



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the Ministry”) decision dated June 30, 2016, which denied the Appellant Income Assistance (IA) because the Ministry determined that the Appellant had failed to make a reasonable effort to comply with the conditions of his Employment Plan, pursuant to Section 9 of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

EAA, Section 9.

PART E – Summary of Facts

The Panel reviewed the following documents contained in the Appeal Record:

- i. A copy of the Appellant's Employment Plan (EP) dated November 18, 2015 referring the Appellant to Employment Program BC (EPBC), indicating he must attend all appointments set by EPBC and failure to comply with the EP will result in him being ineligible for IA.
- ii. A letter from the Ministry to the Appellant dated May 30, 2016 advising that as he did not follow through with appointments with EPBC and was spoken to about this and continued to fail to complete the requirements he is no longer eligible for IA.
- iii. Request for Reconsideration dated June 15, 2016, indicating that the Appellant was deemed ineligible for IA due to non-compliance with his EP. The Reconsideration indicates that the Appellant did attend EPBC on August 17 and November 5 for appointments and November 10 for a workshop, however did not attend appointments on August 24, August 31, September 30, November 13, November 20, November 27, December 11, December 24, 2015 and January 7, 2016. On May 30, 2016 a worker at the Ministry reviewed the reports from EPBC and determined the Appellant was ineligible for IA due to consistent non-compliance with attendance at EPBC. On the Request for Reconsideration the Appellant indicated he and his son needs to pay rent and hydro, are running low on food and the Appellant hasn't found employment and is still searching for work, and hasn't been feeling well for the past year or so, they live 10km out of town and transportation is an issue, he has been submitting resumes for employment but has not been receiving any calls.
- iv. Reconsideration Decision dated June 30, 2016, determining that the Appellant had not made a reasonable effort to comply with the conditions of his Employment Plan (EP). The Decision notes that the Appellant was previously denied IA in 2014 for the same or similar reason, and has been reminded on several occasions about the requirements and possible sanctions for not complying with the conditions of an EP, and refers to the most recent EP signed by the Appellant on November 18, 2015 confirming that he had read, understood and agreed to the conditions and consequences of not complying with the EP. The Decision notes that on November 18, 2015 the Appellant was reminded that continued eligibility for IA was dependent on attending and participating in the Employment Program of BC (EPBC) and while the Appellant did attend an appointment on November 5, 2015 and November 10 2015, he did not show up for workshops on November 13th and 20th, or attend appointments on November 27th, December 11, or a rescheduled appointment booked on and taking place on December 24th, or another rescheduled appointment on January 7, 2016.
- v. Notice of Appeal dated July 6, 2016, stating that the Appellant has a son that depends on him, he lives 9.5 km from town, transportation & gas are always an issue and the Residential School he had to attend as a child did not help.

As supporting evidence the Ministry also included:

- i. A copy of the Reconsideration Decision dated March 18, 2014 determining that the Appellant was not eligible for IA at that time because he had ceased to participate in employment programming. The Reconsideration Decision indicates that the Appellant had signed an EP on October 25, 2012 confirming that he had read, understood and agreed to the conditions and consequences of not complying with the EP. The Decision notes that the Appellant was to attend appointments every second Thursday, but on October 22, 2013 EPBC indicated he had not been attending booked appointments. On September 19, 2013, the Appellant attended but was 40 minutes late so the appointment was rescheduled for September 25, and the Appellant did not attend, stating he had forgotten. This was rescheduled for October 2, and the Appellant did not attend because he was at a funeral, and also did not attend an appointment on October 3. The Ministry advised the Appellant to report to EPBC on October 24th, 2013; on November 27, 2013, the Appellant failed to attend another appointment. The Appellant advised the Ministry that he did not have money for gas to attend the appointment, and the Ministry advised that eligibility for IA was contingent on complying with the conditions of the employment plan. On January 3, 2014 the Appellant was warned by the Ministry that any further instances of non-compliance would cause his IA file to be closed. On January 8th, January 20th, February 6, February 13 and February 24, 2014 the Appellant missed appointments because his son was sick, his car wouldn't start, he didn't have a ride, he found it difficult balancing fatherhood with meeting the conditions in the employment plan, and could not afford gas money to attend.

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- ii. A Request for Reconsideration dated March 6, 2014 along with a letter from an advocate indicating that the Appellant missed at least two appointments due to his need to look after his young son; on one occasion his son was sick and on the other he was unable to find a caregiver for his son. Transportation issues prevented him from attending 2 more appointments.
 - iii. A copy of a signed employment plan dated October 25, 2012.
 - iv. Letters to the Appellant from the Ministry dated October 22, 2013, and February 5, 2014 reminding the Appellant of the terms and conditions of his Employment Plan and a letter dated March 18, 2014 advising that upon reconsideration the Appellant was denied IA for failing to comply with the conditions in his EP.

Information regarding the Appellant's attendance at Residential School and the impact that may have on the Appellant's ability to participate in the EP is not supported by documentation and also this information was not before the Ministry at the time of the original Reconsideration. For this reason this statement is not admissible as evidence under Section 22(4) of the EAA.

At the hearing the Appellant provided the following information:

The Appellant's vehicle has leaky tires, had a dead battery, lots of other issues with vehicle, gas is just one of them. Also there were a few times either the Appellant or his son was sick. Buying gas is a problem – money goes to food and bills. Right now, the Appellant is trying to register for a program and is on a waitlist for the next intake next week; if there are no cancellations then he will start in September. This is a 4 week program which will help with cover letters, emailing resumes, etc. The Appellant does not have a home phone, just a cell phone, and sometimes runs out of minutes. He lives on a bus route but does not have a bus pass. He had been given bus tickets to attend appointments with the EPBC contractor but used two of the tickets to bring son in to hospital because he was sick. His vehicle needs a tune up and burns a lot more gas than it would if it had a tune-up. It is a V8. On one time the Appellant requested bus tickets and they were unable to provide them on that day, and he needed to pick them up on another day.

At the hearing the Ministry provided the following information:

The reason the record is so large is we also have documentation from the previous reconsideration re: noncompliance for an employment plan. The Ministry believes this is a pattern and that the Appellant is aware of the expectations as they have been laid out at least a dozen or more times since 2012, but for various reasons the Appellant is still not regularly attending is appointments. Although the Appellant signed an employment plan in November 2015, it was actually initiated in June 2015 when the Ministry mailed it to the Appellant. The Ministry referred to the record hi-lighting the list of missed appointments. The Ministry was unable to take action in the fall of 2015 because the employment plan had not been signed and returned by the Appellant.

The Appellant could have requested more bus tickets, given that his vehicle was in such poor repair. Clients are given multiple opportunities because we know that things do come up, we do give a reasonable number of chances but when there is a pattern of noncompliance they rely on the legislation and deny income assistance.

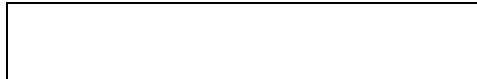
When a client is in noncompliance, based on reports from the EPBC contractor, the Ministry directs the income assistance cheque to the office, talks to the client about their compliance, and holds the cheque until at least one appointment has been attended. In this case, this has happened 2 or 3 times. Since the reconsideration request was filed the Appellant has been receiving an appeal supplement. Anything he is doing re: participating in a program at this point is a little late. The decision was made in May; if the Appellant attends a program now it would not impact the denial in May however he could reapply and demonstrate his current willingness to comply in his employment plan.

Admissibility of New Information

The Ministry had no objections to new evidence presented regarding the Appellant's recent registration in a 4 week employability program. However, the panel did not admit the evidence regarding the Appellant's enrollment in a program as it is a new situation and therefore not information or records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the Employment and Assistance Act.

The Panel Makes the Following Findings of Fact:

1. The Appellant is a single father
2. The Appellant does not have a home phone but does have a cell phone.
3. The Appellant does not live in the downtown area and must access some mode of transportation in order to



attend appointments.

4. The Ministry makes bus tickets available for the purpose of attending EPBC and the Appellant lives on a bus route.
5. On November 18, 2015, the Appellant signed an EP which referred him to EPBC. The EP states that the Appellant must take part in the EPBC program activities as agreed to with the EPBC Contractor and complete all tasks given to him, and call the EPBC Contractor if he is unable to take part or complete steps that he agreed to. The EP also states that if he does not follow this EP, the Ministry may stop his IA payments.
6. The Appellant attended some appointments but also missed appointments and did not contact the EPBC contractor on August 24, August 31, September 30, November 13, November 20, November 27, December 11, December 24, 2015 and January 7, 2016
7. The Appellant was denied IA in 2014 under similar circumstances

PART F – Reasons for Panel Decision

The issue before the Panel is whether the decision to deny the Appellant income assistance for failure to make a reasonable effort to comply with the terms of his Employment Plan is a reasonable application of Section 9 of the EAA.

The Employment Assistance Act, Section 9, states:

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 legislation provides that recipients, when required to, must enter into an employment plan. The Appellant entered into an Employment Plan on November 18, 2015, agreeing to comply with the conditions set out in the Plan. One of the conditions was that he attend all appointments set by EPBC and participate in the program. He signed the acknowledgement that he understood the conditions of the plan, including the requirement to attend all appointments.

The legislation provides that in order to be eligible for income assistance, recipients must comply with the conditions in the employment plan. As per section 9(3) EAA, if an employment plan includes a condition requiring an applicant to participate in a specific employment-related, that condition is not met if he person fails to demonstrate reasonable efforts participate in the program or ceases, except for medical reasons, to participate in the program. The Ministry argues that the Appellant failed to make a reasonable effort to comply with the conditions of his employment plan, because he missed appointments on August 24, August 31, September 30, November 13, November 20, November 27, December 11, December 24, 2015 and January 7, 2016. The Appellant only attended 2 appointments and one workshop between August 17 and November 5. The Appellant did not attend all the scheduled appointments nor did he routinely contact the EPBC Contractor to reschedule, and follow through by attending rescheduled appointments. The Ministry argues this reflects a previous pattern of non-compliance which resulted in a denial of benefits in 2014, and that bus tickets are available to the Appellant and the Appellant is aware of this.

The Appellant does not dispute this. The Appellant argues that he was unable to attend the scheduled appointments due to various issues, including child care commitments and transportation issues. He lives 9.5km from the EPBC Contractor and struggles with transportation issues as a result. He has been making a reasonable effort by looking for work and submitting resumes, but just hasn't been receiving any calls. He has been feeling unwell for the past year. He also argues that he needs income assistance to pay his rent and hydro, and buy food.

The Appellant argues that he is a single father and has difficulty balancing his parental responsibilities with the requirement to attend regular appointments with the EPBC contractor. The Ministry argues that the Appellant is “employment obligated” and must participate in a program to help him find employment or become more employable. Section 9 of the EA indicates that in order to be eligible for IA, they must enter into and comply with the conditions of the EP when required to do so by the Ministry.

The question before the panel is whether the Appellant demonstrated reasonable efforts to participate in his employment program (EPBC), which was a condition of his employment plan or had a medical reason for not participating. He was to attend appointments and workshops and contact the EPBC Contractor when he was unable to attend and make an effort to reschedule.

The Ministry supplied bus tickets to address the appellant’s transportation issues, and the Panel finds that the Appellant had a pattern of non-compliance as he missed many appointments with the EPBC. Section 9(4)(b) of the EAA also indicates that the only exception to the requirement to participate in the EP is for medical reasons but the Appellant has not indicated or provided verification on how illness has prevented him from attending the EPBC Program on a consistent basis instead providing a number of non-medical reasons, such as transportation, for not attending. As such, the panel determined that the ministry was reasonable in determining the appellant did not demonstrate reasonable efforts to participate in his employment-related program and thus did not meet the requirements of s. 9(4) EAA. As this was a requirement of his employment plan, the panel determined the ministry decision that the appellant did not comply with the conditions of his employment plan, as required by section 9(1) and is thus ineligible for income assistance was reasonably supported by the evidence.

The panel confirms the ministry decision. The appellant is not successful in his appeal.