



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of June 3, 2015 in which the ministry denied further income assistance to the appellant for failure to comply with the terms of her employment plan pursuant to Section 9 of the Employment and Assistance Act (EAA) because she failed to demonstrate reasonable efforts to participate in her employment program.

### PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 9

## PART E – Summary of Facts

The appellant is an individual who was in receipt of income assistance as a single recipient until May 2015. At the commencement of the hearing she asked that her advocate and his law student attend by telephone, and consented in writing to release of information.

The evidence before the ministry at the time of reconsideration consisted of the following:

- Employment Plan (EP) signed by the appellant on November 10, 2014 in which the appellant acknowledged that failure to comply with the conditions of her EP would render her ineligible for assistance, and agreed to:
  - attend a first appointment with her Employment Program of BC (EPBC) contractor within 5 business days;
  - participate in EPBC programming regularly and as directed by the contractor;
  - work with the contractor to address any issues and complete all tasks assigned;
  - notify the contractor if she was unable to attend a session or when she started or ended employment; and
  - declare all income and report any changes to the ministry and attend all ministry appointments.
  
- February 20, 2015 hospital emergency department note stating the appellant may be absent from work and school for medical reasons, namely concussion, with the added handwritten note: “Must rest, quiet, low stimulation until headache resolves”.
- BC Ambulance patient care report dated April 27, 2014 stating that the appellant was attended upon for worsening spider bites on her arm. The report also notes “patient is wobbly, feels very unsteady. Stated she had been drinking. Notes she has a medical history of anxiety, depression, recent concussion. Patient dizzy, tachycardia, feels very anxious.” Also “sore tailbone, recent fall”.
- Medical Report-Employability dated May 19, 2015 in which the physician stated that the appellant had a medical condition, namely a sore back arising from an injury on April 20, 2015. The physician also noted that the medical condition was “mild”, with an expected duration of two weeks. Under the section “Restrictions” the physician handwritten note was not legible, but appeared to state decreased “walking” or “working”.
- Regional health hospitalization record dated May 28, 2015, covering the period March 16, 1998 to April 27, 2015. Two ED visits occurred after November 10/14:
  - February 20, 2015 – streaming
  - April 27, 2015 – minor treatment.On both occasions the patient was treated and discharged on the same day.
- Request for reconsideration received by the ministry on May 27, 2015 with Section 3 “Reason for Request for Reconsideration” left blank by the appellant.

The reconsideration decision is summarized as follows:

- December 10, 2014 – appellant attended one appointment with her EP case manager
- January 22, 2015 – the EP case manager advised ministry that the appellant had not attended several appointments, and when contacted by case manager appellant stated she was going to another city for an undetermined amount of time and would not be attending.
- appellant called EP case manager (date unknown) to advise that she was hospitalized and could not attend February 26 appointment because she was recovering from injuries. A medical report was requested.

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- March 23, 2015 – appellant did not attend her EP appointment because she had too many aches and pains.
  - April 21, 2015 – appellant attended EPBC but stated she was medically unable to work. Her case manager requested a medical report. The appellant’s May 2015 assistance cheque was withheld.
  - May 21, 2015 – the appellant submitted a medical report confirming that the appellant had a mild sore back injury with an expected duration of two weeks.
  - May 25, 2015 – the appellant met with the ministry and advised that her two falls were the reason for her non-participation in her EP. The ministry contacted her doctor and confirmed that the appellant experienced a fall on February 20, 2015 and was treated at the hospital but was not admitted. The ministry advised the appellant that she was denied further assistance due to non-participation in her EP.

In her Notice of Appeal dated June 10, 2015 the appellant stated that she is now feeling better, has an appointment with her EPBC case manager on June 17<sup>th</sup>, and is complying with the terms of her EP.

No additional documentary evidence was submitted at the hearing. The appellant stated that she had suffered from cancer for a 10 year period ending in 2013. She also stated that on January 22, 2015 she traveled to another city for approximately 1 ½ weeks because her aunt was in hospital, and that she had also traveled to that city for a 3 day period in November 2014. She also insisted that during the period November 18, 2014 – February 20, 2015 she had attended several appointments as directed by her EPBC case manager. She acknowledged that she had not asked for changes to be made to her EP to address her physical limitations.

The panel finds that the oral evidence of the appellant relating to her history of cancer is not admissible under Employment and Assistance Act Section 22 (4) as it is not evidence in support of the information before the ministry at reconsideration because it is not relevant to the appellant’s participation in her EP and does not corroborate with evidence available at reconsideration. However, the panel finds that the remaining oral evidence given by the appellant at the hearing is admissible because it clarifies the time periods when she did not participate in her EP because she was away and offers evidence to contradict the ministry’s finding that she had failed to attend several sessions between November 18, 2014 and January 22, 2015.

The ministry relied on its reconsideration decision. The ministry representative also stated that the ministry did not have a record of the specific dates of the appellant’s attendance or non-attendance at EPBC appointments, but relied on reports of non-attendance made to the ministry by the EP contractor.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of June 3, 2015 in which the ministry denied further income assistance to the appellant for failure to comply with the terms of her employment plan pursuant to Section 9 of the EAA because she failed to demonstrate reasonable efforts to participate in her employment program.

The relevant legislation is as follows:

### **EAA:**

#### ***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.

The appellant argues that she has provided medical evidence confirming that after February 20, 2015 she was unable to attend all appointments as requested because she suffered two injuries: on February 20, 2015 she fell and sustained a concussion, and on April 27, 2015 she fell and sustained a back injury. She also asserts that she attended several appointments during the period November 18, 2014 - January 22, 2015 and argues that the ministry has no proof that she was non-compliant.

The ministry argues that the appellant did not make reasonable efforts to participate in her EP between November 18, 2014 and February 20, 2015 and did not sufficiently justify why she was not participating during that time, the length of time she was in another city, and the reason why she traveled to that city. The ministry concedes that the appellant needed 1-2 weeks to recover from the concussion she sustained on February 20, 2015 but does not believe that the mild back injury prevented the appellant from participating in the program.

## Panel Decision

EAA Section 9 (1) states that a recipient of income assistance must comply with the conditions of the employment plan in order to be eligible for assistance. Subsection (4) specifies that if an employment plan includes a condition requiring a person 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 or ceases, except for medical reasons, to participate.

The period during which the EP was in effect can be divided into two sections in order to address the issues raised by the appellant:

### 1. November 18, 2014 – February 20, 2015:

The ministry found that the appellant failed to attend several appointments between November 18, 2014 and February 20, 2015. Although the ministry did not provide a record of specific appointments attended or missed by the appellant, it did have a report from the appellant's EPBC contractor on January 22, 2015 that she had failed to attend several appointments and had advised that she was going to another city without providing a reason for her absence or any indication of the length of time she would be away.

At the hearing, the appellant stated that she did attend several appointments between November 18, 2014 and February 20, 2015, and that on January 22, 2015 she traveled to another city for a week and a half to visit a sick aunt.

The panel notes that the appellant did not make these assertions in her request for reconsideration or in her notice of appeal, in spite of the fact that the ministry had conveyed to her its concern that she was not demonstrating sufficient effort to participate in her EP.

In applying this conflicting evidence to the relevant dates and taking into account the surrounding circumstances the panel finds that the ministry reasonably determined that the appellant failed to make reasonable efforts to participate in her EP between November 18, 2014 and February 20, 2015.

### 2. February 21, 2015 – May 25, 2015:

The appellant asserts that she was unable to participate fully in her EP during this period because she suffered two injuries: on February 20, 2015 she fell and sustained a concussion, and on April 27, 2015 she fell and sustained a back injury. On February 26, 2015 the appellant advised the EPBC worker that she was hospitalized and could not attend her appointment. Hospital records submitted by the appellant indicate that she was treated and released on the same day. Twenty-five days later, on March 23rd, she did not attend her appointment because she had aches and pains. On April 21, 2015 the appellant attended EPBC but was medically unable to work. On April 22, 2015 the ministry sent a medical form to the appellant to be completed by her physician. The form was not completed until May 19, 2015. It described a mild sore back with an estimated recovery period of 2 weeks. At no point did the appellant request a change in her EP due to her medical circumstances.

The panel finds that the ministry reasonably determined that the appellant failed to make reasonable efforts to participate in her EP during the period February 21, 2015 – May 25, 2015 because in coming to its determination the ministry took into account a 1- 2 week period following the February

20<sup>th</sup> concussion and acknowledged that she had suffered a mild back injury in April. These excusable absences amount to less than one-third of the February 21-May 25 time period, and do not address the remaining two-thirds of the period in question.

In conclusion, the panel finds that the decision of the ministry to deny further income assistance to the appellant for not complying with her EP because she failed to demonstrate reasonable efforts to participate in the employment program during the period November 18, 2014 – May 25, 2015 was a reasonable application of the applicable enactment in the circumstances of the appellant, and confirms the decision.