

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated September 16, 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 her Employment Plan (EP), due to her 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) EP signed by the appellant dated February 28, 2014. The terms of the EP include provisions requiring the appellant to participate in the Employment Program of B.C. program regularly and as directed by the contractor. She will work with the contractor to address any issues that may impact her employability and complete all tasks assigned including any activities that may be set out in an action plan. She will notify the contractor if she is unable to attend a session or when she starts or ends any employment. She will declare all income and report any changes to the ministry and will attend all ministry review appointments as required; and,
- 2) Request for Reconsideration dated September 1, 2015 with attached handwritten page.

In her Request for Reconsideration the appellant wrote that:

- Although the decision states that she missed an appointment on February 12, 2015, her case manager (CM) emailed on February 3, 2015 and asked if she could come in on February 11, 2015 and replied that sometime on February 12, 2015 would be OK. Since she got no response to confirm, there was no appointment scheduled.
- The decision states that on March 5, 2015 her CM attempted to phone her but found her phone was out of service, and her CM sent an email asking for contact but she failed to respond. Her cable, phone and internet are all through the same provider so that they were all out of service. The CM could have mailed her a letter and not just give up.
- She emailed her resume to her CM and she was told it was fine as it was and did not have anything to suggest.
- She has left messages for the CM “on her machine or at the front desk that went un-answered, so the fault goes both ways.”
- She does not understand why if there was an issue in March 2015, it is not being brought up until September 2015.
- She still really needs help and a chance to set and achieve goals as a productive member of the community.

The ministry relied on its reconsideration decision.

Additional Information

In her Notice of Appeal dated October 7, 2015, the appellant expressed her disagreement with the ministry’s reconsideration decision and wrote that:

- Due to miscommunication, the CM set an appointment that she requested be moved to the following day.
- They missed each other a couple of times and when her phone was cut off, she gave up trying to get a hold of her. She could have sent a letter.

With her Notice of Appeal, the appellant provided the following additional documents:

- 1) Proof of Service on the other tenant at the premises dated October 5, 2015 for a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities;
- 2) Page 2 of the Notice to End Tenancy for Unpaid Rent or Utilities which sets out instructions.

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

-
- 1) Print-out of an email dated February 2, 2015 from the appellant to the CM regarding receipt of her letter and expressing the appellant's desire to keep her file open;
 - 2) Print out of an email dated February 4, 2015 from the CM to the appellant stating she has been trying to reach her and asking her to come in for an appointment on February 11, 2015 at 1:00 p.m.;
 - 3) Print out of an email dated February 7, 2015 from the appellant to the CM stating that she has been busy being productive and requesting that they meet in the afternoon of February 12 instead;
 - 4) Print out of an email dated February 19, 2015 from the CM to the appellant suggesting they try an appointment for February 24, 2015 at 2:30 p.m.;
 - 5) Print out of an email dated February 24, 2015 from the CM to the appellant asking her not to attend the appointment that day because the CM had a family emergency and apologizing for the late notice.

At the hearing, the appellant stated that:

- She had included the eviction notice with her Notice of Appeal to show that she has a roommate and they have pets so if she does not receive income assistance it will impact others beside just her.
- Asked whether there were any other emails between her and the CM, the appellant stated that there are many emails before this time but no emails after the last one on February 24, 2015.
- Prior to that, the CM just kept saying "keep doing what you're doing", to keep sending out her resume and to call people. She completed a few work searches but had not done any since March 2015.
- As can be seen from the emails, there was no appointment set for February 12, 2015 so it is not fair to say that she "missed" an appointment on this date.
- Her service provider for her telephone and internet was down for a period of about 2 weeks.
- She has responded before to letters sent by the CM, but the CM did not send her a letter. It does not seem fair for the CM to "give up" on her.
- She had been checking in with the CM previously but the CM was asking for reports and asked the appellant to bring her resume in. They had a few appointments, but mostly they were in contact through email.
- Contacting the CM was not in the forefront of her mind since her hydro and cable had been cut off and she had other things to deal with. She figured that if the CM cared she would contact her, maybe send a letter. Instead, the CM did not contact her at all and this did not become an issue until August 2015.
- She mentioned a health issue to the CM but the CM did not recommend that she take any action based on that information.
- It does not seem fair that her email and telephone being cut off is reason for the CM to "give up" on her, especially when she knew the appellant's situation.

At the hearing, the ministry stated that:

- The reconsideration decision refers to the EP having been signed on February 28, 2015, which is noted to fall on a Saturday, so there must be a mix-up on the date and a possible typographical error. A review was conducted after one year of the original EP signed on February 28, 2014 and there may have been another document signed in February 2015 but there is no information currently available to indicate one way or the other.

-
- The “details” section of the EP document set out the appellant’s obligations and the consequences for failing to comply with these conditions.
 - There is an excuse from the requirements of an EP if there is a documented medical condition but no confirming information was received by the ministry regarding an inability for the appellant to attend the program due to a medical condition.
 - Up to February 2015, the appellant was doing well in her involvement with the program, with some sporadic contact when the appellant went through some “rocky” times, but there had been no negative reporting to the ministry of the appellant’s failure to attend.
 - When communication broke down between the appellant and her CM after February 24, 2015, the responsibility remained with the appellant to contact the CM. However, the appellant admits that there was no contact by her for 6 months.
 - The ministry has also asked the question why the contractor was not supporting the appellant over this period of time.

Admissibility of Additional Information

The ministry did not object to the admissibility of the print-outs of the emails between the appellant and the contractor and did not object to the admissibility of the tenancy documents attached to the appellant’s Notice of Appeal. The panel considered that the appellant had addressed her interactions with the employment contractor at reconsideration and, therefore, the print-outs of the emails 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 stated that the proof of service and instruction sheet for a 10-Day Notice to End Tenancy were provided to show that she has a room-mate and others rely on her receiving income assistance, this was not raised by the appellant at reconsideration and, therefore, the panel did not admit these eviction documents as they do 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 her EP, due to her 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.

Section 9 of the EAA provides:

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].

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. Under Section 9(3) of the EAA, the ministry has the authority to specify conditions in an EP, including a requirement that the person participate in an employment-related program. Pursuant to Section 9(4) of the EAA, if an EP 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 if the person ceases, except for medical reasons, to participate in the program.

Ministry's Position

The ministry's position is that the appellant failed to demonstrate reasonable efforts to participate in her EP and she has not provided any information of circumstances that prevented her from being compliant with her EP. The ministry argued that the appellant entered into an EP dated February 28,

2014 and, by signing her EP, confirmed that she read, understood and agreed to the conditions specified. It is a requirement in the appellant's EP to complete all tasks assigned by the contractor and notify the contractor if she is unable to attend. The ministry argued that the appellant failed to attend an appointment scheduled with the contractor on February 12, 2015 and failed to respond to requests to make contact in March 2015. The ministry argued that there is no evidence that the appellant made any significant attempt to regularly participate in her EP after February and March 2015.

Appellant's Position

The appellant's position is that there was no appointment scheduled with the CM for February 12, 2015, and both her telephone and internet services were down for a two-week period after that time. The appellant argued that the CM did not send her a letter and did not attempt to make any further contact with her and seemed to have "given up" on her, which does not seem fair. The appellant argued that the CM could have raised an issue earlier than August 2015 and given her an opportunity to respond. The appellant argued that she still really needs help and a chance to set and achieve goals as a productive member of the community.

Panel's Decision

The panel finds that the appellant signed her EP on February 28, 2014 and the EP includes conditions that she will work with the contractor to address any issues that may impact her employability, complete all tasks assigned, and notify the contractor if she is unable to attend a session. Although the ministry stated at the hearing that the appellant may have also signed a document in February 2015, as set out in the reconsideration decision, since February 28, 2015 falls on a Saturday and there is no available evidence of another EP having been signed, the panel accepts that a typographical error was made in the reconsideration decision regarding the year that the EP was signed by the appellant. Based on the chain of email interactions between the appellant and her CM, it is not clear that an appointment had been scheduled by the CM with the appellant for February 12, 2015, and the CM suggested February 24, 2015, which appointment the CM wrote she was unable to attend due to a family emergency. The appellant explained that her telephone and email services were unavailable for a 2-week period in March 2015 and that she could not receive or send communications with the CM during this time; however, the appellant also acknowledged that she did not contact the CM at any time after her telephone and internet services were restored.

The panel finds that, after signing her EP, the appellant failed to re-establish contact with her CM at the contractor after her telephone and internet services had been unavailable in March 2015. To 'participate' is to take part in or to be actively involved in, and the panel finds that the ministry reasonably determined that the appellant failed to make reasonable efforts to participate in the program. The ministry acknowledged that the contractor did not show any efforts on its part to support the appellant from March 2015 to August 2015 but pointed out that the responsibility to ensure regular participation remains with the appellant.

Although the appellant mentioned at the hearing that her CM was aware of a health issue that has an impact on the appellant, the panel finds there is no information provided by the appellant's doctor as to the nature of the appellant's condition, the required treatment, or the associated restrictions in order to demonstrate that there is a medical reason for her ceasing to participate in her program. The legislation requires that the appellant demonstrate reasonable efforts to participate in the program, or to provide a medical reason for ceasing to participate in the program, and the panel finds that the

ministry reasonably concluded, pursuant to Section 9 of the EAA, that the requirements have not been met in this case.

Conclusion

The panel finds that the ministry decision, whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the EAA, was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.