APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the Ministry's) reconsideration decision dated March 30, 2015 which held that the Appellant was ineligible to receive income assistance for March and April 2015 after being dismissed from employment for just cause under section 13(1) and 13(2) of the Employment and Assistance Act and section 29(3) of the Employment and Assistance Regulation.

PART D – Relevant Legislation

Section 13(1) and 13(2) of the Employment and Assistance Act (EAA) and section 29(3) of the Employment and Assistance Regulation (EAR)

APPEAL #

PART E – Summary of Facts

The Appellant was not in attendance at the hearing. After confirming that the Appellant was notified as to its date and time, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the Ministry at reconsideration consisted of the following:

- A Record of Employment (ROE), dated March 3, 2015, showing the last day for which the Appellant was paid as February 13, 2015 and the reason for issuing the ROE as "dismissal".
- Discharge instructions, dated March 5, 2015 and prepared by a hospital, indicating that a follow-up appointment with a doctor is required and instructing that the Appellant should not drive that day.

In the Request for Reconsideration (RFR), dated March 27, 2015, the Ministry stated that they contacted the Appellant's former employer to confirm the circumstances of the dismissal and were told that calling in sick was a common occurrence and that a note from a doctor had not been provided to the employer. On the day of dismissal, the employer told the Ministry that the Appellant did not appear to be sick when she checked in at 12:00pm and as February 14th is one of their busiest days of the year, when the Appellant did not show up for her shift, she was dismissed.

In the RFR, the Appellant writes that she was dismissed on February 14th, 2015 from her job for calling in sick. She says that she faxed in a doctor's note to the Ministry. On February 14, the Appellant states that she called her employer at 12:00pm and then later that day she was too sick to work and could not go in. Her employer said that if she did not come in, to pick up her cheque on Monday. She says that she now has a doctor's note for her employer.

The Appellant's RFR contained two attachments as follows:

- A prescription written by the Appellant's doctor, dated March 25, 2015, indicating medications for stomach acid, back pain and acute anxiety; and
- A doctor's note, dated March 25, 2015, stating that the Appellant had been seen frequently over the last two months for abdominal pain and multiple tests. The doctor states that this contributed to her job loss.

In the Notice of Appeal dated April 9, 2015, the Appellant writes that it was a wrongful dismissal. She called in to check her schedule with a manager at 12:00pm, then her employer later because she was too sick to work.

At the hearing, the Ministry further described the information available at the time of the reconsideration decision. The Ministry stated that the Appellant's former employer said that absences due to illness were a common occurrence during the Appellant's employment and that there was no doctor's note for the date that she was dismissed. The Ministry learned from the employer that the Appellant reviewed her schedule at 12:00 and she complained that her schedule had been reduced. At 2:15 she called in to say that she was unable to work due to illness. The employer mentioned that she did not appear ill at 12:00. After the Ministry denied income assistance, the Appellant mentioned that she was sexually harassed by a co-worker and said that the employer was lying.

The panel finds that the Appellant was dismissed from her job. On the day she was dismissed,

APPEAL #

February 14th 2015, the panel finds that the Appellant checked with her employer at 12:00pm to find out her schedule, later that afternoon before her scheduled shift started, the Appellant called in sick. The panel also finds that the Appellant had been seen frequently by a doctor during February and March. The Appellant applied for income assistance in March 2015.

APPEAL #

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry's decision that the appellant was ineligible to receive income assistance for March and April 2015 after being dismissed from employment under section 13(1) and 13(2) of the EAA and section 29(3) of the EAR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

The legislation provides the following:

Employment and Assistance Act:

Consequences of not meeting employment-related obligations
13. (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if
(a) at any time while a recipient in the family unit is receiving income assistance or hardship assistance or within 60 days before an applicant in the family unit applies for income assistance, the applicant or recipient has
(i) failed to accept suitable employment,
(ii) voluntarily left employment without just cause, or
(iii) been dismissed from employment for just cause, or
(b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment. (B.C. Reg. 263/2002)
(2) For the purposes of subsection (1),
(a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and
(b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.
(3) The Lieutenant Governor in Council may specify by regulation categories of applicants or recipients to whose family units this section does not apply.

Employment and Assistance Regulation:

Consequences of failing to meet employment-related obligations
29 (1) For the purposes of section 13 (2) (a) *[consequences of not meeting employment-related obligations]* of the Act,
(a) for a default referred to in section 13 (1) (a) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by $100 for each of 2 calendar months starting from the later of the following dates:
(i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation; (B.C. Reg. 304/2005)
(ii) the date the default occurred, and (B.C. Reg. 263/2002)
(b) for a default referred to in section 13 (1) (b) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by $100 for each calendar month until the later of the following occurs:
(i) the income assistance or hardship assistance provided to the family unit has been reduced for one calendar month;
(ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.(B.C. Reg. 263/2002)
(2) The reduction under subsection (1) applies in respect of each applicant or recipient in a family unit who does anything prohibited under section 13 (1) [consequences of not meeting employment-related obligations] of the Act.
(3) For the purposes of section 13 (2) (b) *[consequences of not meeting employment-related obligations]* of the Act, the period of ineligibility for income assistance lasts
(a) for a default referred in to section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:
(i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation; (B.C. Reg. 304/2002)
(ii) the date the default occurred, and (B.C. Reg. 263/2002)
(b) for the default referred to in section 13 (1) (b) of the Act, until the later of the following has occurred:
(i) the family unit has been ineligible for income assistance for one calendar month;
(ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable

efforts to search for employment. (B.C. Reg. 263/2002)…

The Ministry argues that there is insufficient evidence to show that the Appellant was too sick to work on the day that she was dismissed. The Ministry states that although the doctor's note does say that Appellant made frequent visits to his office during February and March and that the Appellant suffered from stomach acid, back pain, and acute anxiety, there is not enough evidence to show that the Appellant was unable to work on February 14th, 2015. Ministry states that the Appellant's former employer said that calling in sick was a common occurrence and that no note was provided to the employer by the Appellant on the day that she was dismissed. The Ministry further argues that although they don't necessarily require evidence of sexual harassment, the Appellant did not mention that she was fired due to sexual harassment until after she was denied assistance and did not provide any corroborating evidence that she attempted to report sexual harassment. The Ministry therefore concluded that the Appellant was dismissed with just cause under section 13(1)(a) of the EAA and was therefore ineligible for income assistance for two calendar months under section 29(3)(a) of the EAR.

The Appellant argues that she was wrongfully dismissed. She argues that she called in to check her schedule then later called in because she was too sick to work.

The panel finds that the Ministry reasonably determined that the Appellant was dismissed from employment for just cause under section 13(1)(a) of the EAA. Although there is evidence that the Appellant visited a doctor frequently in February and March 2015, the panel finds that Ministry reasonably determined that the evidence did not show that she was unable to work on the day she was dismissed, February 14th 2015. The doctor's note indicating stomach acid, back pain and acute anxiety was issued more than one month after the Appellant was dismissed and obtained only after the Appellant was denied income assistance on March 19, 2015. In addition, although the Ministry notes in the reconsideration decision that the Appellant stated that she was sexually harassed at work, this information was not disclosed to the Ministry until after she was denied assistance. The timing of the notifications in combination with the lack of evidence from February 2015 indicated to the panel that the Ministry was reasonable in determining that there was insufficient evidence to show that the employer was lying and that the Appellant was dismissed without just cause.

The panel also finds that the Ministry reasonably determined that the Appellant was ineligible to receive income assistance for the prescribed period under section 13(2)(b) of the EAA because there is no indication from the Appellant that she has dependent children in her family unit.

Finally, the panel finds that the Ministry reasonably determined that the period of ineligibility is March and April 2015 under section 29(3) of the EAR because these are the two calendar months that elapsed from the Appellant's date of application in March.

The panel confirms the reconsideration decision as it was reasonably supported by the evidence.