

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated December 1, 2016, in which the ministry determined that the appellant is not eligible for income assistance (IA) due to non-compliance with her 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 was no information from a medical practitioner to indicate that she ceased to participate 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 9, 2015, in which she agreed to participate fully and to the best of her ability in an EPBC program offered by a contractor. The program dates were March 31, 2015 to March 30, 2017. The EP contained the following details and requirements:

- The appellant must meet with the EPBC contractor on or before April 7, 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.
- She must call the contractor if she cannot take part in services or complete steps that she agreed to, or when she finds work or moves to a new area.
- To be eligible for IA, the recipient must, when required to do so, enter into an EP and comply with the conditions set out therein.
- Assistance will be discontinued if the recipient fails to demonstrate reasonable efforts to participate in a program as required, or ceases, except for medical reasons, to participate in the program.
- The appellant acknowledges that it is a condition of IA eligibility to sign the EP and comply 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. She understands that she may be required to provide verification of her 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. She acknowledges and understands that if the ministry refers her to a specific employment-related program, she will participate fully in the activities required by the contractor, and if she does not comply with the conditions of the EP, the assistance issued to her and/ or her 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 October 21, 2016 in which she provides her argument and states that she has had some stress dealing with her autistic child, and she will be looking into training and seeing if she can get a training allowance.

3. Letters to the appellant from the ministry dated November 5, 2015 and November 2, 2016 regarding non-compliance with her EP. The ministry reviews the requirement to contact the contractor and participate in the program, and informs her that her cheque is being held by the ministry until she contacts the contractor or EP worker.

4. A ministry information sheet, *Your Guide to the Employment Plan* explaining the creation of the EP and the requirement to participate in EP activities.

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

- On March 31, 2015, the appellant's IA file was opened. She already had an open file with the EPBC contractor, and an EP was created for the appellant to continue to work with the contractor. The ministry spoke with the appellant and she stated that she understood her EP obligations.

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- On April 7, 2015, the contractor advised the ministry that the appellant's case manager had been attempting to contact her without success. An appointment letter was mailed to the appellant advising of her appointment on April 9, 2015.
 - On April 9, 2015, the appellant signed the EP agreeing to the terms contained therein.
 - On April 22, 2015, she attended the ministry's office as her May IA benefits were being held. She stated that she had an appointment with the contractor the next day and her May 2015 assistance cheque was released.
 - On July 8, August 21, September 16, and October 15, 2015, the contractor called or sent a letter to the appellant. No response was received.
 - On November 5, 2015, EPBC reported that the appellant's case manager had not seen her since April 29, 2015. The contractor had called her several times in July and August 2015, and sent her letters in September and October 2015, and there was no response to any contact attempts. The ministry mailed a non-compliance letter with a copy of the EP and advised the appellant to attend the contractor. A hold was placed on her December 2015 IA cheque to ensure her attendance.
 - On November 18, 2015, the appellant attended the ministry's office and advised that she had booked an appointment with the contractor for November 24, 2015. She stated she had not read the paperwork properly and did not realize the attendance and participation requirements. She stated she now understood and would attend all appointments and that if she did not attend appointments without mitigating circumstances, she would be found ineligible for assistance. Her December 2015 IA cheque was released.
 - On December 8 and 23, 2015 and January 12, 2016, the contractor attempted to contact the appellant by phone and sent her a letter on January 13, 2016. There was no answer or response.
 - On March 10, 2016, the contractor indicated that the appellant had not been participating as required since April 2015. A ministry worker reviewed the appellant's file and found this issue has been ongoing since December 2015. The ministry put a hold on the appellant's April 2016 IA cheque to discuss her non-participation and mitigating circumstances.
 - On March 11, 2016, the ministry mailed a letter regarding non-compliance and the consequences of non-compliance with the EP, requesting the appellant to contact the ministry.
 - On March 18, 2016, the appellant contacted the ministry in regards to the cheque hold. The worker discussed the EP obligations and advised that the appellant had not been participating as required, is required to attend and participate with EPBC on a regular basis, and it is not acceptable to attend the contractor once after her cheque was held and then stop attending. The appellant called back and advised she had booked an appointment with the contractor on April 4, 2016.
 - On April 4, 2016, the appellant attended the contractor and agreed to check in with them every two weeks.

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- On July 8 and 28, August 11, and September 16, 2016, the contractor attempted to contact the appellant by phone and mailed her a letter on July 29, 2016. There was no answer or response. The ministry also attempted to contact the appellant via phone and was unable to reach her.
 - On November 2, 2016, EPBC reported that the appellant was non-compliant. The ministry reviewed her file and left her a voice message requesting that she call back to discuss her non-compliance and any mitigating circumstances. A hold was placed on the appellant's December 2016 IA cheque and the ministry sent her a letter advising of the hold.
 - On November 7, 2016, the appellant contacted the ministry and stated that she had received the phone message and a letter but did not receive any calls or letters from EPBC. The ministry noted that both the ministry and the contractor have the same address and phone number for the appellant. When asked why she did not make contact on her own, as she had agreed to do every two weeks, the appellant stated that she kept forgetting and forgot to send in job search documents. When asked if she had any mitigating circumstances that prevented her attendance at the contractor, the appellant stated that she had some stress in her life and a couple of recent falls. When asked about the falls, she stated that she had fallen on her face but did not require hospitalization. She was advised that she is no longer eligible for IA for non-compliance with her EP. The appellant requested reconsideration.

Additional submissions

Subsequent to the reconsideration decision, the appellant filed her Notice of Appeal dated December 9, 2016 with the following documents attached:

1. A one page submission from the appellant dated December 9, 2016 in which she provides the following information:
 - She did not attend meetings or return phone calls due to the chronic and severe anxiety that she suffers from.
 - On December 8, 2016, she forced herself to see a physician about her anxiety and it was the first time she had seen a physician in her community and the first time she had disclosed that she has chronic and severe anxiety as well as panic attacks. She indicates feeling helpless, hopeless and afraid in any situation that involves interactions with any person outside her immediate family, and reports chest pain, nausea, sleeplessness, restlessness, and panic attacks that stop her from meeting with, talking to, and communicating with people to the point where she avoids interactions or just quickly leaves/ runs.
 - Anxiety has been an ongoing issue her whole life, is getting worse with age, and the reason she did not disclose her struggle with mental illness is due to her fear of ridicule.
 - Her physician has referred her to community Mental Health, and she has an appointment on December 15, 2016, is unable to work, and will apply for PWD.

The submission also contains her argument on appeal regarding being cut off from IA. The panel will consider the arguments of both parties in *Part F – Reasons for Panel Decision*.

2. A letter from the appellant's physician dated December 7, 2016 confirming that the appellant is considered "gainfully unemployable for medical reasons for a few weeks, or until further notice."

Admissibility

Other than the appellant's argument on being cut off from IA which was before the minister at reconsideration, the panel finds that the appellant's submission and the letter from her physician are not admissible under section 22(4)(b) of the EAA. The legislation permits the panel to admit evidence that is in support of the information and records that were before the minister at the time the decision being appealed was made. The ministry did not have any information about the appellant's anxiety or inability to work for medical reasons when it made the reconsideration decision. While the reconsideration decision states that the appellant had "stress" from dealing with her autistic child, and she had had a couple of falls that did not require hospitalization, there is no mention of anxiety or an inability to comply with her EP for medical reasons.

Oral submissions

The ministry did not attend the hearing and upon confirming the ministry had been notified of the hearing date and time, the panel proceeded in the ministry's absence pursuant to section 86(b) of the Employment and Assistance Regulation.

At the hearing, the appellant summarized her argument, and acknowledged in response to questions from the panel, she did not mention her mental health condition to the ministry at the time of the reconsideration. She explained that she already had an open file with the contractor at the time she signed her EP because the ministry required her to make contact with the contractor when she first applied for IA. She stated that she met with the contractor and believes she signed the EP at their office.

PART F – Reasons for Panel Decision

The issue to be decided is whether the reconsideration decision of December 1, 2016, in which the ministry determined that the appellant is not eligible for IA due to non-compliance with her 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 was no information from a medical practitioner to indicate that she ceased to participate 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 she “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 she “ceases, except for medical reasons, to participate.”

The appellant does not dispute that she was required to participate in EPBC programming and she does not dispute that she is not in compliance with her EP. The EP confirms that she was required to attend all appointments with the contractor, participate regularly and as directed by the contractor, complete all assigned tasks, and notify the contractor if unable to attend a session. While she takes responsibility for not doing what was expected of her, her position is that she had some stress dealing with her autistic child and will abide by all conditions and look into getting training if she is able to stay on IA. She expresses concern about becoming homeless without IA and states that if she is denied, her child will be devastated.

She submits, in addition, that the financial assistance she receives from the ministry is her only source of income and means to care for herself, and if she is cut from IA she would have no way to support herself. At the hearing, she added that her main complaint is that the EP was supposed to be a two year deal that goes until April 2017, and she was not made aware that she would suddenly be cut off from IA if there was a problem with compliance. With an autistic child to care for, it is hard for her to remember everything, and she is not denying that she did not participate with the contractor as regularly as she should have. She argues that her appeal submission explains everything and it was hard to admit her mental health problem and see her doctor about it.

The ministry's position is that the appellant is not eligible for IA due to non-compliance with her EP. The ministry submits that when the appellant signed the EP she entered into a legal agreement with the ministry to comply with the conditions and follow through with EPBC requirements. By signing the EP, she acknowledged that if she did not comply she would be found ineligible for IA. The ministry notes that a condition of the EP was to attend appointments, complete tasks, and contact the contractor if unable to attend an appointment.

The ministry argues that the appellant ignored repeated attempts on the part of the contractor to make contact with her and she failed to make contact with her case manager every two weeks despite making an agreement to do so. The ministry notes that the appellant spoke with ministry workers and EPBC staff on at least five occasions regarding participation and compliance and during these conversations, the appellant acknowledged that she understood the expectations. The ministry argues that the appellant's pattern of non-participation indicates that she failed to make a reasonable effort to participate in EPBC programming and despite stating that she was experiencing stress and had had a couple of falls, she did not submit any information from a medical practitioner to indicate that her lack of participation is due to a medical reason. The ministry further argues that the conditions of the EP were reasonable and that the appellant was given numerous opportunities to comply.

Panel's decision

The ministry's evidence, which the appellant does not dispute, is that she did not respond to the contractor's attempts to contact her by phone or mail on more than fourteen occasions between April 2015 and November 2016 as noted in the record of decision. She also did not respond to the ministry's attempts to contact her in the summer of 2016, and the only times she contacted the ministry were when a hold was put on her cheque. On these occasions, she attended her next appointment with the contractor but then reverted to her pattern of non-attendance and non-participation. There is no evidence that she called the contractor, as required under the EP, when she was unable to attend an appointment.

The ministry notes that a condition of the EP is to work with the contractor to address any issues that may impact employability and complete all tasks assigned; however, although the appellant reported "stress" and some falls to the ministry, she did not give the contractor any reason for her non-participation. In fact, the contractor indicated in March 2016 that the appellant had not been participating as required since April 2015 and in November 2015, the case manager reported that they had not seen the appellant since April. The appellant also told the ministry that she forgot to submit job search records despite it being one of the tasks assigned by the contractor.

The evidence shows that the ministry communicated expectations and/or the consequences of non-compliance on at least six occasions between March 2015 and November 2016 and gave the appellant repeated opportunities to comply with her EP. The evidence indicates that the ministry communicated with the appellant both in person and in writing. While the appellant argues that her main concern is that she was not made aware that she would suddenly be cut off from IA if there was a problem with compliance, the evidence indicates that the appellant received several warnings from the ministry [holds were placed on her cheque three times between May 2015 and April 2016], and reminders that compliance with her EP was a condition of continued eligibility for IA. Furthermore, the EP clearly states that assistance will be discontinued if she does not comply and participate and the appellant acknowledged to the ministry on more than one occasion that she understood.

The appellant argued at the hearing that she was unable to comply with her EP due to a medical condition and provides a physician's letter stating that she cannot work for medical reasons. However, the panel did not admit the information as it is not in support of the information and records before the minister at reconsideration. The information in the ministry's possession at reconsideration does not confirm any medical condition.

While the panel sympathizes with the appellant's position that it was difficult to disclose her medical condition to anyone out of fear of stigma or ridicule, the panel has considered all of the evidence that was before the minister at reconsideration regarding her participation with the contractor including any direction she received regarding what constitutes satisfactory participation as well as evidence that she was aware of the requirements. As the evidence before the minister indicates the appellant did not comply with the conditions of her EP including meeting with the contractor, completing job search tasks, and notifying the contractor when she was unable to attend appointments, the panel finds that the ministry reasonably determined she did not comply with the conditions of her EP as required under subsection 9(1)(b) of the EAA. The panel finds that the ministry reasonably

determined the appellant did not demonstrate reasonable efforts to participate in an employment-related program as set out in subsection 9(4)(a) of the EAA, 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 and subsequent discussions with the ministry confirm that she understood the consequences of non-compliance with the conditions. As the evidence indicates 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 her appeal.