

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated August 15, 2016, in which the ministry determined that the appellant is not eligible for income assistance (IA) due to non-compliance with his Employment Plan (EP) under section 9 of the *Employment and Assistance Act* (EAA). The ministry found that the appellant did not demonstrate reasonable efforts to participate in Employment Program of BC (EPBC) programming and that there is insufficient evidence to determine that he ceased to participate in EPBC programming as a result of a medical condition.

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 April 20, 2016, in which he agreed to participate fully and to the best of his ability in an EPBC program offered by a contractor. The program dates were December 8, 2015 to December 7, 2017 and the EP contained the following details and requirements:

- The appellant is required to meet with the EPBC contractor on or before December 15, 2015, take part in program activities agreed to with the contractor and complete all assigned tasks including any actions set out in an Action Plan.
- The appellant must call the EPBC contractor if he cannot take part in services or complete steps that he agreed to, or when he finds work or moves to a new area.
- If the appellant does not follow this EP, the ministry may stop his IA payments.
- Assistance will be discontinued if the recipient fails to demonstrate reasonable efforts to participate in a program in which he or she is required to participate, or ceases, except for medical reasons, to participate in the program.
- The appellant acknowledges that it is a condition of IA eligibility that he signs the EP and complies with its conditions, including any condition to participate in an employment-related program. In signing the EP, the appellant understands that the contractor has the ability to report to the ministry on the appellant's activities. He further understands that he may be required to provide verification of his compliance with the conditions of the EP, including proof of active work search and/ or records of attendance and participation in an employment-related program as required by the ministry. He further acknowledges and understands that if the ministry refers him to a specific employment-related program, he will participate fully in the activities required by the contractor, and if he does not comply with the conditions of the EP, the assistance issued to him and/ or his family will be discontinued and participation in the EP is not open to appeal.

2. A Request for Reconsideration (RFR) signed by the appellant on August 4, 2016 in which he states that he went to another community and missed appointments because he was looking for work, and he borrowed money to get there. He was sick and unable to make it and he also has no vehicle, no money for the bus, and no phone time, and he got a ride today with his neighbour. He states that he is going to his next appointment on August 8, 2016.

3. Information from the ministry record [reconsideration decision and *Decision to be Reconsidered*] as follows:

- The appellant is a single person in receipt of IA benefits.
- December 8, 2015: A new EP was created for the appellant. A ministry worker called him and stated that he was required to attend the contractor's program on or before December 15, 2015.
- January 25, 2016: EPBC reported to the ministry that the appellant had booked an orientation appointment for December 18, 2016 [sic]. The appellant called to reschedule that appointment for January 7, 2016 and he also booked an appointment for January 21, 2016. The ministry reports that he did not attend either of these appointments.

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- February 18, 2016: The appellant spoke with a ministry worker and advised that he was unable to attend the appointments due to his mother's health; however, she is now being provided care and the appellant can attend. The ministry reminded the appellant of the consequences of non-compliance and he then submitted an appointment slip showing that he had booked an appointment with the contractor.
 - March 15, 2016: EPBC reported that the appellant had failed to attend his scheduled appointment. He had called and left a message after missing the appointment. EPBC re-scheduled the appointment for March 17, 2016.
 - March 31, 2016: EPBC advised that the appellant did not attend his appointment on March 17, 2016. The ministry placed a hold on the appellant's next IA cheque and mailed the appellant a letter advising of same. The ministry noticed at this time that the appellant had not returned a signed copy of his EP.
 - April 20, 2016: The appellant met with a ministry worker and signed his EP agreeing to work with an EPBC contractor. He was required to attend the contractor's program within the next five days. He was advised of the expectations stated in his EP and the consequences of non-compliance. The ministry notes the appellant did not make contact with EPBC.
 - May 5, 2016: EPBC reported that the appellant had not attended or participated with EPBC since the date of his referral. The ministry worker placed a hold on the appellant's June IA cheque and sent him a letter advising of same.
 - May 26, 2016: The appellant attended the ministry office regarding his June IA cheque. The worker gave him a copy of the letter that had been sent to him on May 5, 2016, advising that his IA cheque was being held and reminding him of the consequences of non-compliance with his EP. The appellant stated that he understood. He also advised that due to his mother's medical condition he was not able to attend the appointment. The ministry worker reviewed his file and noted that in February 2016 the appellant informed the ministry that care had been arranged for his mother and he was able to participate with EPBC. The ministry reminded him that if he is unable to attend EPBC or participate in their programming for any reason, he is required to speak to EPBC directly and discuss it with the ministry worker and failure to do so would be considered non-compliance with his EP.
 - June 2, 2016: The appellant attended the ministry office with confirmation that he had gone to his appointment with EPBC on this date and he had an appointment booked for June 8, 2016. The worker released his June IA cheque and reiterated that he must comply with the conditions of his EP to remain eligible for IA.
 - June 8, 2016: The appellant did not attend his scheduled appointment with EPBC.
 - June 23, 2016: EPBC reported that the appellant had failed to attend his appointment on June 2, [sic] 2016; he had not called in advance to advise that he would not be attending, and he did not re-book the appointment. The ministry placed a hold on his August IA cheque and he was sent a letter advising of same.

• July 28, 2016: The appellant attended the ministry office regarding his August IA cheque and presented an appointment slip showing an appointment with EPBC, scheduled for August 8, 2016.

• July 29, 2016: The appellant spoke to the EPBC worker and advised that he was away in another community the previous week to look for work. The worker asked why he did not attend his appointment with EPBC on June 8, 2016 and he said it was because he had a cold. The worker reviewed the appellant's file and noted that he had not participated at all with EPBC programming except when his cheque was withheld. The worker noted that his file with the contractor had not been opened due to lack of participation. The worker noted that he had been advised on several occasions of the requirement to comply with his EP, including the requirement to contact EPBC and advise them if he is unable to attend appointments. The worker noted that this requirement is stated in his EP but it was not followed. The worker advised that the appellant is ineligible for IA due to non-compliance with his 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 his Notice of Appeal dated August 26, 2016 in which he states that he has no other form of income and requires financial support. In an e-mail to the Tribunal, the ministry states that the ministry's submission on appeal will be the reconsideration summary. The panel accepts the appellant's submission as argument in support of his circumstances at reconsideration. The panel will consider the arguments of both parties 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 August 15, 2016, in which the ministry determined that the appellant is not eligible for IA due to non-compliance with his EP under section 9 of the EAA was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry found that the appellant did not demonstrate reasonable efforts to participate in EPBC programming and that there is insufficient evidence to determine that he ceased to participate in EPBC programming as a result of a medical condition.

Section 9 of the EAA sets out 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...

(7) A decision under this section

- (a) requiring a person to enter into 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 employable recipients 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 recipient 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 recipient has not met the condition of participating if he “fails to demonstrate reasonable efforts to participate”.
 - Under subsection 9(4)(b), the recipient has not met the condition of participating in the program if he “ceases, except for medical reasons, to participate.”

The appellant does not dispute that he was required to participate in EPBC programming. The EP confirms that he was required to attend all appointments with the contractor, participate regularly and as directed by the contractor, complete all assigned tasks, and to notify the contractor if unable to attend a session. The appellant’s position on appeal is that he disagrees with the ministry’s reconsideration decision because he has no other form of income at this time and is still in "deepest need of financial support."

In his RFR, he argues that he missed appointments because he was out of town looking for work, and then he was sick and unable to make it, plus he had no vehicle, money for the bus, or time available on his phone. He states that he has arranged a ride with his neighbour and will attend his next appointment on August 8, 2016.

The ministry’s position is that the conditions of the EP were reasonable and that the appellant was given numerous opportunities to comply but missed numerous appointments after signing the EP and did not follow through with EPBC programming. The ministry’s position is that the appellant was aware of the requirements to abide by the conditions of his EP as he signed a legal agreement with the ministry to follow through with EPBC. The ministry argues that by signing the EP, the appellant acknowledged that if he did not comply with these requirements he would be found ineligible for IA.

The ministry argues that the appellant did not demonstrate a reasonable effort to participate in EPBC programming because he did not call in advance to re-schedule appointments, he missed multiple appointments with EPBC without prior notification, and he did not respond when contacted by EPBC. The ministry notes that the appellant was aware of his obligations to work with EPBC for four months prior to signing the EP and he had several conversations with the ministry worker during that period and was reminded of the minister’s expectations. The ministry notes that once he signed the EP, he had several additional conversations with the ministry but the only appointments he attended with the contractor were booked when his IA cheque was being held by the ministry. The ministry notes that his flie with the contractor also remained closed due to his non-participation in their program.

Regarding the appellant’s reasons for missed appointments, the ministry notes that the appellant did not contact EPBC when he had a cold, to advise that he was unwell and needed to re-schedule the appointment. The ministry notes that the appellant did not provide any information from a medical professional to indicate that he was unable to participate due to medical reasons. The ministry further notes that the appellant did not inform EPBC that he was going out of town to look for work even though the EP states that he is required to contact EPBC if he is unable to attend appointments for any reason.

Panel's decision

The ministry's evidence is that the appellant missed appointments in January, March and June 2016 and he did not make contact with EPBC in April 2016 as directed. Although he called EPBC to re-schedule his January appointment, he failed to attend at the new appointment time. In March, he did not leave a message with EPBC until after he had missed his appointment. He then missed the re-scheduled appointment without notifying EPBC. Similarly in June, he did not notify EPBC when he missed his appointment.

The ministry's record indicates that the appellant did not sign his EP or provide confirmation that he had attended an appointment with the contractor until after the ministry put a hold on his June 2016 cheque. Subsequently, he did not confirm that he had made a new appointment with EPBC until the ministry put a hold on his August 2016 cheque. The evidence also shows that the ministry communicated expectations and/or the consequences of non-compliance on at least six occasions from December 2015 to June 2016. The evidence indicates that the ministry communicated with the appellant both in person and in writing.

While the appellant's initial reason for non-compliance is that he was looking after his ill mother, the evidence is that he subsequently reported in May 2016 that care for his mother had been arranged. Nevertheless, the evidence is that he continued to miss appointments and the contractor had not even set up a file for him due to non-participation with EPBC.

Regarding his other reasons for missing appointments, the evidence is that he did not inform EPBC, as required under the EP, that he was going out of town for a week or that he was absent because he was sick with a cold. The appellant did not provide any medical documentation to confirm that he ceased participating for medical reasons. He also did not indicate, until he filed his appeal submission, that he could not make it to appointments due to transportation issues (no money for bus fare, etc.) or that he could not call EPBC due to a lack of minutes on his phone.

While the panel notes that the appellant did not actually sign his EP until April 20, 2016, the participation requirements set out in the EP date back to December 8, 2015. Even after the appellant signed the EP, he continued to miss appointments and to not participate in EPBC programming. He did not make contact with EPBC, as required, after signing his EP in April 2016. He then missed two appointments in June 2016 despite the ministry continuing its communications around expectations and consequences of non-compliance.

In summary, the panel has considered all of the evidence presented regarding the appellant's participation in the program including any direction he received regarding what constitutes satisfactory participation as well as evidence that he was aware of the requirements. As the evidence before the minister indicates the appellant did not comply with the conditions of his EP by participating with EPBC and notifying EPBC when he was unable to attend appointments, the panel finds that the ministry reasonably determined he did not comply with the conditions of his EP as required under subsection 9(1)(b) of the EAA; demonstrate reasonable efforts to participate in an employment-related program are set out in subsection 9(4)(a); or cease to participate in the program for medical reasons pursuant to subsection 9(4)(b).

Subsection 9(1)(b) of the EAA clearly states that eligibility for IA is contingent upon complying with the conditions of the EP. The appellant's signature on the EP confirms that he understood the consequences of non-compliance with the conditions. As the evidence indicate a general pattern of non-compliance despite the ministry's explanations and reminders, the panel finds that the ministry was reasonable in finding the appellant ineligible for IA pursuant to subsection 9(1)(b) of the EAA.

Conclusion

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence. The panel confirms the decision pursuant to sections 24(1)(a) and 24(2)(a) of the EAA and the appellant is not successful in his appeal.