

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated March 23, 2015 which held the appellant ineligible for income assistance pursuant to section 9 of the Employment and Assistance Act (EAA) due to non-compliance with his employment plan for failing to demonstrate reasonable efforts to participate in his employment program except for medical reasons.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 9.

PART E – Summary of Facts

The information before the ministry at reconsideration included:

From ministry files:

- The appellant is a sole recipient of income assistance with no children.
- The appellant was involved with Employment Program of BC (EPBC) on/off since August 2013. In August 2013 the appellant submitted a medical report confirming that at that time his primary condition (onset 2007) was Addictions (Alcohol/cocaine), and the secondary condition (onset 2001) was depression, OCT [at the hearing the appellant clarified that this should read OCD and stands for Obsessive Compulsive Disorder], and ADD. The doctor reported the appellant's restrictions as unable to work at that time as the appellant was in residential treatment.
- In September 2014 the appellant reported that he had been employed 3 months prior, was currently in treatment, and was leaving the treatment program on October 1, 2014.
- On November 11, 2014 the appellant signed an Employment Plan that included the following provisions:
 - Conditions of the Plan: The appellant will participate fully and to the best of his ability in the activities required by the ministry or contractor.
 - End date of Employment Plan: November 5, 2016.
 - Name of program: Employment Program of BC (EPBC).
 - The contractor's name, address, phone number, email address, website and hours of operations (8am to 5pm).
 - Details: "I will attend all appointments with the EPBC contractor. As a condition of continued eligibility for assistance I will participate in EPBC regularly and as directed by the EPBC contractor. I will work with the EPBC contractor to address any issues that may impact my employability and will complete all tasks assigned ... I will notify the contractor ...if I am unable to attend a session or when I start or end any employment. I understand that if I fail to comply with the conditions of my employment plan, I will be ineligible for assistance....I will declare all income and report any changes to the ministry and will attend all ministry review appointments as required."
- On November 13, 2014 the appellant completed an Action Plan with EPBC. It was identified that the appellant was serving jail time every Friday through Saturday and therefore his ability to work would be limited. The weekend jail time was to be completed by the end of December. The appellant agreed to:
 - Remain in contact with the case manager bi-weekly;
 - Work with the case manager to explore suitable career options;
 - Look for part-time job opportunities;
 - Submit record of job search activity to the case manager.

- EPBC reported that the appellant failed to attend appointments on January 5, 13, 27 and February 2, 12 of 2015.
- The ministry gave the appellant the opportunity to submit confirmation of mitigating circumstances for missed appointments however he did not.
- On February 12, 2015, EPBC advised the ministry that his EPBC file will close due to non-compliance.
- On March 2, 2015 the appellant was denied further assistance.

In his request for reconsideration dated March 18, 2015, the appellant states that

- He has mental disorders including short term memory loss.
- He missed a couple of appointments due to forgetting.
- He missed other appointments because he was sick or had job interviews.
- He tried rescheduling.
- He has lost his home and his belongings.

A fax dated March 19, 2015, from the appellant's homeless shelter, forwarding the appellant's signed and dated request for reconsideration. The cover page included name and address of the homeless shelter.

In his Notice of Appeal dated March 30, 2015, the appellant states that

- He is homeless.
- His life is at risk if he doesn't find a place to live.
- He has had addiction problems.
- Living on the street is making it impossible to find work let alone to shower.

At the hearing the appellant stated that due to his short term memory loss he cannot remember which of the appointments he missed because he was sick and which ones he missed because he had job interviews. His memory loss started long time ago in his youth. He always called the ministry to reschedule either before or after the missed appointment. He was told by the ministry that it was okay and there would be no problem.

He can't get out and look for a job because the shelter has set times for meals, for laundry and for showering.

The appellant's witness stated that she is a worker in a homeless shelter and has been working with the appellant for 2 months. She stated that the shelter fast-tracks homeless people and helps them move forward to get assistance. Being homeless makes it difficult to find a job.

The ministry relied on its reconsideration decision and added the following information:

When the appellant entered the employment plan on November 11, 2015 the conditions of the plan and that failure to comply with the conditions may result in ineligibility were explained. Again this was explained to the appellant when he signed the Action Plan on November 13. The case manager reported the appellant did not follow through with the conditions. There had been numerous

communications and attempts to communicate with the appellant. Phoning and rescheduling does not mean complying; the ministry looks to the case manager for compliance. The ministry suggested the appellant visit an office and request benefits while under appeal.

Pursuant to section 22(4) of the EAA the panel admits oral testimony of the appellant, his witness and the ministry as being in support of the information that was before the ministry at the time of reconsideration. The testimony provides additional details on the appellant's homelessness, missed appointments and attempts to reschedule that tend to corroborate the information available at reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision which found the appellant ineligible for income assistance due to non-compliance with his employment plan for failing to demonstrate reasonable efforts to participate in his employment program except for medical reasons pursuant to section 9 of the EAA was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

The following section of the EAA applies to this appeal:

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*].

The appellant argues that he was unable to attend appointments because he suffers from short term memory loss and forgot to attend; he was also sick or had job interviews. He has lost his home and lives on the street which makes it impossible to keep himself clean and find work. The rigorous homeless shelter schedule prevents the appellant from going out and looking for work. Every time he missed an appointment he called the ministry to reschedule and was assured that there would be no problem with his eligibility.

The ministry argues that the appellant failed to demonstrate reasonable efforts to participate in the Employment Program of BC (EPBC) and his Employment Plan (EP) in accordance with section 9 of the EAA and is therefore ineligible for income assistance due to non-compliance. Section 9 states that a recipient must enter into an employment plan and comply with the conditions of the employment plan. The minister may specify the conditions in an employment plan including, without limitation, a condition requiring the appellant to participate in a specific employment-related program that, in the ministry's opinion, will assist the recipient to find employment or become more employable. That condition is not met if the person fails to demonstrate reasonable efforts to participate in the program, or ceases, except for medical reasons, to participate in the program.

The ministry argues that in January and February 2015 the appellant was not participating as required: he was to contact the case manager bi-weekly but missed 5 scheduled appointments without providing supporting documentation that he was sick or had job interviews. No medical reports were provided to establish that the appellant was medically unable to continue.

The panel finds that there is sufficient evidence that the appellant did not demonstrate reasonable efforts to participate in the EPBC and his Employment Plan under section 9 of the EAA as argued by the ministry; the appellant's Action Plan specified bi-weekly appointments and the appellant failed to attend 5 scheduled appointments in January and February of 2015.

The panel further finds that there is not enough evidence in support of medical exemption; while the appellant reports medical issues he provides no evidence from a medical professional. The panel notes that homelessness is not a legislated exemption for non-participation and it is unclear if the appellant was homeless in January and February 2015.

For these reasons the panel finds that the ministry's decision was reasonably supported by the evidence and is a reasonable interpretation of the applicable legislation; the decision is confirmed.