



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated September 30, 2016, which held that the appellant is not eligible for income assistance due to a failure to comply with the conditions of her Employment Plan (EP) pursuant to Section 9 of the Employment and Assistance Act (EAA). The ministry found that the appellant failed to demonstrate reasonable effort to participate in her employment program which is part of her EP or that she ceased to participate due to medical reasons.

### PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 9

## PART E – Summary of Facts

With the oral consent of the appellant, a ministry observer attended but did not participate in the hearing.

The evidence before the ministry at the time of reconsideration consisted of:

1. Employment Plan signed and dated May 17, 2016. The conditions of the EP were that she participate in the Employment Program of British Columbia (EPBC), attend her first appointment with EPBC on or before May 10, 2016, participate regularly as directed, work with the contractor to address any issues that may impact her employability, complete all tasks assigned including any activities that may be set out in an action plan; notify the EPBC if unable to attend a session or when she started or ended employment; declare all income and report any changes; and that failure to comply with these conditions will deem her ineligible for assistance;
2. EPBC Action Plan signed and dated June 23, 2016.

In her Notice of Appeal, signed and dated October 11, 2016, the appellant stated that she did miss workshops and appointments and was in regular contact with (EPBC) case worker and is seeking help to build her future. The past 3 months have had stressful personal situations that are now resolved.

Prior to the hearing the Ministry submitted the following additional documents that were mistakenly not included in the ministry's record but were before the ministry at the time of reconsideration:

1. Request for Reconsideration, which included a signed and dated (September 21, 2016) 4-page letter from the appellant. In the letter, the appellant stated the following:
  - She received the letter (EP plan) in the mail on May 17, 2016 and on May 26, 2016 the signed EP plan was submitted;
  - During the last week of May 2016 and first week of June 2016 she fell ill with pneumonia which caused the need to reschedule her appointments that were booked with the EPBC worker for that period;
  - On June 8, 2016 she was still ill and reschedule her appointment with the EPBC worker again for the following week;
  - She had written the appointment down for June 15, 2016 but it was actually for June 16, 2016 and her son fell ill. She had to reschedule the appointment for June 23, 2016;
  - On June 23, 2016 she met with the EPBC worker and scheduled various workshops for the month of July 2016;
  - During the month of July 2016 she did not attend the workshops because of a personal matter concerning her son and his father. This situation caused stress for her young son and caused stress and depression for her;
  - She scheduled an appointment with the EPBC worker for August 15, 2016 and scheduled workshops for August 23-August 26, 2016. She had also changed her phone number but failed to inform the case worker;
  - Her son became ill on August 22, 2016 and was awake all night. On August 23, 2016 she ended up sleeping in and contacted the EPBC worker to reschedule;
  - She attended the scheduled workshop from September 22-23, 2016 and has an appointment with the job developer on September 27, 2016;
  - She is now in 100% full participation and ready with a clear focus since the personal

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situation regarding her son's father has now passed;

- Her goal is to gain employment by November 11, 2016 and she has been actively looking for work over the past year;
  - Together with the EPBC worker, she has explored the 'Single Parent Initiative Program' and will be enrolling into the wage subsidy program September 27, 2016; and
  - She has a more current EP Action Plan.
2. EPBC Action Plan that is signed and dated August 16, 2016; and
  3. 2 of 4 pages of an EPBC Action Plan with the latest date of September 15, 2016.

At the hearing the appellant submitted the following additional documents:

1. Work BC Workshop schedule for September 2016; and
2. Prescription for her son dated August 4, 2016 which was issued at the local hospital's emergency department.

At the hearing the appellant reiterated what was stated in the 4-page letter that accompanied her request for reconsideration, and added the following;

- She understands why EP Action plans are made, that they need to be followed and that she is accountable;
- She feels penalized for things related to her son's father;
- She was open with the EPBC worker but did not advise the ministry about her personal situation because she was afraid of what the ministry could do and that it was linked to the Ministry of Children and Family Development;
- She attempted to attend 1 workshop on July 13, 2016 but she could not focus, and informed the EPBC worker that she could not participate. However she did not tell him immediately but half-way through the scheduled workshops;
- She changed her phone number at the end of July and advised the EPBC worker but not the ministry;
- The ministry is denying income assistance in September 2016 based on missed workshops and appointments in May, June and July 2016. This occurred months ago and was resolved with the EPBC worker on August 15, 2016;
- She was in contact with the EPBC worker but missed the workshops. Workshops are only offered once per month. Therefore if a workshop is missed, one must wait until the next month to attend;
- Currently she is attending a woman's empowerment program in which she received counselling; and
- The EPBC worker did not explain that verification was required for absences due to medical issues. Her doctor is out of town until November 11, 2016 and she cannot provide a medical note to verify that she had pneumonia in May-June 2016 until his return. However, she has verification in the form of a prescription that her son was ill.

At the hearing the ministry relied on its reconsideration decision.

### **Admissibility of Additional Evidence**

Neither the appellant nor the ministry objected to the admission of any of the above mentioned additional documents.

On review of the evidence, the panel notes that the appellant's oral evidence and the documentation submitted by the appellant and ministry were not "new evidence" but rather, they specifically related to and referred to the documents that were before the ministry at reconsideration. The panel therefore finds that the appellant's oral evidence, the documents she submitted at the hearing and the submission from the ministry prior to the hearing are admissible as they are in support of the information and records that were before the minister when the decision being appealed was made, pursuant to section 22(4)(a) and (b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the ministry's reconsideration decision, which held that the appellant is not eligible for assistance due to noncompliance with her EP pursuant to Section 9 of the EAA. The ministry determined that the appellant failed to meet the requirements of her EP by not demonstrating reasonable efforts to participate in the employment program which is a part of her EP or that she ceased to participate due to medical reasons.

Section 9 of the EAA outline the stipulations of an EP and states that:

### 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

The appellant argues that there were mitigating circumstances that caused her to miss her appointments and workshops. In addition to her and her son becoming ill through-out the period in

question, she also had to deal with the stress, depression and emotional upheaval caused by her son's father. She also argues that the ministry is only now responding to non-compliance which took place months ago and that the ministry ignored that the non-compliance issues have been remedied. Finally, the appellant argues that she was in contact with her EPBC worker the entire time and explained her absences to him.

### The Ministry's Position

The Ministry's position is that the conditions of the EP Action plan were reasonable, the appellant agreed to the conditions and that she failed to demonstrate reasonable efforts to participate in the program. The ministry also argues that the appellant was given numerous opportunities to comply but did not and that she did not provide verification that she ceased to participate in the EPBC programming due to a medical reason. Finally the ministry argues that the appellant understood the consequences of non-compliance as demonstrated by her signature on the EP Action plan and she was advised on numerous occasions by the EPBC worker and ministry worker.

### *The Panel's Decision*

Section 9 (1) of the EAA sets out that to be eligible for assistance, the recipient must, when required to, enter into an EP, and comply with the conditions of the plan. The panel notes that by signing the EP the appellant acknowledges that she was aware of the requirements of her EP and aware of the consequences of not complying with the EP, and the appellant does not dispute this. A condition of her EP was to participate in an employment program (EPBC), and to notify the EPBC worker if she was unable to attend a session. The appellant admits that several appointments and workshops, which formed part of her EP Action plan, were missed, that the EPBC worker was not notified prior to missing the appointments and workshops and she contacted him after to reschedule the missed appointments and workshops. The panel notes that the conditions of the EP Action plan were clear; in that the appellant was required to meet with her EPBC worker and attend workshops, and EPBC worker was to be notified prior to the appellant's absence from the appointments and workshops. The panel finds the appellant failed to demonstrate reasonable effort to participate in the program in that she failed to meet her obligation to contact her EPBC worker prior to missing scheduled appointments and/or workshops as specified in her EP Action plan

The appellant argues that she had mitigating circumstances with her son's father that caused stress, depression and emotional upheaval and she missed appointments and workshops. The panel notes that the appellant has not provided medical evidence that the mitigating circumstance she described affected her and her son to the degree she claims and the circumstance directly caused her to miss scheduled appointments and/or workshops. Furthermore the panel notes that the legislation specifies that ceasing to participate in the conditions of the EP Action plan is only suitable for medical reasons. The panel notes that the mitigating circumstance that the appellant described are non-medical in nature and that the appellant failed to provide evidence that the depression she experienced as a result of the mitigating circumstances required medical attention.

The appellant argues that she fell ill to pneumonia in late May 2016 and early June 2016 and had to therefore miss her scheduled appointment with the EPBC worker and scheduled workshops. The panel notes that the appellant has not provided any medical evidence to demonstrate that she had pneumonia in late May 2016 to early June 2016.

The appellant argues that her son was ill and that this caused her to miss appointments on June 16 and 20, 2016 as well as her workshop during August 23, 2016 to August 26 2016. At the hearing the appellant provided a prescription to demonstrate that her son had been ill . The panel notes that the prescription is dated August 16, 2016 and the duration of treatment for her son was 5 days (or August 21, 2016). The appellant has not provided evidence to demonstrate that her son's illness lasted longer than the expected 5 days. The panel finds that the appellant has failed to demonstrate that she ceased to participate in the EPBC programming and therefore the conditions of her EP Action plan due to medical reasons.

### **Conclusion**

The panel finds that the ministry's decision to deny the appellant income assistance due to the failure to comply with the conditions of her EP pursuant to section 9(1) of the EAA was a reasonable application of the legislation in the circumstance of the appellant as a condition of her EP was to participate in an employment program (EPBC) under section 9(4) EAA ) and she failed to demonstrate reasonable efforts to participate and she did not demonstrate that there were medical reasons that prevented her participation. The panel therefore confirms the ministry's reconsideration decision. The appellant is not successful in her appeal.