



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of January 25, 2016 which resulted in the discontinuance of the appellant’s income assistance. In particular, the ministry found that the appellant ceased to be eligible for income assistance since she had not complied with the conditions of her employment plan (“EP”) as required by section 9(1) of the *Employment and Assistance Act* (“EAA”). The ministry found that the appellant had failed to make reasonable efforts to participate in an employment program and did not appear to have a medical condition that would have prevented her from participating in the employment program, as provided in EAA section 9(4).

### PART D – Relevant Legislation

EAA, section 9

## PART E – Summary of Facts

The appellant did not attend the appeal hearing. Having confirmed that the appellant was notified, the panel proceeded with the hearing in accordance with section 86(b) of the Employment and Assistance Regulation.

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

- The EP signed by the appellant dated December 8, 2014.
- The appellant's Request for Reconsideration, dated January 22, 2016. The Request for Reconsideration contained information from a ministry worker and a handwritten reconsideration submission from the appellant. In her written reconsideration submission the appellant stated that she had been working part time, on call, and that she could never be sure when to make an appointment with the contractor who administered the appellant's Action Plan on behalf of the province (the "Contractor"). She also stated that she has been laid off from work, and is now 2 ½ months behind on her rent and fears eviction.
- A letter from the appellant's roommate/landlord dated January 21, 2016, in which the roommate confirmed that the appellant is 2 ½ months behind on her rent and that the roommate "fear[s] the need to ask her to find another place to stay."
- A letter from the ministry to the appellant dated September 28, 2015 (the "Warning Letter"). In the Warning Letter the ministry stated that the appellant had not followed through on the conditions in her EP, and requested a meeting with the appellant to "talk about why you did not follow through with your [EP]." The Warning Letter advised that if the appellant did not make contact her income assistance may be delayed.
- A Monthly Report form dated December 14, 2015, in which the appellant reported employment income. The amount earned is illegible in the copy included in the appeal record.
- A pay stub for the period November 29, 2015 to December 12, 2015, showing monthly earnings of just under \$300, and year to date earnings just under \$3,000.
- A Shelter Information form dated October 21, 2015, showing the appellant had moved to a different residence in another community in June, 2015.

The EP is a two page document. On the first page, in a section titled "A Note About Your Employment Plan", is the statement that "It is important that you follow through with the conditions of the EP. If you are unable to follow through please advise the ministry. If you fail to comply with your EP you will be ineligible for assistance."

In the section of the EP headed "Conditions of the Plan" is the statement "I will participate fully and to the best of my ability in the activities required by the ministry or contractor as set out in sections 3 (a) to (f)."

Section 3(d) of the EP specifies that:

[ ]

"You must meet with the ...Contractor on or before 2014Dec15. You must take part in ...program activities as agreed to with the ...Contractor. You must complete all tasks given to you, including any actions set out in your ...Action Plan. This is a plan developed by you and the ...Contractor which sets out: the steps, services, and supports that you agree are needed for you to find work or become more employable as quickly as possible.

You must call your ...Contractor if you cannot take part in services or complete steps that you agreed to, or when you find work. If you move, within one week you must ask the ...Contractor serving your new area to transfer your ...case file. To find the ...Contractor in your new area, call [phone number]. Your employment plan conditions will continue to apply. If you do not follow this employment plan, the ministry may stop your income assistance payments."

The second page of the EP contains the following acknowledgement above the appellant's signature and date of December 8, 2014:

"I acknowledge that it is a condition of eligibility that I sign this employment plan and that I comply with the conditions set out in this plan ...I understand that I may be required to provide verification of my compliance with the conditions of this plan...I understand that if I do not comply with the conditions of this employment plan, the assistance issued to me and/or my family will be discontinued..."

The reconsideration decision indicates that:

- On March 3, 2015 the Contractor confirmed that the appellant found full-time employment with a restaurant and had commenced work on February 11, 2015. Later that day the appellant contacted the ministry to advise that she was no longer employed at the restaurant.
- On September 9, 2015 the Contractor noted on the appellant's file that it had no current contact information for the appellant. The Contractor attempted to contact the appellant by telephone and mail on August 24, 2015. The telephone number was not in service and the letter was returned as "moved/unknown." The Contractor notified the ministry of these facts on September 28, 2015, at which time the ministry sent the Warning Letter.
- After the appellant failed to attend an appointment scheduled for September 2, 2015, the Contractor sent the appellant another letter and received no contact in return.
- On October 26, 2015 the Contractor noted on the appellant's file that "we have not seen or heard from her in months after numerous attempts." On November 5, 2015 the Contractor reported to the ministry that the appellant was non-compliant with her program.
- The appellant contacted the ministry on November 27, 2015 to enquire about her December income assistance cheque after the ministry decided to hold the cheque. The ministry advised the appellant that the Contractor had reported her as being noncompliant for several months.
- The appellant missed multiple appointments with the Contractor from December 8, 2014 to December 15, 2015.
- On December 15, 2015 the ministry informed the appellant that she was no longer eligible for income assistance.

At the appeal hearing, the ministry relied on its reconsideration decision and submitted no additional information.

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision of January 25, 2016 which resulted in the discontinuance of the appellant's income assistance. In particular, the ministry found that the appellant ceased to be eligible for income assistance since she had not complied with the conditions of her EP as required by section 9(1) of the EAA. The ministry found that the appellant had failed to make reasonable efforts to participate in an employment program and did not appear to have a medical condition that would have prevented her from participating in the employment program, as provided in EAA section 9(4).

The relevant legislative provision is as follows:

### *Employment and Assistance Act*

#### **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*].

The appellant's position, as set out in her reconsideration submission and Notice of Appeal, is that she had been working part time, on call, and that accordingly she could never be sure when to make an appointment with the Contractor. As a mitigating circumstance she stated that she is behind on her rent and fears eviction.

The ministry's position, as set out in its reconsideration decision, is that the appellant was clearly advised of the attendance and participation requirements of the employment program administered by the Contractor, and that she was given many opportunities to comply with those requirements. The ministry argued that the appellant moved without advising the ministry within the time period specified in the EP, and that the appellant did not maintain contact or attend appointments as required. The ministry also argued that the appellant has provided no indication of a medical reason that would make her unable to participate in the employment program.

Panel Decision

The panel is satisfied that the language of the EP is clear when it specifies that the appellant must participate in an employment program offered through the ministry's Contractor. Section 3(d) of the EP required the appellant to – among other things – take part in employment program activities (such as attending scheduled meetings with the Contractor and notifying the Contractor if she was unable to attend a scheduled meeting) and to notify the Contractor in her new area if she moved. Section 3(d) also specified that failure to follow the EP may result in the ministry stopping the appellant's income assistance payments. The appellant was aware of the conditions of the EP, the requirements of the employment plan, and of the consequences for non-compliance, but did not fulfill them.

The Shelter Information Form demonstrates that the appellant moved in June but failed to notify the ministry or the Contractor of her change of address for many months. This constitutes a failure to comply with a condition of the EP, as required by EAA section 9(1). Also, the uncontested evidence of the ministry is that the appellant had missed multiple appointments without contacting the Contractor. The appellant argued that she had a potential conflict with being called in to her part-time work, but that is not an excuse that justifies her failure to contact the Contractor to reschedule appointments. Based on the evidence that the appellant failed to attend multiple scheduled appointments with the Contractor, and that she failed to contact the local office of the Contractor when she moved to her current community, the panel finds that the ministry reasonably concluded that the appellant did not demonstrate that she'd made reasonable efforts to participate in the employment program as required by EAA section 9(4)(a). There is no evidence to show that the appellant had a medical reason for her non-compliance, as specified by EAA section 9(4)(b). The appellant stated that she is behind on her rent and that she fears eviction, but these are not mitigating factors recognized by the legislation.

Based on the foregoing evidence and analysis, the panel finds that the ministry's reconsideration decision is a reasonable application of the legislation in the circumstances of the appellant.

Accordingly, the ministry's decision is confirmed.