

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated September 1, 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), due to his failure to demonstrate reasonable efforts to participate in the employment-related program and with no medical reason for ceasing to participate.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 9

PART E – Summary of Facts

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

- 1) Diagnostic Imaging Report of chest dated April 26, 2012 shows acute fracture of the distal right clavicle as a result of the appellant being assaulted; Report of cervical spine concluding there is no demonstrated fracture or abnormality of alignment; Report of a CT scan of the head included that the right frontal epidural hematoma is minimally larger;
- 2) Consultation Report dated April 26, 2012 with impression of right frontal nondisplaced fracture, epidural hematoma and contusion, left temporal contusion, right clavicular fracture, and history of polysubstance and ethanol abuse at risk for withdrawal;
- 3) Diagnostic Imaging Report dated April 27, 2012 for a CT of the head, with an impression of an unchanged right frontal bone fracture, right frontal epidural hematoma, right frontal and left temporal hemorrhagic parenchymal contusions, scattered areas of mild subarachnoid hemorrhage, subdural hemorrhage along the left tentorium and significant soft tissue swelling, with no new intraparenchymal/extra-axial hemorrhage or evidence of interval ischemia;
- 4) Diagnostic Imaging Report dated May 21, 2012 of the right shoulder showed fracture of the outer clavicle;
- 5) Diagnostic Imaging Report dated June 1, 2012 for a repeat head exam as a result of an assault injury showed mild residual hypodensity of the right frontal and left temporal level, no significant residual extra-axial hematoma on the right and no change in the right frontal fracture;
- 6) Letter dated July 4, 2012 from physician which reported that the results of the appellant's CT scan performed at the beginning of June was compared to his CT scan on presentation and there has been almost complete resolution of the epidural hematoma, right frontal contusion has resolved and the edema has settled down and he is left with the residual area of myelomalacia in the right frontal lobe. The physician wrote that the appellant can do any work activities that do not bring on a severe headache or nausea;
- 7) Occupational Therapy Assessment dated August 13, 2012 including comments that the appellant's test results are "within normal range" and that the appellant reported that he thought his memory and concentration are fine and he thinks he can manage things well;
- 8) Employment Plan (EP) signed by the appellant and dated January 20, 2015. The terms of the EP include to:
 - Take part in the contractor program activities as agreed to with the contractor;
 - Complete all tasks given to him, including any actions set out in his Action Plan, which is a plan developed by the appellant and the contractor which sets out the steps, services, and supports that the appellant agrees are needed for him to find work or become more employable as quickly as possible;
 - Call the contractor if he cannot take part in services of complete steps that the appellant agreed to, or when he finds work.
- 9) Job Search Log Sheet for August 2015;
- 10) Typed note dated August 12, 2015 signed by the appellant that he "would like to withdraw [his] file " from the contractor and have it closed as he thinks he can conduct job search on his own;
- 11) Employment contractor file notes regarding the appellant, in which the job developer (JD) wrote that:
 - On August 10, 2015, he arranged an interview for the appellant at the subject company for August 11, 2015;
 - On August 11, 2015 the manager at the subject company offered full-time employment

for 2 months of temporary position to the appellant with \$11 an hour salary;

- The manager asked the appellant when he could start and the appellant stated that he did not want to work and he did not know why he was sent to the subject company;
- In a follow-up session, the appellant stated that he did not want this type of job as he was looking for a job “in the bush”;
- The case manager for the employment contractor wrote that each time the appellant would attend follow-up sessions he would state that the reason he came was to get his cheque and the appellant asks for bus tickets for personal reasons; and,

12) Requests for Reconsideration- Reasons, dated August 21 and August 28, 2015.

In his Requests for Reconsideration, the appellant wrote that:

- What he said was true. He tries to find work almost every day at the employment contractors.
- He loves to work.
- He has stress with his injury.
- It is not fair for the worker at the employment contractor to say that he goes just to get a cheque. This is not true.
- He goes to the employment contractor 3 to 4 times every week to find a job.
- He may have a job on September 8, 2015.

Additional information

In his Notice of Appeal dated September 4, 2015, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that he had no formal interview and the JD from the employment contractor deliberately pushed him into the subject company for a job.

At the hearing, the appellant provided the following additional documents:

- 1) Business card for the case manager of a local employment contractor’s office;
- 2) Note dated September 21, 2015 in which a physician wrote that the appellant “has a lot of ongoing health problems following a head injury in 2012. He also has ongoing problems with inflammatory bowel disease. These conditions make it impossible for him to work or hold down a job.”
- 3) Two-page resume for the appellant showing skills and abilities in safety and one particular industry; and,
- 4) Job Search Log Sheet for September 2015.

At the hearing, the appellant stated that:

- The job that was offered to him was not on his search criteria given to the employment contractor. He has skills and certification in certain areas, as set out in his resume.
- The JD at the employment contractor was very rude to him and was pushy. He met with the case manager who agreed that the JD is like that sometimes.
- He has always been looking for work and he did his best. It is not true that he went to employment contractor just to get his cheque.
- His Job Search Log sheets show that he was doing his best in August and September.
- He has worked to keep his resume up-to-date, as seen in the copy provided. He does not have a computer so he goes to the office of the employment contractor to work on this.
- He thinks the JD did not want to work with him and was trying to get rid of him. The JD typed up the note dated August 12, 2015 and asked him to sign it, but he did not really know what it

meant.

- He only missed one appointment because he had a bad sore throat. He made another appointment 5 days later when he was feeling better. It is not true that he said he would be traveling to a particular community to visit a friend because he does not even know where that community is.
- He has a third appointment booked with the employment contractor on October 6, 2015, having already met with them on September 9 or 10, 2015 and again on September 23, 2015.
- He has had some problems. He and his wife got divorced in 2013 and he has a hard time because they were married for over 15 years.
- It is not true that he requested bus tickets just to go on personal trips.
- He had an interview for a job on September 8, 2015 but he was not chosen because he has no insurance on his car and he did not meet the residence requirement.
- He loves to work and he has made good income of over \$30,000 per year in previous years. Lately he has been having some “bad luck.”
- He has difficulty because of his fractured skull. He was not able to work for 5 months afterwards but victims’ services only paid him for 1 month.

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

- Although the EP created for the appellant does not specify the number of job search activities required, the usual expectation is for a client to conduct 5 job search activities per day for 5 days per week. The number of activities on the appellant’s Job Search Log Sheets for August and September 2015 does not meet the usual expectation.
- The terms of the appellant’s Action Plan with the employment contractor are not known.

Admissibility of Additional Information

The ministry objected to the admissibility of the business card and note from the physician and did not object to the admissibility of the resume and the Job Search Log Sheet for September 2015. The panel considered that the appellant had raised his job search skills and activities and his interactions with the employment contractor at reconsideration and, therefore, the business card, Job Search Log Sheet and Resume are admitted by the panel as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*. While the appellant wrote in his Request for Reconsideration that he is stressed due to his injury and he included several medical reports, the appellant did not suggest that he could not work as a result of his health conditions and, therefore, the panel did not admit the part of the physician’s note stating that it is impossible for the appellant to work as this does not tend to corroborate information 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, due to his failure to demonstrate reasonable efforts to participate in the employment-related program and with no medical reason for ceasing to participate 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 January 20, 2015 and the conditions of his EP require that he complete all tasks given to him, including any actions set out in his Action Plan agreed to with the employment contractor. The ministry argued that the employment contractor reported that the appellant refused full-time employment on August 11, 2015, he only attended follow-up appointments to receive a cheque, he acknowledged that his request for bus tickets was for personal reasons rather than for job interviews, and he cancelled an appointment with the employment contractor to travel to a community to visit a friend. The ministry argued that, for these reasons, the appellant failed to demonstrate efforts to actively participate in his EP, which is intended to help him become more employable and secure employment. The ministry argued that the medical reports submitted by the appellant are insufficient to demonstrate that the appellant stopped participating in the program for medical reasons as they are dated and do not indicate that the appellant has a medical condition that impacted his participation.

[]

Appellant's position

The appellant's position is that he has always been looking for work as he loves to work and he did his best. The appellant argued that he went to the employment contractor 3 to 4 times every week to find a job and it is not true that he went to employment contractor just to get his cheque. The appellant argued that he has worked to keep his resume up-to-date, as seen in the copy provided, and he does not have a computer so he goes to the office of the employment contractor to work on this. The appellant argued that the job that was offered to him was not on his search criteria given to the employment contractor because he has skills and certification in certain areas. The appellant argued that he had another interview for a job but he was not chosen because he has no insurance on his car and he did not meet the residence requirement. The appellant thinks the employment contractor did not want to work with him and was trying to get rid of him and the JD typed up the note dated August 12, 2015 and asked the appellant to sign it, but he did not really know what it meant.

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 January 20, 2015 and the conditions were for the appellant to take part in the contractor program activities as agreed to with the contractor and to complete all tasks given to him, including any actions set out in his Action Plan for him to find work or become more employable as quickly as possible. The ministry acknowledged that the actual terms of the appellant's Action Plan with the employment contractor are not known.

Section 9(4) of the EAA stipulates that if an employment plan includes a condition requiring a recipient 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 in the program. The ministry acknowledged in the reconsideration decision that "there was no detailed information provided" in respect of the appellant's participating in the program from the time he signed the EP in January 2015 up to August 2015, or for a period of 8 months, and there is no indication of the appellant missing appointments or failing to cooperate during this time. In finding that the appellant failed to demonstrate reasonable efforts to actively participate in his EP, the ministry relied on information from the employment contractor regarding the appellant's activities over the period of about one week: from August 11 to August 18, 2015. The employment contractor reported that the appellant refused full-time employment on August 11, 2015, that he only attended follow-up appointments to receive a cheque, he acknowledged that his request for bus tickets were for personal reasons rather than for job interviews, and he cancelled an appointment with the employment contractor on August 17, 2015 to travel to a community to visit a friend.

The appellant, however, stated at the hearing that the JD at the employment contractor was very rude to him and he thinks the JD did not want to work with him and was trying to get rid of him. At the hearing, the appellant denied the allegations by the employment contractor and stated that he provided search criteria to the employment contractor for a job that fit with his skills and certification as set out in his resume and the job at the subject company did not fit within those criteria, that he went to the employment contractor 3 to 4 times each week to find a job and not just to get his cheque, that the bus tickets were not for personal reasons and he has gone to another job interview but was not successful, and he cancelled the appointment on August 17, 2015 because he was sick and not so he could travel to see a friend in a community he has never heard of.

The Job Search Log Sheets show that the appellant was applying for jobs on a regular basis in both August and September 2015, and that over the period August 10 through August 14, 2015, the week that the employment contractor focused on, the appellant applied for 16 different jobs or about 3 jobs per day. Although the ministry stated at the hearing that the usual expectation is for a client to conduct 5 job search activities per day for 5 days per week, there was no provision in the appellant's EP to establish that this expectation applied to him and the ministry acknowledged that job search "activities" includes updating a resume and other preparatory activities. The appellant stated that he also worked on keeping his resume up to date and he provided a copy of a current resume at the hearing. As the Action Plan is undefined but generally geared to help the appellant find work or become more employable, the panel finds that the ministry was unreasonable in concluding that the appellant failed to demonstrate reasonable efforts to participate in the program over a week when he engaged in job search activities, actively looked for work, secured a job interview, and was offered a job. Whether the appellant failed to accept suitable employment is not the issue on this appeal.

While the ministry argued that the appellant stopped participating in the program and that the medical reports submitted by the appellant are insufficient to show that he ceased participating for medical reasons, the appellant argued that he did not understand the note that the employment contractor prepared for him to sign and he did not want to cease looking for work. The appellant stated at the hearing that he has a third appointment with the employment contractor on October 6, 2015, having already met with them on September 9 or 10, 2015 and again on September 23, 2015. The appellant also stated at the hearing that he went for a job interview on September 8, 2015 but was not successful in getting a job for particular reasons, and the Job Search Log Sheet for September document a number of jobs that the appellant applied for up to September 23, 2015. The medical records provided by the appellant are from 2012 and chronicle a number of injuries sustained in an assault and a physician wrote, in a note dated September 21, 2015, that the appellant "has a lot of ongoing health problems following a head injury in 2012." The panel finds that it is not clear that the appellant ceased to participate in his employment program and the ministry reasonably concluded that there is insufficient admissible evidence to demonstrate that there are medical reasons that would prevent the appellant from participating in his program.

Conclusion

In conclusion, the panel finds that the ministry decision that the appellant is ineligible for income assistance pursuant to Section 9 of the EAA for not complying with the conditions of his EP due to his failure to demonstrate reasonable efforts to participate in the program, was not reasonably supported by the evidence and the panel rescinds the decision. Therefore, the decision is overturned in favour of the appellant.