



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of 15th August, 2016, that denied the appellant income assistance for failing to comply with the conditions of his employment plan, as required in the Employment and Assistance Act (EAA) section 9(1), which required the appellant to participate in a specific employment-related program. The ministry found that the appellant failed to demonstrate reasonable effort to participate in the employment program (EP) and therefore had not complied with the conditions of his EP, as provided in EAA section (9)(4).

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:

- An Employment Plan (EP) dated 12th February 2016;
- A Medical Referral dated 24th June 2016, which stated that the appellant had been referred to a chiropractor;
- A Medical Report- Employability dated 18th July 2016, which stated that the appellant had mechanical back pain going back to 2014, which should improve in 6 to 8 weeks with physiotherapy;
- A Request for Reconsideration dated 2nd August 2016;
- A handwritten four (4) pages submission dated 4th August 2016 from the appellant attached to the Request for Reconsideration, which is presumably written by the spouse of the appellant, as the appellant does not speak English. Among other matters, it states that:
- The appellant was attending every appointment he was given but only missed the last appointment due to pain in his back; and that the relevant case manager had been sent an email before hand with a doctor's note and a referral relating to an x-ray exam;

-Sometimes the case worker asked the appellant to meet twice a day and the appellant would attend;

-The appellant never refused a job offer, especially since he had experience in the jobs he was offered (flooring and stacking shelves);

-The appellant was seeing a physiotherapist for his back treatment, which prevented him from working until his treatments were complete;

-The appellant missed his last appointment with the case manager, because (i) it was on the same day as a dentist's appointment for his daughter; (ii) the appellant had misplaced his appointment card; and (iii) the appellant was confused about the date of the appointment;

-The appellant had emailed the case manager on the 20th [August] to confirm the appointment, but it turned out that the appointment was on the 19th [August] and that date was already missed;

-The appointment was rescheduled to 24th August 2016 and confirmed by email:

-The last telephone conversation with the EPBC case manager was degrading, disrespectful and humiliating; it was emotionally upsetting; and alleged that the appellant was not looking for jobs. In response to the allegations made, the appellant's spouse informed the case manager that the appellant had dropped his resume everywhere that was hiring as well as places that were not hiring; and that the appellant

had proof of that as well.

Conditions of the Employment Plan:

- The appellant will participate fully and to the best of his ability in the activities required by the ministry or Contractor;
- Term of the EP: 10th February 2016 – 9th February 2018;
- Appellant must meet with the EPBC Contractor on or before 17th February 2016;
- Take part in EPBC program activities as agreed with the EPBC Contractor;
- Complete all tasks given to the appellant, including any actions set out in the EPBC Action Plan;
- Call the EPBC Contractor if the appellant cannot take part in services or complete steps that are agreed to or when the appellant finds work;
- If the appellant does not follow this employment plan, the ministry may stop income assistance payments.

In the Summary of Facts in the Reconsideration Decision dated 15th August 2016, the ministry wrote:

- On 12th June 2016 the appellant signed an EP;
- On 27th June 2016, EPBC reported that the appellant had spoken to the EPBC Contractor on 17th June 2016 and scheduled an appointment for 21st June 2016, but had not attended that appointment;
- On 14th July 2016 the EPBC reported that the appellant had been referred to an employment lead and the appellant had declined to meet with the prospective employer on the specified date and time.
- A second prospective employer was located and the appellant again declined to meet with the prospective employer stating that the appellant had medical concerns and submitted a referral to a chiropractor.
- On 18th July 2016 the ministry received a “Medical Report – Employability”, which stated that the appellant had mild mechanical back pain that was expected to last 6-8 weeks and would likely improve with physiotherapy;
- On 19th July 2016, EPBC reported that the appellant failed to attend an appointment with them on the said date;
- A ministry worker spoke (date not specified) to the appellant as to why he had not met with prospective employers, and with his spouse interpreting, the appellant stated that he did not want to do flooring or the other job, which was stocking shelves;

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- On 26th July 2016, the ministry worker advised the appellant that he was ineligible for income assistance for failing to comply with the conditions of the EP.
 - On 26th July the ministry found the appellant ineligible for income assistance due to non-compliance with his EP;
 - The ministry received a signed Request for Reconsideration from the appellant on 28th July 2016.

In the Reconsideration Decision dated 15th August 2016, the ministry wrote:

- When the appellant signed the EP, he entered into a legal agreement to comply with the conditions of the EP and follow with EPBC requirements. The appellant also acknowledged that if he did not comply, he would be found ineligible for assistance. The appellant missed multiple appointments, he did not call in advance to reschedule appointments and did not actively participate in the action plan by meeting with prospective employers;
- The appellant had stated that he was unable to look for work due to back pain; and that the appellant attended physiotherapy and was therefore unable to attend EPBC. While the appellant did submit a medical report from his doctor stating that the appellant had mild back pain with a date onset in 2014, the doctor indicated that the back pain should be resolved in 6 to 8 weeks if the appellant attended physiotherapy;
- Given his employment related obligations, it was the appellant's responsibility to attend EPBC regularly and as directed. The appellant must participate to the best of his ability and work with the contractor to overcome barriers he might have with regard to employment. The appellant's responsibility is to schedule his appointments in such a way that he is able to both attend and participate with EPBC and attend physiotherapy. EPBC reported that the appellant did not call in advance to advise that he would be unable to attend appointments and did not reschedule missed appointments. Additionally, the appellant did not attend interviews with potential employers and therefore did not explore these employment options. Had the appellant attended, he would have been able to discuss whether the job would be appropriate considering his back pain with the potential employer.
- The conditions of the EP were reasonable and the appellant was given numerous opportunities to comply with his EP. As the appellant missed numerous appointments and had not followed through with the EPBC programming, the ministry found that the appellant had not complied with his EP and was therefore ineligible for income assistance under Section 9 of the EAA.

Additional Evidence Before the panel:

- Notice of Appeal dated 25th August 2016, which, among other matters, states that the (reconsideration) decision wasn't fair.

The appellant was not in attendance at the hearing. Therefore, the panel members confirmed that the appellant was notified of the hearing date, the hearing proceeded thereafter under Section 86 (b) of the Employment and Assistance Regulation.

The ministry did not submit any additional documentary evidence at the hearing. However, at the hearing, in answers to questions from the panel members, the ministry representative clarified that (a) the appellant is a male and was communicating with the ministry through his spouse, as he did not speak English; (b) the appellant's submission comprised of only 4 pages included in the Record of Appeal. The ministry representative relied upon the contents of the reconsideration decision in support of the ministry's position. In particular, the ministry representative emphasized that (a) the appellant failed to attend meetings with the EP contractor on two occasions; and (b) although the Employability Report received by the ministry indicated some back problems, the appellant was able to work with light duties. Therefore, the appellant had failed to make reasonable efforts to comply with the conditions of his EP.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision of 15th August 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 he had not complied with the conditions of his 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 therefore had not complied with the conditions of his EP, as provided in EAA section 9(4).

The relevant legislation 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 was required to enter an EP and was required to comply with the conditions of the employment plan to be eligible for income assistance. A condition of his employment plan was that he participate in an employment program and as per 9(4) EAA, that condition is not met if the person does not demonstrate reasonable efforts to participate, unless there was a medical reason.

The Appellant's Position

The appellant did not attend the hearing of the appeal. However, from the Record of appeal, the panel notes that the appellant had argued for the purposes of the reconsideration decision that he: (i) was unable to look for work due to back pain; (ii) had only missed one last EPBC appointment with his case worker due to a dental appointment for his daughter on the same day; (iii) had misplaced his appointment card and was confused as to the exact date of his EPBC appointment; (iii) had sent emails to his case manager to reschedule an EPBC appointment; (iv) had dropped his resume everywhere that was hiring and had proof thereof; and (v) had never refused a job offer.

The Ministry's Position

The Ministry argued that:

- By signing the EP on 12th February 2016, the appellant had agreed to take part in the EPBC program activities; to complete all tasks given including actions set out in his EP; and indicated that he had read and understood the conditions in his EP to the effect that if he did not comply with these conditions, he would no longer be eligible for income assistance.
- The appellant (i) did not comply with several conditions set out in the EP and missed multiple appointments; (ii) did not call EPBC in advance to reschedule his appointments in such a way that he was able to both attend and participate with the EPBC and attend physiotherapy; and (iii) did not actively participate in his action plan by meeting with potential employers to explore the employment options that were being offered. Had the appellant met with the potential employers, he would have been able to discuss whether the job options were appropriate considering his back pain with the potential employers.
- For a family to be eligible for income assistance, the recipient must comply with the conditions in his EP;
- The conditions of the appellant's EP were reasonable and that the appellant was given numerous opportunities to comply with the EP.

As the appellant had missed numerous appointments and not followed through with the EPBC programming, the ministry argued that the appellant had not complied with the conditions of his EP. It was therefore determined by the ministry that the appellant was not eligible for assistance, as per Section 9 of the EAA.

Panel Decision

The panel has noted that, although the appellant's submission attached to the Request for Reconsideration is on behalf of the appellant, at several places in the submission it appears to put forward the views of the appellant's spouse, who was apparently translating for the appellant, and substantially wrote the submission for and on behalf of the appellant.

Section 9(4) of the EAA stipulates that if an EP includes a condition requiring a recipient 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 in the program.

The evidence before the panel establishes that the EPBC reported to the ministry on 19th June 2016 that the appellant failed to attend a scheduled appointment with them on that date. On 27th June 2016, the EPBC further reported to the ministry that there had been no engagement from the appellant with the employment program. Further, when he had been referred to an employment lead he declined to meet with a prospective employer on a specified date and time. When a second prospective employer was identified, the appellant again declined to meet with the prospective employer stating medical concerns and submitted a referral to a chiropractor. In his written submission dated 4th August 2016, the appellant submitted that he had "*never refused a job offer, especially since [s]he has experience in the jobs [s]he was offered (flooring and stocking shelves)*". This submission is different from what the appellant stated (through his spouse interpreting) to a ministry worker after the two prospective job offers to the effect that he did not want to do flooring or stocking shelves.

The appellant had also submitted a medical report from his doctor stating that he had mild back pain with a date of onset in 2014 and that the pain should be resolved in 6 to 8 weeks through physiotherapy. However, the appellant did not make the effort to meet the second prospective employer to discuss whether the proposed job was appropriate and/or the timing thereof considering the appellant's back pain.

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's decision that the appellant failed to make reasonable efforts to participate in the EPBC program pursuant to section 9(4) and therefore failed to comply with the conditions of his EP and pursuant to Section 9(1) was not eligible for income assistance was reasonably supported by evidence and a reasonable application of the applicable enactment in the circumstances of the appellant. Therefore, the panel confirms the decision of the ministry.