

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated March 10, 2016, 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 found the appellant had not made a reasonable effort to comply with the conditions of her EP by participating fully in Employment Program of BC (“EPBC”) programs.

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 September 24, 2014, in which she agreed to participate fully and to the best of her ability in an EPBC program offered by a contractor. The program dates were September 24, 2014 to September 24, 2015 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.
- The appellant is required to attend all appointments with the contractor, and participate in EPBC programming regularly and as directed by the contractor as a condition of continued eligibility for IA. The appellant will work with the contractor to address any issues that may impact her employability and she will complete all assigned tasks including any activities that may be set out in her Action Plan. She will notify the contractor if she is unable to attend a session or when she starts or ends any employment. She understands that if she fails to comply with the conditions of her EP she will be ineligible for IA.
- Her reporting obligations (frequency and method) are per EPBC and ministry requirements.
- In signing the EP, the appellant acknowledged that she accepted and understood the following conditions:
 - Signing the plan and complying with the 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 the appellant's activities, and the ministry may require her to provide verification of her participation with the conditions of the EP including proof of active work search and/or records of attendance and participation in the contractor's 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 ("RFR") signed by the appellant on March 7, 2016 in which she stated her argument and reported that she is applying for jobs and needs \$160 for an orientation certificate to complete one of her applications. She further reported that she currently takes on part-time work. She attached her Action Plan dated March 24, 2015 with stated employment goals and objectives, and a list of activities completed from February 24 to 27, 2015. The appellant's status is recorded as *Attended* for the 8 listed activities.

3. Information from the ministry reconsideration record as follows:

- The appellant has been a sole recipient of IA since September 2012.
- She signed EPs on December 12, 2012 and September 24, 2014 and in each instance she was referred to an EPBC contractor.
- On April 10, 2015, the contractor reported the appellant had cancelled numerous appointments including one on March 10. The ministry contacted her to discuss compliance and she stated she had been attending on a regular basis other than a couple of missed appointments and that she had taken all the workshops she had been advised to take.
- On April 17, 2015, the contractor confirmed the appellant had re-connected with the program. The ministry reminded her that regular attendance was required to be eligible for continued IA.
- The appellant missed 6 appointments with EPBC in June and July, 2015 and on July 22, 2015 the case manager reported the appellant had not registered for or shown any interest in job fairs. The

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case manager continually emailed her information about the fairs and the appellant often expressed that she is not qualified for the positions. The ministry noted that some of the jobs are entry level.

- On August 6, 2015, the appellant advised the contractor's case manager that she intended to apply for Persons with Disabilities ("PWD") designation. In August, September and October 2015, she advised the case manager that she was still waiting for PWD papers. The ministry noted there are no records indicating the appellant had requested a PWD application.
- The case manager twice re-scheduled a meeting that the appellant cancelled in November 2015. The appellant advised that she was cancelling the meeting due to medical appointments. On the re-scheduled date of December 2, 2015, she advised the case manager that she was still working on her PWD designation. The ministry again noted no record of the appellant requesting a PWD application.
- On January 14, 2016, the case manager consulted with the ministry over next steps, and indicated the appellant had been working with EPBC since 2012, has missed numerous appointments over the years due to illness or part-time work, continues to miss appointments and sessions, and also stated she does not want to attend the workshops and that she likes sporadic part-time employment.
- On February 19, 2016, the appellant told the ministry that the case manager was mistaken as she had never missed EPBC appointments or sessions. The ministry advised the appellant that she is not eligible for further IA due to non-compliance with the conditions of her EP.

Additional submissions

With the consent of both parties, the appeal proceeded as a written hearing pursuant to section 22(3)(b) of the EAA. Subsequent to the reconsideration decision, the appellant filed her Notice of Appeal dated March 29, 2016. She stated that she is currently working part-time, which corroborates the information that was before the minister at reconsideration. The appellant also stated her argument on appeal and in an e-mail to the Tribunal, the ministry stated that the ministry submission will be the reconsideration summary. The panel will address both parties' arguments in the next section - Reasons for Panel Decision.

PART F – Reasons for Panel Decision

The issue to be decided is whether the reconsideration decision of March 10, 2016, 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 found the appellant had not made a reasonable effort to comply with the conditions of her EP by participating fully in EPBC programs.

Section 9 of the EAA outlines EP requirements:

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*].

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. Section 9(4) requires the client to participate in a “specific employment-related program” where participation in the program is a condition of the EP. 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:

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- Subsection 9(4)(a) requires “reasonable efforts to participate in the program” and the client has not met the condition of participating if she “fails to demonstrate reasonable efforts to participate”.
 - 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.”

The appellant does not dispute that she was required to participate in the contractor’s program. The EP confirms that she was required to attend all appointments with the contractor, participate in EPBC programming regularly and as directed by the contractor, complete all assigned tasks including any activities in her Action Plan, and notify the contractor if unable to attend a session.

In her RFR submission, she submits that she complied with everything she was asked to do in her job search and she continues to apply for jobs for which she is suited. She submits that she expects to be employed full-time very soon and just needs a little help. She currently does what she can by taking on part-time work, and the report (Action Plan) she provided shows some of the appointments she attended to help her find full-time employment.

In her Notice of Appeal, she affirms that she is currently employed part-time and is working on getting full-time employment. She states that she just needs a little more help and argues that she has "complied with all of the scheduled appointments" and has "followed all the things asked of (her)."

The ministry submits that the appellant's EPs stipulated that she was to participate in the EPBC programs or contact the program if unable to attend. However, the contractor reported a long history of not fully participating in the programs, not making contact, and not reporting when unable to attend. The ministry argues that the appellant's obligations and responsibilities were reviewed with her on several occasions and she was provided with many opportunities to demonstrate compliance.

The ministry noted that the contractor reported several missed appointments from January to July 2015 and the appellant did not participate from August through November as she was waiting to apply for PWD. The ministry noted there is no record of a request for PWD designation, or indication that the appellant had medical issues that prevented her participation in the program. The ministry submits that the appellant has not provided any evidence to support her statement that she continues to apply for jobs. The ministry argues that the requirements of EPBC programs are not limited to job applications as the appellant is also required to participate in meetings with the case manager, attend job fairs when requested, and attend workshops when assigned. The ministry argues that the appellant has not demonstrated a reasonable effort to comply with the conditions of her EP.

While the appellant argues that she complied with all scheduled appointments and did everything that the contractor required, she has not provided any evidence in support of her claims, other than confirmation of her participation in her Action Plan activities for approximately one week in February 2015. The panel therefore gives little weight to her statements and finds that the ministry’s evidence is more reliable as it includes dates for missed appointments and information on job fairs that the appellant was notified of but declined to attend even though entry level positions were included.

The ministry’s evidence is that the appellant missed appointments in March and April 2015 and the ministry discussed compliance with her twice in April and reminded her that regular attendance is required to be eligible for continued IA. The appellant re-connected with the program in April but continued to miss appointments from June to November 2015 (including 6 appointments in June and

July). While the appellant argues that she has been pursuing part-time work and applying for jobs all along, she was also required to participate in other activities including attending all appointments with the contractor and going to job fairs. The ministry's evidence indicates that she did not fully participate in all aspects of the contractor's program.

While the ministry noted that the appellant reported she could not attend some of the meetings with the contractor due to medical appointments, there was no confirmation that she was applying for PWD designation. The ministry noted that she had no documented medical reason for ceasing participation in the program from August to November 2015. She was therefore required to participate fully in all activities for the entire duration of the EP (September 2014 to September 2015).

The basis for the reconsideration decision is subsection 9(1)(b) and subsection 9(4)(a) of the EAA where the ministry determined the appellant "did not comply with the conditions in the employment plan" and failed to demonstrate a reasonable effort to participate in a specific employment-related program. Based on the above analysis of the evidence, the panel finds that the ministry reasonably determined that the appellant did not participate fully in the EPBC program as required by her EP, and has therefore not complied with the conditions of the EP for continued eligibility for IA pursuant to subsection 9(1)(b) of the EAA.

Under EAA subsection 9(4)(a), the onus is on the client to demonstrate reasonable efforts to participate in a specific 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 is not satisfied that reasonable efforts have been made. What constitutes "reasonable efforts" is not defined in the legislation and the ministry therefore has the discretion to determine whether the client's efforts were reasonable. As noted earlier, the ministry relied on reports from the contractor to assess the appellant's efforts to participate in the EPBC program.

The panel has considered all of the evidence presented regarding the appellant's participation in the program including any direction she received regarding what constitutes satisfactory participation and evidence that she was aware of the requirements. The evidence indicates only a few occasions where she called the contractor to say that she could not attend an appointment and it paints a general pattern of missed or postponed appointments as well as a lack of interest in activities such as job fairs and workshops. Further, the ministry addressed compliance with her twice in April 2015 and her signature on the EP confirms that she understood the consequences of non-compliance with the conditions. The panel finds that the ministry reasonably determined the appellant failed to make a reasonable effort to participate in the EPBC program and, therefore, she did not meet the condition set out in subsection 9(4) of the EAA.

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 reasonably supported by the evidence. The panel confirms the reconsideration decision pursuant to sections 24(1)(a) and 24(2)(a) of the EAA.