

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated December 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 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 appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

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

- 1) Client Connect notes for the period September 2013 through June 2014;
- 2) Employment Plan (EP) signed by the appellant dated November 27, 2013;
- 3) Action Plan dated January 24, 2014;
- 4) Letter dated May 27, 2014 to the appellant in which the ministry advised she was not eligible for income assistance for failing to follow through with the activities in her EP;
- 5) EP signed by the appellant dated August 8, 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;
- 6) Undated letter from addiction program stating in part that the appellant attended her appointment at the service provider today and she is scheduled to attend a resume workshop on December 3, 2014;
- 7) Letter dated March 23, 2015 to the appellant in which the ministry stated that her cheque will be held until an EP review has been conducted; and,
- 8) Request for Reconsideration dated November 23, 2015 with attached handwritten pages.

In her Request for Reconsideration the appellant wrote that:

- She has lived on the street and has been clean but is recovering from drug and alcohol addiction.
- She moved from a previous residence because of mold and severe plumbing problems and no mail delivery from 2012 to 2014 so she had no choice but to move with a person she knew, who was addicted to drugs, so she moved again on February 15, 2015.
- Moving put a big financial burden on her and she lost everything she owned in storage as she was not able to pay the storage fees.
- Her new room-mate was also addicted to drugs and did not pay the rent and the hydro was shut off twice.
- With her health issues, she goes day-by-day and 95% of the time depends on how she is in the morning. It has caused her to miss schooling that she has wanted to complete.
- She is in the process of looking for quiet and affordable housing for herself.
- Finding her in non-compliance will only put her on the street again since she has no parents and only an elderly uncle with whom she stays most of the time. Her uncle's landlord said she can only stay until November 23, 2015 and she has still not found affordable housing.
- She will submit written letters from her doctor and friends and family. She is in the process of finding a new doctor because her previous doctor is no longer practicing.
- Her medical conditions are sciatica nerve displacement which causes her not to be able to walk, stand, sit for any length at a time and no lifting whatsoever. She also has chronic obstructive pulmonary disease (COPD) and she has had to use 2 inhalers to help for the last 10 years.

In her Notice of Appeal, the appellant wrote that the ministry does not realize the severity of her health issues; drug and alcohol past issues.

The ministry relied on its reconsideration decision as summarized at the hearing. The ministry clarified at the hearing that the EP that the appellant entered into in August 2014 was with a service provider that is geared towards helping clients overcome basic barriers to employability, such as finding housing or obtaining counseling.

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 information of circumstances that prevented her from being compliant with her EP. The ministry argued that the appellant entered into an EP dated August 8,

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 contractor reported on March 23, 2015 that there had been no contact with the appellant since November 26, 2014, attempts to contact her had been unsuccessful and she had frequent "no shows." The ministry argued that the contractor reported on November 3, 2015 that the appellant failed to attend appointments scheduled with the contractor on June 18 and October 6, 2015. The ministry argued that the contractor gave the appellant multiple chances to improve her participation, but it is not reasonable effort to attend 3 times in 15 months and the appellant did not show any improvement. The ministry acknowledged that the appellant's asthma has been confirmed but it has not been established that it prevents her from participating in the program.

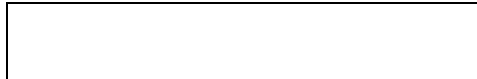
Appellant's Position

The appellant's position is that she has had many challenges with having to move once because of problems with her previous residence and then again in February 2015 because of problems with a room-mate who was addicted to drugs. The appellant argued that moving put a big financial burden on her and she is staying with her uncle on a temporary basis and in the process of looking for quiet and affordable housing for herself. The appellant argued that with her health issues, she goes day-by-day and 95% of the time depends on how she is in the morning and it has caused her to miss schooling that she has wanted to complete. Her medical conditions are sciatica nerve displacement which causes her not to be able to walk, stand, or sit for any length at a time and to not be able to lift at all, and she also has COPD. The appellant argued that finding her in non-compliance will only put her on the street again since she has no parents and only an elderly uncle.

Panel's Decision

The panel finds that the appellant signed her EP on August 8, 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. The panel finds that, after signing her EP, the appellant failed to attend several appointments with the contractor, including those on June 18 and October 6, 2015, and the contractor had been unable to contact the appellant over several months. The appellant did not dispute that she had missed appointments with the service provider but argued that she has had many challenges with finding reliable housing and with severe health issues. As the ministry clarified at the hearing, the service provider that was working with the appellant is geared to helping clients with basic barriers, such as finding appropriate housing. 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.

Although the appellant wrote in her Request for Reconsideration that she has sciatica and COPD and the ministry acknowledged that the appellant's asthma had been confirmed, there was no further medical information provided on the appeal. 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.