



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated December 8, 2015, in which the Ministry denied the Appellant income assistance (“IA”) under section 9 of the *Employment and Assistance Act* (“EAA”) due to non-compliance with the conditions of her Employment Plan (“EP”). The Ministry determined the Appellant had not participated fully in the Employment Program of BC (“EPBC”) program and there were no mitigating circumstances that would warrant amending, suspending, or cancelling the EP.

PART D – Relevant Legislation

Employment and Assistance Act - EAA - section 9

PART E – Summary of Facts

The evidence before the Ministry at reconsideration consisted of:

1.. An EP signed by the Appellant on May 29, 2015, in which she agreed to participate in an EPBC program offered by an employment sub-contractor (“contractor”). The program dates were May 19, 2015 to May 18, 2017 and the EP contained the following details and requirements:

- The purpose of the EP is to outline activities and expectations toward employment or becoming more employable, and to track the client’s progress toward employment. Any changes to the EP require an amendment agreed to by the Ministry.
- The Appellant is required to meet with the contractor on or before May 29, 2015, take part in program activities agreed to with the contractor, and complete all tasks assigned by the contractor including any actions set out in the Appellant’s Action Plan.
- The Action Plan is developed by the client and the contractor and sets out the steps, services, and supports that the client agrees are needed in order to find work or become more employable as quickly as possible.
- The Appellant is required to call the contractor if she cannot take part in services or complete steps that she agreed to. *Client Reporting Requirements* (frequency and method) are “as per program”.
- The EP references section 9 of the EAA and requires the client to comply with the conditions of the plan in order to be eligible for IA. The conditions of the EP may be reconsidered but cannot be appealed to the Employment and Assistance Appeal Tribunal.
- In signing the EP, the Appellant acknowledged and understood the following conditions:
 - Signing the plan and complying with its conditions, including participation in the contractor’s program, are conditions of eligibility for IA.
 - The contractor has the ability to report to the Ministry on her activities and the Ministry may require verification of her participation in the program.
 - If she did not comply with the conditions of the EP, IA will be discontinued and participation in the EP is not open to appeal.

2. A Request for Reconsideration signed by the Appellant on December 1, 2015 with the following documents attached:

(a) A three page submission containing her argument (to be addressed by the panel in Part F – Reasons). The Appellant noted that an employment program for single parents (“SPEI”), though announced in March 2015, was not in place at the time of her discussions with the contractor. She stated that the contractor did not have any information about how she could proceed with the SPEI or any self-employment programs she was interested in. She stated that she also inquired about an “individualized job search” to meet the Ministry’s requirements and incorporate the volunteer work she was doing in the community, but the contractor had no information on whether she could be a trainee at the groups where she volunteers.

(b) *Appendix A*, an e-mail exchange with the contractor (the Appellant’s case manager and the program director). date range July 16 to November 19, 2015 (“e-mail record”), with communications on the following themes:

Questions regarding Alternative job search arrangements:

In July and October, she inquired about arrangements that would incorporate her volunteer work and allow her to be exempted from the standard "job search forms" and "research" required by the Ministry. She asked how to proceed in order to not be cut off of welfare, if she can "work for a non-profit in a job placement as part of the SPEI program" and whether she has to do "a training program first to get a work placement."

Volunteer activities:

- In July and November, the Appellant outlined her volunteer work including "a very active project" that requires four to five meetings a week in her capacity as a board member. The program director acknowledged the Appellant's volunteer work involves a lot of her time and commended her interest in the SPEI. On July 16, 2015, he advised her to include "all the great things you do for [volunteer project] as part of your job search" as pre-application for SPEI.
- On October 21, 2015, the case manager asked the Appellant to clarify her question about a job placement as part of the SPEI and to also specify what kind of training she is interested in.
- On November 10, 2015, the Appellant assured the case manager that she and other volunteers are submitting funding proposals for paid work.
- On November 19, 2015, the program director again acknowledged the Appellant's volunteer work while explaining that the Ministry expects the Appellant to participate in the EPBC program but the contractor could assist the Appellant with finding work above minimum wage as well as opportunities for single parents.

Appellant's "Action Plan"

- On July 16, 2015, the program director indicated that if the Appellant required training as part of her Action Plan, she would need to complete a job search that is separate from the job search record the Ministry may require. He explained that the contractor "cannot control if welfare requires a job search record" but until the Ministry confirms that the Appellant is not required to participate in a job search, she will need to continue working with the contractor on her Action Plan. He provided some information about the SPEI noting it is separate from the contractor's program and training is not the only option. He stated that as long as the Appellant can set up appointments with the contractor's case manager that fit within her schedule, and mutually agree to an Action Plan, the contractor is "not concerned about participation".
- On November 19, 2015, the program director offered the Appellant resources for "career exploration" and indicated a level of commitment would be needed to attend appointments on site, but the Appellant's commitment did not necessarily need to be full-time. He indicated the case manager could provide her with a copy of her Action to satisfy the Ministry's request for information regarding the Appellant's participation in the contractor's program.
- On November 19, 2015, the Appellant wrote that her career plan is to continue her efforts to be funded for her volunteer work.

Meetings with the Appellant:

- On August 28, 2015, the case manager stated that she and the Appellant did not have their last scheduled appointment since she hadn't heard back from the Appellant.

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- On October 16, 2015, the case manager requested the Appellant to contact a case manager at an EPBC centre.
 - On November 4, 2015, the case manager asked the Appellant to let her know when they can book an appointment to go over all her questions.
 - On November 10, 2015, the Appellant stated she is unable to book an appointment with the case manager because her child has been ill for two weeks and has medical appointments; she needed to take on more responsibilities with her volunteer organization, and she has been helping her significant other through a medical condition. She stated that she received a call from the Ministry who explained that she will not receive her IA cheque on November 18 if she does not follow through with the contractor's program. Her cheque would be held until she got a letter from the contractor indicating whether she has made a job search. She wrote that the Ministry told her that she is better off working in a minimum wage job than receiving IA.
 - On November 18, 2015, the program director indicated the Ministry had asked him whether the Appellant had come in for an appointment yet. He offered to assist the Appellant with obtaining a different case manager (the Appellant had communicated difficulties in connecting with the case manager she was assigned to).
 - On November 19, 2015, the case manager indicated she had been away but would follow up with the Appellant once she received more information from the Appellant or the Ministry. She reminded the Appellant that the contractor is not the decision-maker regarding eligibility for IA.

(c) *Appendix B*, a letter to the contractor from the managing director of a high profile volunteer project, dated November 26, 2015. The director stated that the Appellant has been a volunteer coordinator for the project since 2010. The project runs seven days per week and the Appellant has been a major contributor. The Appellant's duties "require over 40 hours per week of skilled volunteer time" that includes developing revenue streams for the project. While the revenues do not allow for the payment of a hired contractor, the Appellant's activities are crucial for the success of the project and these activities "far exceed in both time and utility of any conventional job search that may be conducted by (the Appellant) at this time."

(d) A letter to the Ministry from the Appellant dated November 23, 2015 in which the Appellant requested an explanation for not receiving her IA cheque for December 2015. The Appellant stated that when she called the Ministry about her cheque, she was told that she had not complied with the contractor's requirements. The Appellant stated that she has been taking reasonable steps towards searching for employment and met with the contractor on November 20, 2015 regarding her job search as well as taking other steps on her own.

3. A letter from the Ministry to the Appellant dated November 24, 2015 regarding non-compliance with her EP. The Ministry stated that the Appellant did not follow through with the EP requirements, including "workshops, job search and training" she was to take part in, as well as not attending the program regularly and keeping in touch with her case manager. The Ministry stated the Appellant was to "search for any and all types of work at all wage points." The Ministry informed her that she is not eligible for IA as she has not completed these requirements,

4. Information from the Ministry reconsideration record as follows:

- The Appellant is a single parent recipient of IA. On May 28, 2015, the Ministry advised the Appellant of her EP, consisting of a referral to the EPBC contractor. The Ministry reviewed her responsibilities, including the obligation to "attend and participate fully in the program and that failure

to do so, without mitigating circumstances, will result in the denial of IA due to non-compliance."

- On September 10, 2015 the Ministry contacted the Appellant as the contractor reported she had not attended her August 13 appointment, had not notified the contractor of her inability to attend, and did not respond to e-mails requesting her to make contact. The Appellant stated she had been ill and also had responsibilities toward ill family members as well as caring for her child; she therefore could not attend the program full-time. She also stated that the contractor's case manager was not providing her with support. The Ministry discussed community resources that may be able to assist her, reminded her of her responsibility to contact the contractor if she was unable to attend, advised that she could request a different case manager, and reiterated that continued eligibility for IA was contingent on attending and participating in the contractor's program. The Appellant advised that she would re-schedule her appointment.
- On November 4, 2015, the Ministry contacted the Appellant to discuss compliance. The contractor reported on October 30, 2015 that the Appellant did not attend a scheduled appointment, was not responding to e-mail requests to make contact, and had no further contact with the contractor. The Ministry noted that the Appellant was not participating in the contractor's program due to "self-imposed barriers", such as being unable to participate in the SPEI "as there is too much paperwork." The Ministry noted that the Appellant was aware that her December IA would be held pending confirmation of her attendance at the program.
- On November 19, 2015 the Ministry advised the Appellant that the contractor reported she had not been attending meetings. The Appellant stated that the contractor did not agree with her work search that consisted of volunteering with several groups that are applying for funding. The Appellant indicated there could be an opportunity for paid work if funding was approved. The Ministry reminded the Appellant that attendance and participation in the contractor's program were mandatory in order to maintain eligibility for IA.

Additional submissions

Subsequent to the reconsideration decision, the Appellant filed her Notice of Appeal to which she attached a blank EPBC dispute resolution form. She indicated receiving the form after the date of the December 8, 2015 reconsideration decision, despite asking for dispute resolution since July 2015.

At the hearing, the Appellant submitted two policy documents for the panel's consideration: **(a)** A copy of the Ministry Service Plan – *Purpose of the Ministry*, and **(b)** a copy of the SPEI information package. The Ministry had no objections to either document, stating that both are open documents; however, the Ministry stated it does not believe that the single parent program information has any bearing on the Appellant's non-compliance with her EP.

The panel accepts all three documents as argument that substantiates the Appellant's submissions that were before the Ministry at the reconsideration. In addition to critiquing the Ministry's employment policies and procedures, the Appellant made submissions on a lack of dispute resolution regarding her volunteer work, and she expressed an interest in fitting her activities into the SPEI.

The panel admits the following oral testimony under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister at the time the decision being appealed was made. The panel finds that the oral testimony of both parties adds more detail to the information in the reconsideration record.

Oral testimony - Appellant

The Appellant attended the hearing with three law students as her advocate was unavailable. In addition to summarizing her argument (which the panel will address in *Part F- Reasons*), the Appellant testified that the Ministry never discussed how to have her EP amended; the local office would not listen to her submissions regarding her efforts to look for work (and told her that the only dispute mechanism was reconsideration and appeal and these were not available unless she was cut off of IA); and she was not provided with the dispute resolution form for EPBC until several days after the reconsideration decision of December 8, 2015..

Regarding the Action Plan that she was required to follow, she testified that despite the Ministry's statements that she was not fulfilling this requirement, an Action Plan was never finalized and was still being discussed. She stated that, in fact, she did not have an Action Plan with the contractor listing the tasks that were required.

In response to questions from the panel, the Appellant explained that she receives a small stipend for her volunteer work but the Ministry does not consider it employment income because it is to cover the expenses she incurs and it works out to only four or five dollars per hour. The Appellant further explained that she has been receiving IA for four years and at one time, the Ministry, the contractor, and representatives from her volunteer project were having meetings to determine whether the volunteer work could be considered as a job search. She testified that there was "misinterpretation and miscommunication over what is a reasonable job search" and although the contractor had a change of policy and said it was not considered work, whether it was accepted as a job search depended on a particular case manager's view.

In response to further questions, the Appellant indicated that she showed up for some appointments with the contractor but not all of them, and over the six month period between May and November 2015, there were four appointments that she did not attend and some of these were due to her family's illnesses as noted by the Ministry. She indicated that the information in the volunteer letter is accurate, regarding activities that require forty hours per week.

Oral testimony - Ministry

The Ministry summarized the reconsideration decision and explained three different types of EP's the Ministry creates for clients:

- "Ninety percent of the time", clients are referred to a contractor's program because the contractor has the funding, resources, and expertise to help the client look for work and get off of IA.
- Other recipients may be required to do a work-search only EP that is supervised by the Ministry and not the contractor.
- The third type of EP is where the client begins with a Ministry-supervised work search, and is later referred to a contractor's program.
- The Appellant's EP was the first type, where she was required to attend the contractor's program from the outset and the conditions of the EP are "final and conclusive".

The Ministry explained that IA is intended "as a last resort and a temporary process", and the Ministry is accountable for expenditures of public funds. Therefore clients have employment-related obligations unless exempted by the legislation (for medical reasons). Further, the Ministry does not "cut people off" because they fail once or twice at following the terms and conditions of their EP. The

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Ministry reminds clients of their obligations, and holds their cheque (as was done with the Appellant) to give the client another chance at compliance before finding them ineligible for IA.

In response to questions regarding how non-compliance is determined, the Ministry explained that every action it takes for non-compliance with an EP is based on information from the contractor. The Ministry stated that the Appellant was found ineligible for IA after the Ministry received “repeated non-attendance/non-compliance reports from the contractor”, and the final straw was when “she indicated she was not going to seek employment outside of her volunteer work.”

The Ministry stated that if an email requested the Appellant’s attendance, then that is what the Ministry would look for and the adjudicator considered all of the emails as well as the volunteer letter as these were part of the record (even if not specifically referenced in the decision). The Ministry explained that it assumes compliance unless there is an adverse report from the contractor. The Ministry explained that in the context of the reconsideration decision, the contractor’s reports could be verbal, over the phone, in writing, or quoted by the Ministry adjudicator from the Ministry’s file notes.

When questioned regarding the Appellant’s Action Plan, the Ministry explained that the Appellant’s obligation under the EP to “complete all tasks” assigned by the contractor may include a “Service Action Plan”. However, no Action Plan was created for the Appellant because she did not attend required appointments with the contractor. Further, the SPEI only came into effect on September 1, 2015 and the Appellant “would still have to start off with her EP and the contractor’s program”.

When asked what “mitigating circumstances” would allow the EP to be amended, the Ministry described the following contexts:

- The client was on a Ministry-supervised work search and is then referred to a contractor’s program for extra support.
- When the client is ill (as supported by a medical record), they may be temporarily exempted from the EP.
- If the client was attending the program regularly, but their attendance suddenly drops off, an amendment could be looked at. The Ministry stated this was not the case for the Appellant as there were repeated reports of missed appointments and non-compliance.

When asked what the Ministry considers “reasonable efforts” as contemplated by EAA subsection 9(4)(a), the Ministry explained that a reasonable effort would be shown if the Appellant made an effort to re-schedule an appointment after missing one, and did not give up on her EP by indicating “she is not going to do anything except her volunteer work”. Regarding volunteer activities, the Ministry stated that the terms of the EP “do not allow replacement of attendance/ participation with volunteer work”.

PART F – Reasons for Panel Decision

The issue to be decided is whether the reconsideration decision of December 8, 2015 in which the Ministry denied the Appellant IA under section 9 of the EAA due to non-compliance with the conditions of her EP was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry determined the Appellant had not participated fully in the EPBC program and there were no mitigating circumstances that would warrant amending, suspending, or cancelling the EP.

Section 9 of the EAA outlines EP requirements, and section 29 of the Employment and Assistance Regulation (“EAR”) was cited by the Appellant:

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.

(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*].

EAR

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:

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- (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,

Analysis

- Section 9(1) of the EAA requires the client to enter into an EP when required to do so by the minister, and comply with the conditions of the EP in order to be eligible for IA. While the Appellant argued in her reconsideration submission that the penalty for non-compliance with the EP is a \$100 reduction in IA (rather than being “cut off welfare” altogether), the panel finds that the Ministry reasonably determined that section 29 of the EAR, cited by the Appellant, does not apply to non-compliance with an EP under EAA section 9. The EAR sanctions are for failing to accept suitable employment, leaving a job without just cause, or being dismissed from employment under EAA section 13 and none of these circumstances apply to the Appellant in the decision under appeal. As explained by the Ministry, the sanction for non-compliance with the EP under EAA section 9 is ineligibility for further IA payments.
- Section 9(4) requires the client to participate in a “specific employment-related program” when participation in the program is a condition of the EP. While the contractor referenced a “separate” job search (including forms) required by the Ministry, the content of the EP and the Ministry’s oral testimony regarding various types of EP’s, confirms that the Appellant was referred to “a specific employment-related program”. She was to “take part in program activities agreed to with the contractor, and complete all tasks assigned by the contractor including any actions set out in (her) Action Plan.” The EP further stipulates that the Appellant was “required to call the contractor if she could not take part in services or complete steps that she agreed to.”

In addition, section 9(4) sets out two separate circumstances that constitute failing to meet the condition of participating in a “specific employment related program”.

- First, subsection 9(4)(a) requires “reasonable efforts to participate in the program” and the client has not met the condition of participating in the program if she “fails to demonstrate reasonable efforts to participate”.
- Second, under subsection 9(4)(b), the client has not met the condition of participating in the program if she “ceases, except for medical reasons, to participate.”

While the Ministry noted that the Appellant reported she could not attend some appointments because of illness, the basis for the reconsideration decision is subsection 9(4)(a) as the Ministry determined the Appellant had “not participated fully” in the EPBC. Accordingly, the panel’s focus will be on the reasonableness of the Ministry decision under EAA subsection 9(4)(a).

Before turning to an analysis and decision under subsection 9(4)(a), the panel will consider two other sections of the EP legislation that relate to the reconsideration:

- Section 9(6) allows the Ministry to amend, suspend or cancel an EP at its discretion (“may amend...”). The Ministry, citing the Appellant’s “self-imposed barriers” and “repeated non-attendance”, found there were no mitigating circumstances that would warrant amending, suspending, or cancelling the EP. At the hearing, the Ministry provided examples of mitigating circumstances including consistent attendance followed by a sudden drop off in participation. The record does not evidence any missed appointments with the contractor prior to August 13, 2015 and

the Appellant argued that the Ministry should have found that her family responsibilities, volunteer activities, and unresolved dispute with the contractor (regarding what constitutes a reasonable job search), were mitigating circumstances. However, as the legislation does not set out a test for the Ministry to meet in deciding whether to amend the EP (or obligate the Ministry to amend it), the panel finds that the Ministry reasonably exercised its discretion under section 9(6) in not amending, suspending, or cancelling the EP.

- Section 9(7) limits a client's right to appeal certain aspects of an EP. The panel will offer some explanation as the Appellant expressed her confusion over this section:
 - Subsection 9(7)(a) precludes the Appellant from appealing the Ministry's requirement to have her enter into an EP. Therefore, her arguments with regard to being "forced" to sign the EP "because "if you don't they cut you off", will not be assessed by the panel.
 - Subsection 9(7)(c) precludes the Appellant from appealing the conditions of the EP; for example, the condition to participate in the contractor's program in order to be eligible for IA. While the Appellant expressed her disagreement and dissatisfaction with the Ministry's processes and procedures, her arguments on appeal also focused on compliance with her EP and whether she was making reasonable efforts to search for work. The panel notes that none of the provisions in EAA section 9(7) preclude the Appellant from appealing the Ministry's finding of non-compliance.
 - Subsection 9(7)(b) does not apply to the Appellant's circumstances because the Ministry did not amend (or suspend or cancel) the Appellant's EP.

Reasonable efforts to participate in employment-related program, EAA subsection 9(4)(a)

To determine whether the Ministry was reasonable in finding that the Appellant did not demonstrate reasonable efforts to participate in the contractor's program, the panel must consider all of the evidence presented regarding the Appellant's participation including any direction she received regarding what constitutes satisfactory participation, and evidence she was aware of the requirements.

As noted earlier, the Appellant provided argument around the "procedural fairness" of the Ministry's reconsideration decision. In her Notice of Appeal, she argued that the Ministry's decision "violates procedural fairness" because the Ministry found her ineligible for IA without allowing her to resolve the "job search issue" with the contractor regarding recognition of her volunteer work as a component of the program. While the Appellant's EP contemplates her endorsement of specific activities, including program activities "agreed to with the contractor" and an Action Plan that sets out the steps, services and supports "that the client agrees are needed", there is no provision for dispute resolution in either the EP or the EAA - section 9. In any event, the Ministry did not address dispute resolution regarding what constitutes a reasonable work search, and instead assisted the Appellant with her service quality issues by giving her the EPBC's direct-line to inquire about obtaining a new case manager.

In terms of specific tasks and activities the Appellant was required to follow through on in order to demonstrate reasonable efforts to participate in the contractor's program, the EP states that she was required to meet with the contractor on or before May 29, 2015, complete all tasks assigned by the contractor (including the actions in her Action Plan), and call the contractor if she could not take part in services or complete steps.

Regarding the May 2015 obligation, the Appellant noted in her submission for the reconsideration that she met with the contractor in May. The Ministry does not dispute that a meeting with the contractor took place in May 2015 and the panel finds, as a fact, that the Appellant complied with that condition.

Regarding the tasks assigned by the contractor and actions in the Appellant's Action Plan, neither the EP nor the reconsideration record includes a record from the contractor listing specific tasks or activities, except for the clause in the EP that requires the Appellant to call the contractor if she cannot take part in services or complete steps that she agreed to. The Ministry submitted that the Appellant was required to "participate fully" in the contractor's program by maintaining contact with the case manager, completing assigned tasks "such as work search requirements", and attending meetings. The Ministry indicated in its November 24, 2015 letter, that the Appellant was supposed to follow through with the "workshops, job search and training" she was to take part in; attend the program regularly, and keep in touch with her case manager. In this letter, the Ministry further stated that the Appellant was required to "search for any and all types of work at all wage points."

The Ministry argued that the Appellant failed to comply with these aforementioned tasks and activities based on the following reports from the contractor, as well as reminders from Ministry staff.

- On August 13 and September 10, 2015, the contractor reported that the Appellant missed her August 13 appointment without notifying the contractor or responding to email requests to make contact.
- On October 30, 2015, the contractor reported that the Appellant continues to not participate in the program despite e-mail confirmation of a scheduled appointment which she did not attend. The contractor reported "no further contact" from the Appellant.
- On November 4, 2015, the contractor reported that the Appellant was not attending scheduled meetings or responding to e-mail requests to make contact. The program director advised that they have attempted on several occasions to discuss participation and her volunteer work and work around her volunteer schedule; however, the Appellant has refused to participate in the program and has not attended any appointments since August and the contractor was closing her file for non-participation.
- On November 24, 2015, the contractor reported that the Appellant was not seeking employment outside of her volunteer work.
- On September 10 and November 4, 2015, the Ministry reminded the Appellant of the requirement to participate and the consequences of non-compliance, and in November, indicated it was holding the Appellant's IA cheque unless the Ministry received confirmation from the contractor that she had reconnected with the program.

The Ministry argued that the Appellant was limiting her job search "to fields connected with (her) volunteer work", and has "not explored other suitable types of employment". The Ministry noted the e-mail exchange between the Appellant and the contractor and submitted that the e-mails all appear to address the Appellant's lack of participation.

The panel notes that there is no record of appointments and no attendance or log sheet in the reconsideration record and there is conflicting evidence regarding how many appointments the Appellant missed without calling the contractor, and whether she maintained contact with the contractor. In particular, there is no evidence in the record confirming the Appellant missed any appointments or failed to participate in the contractor's program prior to August 13, 2015. Further, while the Ministry reported that the contractor's information indicated the Appellant attended no appointments after August 2015 and the contractor was closing her file, the e-mail exchange evidences communications with the contractor for most of November 2015, and in her letter to the

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Ministry of November 28, 2015, the Appellant indicated she met with the contractor on various occasions including November 20, 2015 regarding her work search.

The Ministry reconsideration record indicates the Appellant missed two appointments for specified dates, without informing the contractor: her appointment on August 13, 2015, and a confirmed appointment in October. In addition, the record indicates the Ministry twice reminded the Appellant of her obligations (September 10 and November 4, 2015) and held her cheque in November pending confirmation she had reconnected with the contractor. The e-mail exchange indicates that on at least one occasion, (November 10, 2015), the Appellant notified the case manager that she was unable to attend an appointment - due to family illness and extra duties for her volunteer project.

While the Ministry's narrative paints a more serious pattern of non-compliance citing reports of generalized non-attendance and non-participation, the e-mail exchange indicates the contractor was still inviting the Appellant to make appointments in November 2015. Throughout November as well, the Appellant and the contractor participated in ongoing discourse about what tasks and actions will be required. On July 30, August 28, and November 4, 2015, the contractor contacted the Appellant to set up meetings/ appointments, to not only re-schedule a missed appointment but to also "go over all your questions". On November 19, 2015, the case manager indicated she would follow up with the Appellant once she received more information from the Appellant or the Ministry,

In addition, the contractor communicated on more than one occasion that the Ministry may have different participation requirements from the contractor. On November 18, 2015, the program director offered to provide the Appellant with a copy of her Action Plan to satisfy the Ministry's requirements. The Appellant acknowledged that she missed four appointments between May and November 2015 and argued that she was nonetheless making reasonable efforts to participate in the program as she was asking questions about employment options and "trying to fit into the SPEI" to work out a solution with her volunteer work. The Appellant argued that she has been taking reasonable steps toward employment both with the contractor and on her own, and that her volunteer work should constitute reasonable efforts to participate in the program as it fulfills both a job search and training function.

In her reconsideration submission, she provided the Ministry with statistics on how volunteer work can lead to employment and she attached the volunteer letter (*Appendix B*) that states that while the project is currently without funding for a paid coordinator, the Appellant's volunteer work more than constitutes a job search. The Appellant further indicated she has been preparing funding proposals for her volunteer projects, including line items for paid positions. She argued that the Ministry has misrepresented her communications by saying she is not interested in finding work because of her volunteer activities.

The e-mail record, which the panel notes is the only record in the decision from the contractor itself, indicates the Appellant communicated with the contractor in July, October, and November 2015 regarding her questions, and options for having her volunteer work recognized as fulfilling program requirements. The panel notes that the EP is silent on whether volunteer activities can be recognized as part of the program. While the Ministry stated at the hearing that the "terms of the EP do not allow replacement of attendance/participation with volunteer work", this is not confirmed in the EP, or in any record from the contractor. Further, while the Appellant reported that she had an unresolved dispute with the contractor over recognition of her volunteer activities as the contractor's policy had changed, the e-mail exchange indicates that the program director was supportive of the Appellant's volunteer

work and willing to work around her schedule and explore program options to incorporate her volunteer activities.

Regarding the weight the panel gives to the evidence, the panel considers the e-mail exchange to be more reliable than the Ministry's narrative as the narrative is not backed by records from the contractor. While the e-mails are not focused on compliance with program requirements per se, they clearly indicate that the tasks required by the contractor were still being worked out. Further, some of the tasks the Ministry found the Appellant non-compliant with, such as not completing workshops and training, were still in progress. The case manager was still looking at what type of training the Appellant was looking for, as evidenced by her October 21, 2015 e-mail to the Appellant.

Panel decision

Under EAA subsection 9(4)(a), the onus is on the client to demonstrate reasonable efforts to participate in an employment-related program where participation in such program is a condition of the EP. The condition is not met and the client is ineligible for IA if the Ministry finds they have not demonstrated reasonable efforts to participate in the program.

What constitutes "reasonable efforts" is not defined in the legislation and the Ministry therefore has discretion to determine whether the client's efforts were reasonable. As noted earlier, the Ministry relied on reports from the contractor to assess whether the Appellant had demonstrated reasonable efforts to participate in the program.

Based on the totality of the evidence that indicates the Appellant and the contractor were still working out the details of her participation in the program and exploring options for training and work placements beyond mid-November 2015, the panel finds that the Ministry was unreasonable in making a final determination at reconsideration that the Appellant had failed to demonstrate reasonable efforts to participate in the contractor's program. The evidence does not confirm the repeated pattern of non-participation, or cessation of involvement with the program that the Ministry described.

Conclusion

The panel finds that the reconsideration decision, in which the Ministry denied the Appellant IA under section 9 of the EAA due to non-compliance with the conditions of her EP, is not reasonably supported by the evidence. The panel rescinds the reconsideration decision pursuant to section 24(2)(b) of the EAA, and refers the matter back to the minister for a decision as to amount.