

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated September 1, 2015 which found that the appellant is not eligible for income assistance for two calendar months because he failed to accept suitable employment, pursuant to Section 13 of the *Employment and Assistance Act* (EAA) and Section 29 of the *Employment and Assistance Regulation* (EAR).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 13

Employment and Assistance Regulation (EAR), Section 29

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 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;
- 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) Job Search Log Sheet for August 2015 including an entry from August 10, 2015 that he applied for a laborer job with the subject company and the result was "too many workers";
- 9) 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 and this position would have led to a full-time permanent position if the appellant performed well;
 - 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, that he was there only because JD sent him;
 - The manager told JD what had happened and not to send more clients like the appellant;
 - 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"; and,
- 10) Requests for Reconsideration- Reasons, dated August 21 and August 28, 2015.

In his Requests for Reconsideration, the appellant stated that:

- The JD with the employment contractor was pressuring him.
- He had an outdoor interview with a guide outfit 2 ½ months ago.
- On August 28, 2015, he signed a form to re-open his file with the employment contractor.
- Due to the lack of a formal interview process and the appearance of many uniformed works present at the subject company, he may have become confused about the fact that he was hired.
- He has been trying to find work almost every day at the contractor's and he did not have an interview as alleged by the ministry. He went back to the subject company on August 19, 2015 and asked for an interview and the representative said he had enough workers.
- The lists from the JD did not meet the appellant's work list or his work standards and he pressured the appellant to work anywhere.
- He is stressed due to his fractured skull and he should be considered eligible for assistance.

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 always pursued finding employment with the employment contractor. He always wrote down his job research and this can be checked.

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:

- He did not have a formal interview with the subject company. If he had an interview, he was not going to be hired.
- The job available at the subject company was not within his search criteria; it was a job inside taking shelves apart. He has skills and special certification in certain areas that he had listed. The job at the subject company was nothing like the jobs he has had in the certain areas.
- The JD at the employment contractor was very rude to him and was pushy. He spoke to the case manager who agreed that the JD is like that sometimes.
- Even though JD says he arranged an interview at the subject company for August 11, 2015, the representative did not know he was coming.
- 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, The ministry also provided evidence at the hearing that:

- The Job Search Log Sheets show that the appellant applied for other laborer jobs in August and September that were similar to the job offered to him at the subject company.

-
- While some employment plans (EP) involve taking basic steps towards employability, the terms of the appellant's EP included looking for work.

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 fractured skull, 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 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 reasonably concluded that the appellant failed to accept suitable employment and that he is, therefore, not eligible for income assistance for two calendar months, pursuant to Section 13 of the EAA and Section 29 of the EAR.

Section 13 of the EAA provides:

Consequences of not meeting employment-related obligations

- 13 (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if
- (a) at any time while a recipient in the family unit is receiving income assistance or hardship assistance or within 60 days before an applicant in the family unit applies for income assistance, the applicant or recipient has
 - (i) failed to accept suitable employment,
 - (ii) voluntarily left employment without just cause, or
 - (iii) been dismissed from employment for just cause, or
 - (b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the recipient fails to demonstrate reasonable efforts to search for employment.
- (2) For the purposes of subsection (1),
- (a) if a family unit includes dependent children, the income assistance or hardship assistance provided to or for the family unit must be reduced by the prescribed amount for the prescribed period, and
 - (b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.
- (3) The Lieutenant Governor in Council may specify by regulation categories of applicants or recipients to whose family units this section does not apply.

Section 29 of the EAR provides in part:

Consequences of failing to meet employment-related obligations

- 29 (1) For the purposes of section 13 (2) (a) [consequences of not meeting employment-related obligations] of the Act,
- (a) for a default referred to in section 13 (1) (a) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each of 2 calendar months starting from the later of the following dates:
 - (i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;
 - (ii) the date the default occurred, and
 - (b) for a default referred to in section 13 (1) (b) of the Act, the income assistance or hardship assistance provided to or for the family unit must be reduced by \$100 for each calendar month until the later of the following occurs:
 - (i) the income assistance or hardship assistance provided to the family unit has been reduced for one calendar month;
 - (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment.
- (2) The reduction under subsection (1) applies in respect of each applicant or recipient in a family unit who does anything prohibited under section 13 (1) [consequences of not meeting employment-related obligations] of the Act.
- (3) For the purposes of section 13 (2) (b) [consequences of not meeting employment-related obligations] of the Act, the period of ineligibility for income assistance lasts
- (a) for a default referred in to section 13 (1) (a) of the Act, until 2 calendar months have elapsed from the later of the following dates:

-
- (i) the date of the applicant's submission of the application for income assistance (part 2) form under this regulation;
 - (ii) the date the default occurred, and
- (b) for a default referred to in section 13 (1) (b) of the Act, until the later of the following has occurred:
- (i) the family unit has been ineligible for income assistance for one calendar month;
 - (ii) the minister is satisfied that the applicant or recipient who committed the default is demonstrating reasonable efforts to search for employment. . . .

Ministry's position

The ministry's position is that the appellant failed to accept suitable employment that was available and offered to the appellant and would enable him to be financially independent. The ministry argued that the appellant has not provided evidence that he is physically or mentally incapable of the type of work offered to him, other than it is not his preference. The ministry argued that the applicable consequence for not accepting suitable employment is ineligibility for 2 calendar months from the date of the default and since the default occurred in August, the appellant is ineligible for September and October 2015 income assistance.

Appellant's position

The appellant's position is that he did not believe that he had a formal interview because the representative at the subject company did not know he was coming and, if he had an interview, he was not going to be hired because there were already too many workers. The appellant acknowledged in his Request for Reconsideration that, for a number of reasons, he may have become confused about the fact that he was hired. The appellant argued that the job available at the subject company was not a "suitable" job because it was inside and involved taking shelves apart and this was not within his search criteria. The appellant provided his resume and argued that he has skills and special certification in certain areas that he had listed with the employment contractor and the job at the subject company was nothing like the jobs he had listed. The appellant argued that he felt pressured by the JD at the employment contractor and the case manager at the employment contractor admitted that the JD can be like that sometimes.

Panel decision

Section 13(1)(a)(1) of the EAA stipulates that, 'subject to the conditions of an employment plan', the appellant is subject to the consequence described in subsection (2) if at any time while receiving income assistance he "failed to accept suitable employment." The appellant's signed EP was not made available on this appeal in order to allow the panel to review the particular conditions to which the consequences in Section 13 are subject in the appellant's circumstances, and to confirm that the appellant was not merely required to take steps towards employability. However, the appellant did not dispute the ministry's assertion that he was required to look for work under the terms of his EP and he provided Job Search Log Sheets for August and September 2015 to demonstrate his job search efforts over this time period.

While the appellant believed he did not have a formal interview with the subject company, the Job Search Activity Log sheet provided by the appellant for the month of August 2015 shows that the appellant applied for a laborer job with the subject company and the result was recorded by the appellant as "too many workers." According to the employment contractor file notes, on August 11, 2015 the manager at the subject company offered the appellant full-time work for a 2-month

temporary position for \$11 per hour. Given the appellant's acknowledgement in his Request for Reconsideration that he may have become confused about the fact that he was hired, and the evidence in both the Job Search Activity Log sheet and the notes by the employment contractor of events on August 10 and 11, 2015, the panel finds that the appellant attended at the subject company and was offered a full-time job for \$11 per hour for a period of 2 months.

The appellant argued that the job available at the subject company was not "suitable employment" because it was inside rather than outdoors, involved taking shelves apart, was not within his search criteria and was nothing like the jobs he had listed since his resume shows he has skills and special certification in other areas. According to the file notes made by the employment contractor, the appellant stated to the JD in a follow-up interview on August 13, 2015 that he did not want the job at the subject company as he was looking for work "in the bush." The ministry argued that even though the job offered to the appellant may not be in his preferred area of work, full-time employment at the rate of \$11 per hour would yield an income over and above the amount of assistance paid to the appellant each month and is "suitable employment" since it would result in the appellant's financial independence.

Although the appellant provided Diagnostic Imaging and Consultation reports indicating that he sustained various injuries in an assault, these are dated in 2012, or over 3 years ago, and do not suggest that the appellant has any current physical or mental limitations to the type of employment he can engage in. As the ministry pointed out at the hearing, the Job Search Log Sheets show that the appellant applied for laborer jobs with other companies in both August and September. In the absence of evidence that the appellant is restricted from working indoors in employment involving general labor skills, the panel finds that the ministry reasonably concluded that the job offered to him, which is full-time employment resulting in the appellant's financial independence, is "suitable employment."

As the panel previously found that there was sufficient information for the ministry to determine that an offer of employment had been made to the appellant on or about August 10, 2015, as well as the terms of the offer, the panel also finds that the ministry reasonably concluded that this is the date of the appellant's default. Since the period of ineligibility for income assistance under Section 13(2)(b) of the EAA lasts until 2 calendar months have elapsed from the date the default occurred, as set out in Section 29(3)(a) of the EAR, the panel finds that the ministry reasonably concluded that the appellant is not eligible for income assistance for two calendar months, specifically September and October 2015.

Conclusion

The panel finds that the ministry reconsideration decision, that the appellant failed to accept suitable employment and that he is, therefore, not eligible for income assistance for two calendar months, pursuant to Section 13 of the EAA and Section 29 of the EAR, was reasonably supported by the evidence and confirms the decision.