineligible for income assistance.

The ministry further argued, that after the ministry's contact with the appellant in November 2014, the contractor advised the appellant's file was closed due to non-compliance and that the appellant then advised she could not attend the program due to illness. The ministry argued that on December 31st, 2014 a ministry worker left the appellant a voice mail message advising the appellant must submit confirmation of mitigating circumstances that prevented her from complying with her EP (attending the program) and that a medical report had been mailed out. The ministry argued the appellant did not respond to their request for almost a month; that and on January 27th, 2015 the appellant called the ministry office to advise she could not submit the medical report (confirmation of mitigating circumstances) until February 16th, 2015 as her doctor was out of town until then. The ministry argued that on February 3rd, 2015 the appellant spoke to a ministry worker but could not provide any mitigating circumstances that prevented her from attending the EPBC program. The ministry argued the appellant was asked what restricted her from participating and the appellant advised that she was participating in the program and capable of attending the program. Ministry argued that the doctor's note was not sufficient to establish that the appellant was not able to participate in her employment program.

The appellant's position is that she has provided the ministry with a doctor's note excusing her from work; that her husband is ill and she has small children. The appellant argues that she feels she is being punished because her community cannot provide the medical care that most Canadians are used to and take for granted. The appellant argued that her former family doctor retired and it was "only two months ago" that she was able to find a doctor willing to provide medical care for her family. The appellant argued that she was

unable to attend EPBC because she was ill and there was no doctor available to provide her with “a note”. The appellant argued that if her family is cut off assistance it will be putting a hardship on her family that they will not be able to overcome. The appellant argued that because she provided a doctor’s note proves that she was not lying about her medical condition.

The panel finds that the EP laid out several conditions, which the appellant acknowledged she understood by initialing that area of the EP; that she would attend and participate in EPBC as directed by the ministry contractor and, that she will contact the contractor if she is unable to attend a session.

The panels finds the evidence supports the ministry’s position that she did not make reasonable efforts to participate in the program as the evidence is that the appellant did not attend several sessions scheduled by the EPBC contractor as required in her EP; that she did not advise the ministry she was unable to attend the EPBC program because there were mitigating circumstance(s) that prevented her from participating in the program; and that she was requested to contact the ministry on December 31st, 2014 to discuss her mitigating circumstances but the appellant did not return the ministry’s call until January 27th, 2015. The panel accepts the ministry’s evidence that on November 6th, 2014 the appellant told the ministry that the only barrier to her not attending the program was transportation and that issue had been resolved. The evidence is that the appellant had two weeks part-time employment between May 30 and June 15th, 2014.

The panel does not accept the appellant’s argument that she was making reasonable efforts to participate in the program when she was deemed to be non-compliant several times and the ministry had to hold her monthly assistance cheque repeatedly to encourage her to comply with her EP; that on November 6th, 2014 the appellant told the ministry there were no mitigating circumstances preventing her from participating in the EPBC program, however, her file was closed by contractor in December 2014 because of her non-compliance. The appellant told the contractor that she was ill. The evidence is that on February 3rd, 2015 the appellant could not provide the ministry with any mitigating circumstances for her non-participation and she told the ministry she was participating in the program and capable of attending the program.

The panel finds that the ministry’s determination that the appellant failed to demonstrated reasonable efforts to participate in the EPBC program was reasonable.

In reference section 9(4)(b) EAA – ceases, except for medical reasons, to participate in the program - the evidence before the panel is that the appellant provided a note dated February 17th, 2015 signed by her doctor that states “Seen for a medical condition causing temporary unemployability. Reassess in 90 days. Thank you.”

The evidence is that on December 31st, 2014 the ministry left a voice mail message for the appellant advising that she needed to have a medical report completed confirming the mitigating circumstances that have prevented her from complying with her EP and the appellant was requested to contact the ministry that day (December 31st, 2014) to discuss her mitigating circumstances. The appellant waited almost a month until January 27th, 2014 when she called the ministry and left a message stating she could not submit confirmation of mitigating circumstances because her doctor is out of town until February 16th, 2015. On February 3rd, 2015 the ministry spoke with the appellant and the appellant could not provide any mitigating circumstances (medical reason) why she ceased to participate in her program. In the appellant’s submission dated March 9th, 2015 she argued that her family doctor had retired and she had “just found in the last two months a doctor willing to take on my family”. There was no evidence presented as to why when she found the doctor, which would have been in early January, 2015, she could not have obtained medical evidence of her illness then and completed the medical report requested by the ministry or advised that it couldn’t be completed then because her doctor was away.

The panel finds the doctor’s note submitted by the appellant is speaking about the present day, February 17th, 2015 - that the appellant is not employable - and the future, 90 days forward, and not the past (November and

December 2014) when the appellant was deemed to be non-compliant with her EP. The panel finds there is no medical evidence to support the appellant that she was sick in December 2014 and not able to participate in the program and there is no medical evidence that the appellant ceased to participate in her EP for medical reasons. Further, as the ministry pointed out, the illness is described as temporary, and the appellant's evidence on February 3rd, 2015 was that she was able to participate in her program.

The panel finds that the ministry's determination that appellant did not cease to participate in the program because of medical reasons was reasonable.

The panel finds that the ministry's decision that the appellant did not comply with her EP and is therefore not eligible for income assistance, as set out in section 9 of the EAA, was a reasonable application of the legislation in the circumstances of the appellant, and confirms the ministry's decision pursuant to section 24(1)(b) EAA and section 24(2)(a) EAA.