

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated June 4, 2015, denying the Appellant income assistance due to non-compliance with her Employment Plan (“EP”). The Ministry determined that the Appellant had not made reasonable efforts to participate in an employment program and did not stop participating for medical reasons. The Ministry found that she was therefore non-compliant with the EP pursuant to section 9 of the *Employment and Assistance Act* (“EAA”).

PART D – Relevant Legislation

Employment and Assistance Act - EAA - section 9

PART E – Summary of Facts

The evidence before the Ministry at reconsideration consisted of:

1. An EP signed by the Appellant on October 7, 2013, in which she agreed to participate in an employment program offered by a Ministry contractor (“employment contractor”). The start and end dates were October 7, 2013 to October 31, 2015 and the plan contained the following details:
 - The employment contractor was to contact the Appellant within ten business days to schedule an orientation session.
 - The Appellant agreed to participate in the program as directed by the contractor.
 - She agreed to work with the contractor to address any issues that may impact her employability, and to complete all assigned tasks including any set out in her action plan.
 - She agreed to notify the contractor if she was unable to attend a session or started/ended employment.
 - She agreed to participate with three employment subcontractors upon referral to their programs.
 - She agreed to report all income to the Ministry as well as any changes in income or family composition.

In addition, the plan shows the Appellant’s initials next to the following statements:

- *I am fully aware of my employment plan obligations; and*
- *I am fully aware of the consequences of ineligibility should I be non-compliant with my employment plan.*

Under Acknowledgement, the Appellant agreed to comply with the conditions set out in the plan including any condition to participate in a specific employment-related program. She also understood that:

- *Ministry contractors have the ability to report back on my activities.*
- *I may be required to provide verification of my compliance with the conditions of the plan, including proof of active work search and/or records of attendance and participation in an employment-related program as required by the ministry.*
- *If the ministry refers me to a specific employment-related program, I will participate fully and to the best of my ability in the activities required by the ministry contractor.*
- *If I do not comply with the conditions of this employment plan, the assistance issued to me and/or my family will be discontinued.*

The Ministry explained that the purpose of the EP is to outline activities and expectations for finding employment or becoming more employable. Specific timelines for activities are reviewed regularly, and any changes to the EP require an amendment agreed to by the Ministry. It is important to follow through and advise the Ministry if unable to participate in activities as failure to comply with the EP will result in being found ineligible for income assistance.

2. Information from the Ministry record that indicated the following:

- (a) On January 30, 2015, the employment contractor reported that it was closing the Appellant’s case due to ongoing compliance issues.
- (b) On February 5, 2015, the employment contractor reported the Appellant had not shown up for her appointment on January 28, 2015. The Ministry signaled her income assistance cheque and asked her to call to discuss compliance issues on her file.
- (c) On February 20, 2015, the Ministry found the Appellant ineligible for further assistance due to non-compliance with her EP and advised her of the reconsideration and tribunal processes. Later that

day, it noted that although the employment contractor's case manager had had discussions and sent letters regarding non-compliance, the Ministry had not had a compliance discussion with the Appellant since she signed her EP in 2013. On the basis of administrative fairness, the Ministry referred her back to the employment program, advising that she was required to reconnect with her case manager and fully participate and attend all workshops. The Appellant agreed to do so as soon as possible. The record shows that the Ministry advised her of the consequences of non-compliance and stated it would be monitoring her file.

(d) On April 8, 2015, the Ministry signaled the Appellant's income assistance cheque, noting that she had not contacted the employment contractor as required. The Ministry determined she was no longer eligible for income assistance and sent her a letter. A call was placed to the Appellant and a message left to advise her of the decision.

(e) On April 17, 2015, the Ministry called the Appellant again but there was no answer.

(f) On April 29, 2015, the Ministry spoke with the Appellant and inquired about her missed appointments with the employment contractor. She told the Ministry she had made a new appointment in May and needed her cheque to pay her rent and she has a disabled spouse. The Ministry noted that it had no record of her reasons for non-attendance. The Ministry advised her that her spouse was not added to her file until March 2015 and that he does not have disability status. The Ministry reminded her of the EP requirements and consequences for non-compliance and explained the reasons why her income assistance was denied.

(g) The Ministry noted the Appellant attended the employment program regularly until mid-August 2014. In the following four months she attended twice – on October 3 and December 18, 2014 and there was no evidence to indicate she attended any appointments in 2015 to support that she was making reasonable efforts to participate in the program.

3. A Request for Reconsideration signed by the Appellant on May 15, 2015 in which she cited discrimination provisions from a "Misinterpretation Act" and "Code of Ethics". She stated that she was advised to call the Ministry case manager but was not given the case manager's last name or direct telephone number. The case manager failed to return her phone calls "a few times" and failed to send her a document that was discussed in a phone call of April 29, 2015. She received no courtesy calls, letter, or phone calls from her new case manager and an appointment with her previous case manager was cancelled. The Ministry did not send her the reconsideration package as requested. It was printed on May 15, 2015 when she picked it up at the Ministry office.

4. A hand-written note from the Appellant to the Ministry dated May 15, 2015 in which she requested a detailed list from "the provincial agency of Ministry of Social Development telephone provider".

5. A five-page list ("log sheet") that details the Appellant's appointments with the employment contractor – with status/outcome notations – and also details communication with the Appellant beginning on August 16, 2013 and concluding on January 15, 2015 when the log sheet shows that the employment contractor left a message for the Appellant.

At the hearing, the Ministry explained the coding from the log sheet and the panel admits this information, pursuant to section 22(4)(b) of the EAA as evidence that substantiates the information on the log sheet, which was before the Ministry at reconsideration:

- "OVDC-Attended" means the Appellant the Appellant showed up on time and was there for the full duration of the appointment;
- "Attended" means she was not there for the full duration but attended for more than half an hour, while "No-show" means she did not attend at all or was more than half an hour late for

the appointment;

- “Non-billable-Attended” means that she was extremely late for her appointment and attended
- “Rescheduled” means that she either called or came in person to reschedule. for less than half an hour;

The log sheet indicates the following attendance results for a total of fifty-two appointments from October 8, 2013 to January 16, 2015. The sheet listed seven appointments in 2013; forty-four in 2014; and one in 2015. There were no recorded appointments after January 16, 2015:

- The Appellant was marked “No-show” for thirteen appointments and “Non Billable-Attended” for two appointments. One of these appointments was in 2013; thirteen were in 2014 (with five after August 1); and one was in 2015.
- She was marked “OVDC-Attended” or “Attended” for twenty-six appointments. Three of these were dated after August 1, 2014.
- Ten appointments were rescheduled with three of these recorded after August 1, 2014.
- One appointment (in 2014) was cancelled.

The log sheet also notes that fourteen messages were left for the Appellant between February 20, 2014 and January 15, 2015; she was sent two compliance letters (December 23, 2013 and August 4, 2014) and another letter on November 19, 2014 with the notation “Successful”. In addition, the Ministry had compliance discussions with the Appellant on December 12 and 30, 2014.

6. A handwritten message from the Appellant to the Ministry dated May 15, 2015 to which she attached copies of hydro bills. She stated that on February 20, 2015, the Ministry went over all of the dates the client did not show up for workshops and appointments with the employment contractor. She stated that the Ministry “put words into my mouth” and “put into a quote something I would never say” when it noted that the client said “I can’t have this tying up my time”. The Ministry failed to pay her hydro bill; her power was cut off; her food was spoiled and wasted; and her partner was assaulted which traumatized her emotionally and psychologically, and drained her physically. She was unable to make an emergency phone call and was and was left with no money to live on. She had to travel to another city to borrow money.

Procedural matters

The Appellant attended the hearing with an interpreter for English as a second language. The Ministry brought a witness (a Ministry staff person) to provide additional testimony. When it was the Ministry’s turn to testify, the witness provided his testimony first.

Additional Submissions

Subsequent to the reconsideration decision the parties provided the following evidence:

1. Notice of Appeal signed by the Appellant on June 11, 2015:

The Appellant stated that her application for assistance was denied and her current assistance is reduced (she later confirmed that she is receiving an appeal supplement). The panel admits this information under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made. The Ministry’s information indicated there were financial consequences to non-compliance with the EP. In her

appeal notice, the Appellant also outlined her argument for why the Ministry's decision was unjustified. The panel will address this in Part F – Reasons for Panel Decision.

2. Documentary evidence: The Appellant submitted two sets of documents that she wanted the panel to consider:

(a) Ten pages of telephone bills for 2014 and 2015. She submitted that they show other incoming/outgoing calls for the contractor including a breakdown of dates, times and phone numbers. The Appellant said that they were her phone bills although they were in her other legal name which is her maiden name.

The documents were given to the Ministry to view and the Ministry objected to admitting them as evidence, stating that it was “ten to fifteen pages of irrelevant information” and the Ministry could not see how it had any bearing on the tribunal. The Ministry stated it could not tell from the bills which phone number the employment contractor used to contact the Appellant; also, the bills did not show incoming/outgoing calls.

The panel admits the documents under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made. The panel finds that the phone bills were provided to expand on the information in the log sheet, which was before the Ministry at reconsideration. In the next section, Part F – Reasons for Panel Decision, the panel will assess the weight it is giving this evidence

(b) An empty envelope with a return address sticker from the employment contractor, post-marked November 19, 2014, The Appellant's address, without any unit number, is typed in the middle of the envelope. To the right, a unit number is printed in black pen with a question mark, and at the bottom, in different handwriting, it says “rec'd June 11/15”. The Appellant explained that the envelope is evidence of a clerical error by the Ministry, in support of her argument that there were clerical errors and staff changes that made it difficult for her to communicate with the employment contractor.

The Ministry had no objections to this document, stating that the November 19, 2014 letter from the contractor is noted on page twenty-three of the appeal record. The panel accepts the document as a submission in support of the Appellant's argument, in particular substantiating the Appellant's position in her reconsideration and appeal submissions with respect to Ministry acts and omissions in handling her file.

3. Oral testimony – Appellant

The Appellant provided the following information in support of her reconsideration and appeal submissions:

- She understands the Ministry was saying she had a breach with the employment contractor, but there was a change in her income assistance application when she re-applied with her partner.
- The log sheet does not contain the employment contractor's logo or address; the name of the person(s) who recorded the entries; or a breakdown of the history of incoming/outgoing calls including phone numbers/email addresses even though she requested those details.

- She went to the Ministry office on May 14, 2015 and told them she had not received a copy of the notice of decision or “breach letter” even though she requested it on April 23, 2015 at a previous office visit. The Ministry said they would mail it to her but she did not receive it within five business days. They printed it for her (along with the reconsideration package which she had also requested to be mailed to her) when she attended at the Ministry office on May 14, 2015.
- At the April 23, 2015 office visit, the Ministry told her to call another office but did not provide her with the name/title/phone number of the person she was supposed to call, or ask for her consent to obtain information from the employment contractor as required under the “Personal Information Protection Act”. When she finally spoke to someone, they read the system notes over the phone and told her she was not entitled to income assistance.
- When she attended at the Ministry office on April 23, 2015, she was told to leave because she asked for the Ministry staff person’s first name. She said that she has problems with her ears and people think that she is screaming when she is actually talking in a different pitch. She said that she dealt with an “unethical employee” who would not provide her name and who misinterpreted a policy. She said she was treated like a second class citizen and this caused her insult, injury, and defamation of character.
- She doesn’t plan to stay on income assistance as her experience with the Ministry’s unethical employees has happened so many times. They lose her documents, reject her application, and provide no courtesy calls. The Ministry also did not provide information that she was entitled to an appeal supplement.

In response to questions from the panel, the Appellant stated the following:

- She is not currently receiving income assistance but is getting benefits under appeal.
- When asked whether she is disputing the information on the log sheet or has evidence of attendance that was not listed, she stated that due to a change of managers at the employment program, a lot of appointments were rebooked and sometimes it would take two weeks or a month to get a new appointment when there was a changeover of staff. Further, she said she was sometimes late for an appointment when the appointment was for 1:00 p.m. but the bus arrived at 1:00 p.m. and she then had to walk from the bus. Notwithstanding, she always called when she could not make it, and even when she was late she came in and rebooked. She confirmed that she had not gone to the employment program in 2015.
- When asked if the contractor was supposed to inform her of appointments, she replied that they made contact with her several times to reschedule. They would write to her regarding attendance but she did not receive any further letters because they had her address (unit number) wrong. Their letter was post-marked November 19, 2014 and she received it on June 11, 2015.
- The “No-show” entries on the log sheet could be from when she was five minutes late. Late would be classified as “no-show” even though she was actually there.
- When asked if she had any medical evidence regarding her spouse’s disability or assault, she replied that he had no means of getting to the doctor and providing records. “They might charge him for the doctor’s records” and she “cannot even afford the gas to get there”. The Appellant emphasized that her spouse was “unable to go to the doctor”.
- Her electricity was disconnected on June 1, 2015 because the Ministry did not pay the full hydro bill and it is life-threatening. She now owes for disconnection fees and she has no power at all.

4. Oral testimony – Ministry witness

The witness reviewed the EP process and provided a chronology of events consistent with the reconsideration decision. He added the following testimony:

- At intake, the Ministry discusses what the client is available to do in terms of employment activities and whether there are any medical issues. The Ministry felt the Appellant was ready for the employment program.
- On February 20, 2015, the Ministry decided to give the Appellant a second chance because her previous attendance was good. On April 29, (not May 1 as indicated in the record), the Ministry told the Appellant she was non-compliant.
- The Ministry advised the Appellant of the reconsideration process and appeal benefits but it was difficult to communicate with her because she was cutting the Ministry off during the call. The Ministry also mailed reconsideration/appeal brochures to the Appellant.
- The log sheet is from the employment contractor, recorded from its workers notes and generated by a computer system. Because it is computer generated, it does not include the contractor's logo, staff names, etc.
- The log sheet is provided to the Ministry only when there are non-compliance issues, signaling the Ministry to have a discussion with the client about compliance. The Ministry has no access to the employment contractor's files but when the contractor has someone who is non-compliant, they are required to inform the Ministry.
- In response to a question from the Appellant regarding the procedure for the contractor's change of workers, the witness explained that if the file was already shut down for non-compliance, the new worker would not respond to the client's request for a new appointment because the employment contractor does not get paid for working with the client once the file is closed.

5. Oral testimony – Ministry

At the hearing, the Ministry relied on its reconsideration decision and added the following:

- The reconsideration package was prepared up until the date of the denial; any interactions with the Appellant after April 29, 2015 were not shown.
- The EP process involves two contracts: (i) a contract between the client and the Ministry (the EP), and (ii) a contract between the client and the employment contractor. The contractor individualizes a program tailored to the client's needs. It is in the contractor's interest to tailor the program to make the client independent as quickly as possible because the contractor receives payment from the Ministry for getting the client off income assistance.
- The Ministry looks at the client's barriers to participating in a program and there was no medical evidence that the Appellant had any conditions.
- In response to a question from the panel on how often the Appellant was to have appointments with the employment contractor, the Ministry explained that it is not given that information. The program particulars are between the contractor and the client, and the Ministry only gets information regarding the client's compliance with what the contractor asks them to do.
- In response to another question from the panel, the Ministry explained that the Appellant could not have been referred to another employment contractor if she was having difficulty with a

changeover in staff, as the contractor she was referred to is the one for her area. However, she never told the Ministry that she was having difficulty with this particular contractor.

- In response to a question regarding whether the client has to agree to a release of information by the employment contractor, the Ministry explained that the Appellant signed one and a half pages of releases/consents when she applied for income assistance. Under freedom of information legislation which applies to both the Ministry and the employment contractor, the Ministry had the Appellant's consent to obtain information from the contractor. Further, under the Acknowledgement section of the EP, the Appellant understands she may have to provide verification of compliance with the EP and that the employment contractor has the ability to report back to the Ministry on program activities.

The panel admits all of the oral testimony under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made. The panel finds that the testimony of the Appellant, Ministry witness, and Ministry corroborates the information that was before the Ministry at reconsideration. The Appellant's testimony highlighted her concerns with how the Ministry handled her case, and these concerns were outlined in her reconsideration and appeal submissions. Her testimony also expanded on the scope of and reasons for her EP non-compliance, which were summarized in the Ministry's reconsideration record. The Ministry testimony corroborates its timeline of events as set out in the reconsideration decision, and provides background information about the EP process as well as information substantiating its non-compliance findings and decision-making process.

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry's reconsideration decision of June 4, 2015 which held that the Appellant is not eligible for income assistance because she did not comply with her EP as required by section 9 of the *EAA*, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry determined that the Appellant had not made reasonable efforts to participate in an employment program and did not stop participating for medical reasons.

Section 9 of the *EAA* outlines EP requirements and the following subsections are relevant to the decision under 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.

(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.

Analysis

Section 9(1) of the *EAA* requires the client to enter into an EP when required to do so by the minister, and comply with the conditions of the EP in order to be eligible for income assistance. Section 9(4) requires the client to participate in a specific employment-related program when participation in the program is a condition of the EP. In addition, section 9(4) addresses two separate circumstances that constitute failing to meet the condition of participating in a "specific employment related program". Such program includes the employment contractor's program that the Appellant was referred to.

First, subsection 9(4)(a) raises the question of whether the client made reasonable efforts to participate in the program. To determine whether the Ministry was reasonable in finding that the Appellant did not make reasonable efforts, the panel must consider all of the evidence presented regarding the Appellant's participation; any direction she received regarding what constitutes satisfactory participation; and any evidence that the Appellant was aware of the requirements and the consequences of non-compliance.

Second, subsection 9(4)(b) sets out that ceasing to participate in a specific employment-related program “except for medical reasons” amounts to failure to meet the condition of the EP to participate. As such, the panel’s analysis under subsection 9(4)(b) is limited to determining whether the Ministry reasonably found that the Appellant did not have “medical reasons” for ceasing her participation in the employment program and therefore failed to comply with the conditions of her EP.

Reasonable Efforts to Participate in EP, EAA subsection 9(4)(a)

Appellant’s position

The Appellant argued that the Ministry’s decision that she did not make reasonable efforts to participate is flawed because the Ministry mishandled her case. In her Notice of Appeal, she argued that she has “a right to quality service, fair access to programs and transparent decision-making” and that the Ministry’s denial of income assistance and reduction in her current benefits was unjustified.

The Appellant cited a number of concerns with Ministry processes and procedures including the following acts and omissions, which she argued make the reconsideration decision unreasonable:

- The Ministry followed a “bad precedent” with “hidden agendas and conflict of interest” when it failed to provide the full name and direct phone number of the staff person she was told to contact. The staff person was then rude and unprofessional in failing to return phone calls and mail the Appellant the document she requested.
- The Ministry did not follow its five day timeline or seven day turnaround time for providing her with the decision record. She argued that the decision should therefore be void under “policy”.
- The Appellant was especially aggrieved at the Ministry’s “common error” and “unethical” communication in misquoting her. She argued that they put words in her mouth that she would never say and she was further humiliated when she was asked to leave the Ministry office. In addition, the Ministry’s denial of income assistance has put her on the poverty line.
- The Ministry didn’t obtain her consent to retrieve information from the employment contractor, even though they are required to do so under the “Personal Information Protection Act”.
- She was also concerned that she did not receive the reconsideration package until she went to the Ministry office in May, and they did not give her information about the appeal benefit.

Regarding the specific finding of non-compliance with her EP, the Appellant argued the following:

- There was a change in her application for income assistance when she re-applied with her spouse.
- The log sheet does not contain sufficient detail to show the efforts she made to participate in the employment program. Aside from having no logo or names and phone numbers (which looks unprofessional), the log sheet doesn’t show that she notified the program every time she couldn’t make it or was late. It also indicates “No-show” instead of breaking down the reason, or the times that she arrived five minutes late. She could not get there on time when she had to walk from the bus. She argued that the phone bills she submitted show incoming/outgoing calls for the employment contractor, which were not recorded on the log sheet, and these calls demonstrate her additional efforts to participate.

- Appointments were often rebooked due to staff changes at the program centre and there could be lengthy delays in obtaining a new appointment. Further, she stopped receiving correspondence from the employment contractor because they had her incomplete address; she did not receive their letter for seven months. When she did contact the new case manager, they would not rebook her appointment.

Ministry's position

The Ministry argued that the Appellant was given ample opportunity to demonstrate reasonable efforts to comply with her EP, including a second chance, in February 2015, to improve her participation. The employment contractor also had "several discussions" with the Appellant about compliance but once her participation began its decline in the summer of 2014, it never improved. The Ministry further argued that the Appellant was aware of the requirements that were reviewed with her a number of times. The Ministry worker who set up the Appellant's EP believes very strongly in explaining it to the client and the Appellant both signed and initialed that she understood the requirements and the consequences of non-compliance. As the Appellant was non-compliant, the Ministry had no choice but to deny her income assistance as it is bound by the legislation (EAA section 9). The Ministry stands by its decision to deny her income assistance because she did not follow through with her obligations and responsibilities.

In addressing the Appellant's procedural concerns the Ministry argued the following:

- Regarding rescheduled appointments, an appointment that was rebooked for May 2015 had no bearing on the Ministry's decision given the Appellant's history, at that point, of non-compliance with the employment contractor's program. There was no information provided to indicate the Appellant attended any appointments in January through April 2015 to support that she was making reasonable efforts to participate. Further, she never expressed any concern over the scheduling of appointments due to staff changeovers.
- Regarding the addition of the Appellant's spouse to her file, this did not occur until March 2015, well after the Appellant ceased participating in the program.
- Regarding missing/delayed correspondence, the log sheet indicates that the employment contractor sent her three letters: by e-mail on December 23, 2013 and mail on April 8 and November 19, 2014. Further, the Ministry communicated its decisions by phone and by mail and provided reconsideration and appeal information including brochures. The Ministry noted that the Appellant is currently receiving the appeal supplement.
- Regarding the lack of detail on the log sheet and the Appellant's privacy concerns about information-sharing, the log sheet was computer generated, for the sole purpose of advising the Ministry of the Appellant's non-compliance issues. The Appellant consented to a release of information when she applied for income assistance, and when she signed the EP she acknowledged that she understood that the contractor has the ability to provide information to the Ministry about her participation in the program.
- Regarding the Appellant's concerns about her communications with Ministry staff, the Ministry argued that it was difficult to interact with the Appellant when she interrupted the worker.

Panel's decision

Under EAA subsection 9(4)(a), the onus is on the client to demonstrate reasonable efforts to participate in an employment-related program where participation in such program is a condition of the EP. The condition is not met if the client does not demonstrate reasonable efforts to participate.

What constitutes “reasonable efforts” is not defined in the legislation and the Ministry therefore has the discretion to determine whether the client’s efforts were reasonable. The evidence is that both the employment contractor and the Ministry had compliance discussions with the Appellant on more than one occasion. There is evidence that on February 20, 2015, the Ministry gave the Appellant a further opportunity – referred to as a “second chance” by the Ministry witness - to improve her participation in the EP. The appeal record and the Appellant’s testimony indicate that she was fully aware of the expectations in her EP and that full participation constituted “reasonable efforts”. Further, the Appellant agreed to reconnect with the employment contractor after the most recent compliance discussion (February 20, 2015) but failed to do so.

The Ministry relied on the log sheet to assess the Appellant’s participation in the employment program and determine whether she had demonstrated reasonable efforts. The panel notes that the log sheet was the only verification the Ministry had received. Despite her assertion that the Ministry violated privacy legislation by not asking for her consent to obtain information from the employment contractor, the Ministry noted that the Appellant signed the Acknowledgment section of the EP which clearly indicates that she understood the Ministry could obtain verification of her participation.

While the Appellant argued that the log sheet’s computer-generated shorthand does not provide a complete picture of her participation and exaggerates non-compliance by providing insufficient detail about why she was late or how late she arrived, the panel notes that the log sheet, viewed in its entirety, clearly shows a pattern of increasing non-participation in the program. As noted by the Ministry, the log sheet indicates that the Appellant’s participation was consistent in 2013, but had fallen off in 2014 and ceased altogether in 2015 when the contractor closed the Appellant’s file. The log sheet shows that the Appellant attended only three appointments after August 1, 2014. Three appointments were rescheduled after that date but there is no confirmation that she attended those rescheduled appointments at a later date. In her oral testimony, the Appellant acknowledged that she did not attend the employment program in 2015.

Further, although the panel admitted the Appellant’s additional documentary evidence (telephone bills), the panel gives these documents very little weight. While the phone bills purportedly support the Appellant’s position that she had additional contacts with the employment contractor, and was conscientious in keeping the contractor informed when she could not attend or was late, the Ministry noted that these phone bills do not indicate which phone number belongs to the contractor. The panel notes that three pages of these documents have a breakdown of long distance calls to various locations and that the Appellant’s area code indicates that she would have to place a long distance call to reach the employment contractor’s location. However, none of the calls are to the employment contractor’s city.

In addition, only one of the bills is for 2015, for the period March 20 to April 19, which is after the Appellant ceased to participate in the employment program. The phone bills actually support the Ministry’s position that she failed to contact the employment contractor as required, and the panel

therefore finds that these documents do not confirm that the Appellant made reasonable efforts to participate in the contractor's program, as required under EAA subsection 9(4)(a).

Regarding the Appellant's position that the reconsideration decision should be void because the Ministry treated her unprofessionally and unethically; violated Freedom of Information legislation in her requests for documents; and did not provide her with contact information or ask for her consent under the "Personal Information Protection Act", the panel cannot find anything in her concerns to refute the Ministry's determination that she did not demonstrate reasonable efforts to participate in the employment program as required by EAA subsection 9(4)(a). Both the Ministry and the panel are bound by the legislative criteria which states that If an employment plan includes a condition requiring an applicant to participate in a specific employment-related program, "that condition is not met if the person fails to demonstrate reasonable efforts to participate in the program". The evidence, as noted above, is that the Appellant's participation in the program significantly lessened in 2014 and ceased in 2015 despite reminders and compliance discussions. The panel therefore finds that the Ministry reasonably determined that the participation requirement in EAA subsection 9(4)(a) was not met.

Exemption for Medical Reasons, subsection 9(4)(b)

Appellant's position

Despite her position that the Ministry's findings of non-compliance were exaggerated and that its process and procedures were flawed, the Appellant did not dispute that she ceased to participate in her EP. In fact, she acknowledged that she did not attend appointments with the contractor in 2015. However, she attributed the breach to personal circumstances that left her psychologically traumatized. Her circumstances included problems paying her hydro bill; and her partner's disability and victimization due to an assault. At the hearing, she stated that the situation with her hydro was "life-threatening" because her power has been cut off since June 1, 2015 due to non-payment of a "disconnection fee". She further stated that she was unable to provide medical documentation to confirm her spouse's health conditions because it was impossible to go to the doctor due to the cost involved.

Ministry's position

The Ministry argued that the Appellant did not provide sufficient evidence to establish that she stopped participating in the employment contractor's program for medical reasons. It was not satisfied that she had factors beyond her control that prevented her from participating. The Ministry noted that it assesses clients at intake to determine whether they have any barriers or medical issues that could impact their ability to participate, and none were identified for the Appellant. Further, the Ministry had no information to confirm that the Appellant's spouse was disabled, and it noted that her spouse was not added to her file until March 2015, which is after her problems with attendance intensified (the Appellant attended only two appointments with the employment contractor from October to December, 2014 and none in 2015). As there was no confirmation of "medical reasons" for ceasing to participate, the Ministry found that the Appellant was non-compliant with her EP.

Panel's decision

Under EAA subsection 9(4)(b), "medical reasons" is the only exemption allowed under the legislation for ceasing to participate in a specific employment-related program. For the Appellant to benefit from

this exemption, she would need to provide evidence that she was unable to participate in the contractor's program due to a health condition. While she reported emotional and psychological trauma and that she was physically drained, she did not provide any medical evidence to support her statements.

Further, while she reported that her hydro situation was "life-threatening" because she has had no electricity for a month, she did not provide any medical evidence to substantiate any effects on her health. In any event, her current hydro disconnection as of June 1, 2015 would not count as "medical reasons" for ceasing to participate in the employment program because the employment contractor did not consider her participation after January 16 according to the log sheet. As the Ministry explained at the hearing, the contractor no longer works with a client once the file is closed.

With regard to her spouse's medical conditions, there was no medical evidence to support that her spouse was disabled or the victim of an assault. Given that there was no medical evidence to confirm that the Appellant ceased to participate in the employment program for medical reasons, and that ceasing to participate "except for medical reasons" results in not meeting the condition of participation in the employment program, the panel finds that the Ministry reasonably determined that the Appellant was not eligible for income assistance because she failed to comply with her EP.

Conclusion

The panel finds that the Ministry's reconsideration decision that denied the Appellant income assistance because she did not comply with the EP pursuant to EAA section 9 was reasonably supported by the evidence. The panel therefore confirms the Ministry's decision.