



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of January 5, 2016 which denied income assistance (IA) to the appellant under Section 9(1) of the Employment and Assistance Act (EAA) because he had not complied with the terms of his employment plan (EP), specifically because he failed, without medical reason, to demonstrate reasonable efforts to participate in his employment-related program, as required by Section 9 (4) of the EAA.

### PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 9

## PART E – Summary of Facts

The ministry was not in attendance at the hearing. After determining that the ministry had been notified, the hearing proceeded under Section 86(b) of the EAR.

The appellant is a sole recipient of income assistance with no dependents.

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

- EP signed by the appellant on June 24, 2015 in which the appellant acknowledged that failure to demonstrate reasonable efforts to participate in his EP would render him ineligible for IA, and in which he agreed to:
  - attend a first appointment with his Employment Program of BC (EPBC) contractor within one week;
  - take part in EPBC program activities as agreed to with his EPBC contractor;
  - complete all tasks assigned, including any actions set out in his EPBC action plan;
  - call the EPBC if he could not take part in services or complete steps to which he had agreed;
  - contact EPBC within 1 week of moving to ask EPBC contractor to transfer his file; and
  - declare all income and report any changes to the ministry and attend all ministry appointments.
- November 18, 2015 notice from the ministry mailed to the appellant's address requiring him to submit further information to confirm eligibility for IA;
- November 20, 2015 letter from the appellant to his employment program case manager (CM) stating that:
  - since August 4, 2015 he has informed the CM several times that his phone and computer are not working properly;
  - he is repeating his request that he be contacted by mail instead of by phone or email; and
  - he will be unable to meet with his CM on November 23, 2015 because he has an appointment that day.
- November 20, 2015 letter from the appellant to the ministry and to his EPBC employment contractor filing a complaint against his CM for failing to communicate with the appellant by regular postal mail (mail) as requested by the appellant;
- November 24, 2015 letter from the appellant to the manager of the EPBC office to which the appellant had been assigned confirming that he wished to register a formal complaint;
- December 4, 2015 letter from the appellant to the EPBC manager repeating his request that he be contacted only by mail;
- December 17, 2015 letter from the ministry to the appellant informing him that he was no longer eligible for IA because he failed to comply with the conditions of his EP;
- 1-page ministry summary of appellant's non-compliance, namely:
  - July 16, 2015 – appellant failed to show for job search modules;
  - September 22, 2015 – appellant emailed/called several times. Has avoided participation with job search activities; numerous attempts made. File scheduled for closure due to non-participation;
  - October 1, 2015 appellant failed to show for scheduled meeting September 29, 2015. Appellant was emailed and telephoned re new meeting scheduled for Oct 1, 2015, but failed to show, also “no show” for case modules;
  - December IA benefit signaled (held) for proof of EPBC participation;

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- November 19, 2015 call from appellant to ministry stating his intention to re-open his file with his CM and to confirm with the ministry once he has done so. Appointment set for “next Monday” (presumably November 23, 2015) ;
  - November 27, 2015 – appellant informed EPBC manager that he would not attend November 23 meeting with his CM.
  - Request for Reconsideration received by the ministry December 22, 2015 with attached 2 page letter from the appellant, stating:
    1. Since August 2015 he has several times informed his CM by email, mail and in person that he can no longer afford phone and internet service, and to contact him by mail;
    2. he left a message for his CM at reception, asking the CM to contact him by mail, but appellant did not receive anything;
    3. he has saved 2 emails showing he tried to get in touch with his CM before his computer crashed: the first dated August 4, 2015 indicating that he is having trouble with his computer and phone but he is doing odd jobs, the second dated September 21, 2015 stating that his phone is intermittent and his internet cuts out all the time, especially during the day ;
    4. he always tries to respond to the CM’s requests as soon as he has internet access, but the CM never sends anything by mail;
    5. he is continuing to follow income assistance guidelines;
    6. he has registered a complaint with the ministry and with the EPBC contractor.

#### Additional Evidence

In his Notice of Appeal dated January 15, 2016 the appellant attached a 3 page note, containing some information which was irrelevant to the issue on appeal and some information which was a repetition of his already-stated position. Statements not before the ministry at reconsideration included:

- he went to many places and begged to borrow their phone or computer;
- he has limited access to public phones and internet at community centers;
- while on a public computer his personal email account was hacked to the point where it is not usable.

At the hearing the appellant submitted additional documentary evidence, namely:

1. a printout of email communications between the appellant and his CM during the period July 6 – November 2, 2015, summarized as follows:
  - July 6 – appellant cancels initial interview with CM due to job interview, re-schedules meeting for July 7
  - July 7 – appellant acknowledges missed meeting due to phone problems, asks to reschedule to July 8
  - July 13 – appellant meets with CM, signs his EAP.
  - July 13 – program assistant (DH) sends out workshop schedule July 15 – 23, with copy to CM;
  - September 21 – CM asks appellant for a meeting as soon as possible to continue with job search, and advises appellant that he also left a voice mail message;
  - September 22 – appellant acknowledges CM’s Sept 21<sup>st</sup> email message, states that he is not doing very well. His phone is intermittent and his internet cuts out, especially during the day;

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- September 22 – CM asks appellant to meet with prospective employer on September 23<sup>rd</sup>. Appellant responds to CM’s request saying he has difficulty lifting. CM responds that prospective employer provides assistance with heavy packages;
  - September 28 - CM requests appellant to appear at an appointment September 29<sup>th</sup> and to bring details of his job search and employers contacted;
  - September 30 – CM advises appellant that he failed to appear at the September 29<sup>th</sup> meeting. CM sets another meeting for October 1<sup>st</sup>, and repeats his request that the appellant bring his job search list with him;
  - October 30 – appellant asks CM not to communicate by email because his account has been hacked. Appellant asks for all communication to take place by regular mail;
  - November 2 – CM follows up with phone call to schedule a meeting with appellant on November 3<sup>rd</sup>.

2. a copy of the Employment Action Plan (EAP) signed by the appellant on July 13, 2015, in which the appellant agreed to:

- a. keep his CM updated with job interviews and job offers;
- b. attend all scheduled appointments with his CM;
- c. utilize job search websites, research transferable industries, explore training options;
- d. attend specialized job search workshop modules between July 7 – August 6, 2015;
- e. to work with his CM and to follow up on the agreed schedule.

At the hearing the appellant stated that when he signed his EAP on July 13, 2015 he had a lengthy discussion with his CM about the need to complete training modules. The CM told the appellant that he did not need to complete the training modules because of his past experience with the tools being taught in them. The appellant added that when he received the July 13, 2015 email from DH containing workshop schedules he did not open the message because he did not recognize the sender’s name. The appellant also expressed his concern that no one from the EPBC office called him or sent him an email between July 21 – September 22. He went to the EPBC office 2 or 3 times each week to see if his CM was available, but he never was. When asked if he left a message for his CM at the front desk of the EPBC office the appellant responded that the office is not equipped for leaving messages, and that the CM never left a message for him at the front desk.

In response to questions from panel members, the appellant stated that his internet access was intermittent until October 30<sup>th</sup>, then quit entirely. He acknowledged that he did not attend a meeting with his CM on November 23<sup>rd</sup> and explained that he could not attend because he had a job interview that took the whole day. The appellant did not make a new appointment with his CM. The appellant also stated that he submitted his job search records to the ministry, and that EPBC never asked him for job search records.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision of January 5, 2016 in which the ministry denied income assistance (IA) to the appellant under Section 9(1) of the Employment and Assistance Act (EAA) because he had not complied with the terms of his employment plan (EP), specifically because he failed, without medical reason, to demonstrate reasonable efforts to participate in his employment-related program, as required by Section 9 (4) of the EAA.

The relevant legislation is as follows:

### **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.

The appellant argues that he was told by his CM not to worry about attending job search modules. He adds that he was unable to communicate by phone or internet because his phone did not work and his internet was intermittent, that his CM was never available to speak with him when he attended in person at the EPBC contractor's office, and refused to communicate by regular mail. He adds that he was constantly looking for work, and had completed job search records.

The ministry argues that despite the fact that the appellant had difficulties with his phone and computer he was required to comply with the terms of his EP, and failed to demonstrate reasonable efforts to participate. In particular the ministry notes that:

- on July 16, 2015 the appellant failed to show up for his scheduled job search modules with EPBC;
- by August 19, 2015 EPBC had lost contact, and the appellant had not attended job search activities;
- on September 22, EPBC reported that they had emailed and called the appellant several

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times, that the appellant had avoided job search participation, and that his file was scheduled for closure due to non-participation;

- on October 23, 2015 the ministry placed a signal on the appellant's December benefits for non-compliance, and a signal letter was mailed to the appellant;
- on November 20 the appellant provided the ministry with an appointment card for EPBC and his December IA cheque was released;
- on November 23, 2015 the appellant advised the CM that he would be unable to attend the November 23<sup>rd</sup> meeting;
- on December 1, 2015 EPBC reported the appellant's non-attendance at a meeting.

### PANEL DECISION

The panel was not unanimous in deciding this appeal. The dissenting opinion will follow the majority decision.

#### 1. Majority Decision

EAA Section 9 (1) states that a recipient of income assistance must comply with the conditions of the employment plan in order to be eligible for assistance. Subsection (4) specifies that if an employment plan 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 ceases, except for medical reasons, to participate.

On July 13, 2015 the appellant signed an EAP in which he agreed to attend a series of workshop modules during the period July 7 – August 6, 2015, to attend all scheduled appointments with his CM, and to keep his CM informed of his job search activities. The appellant states that although he signed the EAP, his CM told him that he was not required to attend the workshop modules. There is no evidence from the EPBC contractor that the appellant was excused from attendance at the workshop modules. On the contrary, an email from the program assistant DH dated July 13, 2015 sets out the dates of the workshops. The appellant admits that he received DH's email, but he did not open it because he did not recognize her name.

After the dates for the workshop modules had expired appointments were scheduled between the appellant and his CM on September 23, September 29, October 1 and November 23, 2015. The appellant did not attend any of these appointments. He also failed to deliver copies of his job search activities to his CM despite the CM's October 30, 2015 request that he do so.

The appellant states that he was unable to communicate with his CM by email or phone, but two email records submitted by the appellant on August 4 and September 21, 2015 indicate that he continued to receive email communications and respond to them until October 30<sup>th</sup>, other than the July 13<sup>th</sup> email from DH which he chose not to open. On October 30<sup>th</sup>, the appellant emailed his CM to inform him that his email account had been hacked, and asking that all future communication take place by mail. The panel notes that the October 30<sup>th</sup> email message from the appellant was sent one week after the ministry wrote to the appellant to inform him that his December IA benefits had been held for non-compliance with his EP.

The panel finds that the ministry reasonably determined that the appellant was ineligible for income assistance because he did not comply with the conditions of his EP as required by EAA Section 9(1) (b), by failing, without medical reason, to make reasonable efforts to participate in his employment program as required under Section 9(4), specifically by failing, without medical reason, to attend scheduled workshop modules, scheduled appointments and to provide copies of job search activities.

## 2. Dissenting Opinion

I dissent from the majority decision. There is not a dissent about the facts before the reconsideration officer.

I disagree that the reconsideration decision was a reasonable application of the applicable enactment in the circumstances.

My grounds for dissent are that the reconsideration officer breached a duty of procedural fairness by not explaining or weighing the evidence why the existence of intermittent communication between the appellant and the employment contractor was not a material fact.

It is clear from the documents that the Ministry concluded that the appellant had repeatedly failed to report, that the appellant understood the consequences of that failure and had not made reasonable efforts to comply. The reconsideration officer affirmed the decision.

Evidence before the reconsideration officer and not before the Ministry when it made its original decision included a copy of the complaint filed with the employment contractor that indicated a litany of failed internet and phone communication. Also before the reconsideration officer was the Mosaic response to the complaint which flagged communication other than by e-mail or phone as a problem area.

E-Mail documents filed by the appellant in support of evidence in front of the reconsideration officer show no reasonable effort by the contractor to address the communication problem and no evidence of any ministry policy on preferred means of communication with clients.

The reconsideration analysis was brief to the point of being more a reiteration than a reconsideration. It provided no administrative or regulatory reason why the exculpatory evidence was not material. Further the Ministry did not attend the Panel Hearing to provide a policy rationale.

On those grounds, there was a breach of a duty of procedural fairness.

### Conclusion

In conclusion, a majority of the panel finds that the decision of the ministry was a reasonable application of the applicable legislation in the circumstances of the appellant, and confirms the decision.