

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated December 11, 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 initial hearing was adjourned to allow the appellant an opportunity to meet with his doctor and obtain a letter and more information confirming how his health problems have affected his abilities.

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

- 1) Action Plan dated October 6, 2014 refers to “Medical Assessment Report” and includes that the appellant agreed to meet the contractor every two weeks and to supply his job search record;
- 2) Employment Plan (EP) signed by the appellant and dated September 25, 2014. The terms of the EP include to:
 - Take part in the contractor program activities as directed by the contractor;
 - Complete all tasks given to him, including any activities set out in his Action Plan;
 - Call the contractor if he is unable to attend a session, or when he finds work; and,
- 3) Requests for Reconsideration- Reasons, dated December 7, 2015.

In his Requests for Reconsideration, the appellant wrote that:

- He is engaged in general housekeeping and cooking for his elderly mother on a daily basis.
- He has poor health, including back and shoulder problems as a result of being hit by a car, and he was taken by ambulance to the hospital.

Additional information

In his undated Notice of Appeal, the appellant expressed his disagreement with the ministry’s reconsideration decision and wrote that he is still looking after his elderly mother who requires daily care and he is still under the care of a cardiologist.

At the hearing, the appellant stated that:

- He obtained a letter from his doctor but was not able to get a copy to either the ministry or the Tribunal prior to the hearing. The letter is titled “Medical Certificate,” dated February 5, 2016 and signed by his family doctor.
- His doctor wrote that he finds that the appellant continues to be unable to work due to chronic right shoulder pain, which is worse with activity. He recently developed left chest wall pain which was evaluated in hospital, is continuing to reduce his activity levels, and which he expects will gradually resolve. He expects the appellant’s right shoulder symptoms to persist on a permanent basis.
- He has been unable to work and unable to do anything. Almost every time, he talked to the counselor at the employment contractor about his situation.
- He is not 100% sure what happened with the appointments on June 8 and June 25, 2015.
- He injured his right shoulder 3 years ago and has been seeing his doctor ever since. He has given him 4 bottles of medications he takes.
- His chest pains started after exertion in December 2015 and, after having tests done in hospital, he is following up with his doctor.
- He is injured and cannot work unless he is retrained.

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

- The ministry has not received medical documentation to confirm the nature of the appellant’s

medical problems.

- When the appellant signed the EP in September 2014, there was no reason given for not being able to participate.

Admissibility of Additional Information

The ministry objected to the admissibility of the information contained in the doctor's letter dated February 5, 2016, as read by the appellant. The panel considered that the appellant had raised his poor health, including back and shoulder problems, at reconsideration and, therefore, the information contained in the letter providing the status and prognosis for the appellant's conditions is 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*.

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 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 EAA. The ministry argued that the appellant entered into an EP dated September 25, 2014, and the conditions of his EP require that he take part in the contractor program activities as directed by the contractor, complete all tasks given to him, including any activities set out in his Action Plan, and contact the contractor if he is unable to attend a session. The ministry argued that the appellant missed appointments on January 13, February 23 and April 8, 2015, and the service contractor advised on May 26, 2015 that there would be zero tolerance for missed appointments, and the appellant missed appointments on June 8 and June 25, 2015 and stated that he had to take his mother for appointments. The ministry argued that on October 30, 2015 the service provider stated that there had been no contact with the appellant since prior to June

2015, and the appellant advised the ministry in November 2015 that he had been attending another program but the service provider was not aware of this program and it was not part of the appellant's action plan. The ministry argued that, for these reasons, the appellant failed to demonstrate efforts to actively participate in his EP and there were no medical reports submitted by the appellant to demonstrate that he stopped participating in the program for medical reasons.

Appellant's position

The appellant's position is that he was unable to participate fully in his EP because of his obligations to care for his elderly mother and because of his own poor health. The appellant argued that he is engaged in general housekeeping and cooking for his elderly mother on a daily basis. The appellant argued that he has poor health, including back and shoulder problems as a result of being hit by a car, and he was taken by ambulance to the hospital. The appellant argued that his doctor has confirmed in the "Medical Certificate" dated February 5, 2016 that he finds that the appellant continues to be unable to work due to chronic right shoulder pain, which is worse with activity, and he expects the symptoms to persist on a permanent basis. The appellant argued that his doctor also confirmed that he recently developed left chest wall pain which was evaluated in hospital, is continuing to reduce his activity levels, and which he expects will gradually resolve. The appellant argued that he is injured and cannot work unless he is retrained.

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 September 25, 2014 and the conditions were for the appellant to take part in the contractor program activities as directed by the contractor, complete all tasks given to him, including any activities set out in his Action Plan, and to contact the contractor if he is unable to attend a session. The panel finds that, after signing his EP, the appellant failed to attend several appointments with the contractor, including those on January 13, February 23, April 8, June 8 and June 25, 2015, and had advised the contractor that he missed the appointments in June 2015 to take his mother to appointments. The appellant did not dispute that he had missed appointments with the service provider but argued that he has had many challenges with caring for his elderly mother on a daily basis; however, there was no evidence before the panel that the appointments for the appellant's mother could not be changed. 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 appellant obtained a "Medical Certificate," dated February 5, 2016 from his family doctor, the contents of which the appellant read at the hearing, and his doctor wrote that he finds that the appellant continues to be unable to work due to chronic right shoulder pain, which is worse with activity, and he expects the appellant's right shoulder symptoms to persist on a permanent basis. The appellant stated at the hearing that he is injured and cannot work unless he is retrained. While the doctor confirmed that the appellant is unable to work, he does not provide information as to the specific restrictions associated with the chronic right shoulder pain, or the available treatments, in order to demonstrate that there is a medical reason for the appellant having ceased to participate in his program, which includes working towards employability. The doctor also confirmed that the appellant recently developed left chest wall pain, which the appellant stated began in December 2015, and while the chest pain is continuing to reduce the appellant's current activity levels, the doctor expects the chest pain will gradually resolve and the panel notes the injury occurred after the

time of the appointments missed with the contractor. 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.