

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated May 7, 2015 whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA) for not complying with the conditions of his Employment Plan (EP).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 9

PART E – Summary of Facts

With the oral consent of the appellant, a ministry observer attended but did not participate in the hearing.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Employment Plan (EP) signed by the appellant and dated February 12, 2015. The terms of the EP include provisions that if the appellant is unable to follow through, that he is to advise the ministry. The terms also require the appellant to:
 - Create and keep an up-to-date resume.
 - Apply for work with all possible employers.
 - Seek out and use all available resources to find work, which means looking for posted job openings, seeking out job openings that are not posted, and applying for jobs that may be open in the future.
 - Record all work search actions on the ministry form (SD0077) and submit these to the ministry for each month by the 5th of the next month.
 - Acknowledge that the ministry expectation is that he spends 25 hours minimum per week on work search activities; and,
- 2) Request for Reconsideration dated April 22, 2015.

In his Request for Reconsideration, the appellant wrote that:

- He would like to re-enter an employment plan.
- He would like to work in a kitchen on the oil rigs in another province.
- He needs to find out which courses he needs to take, i.e. Food Safe, Serving It Right, etc.
- He intended to do this in December but the oil market collapsed.

In his Notice of Appeal dated May 19, 2015, the appellant indicated that he disagreed with the ministry's decision and wrote that there are medical reasons and the list of details will follow soon.

At the hearing, the appellant stated that:

- His doctor of 33 years recently retired and he had some difficulty getting his medical records, and had to pay \$25 to get them on May 28, 2015. The records show that he has a number of serious medical conditions. He had meant to get them to the Tribunal and he wonders if he squandered \$25.
- It is not a good situation that he is in. He cannot work hard anymore, his "body says no."
- He has been offered work, but he has had to turn it down because his body just cannot take it anymore. His medical conditions are having an impact on him.
- He has to find employment that is easier on his body but pays well.
- His father is too old to maintain his home and he has to go and help him put his house on the market.
- All the job searching is done on-line these days but he is computer illiterate, he is "old school" and does not like to appear ignorant.
- He has taken the odd job over the past 6 months that involves lighter tasks.
- He signed the EP because he was told that he would be cut off assistance if he did not.
- His doctor knows about his medical conditions. He did not mention these conditions to the ministry at the time of signing his EP, but "they know" about at least one of his conditions.

- He would like to go back to work on the oil rigs, in the kitchen. He would like to take some courses, such as Serving It Right and Food Safe, in order to be prepared for the job.
- He was going to do this, but then the oil market collapsed. It seems to be picking up again because he has a friend who was just hired to do work there.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry's clarified that:

- The appellant's medical information can be provided to the ministry office for the purpose of preparing a new EP, but it was not made available to the ministry when the subject EP was signed by the appellant on February 12, 2015.
- The appellant's medical conditions were not raised until after the date of the reconsideration decision.
- The ministry will take into consideration any barriers that are identified when creating the EP.
- The EP created for the appellant required that he perform an independent work search which included submitting a record of his searches to the ministry by the 5th day of the next month. He was also required to spend at least 25 hours per week on work search activities.
- Although the reconsideration decision referred to a requirement for the appellant to participate in programming provided by a service contractor, this reference was an error. The decision also correctly referred to the requirement to provide work search records as part of a 'Supervised Independent Work Search.'
- The EP also stated that if the appellant was not able to follow through with the requirements, he was to advise the ministry.
- The ministry is able to also consider documented medical conditions while an EP is in effect, but there must be information that shows that the symptoms or impacts from the conditions in some way prevent the person from actively searching for work. The ministry must agree to amend the conditions in the EP for those requirements to change.
- The appellant did not indicate to the ministry that he was actively looking for work by submitting any work search records.
- Since the reconsideration decision was appealed, the appellant is eligible to apply for an appeal supplement which must be repaid to the ministry if he is not successful on the appeal. If he is not successful on the appeal, the appellant must re-apply for assistance and a new EP will be created.

Admissibility of Additional Information

The ministry did not raise an objection to the appellant's oral testimony or the information provided in his Notice of Appeal. The appellant provided additional information regarding his activities after signing the EP and also about his medical conditions. The panel admitted the additional information regarding the appellant's activities as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4)(b) of the *Employment and Assistance Act*. The panel did not admit the additional information regarding the appellant's medical conditions as this was not raised by the appellant in his Request for Reconsideration and was not part of the information and records that were before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's conclusion that the appellant did not comply with the conditions of his EP, and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA) is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstances.

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].

Ministry's position

The ministry's position is that the appellant entered into an EP dated February 12, 2015 and the conditions of his EP require that he submit a work search activities report by the 5th of each month and the appellant did not comply with these conditions. Although the appellant communicated to the ministry that he would submit the work search report by March 31, 2015, the ministry has not received his work search records. The ministry argued that the appellant confirmed with the ministry on April 7, 2015 that he did not have any work search records and he, therefore, did not submit the work search activities record by the 5th of each month, demonstrating that he spent at least 25 hours each week on search activities. The ministry argued that although the appellant stated that he intended, in December 2014, to find out which courses he needs to take to work in a kitchen and the oil market collapsed so that no jobs were available, this does not demonstrate that the appellant actively searched for employment. The ministry argued that the appellant failed to demonstrate efforts to comply with the conditions of his EP and has not shown any mitigating circumstances that prevented him from complying with the conditions of his EP.

Appellant's position

The appellant's position is that he made some efforts with work search activities but he experienced difficulties complying with his current EP, for various reasons, and he would like to re-enter into a new EP. The appellant argued that much of the work search tools are on-line and he is computer illiterate, he needs training for less physical work because his body cannot take that type of work anymore, and he has responsibilities for assisting an elderly parent. The appellant argued that he would like to work in a kitchen on the oil rigs in another province and he needs some coaching on which courses he needs to take and he needs the training to do this work. The appellant argued that he intended to do this in December 2014 but the oil market collapsed at that time, although it seems to be making a recovery and work is becoming available.

Panel's decision

Section 9(1) of the EAA provides that, when the ministry requires, a person must enter into an EP and comply with the conditions in the EP in order to be eligible for income assistance. The appellant signed an EP on February 12, 2015 for an independent work search which included conditions that he spend a minimum of 25 hours each week on work search activities and that he record his monthly work search activities on the ministry form and provide these to the ministry by the 5th day of the following month. Although the reconsideration decision referred to a requirement for the appellant to participate in programming provided by a service contractor, the ministry confirmed that this reference was an error, and the panel notes that the decision also referred to the requirement to provide work search records as part of a 'Supervised Independent Work Search.' The panel finds that the appellant's EP does not include a condition requiring the appellant to participate in a specific employment-related program to assist the appellant to find employment or to become more employable, as covered by Section 9(3) of the EAA, and, therefore, Section 9(4) of the EAA does not apply.

Although the appellant argued that he made some efforts with his work search activities, he also does not dispute the information from the ministry that he did not submit the required work search records and that he confirmed with the ministry on April 7, 2015 that he did not have any work search records. The appellant also argued that there were good reasons why he did not comply with the work search requirements in his EP, including that he is computer illiterate and he requires training to do less physical work, but he also admitted that he signed the subject EP without specifically raising any of these difficulties with the ministry. The EP signed by the appellant included a statement that if he was unable to follow through with the EP, he was to advise the ministry. The panel notes that Section 9(7)(c) of the EAA stipulates that the ministry's decision specifying the conditions of an EP is final and conclusive and is not open to appeal under section 17(3) [reconsideration and appeal rights]. The conditions in the subject EP include a requirement for the appellant to spend 25 hours minimum per week on work search activities and to submit a record of these activities to the ministry by the 5th day of the following month, and the panel finds that the ministry reasonably concluded that this requirement in the appellant's EP was not met and that he did not comply with the conditions of his EP.

Conclusion

The panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the EAA.