



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated December 19, 2016 to deny the appellant income assistance because he failed to comply with the conditions of his Employment Plan (EP) as required under Section 9 of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 9

PART E – Summary of Facts

The appellant was not in attendance at the hearing. On January 4, 2017, the tribunal mailed a Notice of Hearing to the appellant at the address on record. Four days prior to the hearing, the tribunal checked the Canada Post delivery status for the Notice of Hearing found that it showed as undelivered. The tribunal asked Canada Post to put a trace on the item and followed up with the appellant verbally. The appellant confirmed that he had not received the Notice of Hearing or the Appeal Record. The tribunal provided the appellant with a verbal notice of the hearing and sent a copy of the appeal record electronically. The hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- An Employment Plan (EP) signed by the appellant and dated June 1, 2016. The terms of the EP include that the appellant:
 - a) Create and keep an up-to-date resume.
 - b) Apply for work with all possible employers.
 - c) Seek out and use all available resources to find work: look for posted job openings, seek out job openings that are not posted and apply for jobs that may be open in the future. Resources may include the local WorkBC Employment Services Centre, the Internet, libraries, the newspaper, community agencies, family, friends, cold-calling potential employers, etc.
 - d) Record all his work search actions on the ministry Work Search Activities Record Form, and submit the work search form(s) monthly by the 5th of each month.
 - e) Attend an Employment Plan of BC (EPBC) contractor and provide the ministry with confirmation of attendance.
 - f) Spend at least 25 hours each week on work search activities as described on the work search form.
 - g) Acknowledges by his signature on the EP that if he fails to comply with the conditions of the EP he will be ineligible for assistance.
- On July 5, 2016, an appointment was booked for the appellant with the EPBC contractor. The appellant was to provide the ministry with an update after that meeting.
- On August 17, it was noted that there was no active referral to the EPBC indicating the appellant had not connected since signing his EP. The ministry worker noted he was non-compliant with this EP and a new referral was sent to EPBC.
- EPBC reported to the ministry on September 30, 2016 that they had attempted to contact the appellant by phone at two separate numbers but both were out of service. They then sent a letter but the appellant had not responded. The appellant had not submitted work search reports or confirmation of attendance with the contractor.
- On November 18, 2016, a ministry worker reviewed the appellant's file and found that he was non-compliant with his EP. He had not submitted any work search reports or confirmation from the contractor that he had attended and he did not have an open case file with EPBC. The appellant's December cheque was withheld until he discussed his EP with the ministry. When the appellant attended later that date, he was provided with contact information for the ministry worker.
- The appellant contacted the ministry on November 25, 2016 and left a message. When the worker returned the call, the appellant was not available.
- On November 28, 2016, the appellant spoke with a ministry worker. He stated that he was

clean and sober and there was no reason he was unable to comply with his EP. The worker reviewed with the appellant his conversation with the ministry when he signed his EP. The appellant stated that he understood the terms of his EP and the consequences of non-compliance but he wanted another chance. The ministry worker reviewed the appellant's file and noted that the appellant had been found to be non-compliant twice before. The ministry found the appellant ineligible for income assistance due to non-compliance.

On December 6, 2016, the appellant submitted a Request for Reconsideration in which he stated he believes that, due to his incarceration and the fact that he has been battling drug addiction, he was cut off his income assistance unjustly. He said he has been looking for work and has had multiple job interviews but when employers ask if he has a criminal record, he is refused employment. He said he has copies of work search.

The appellant wrote that it has been more difficult for him to stay clean and on track around the holiday season. Being in and out of incarceration has made his life difficult. He cannot travel on buses because of the noise and proximity to others so he is late for or misses appointments. He was incarcerated from November 3 to 18, 2016 and unable to comply with job search requirements. Losing his income assistance has resulted in his receiving an eviction notice and being faced with homelessness.

The appellant also said that the employment plan worker had a dispute with his roommate and was biased against him when she discontinued his assistance. He said he was attaching work search papers and proof of attending the employment program.

He said finding a new place to live has taken priority over work search because without adequate living space there is a 98 per cent chance of failure in the workplace.

The appellant asked the ministry to reconsider its decision because if given the chance he would like to better himself and obtain employment to gain confidence and be a better person in society.

The appellant filed a Notice of Appeal on the reconsideration decision on December 21, 2016 in which he stated as his reason for appeal as "I was incarcerated."

The panel finds that the information provided by the appellant in his Notice of Appeal is in support of the information before the minister at reconsideration. The panel therefore admits this information as evidence under section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's reconsideration decision that found the appellant ineligible for further income assistance due to non-compliance with his employment plan pursuant to Section 9 of the EAA was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

The relevant legislation is as follows:

EMPLOYMENT AND ASSISTANCE ACT

Part 2 — Assistance

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 positions of the parties

Ministry's Position

At the hearing, the ministry confirmed its position as set out in the Reconsideration Decision.

The appellant entered into an Employment Plan agreement with the ministry on June 1, 2016 and by signing his EP, confirmed that he read, understood and agreed to the conditions specified. The ministry confirmed that it is a requirement of the appellant's EP that he complete all tasks assigned by the EP contractor, spend at least 25 hours each week on work search activities, use all available resources to find work, and report those activities to the ministry monthly.

The appellant did not comply with any of these terms and on November 18, 2016 he was found to be non-compliant with his EP. The ministry accepts the appellant's incarceration as mitigating circumstances for November 3 to 18 but argues that over the five-month period, the appellant did not submit any work searches, make contact with the contractor or provide confirmation of having completed 25 hours per week of work searches. Additionally, on November 28, 2016, the appellant spoke with the EP worker and stated there was no reason he could not attend meetings with the EP contractor and that he was clean and sober. The ministry also notes that the appellant did not submit any information to confirm that he ceased to participate due to a medical reason.

In response to the appellant's allegations that the ministry worker's decision to deny income assistance may have been biased by prior contact with the appellant's roommate, the ministry notes that in the making of the decision, no reference was made to the appellant's roommate or to any prior conversations except those directly relating to the appellant's EP.

Appellant's Position

The appellant's position is that he struggles with drug addiction and incarceration and therefore has been unable to meet the terms of his EP. Having a criminal record makes it difficult for him to be successful in work search because employers will not hire him.

He was living in a small motel room and had been trying to find more suitable housing. Because of the ministry's decision to discontinue his income assistance, he was given an eviction notice and is facing homelessness. Without adequate housing, the appellant stated that there is a 98 per cent chance of failure in the workplace.

The appellant also believes that the ministry worker who made the decision was biased against him because of an incident between the worker and his roommate. He wrote that if given the chance, he would like to better himself and obtain employment so he can gain back some confidence and be a better person in society.

Panel's Decision

In determining the reasonableness of the Ministry's decision, the panel finds that the appellant entered into an EP on June 1, 2016 and by signing the EP, was aware of the terms and conditions of eligibility. These conditions include that he participate in the EPBC program as directed by the EPBC contractor, attend scheduled sessions and provide confirmation of his attendance, spend at least 25 hours each week on work search activities, record his work search activities on the ministry Work Search Activities Record form and submit the work search record to the ministry for each month by the 5th of each month.

Section 9(1) of the EAA provides that, when the Ministry requires, a person must enter into an EP and comply with the conditions of the EP in order to be eligible for income assistance. Section 9(3) of the EAA details the Ministry's authority to specify conditions in an EP including a requirement that the person participate in an employment related program such as EPBC. Section 9(4) of the EAA provides that if the EP includes a condition requiring a person to participate in a specific employment-related program, that condition is not met if the person fails to demonstrate reasonable efforts to participate, or if the person ceases to participate, except for medical reasons.

The panel finds the ministry reasonably determined the evidence establishes that the terms and conditions set out in the appellant's EP have not been met and therefore, the criteria set out in Section 9 of the EAA have not been met.

The evidence of record shows that the appellant failed to demonstrate reasonable efforts to participate in the program by not attending any appointments as required and not providing proof of job search efforts over the five-month period. On November 28, 2016, the appellant reported to the EP contractor that he was clean and sober and there was no reason he could not attend the program, excepting the period during which he was incarcerated.

The panel finds that the Ministry reasonably determined that the appellant failed to demonstrate reasonable efforts to participate in his EP pursuant to Section 9(4) of the EAA, that there is no evidence he was prevented from participating to the program due to medical reasons, and accordingly, as he did not comply with the conditions of his EP, he was not eligible for assistance pursuant to Section 9(1) of the EAA.

The panel therefore finds that the Ministry's decision to deny the appellant income assistance due to the failure to comply with the conditions of his EP was a reasonable application of the legislation and supported by the evidence in the circumstances of the appellant. The panel confirms the Ministry's decision.