

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated February 6, 2017, in which the ministry denied the appellant 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 because she was outside the Province of BC.

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 May 27, 2016, 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 April 12, 2016 to April 12, 2018. The EP contained the following details and requirements:

- The appellant must meet with the EPBC contractor on or before April 26, 2016, contact the program prior to that date to set up an Action Plan and continue to attend as required by the contractor. She must take part in EPBC program activities as agreed to with the contractor and complete all assigned tasks including any actions set out in her 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. Her EP conditions will continue to apply and if she does not follow the EP, the ministry may stop her IA payments.
- 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 her 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.

2. Two Requests for Reconsideration (RFRs) signed by the appellant:

- February 1, 2017 stating that her file is under investigation for non-compliance; and
- February 2, 2017 indicating that she has mental health conditions and is considering Persons with Disabilities (PWD). She states that she did not relocate/ move out of her community - she continued to pay rent while she was away in another province (Province B) to attend to a dying family member. She states that she did not intend to remain out of BC past 30 days but was “stuck there with no money/ no funds to get back.” She states that she still has her rental suite in BC and her shelter information is exactly the same and has never changed. She would like her IA file to remain open; cheque production turned on with re-payment of \$20 per month; and she requests a revised/ new EP.

3. Letters to the appellant from the ministry:

- April 12 and May 19, 2016 regarding the requirement to sign the EP, and setting out the ministry’s expectations and the consequences of non-compliance; and
- January 5, 2017 indicating the appellant’s IA cheque will be held as the ministry received recent communications from EBPC confirming the appellant’s failure to follow the requirements of her EP. Upon subsequent review of her file, the ministry has confirmed that she is now non-compliant with her EP; is therefore no longer eligible for IA; and her case is

being closed.

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

- The appellant is in receipt of IA as a sole recipient.
- Her most recent EP was developed on April 12, 2016 and she signed it on May 27, 2016 confirming she had read, understood, and agreed to the conditions and the consequences of non-compliance.
- On October 13, 2016, the EPBC contractor reported they were no longer able to manage the appellant's case as she had moved from their catchment area 2 months previously. She had not reported a move to the ministry.
- On December 29, 2016, the ministry reviewed the report from EPBC and reviewed the appellant's IA file. The ministry found she had not changed her address with the ministry and there was no phone number on file; she had not been in contact with EPBC since August 2016; and she had not contacted the Employment Services Centre in her new location.
- On January 4, 2017, the contractor reported that the appellant had sent them e-mails on August 22, 2016 to advise she was in Province B, and October 11, 2017 [sic] to advise she was unable to participate in the program as she was still in Province B. Further review of the appellant's file confirmed there was no address change on file since March 11, 2015 and the appellant submitted monthly declaration reports declaring she had not moved, or that she was in Province B. The ministry noted she had been receiving IA funds ongoing from August 2016 to January 2017. The ministry supervisor approved adding a sanction for EP non-compliance as per section 9 of the EAA.
- On January 5, 2017, the ministry stopped any further cheque production and mailed the appellant a letter advising she was no longer eligible for IA due to failure to comply with the conditions of her EP.
- ON January 19, 2017, the appellant stated she had been in Province B from August 1, 2016 to mid-November and she requested reconsideration of the ministry's decision.

Additional submissions

Subsequent to the reconsideration decision, the appellant filed her Notice of Appeal dated February 14, 2017 stating she did not move from BC. She states that she had a "family emergency" - a family member was dying and, in keeping with tradition, her family needed her to be there. Prior to the hearing, the appellant faxed 5 rent receipts to the tribunal office showing rent payments received from the appellant in August, September, October, and November 2016. The ministry had no objections to the submissions and the panel finds that they corroborate the appellant's information that she has not moved and was temporarily outside of BC. The panel therefore admits them under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister when the decision being appealed was made.

Oral submissions

The appellant attended the hearing with an advocate. She stated that the ministry's facts are incorrect and she did not move out of the catchment area but was away for 2 months only. She stated she did not know about "the 30-day rule" because the ministry did not tell her about it or provide any information to keep her up to date. In response to questions, the appellant stated that

she left BC on September 1, 2016 and returned to BC on November 12, 2016. She stated that she e-mailed her case manager at EPBC prior to leaving BC and again while she was in Province B. Although she estimated that she would be away for one month, she ended up being away longer because it took her 5 days to travel to Province B and even more time to come up with funds for the return trip.

In response to further questions, the appellant, explaining that she is prone to depression, indicated she was in a “depressed fog” between June and August 22, 2016 when she sent an e-mail to EPBC. However, even with her family situation and depression, she was trying to participate in her EP but did not get a job despite doing her job search. When asked what she meant by the “30 day rule”, the appellant explained that “you are apparently not supposed to be out of the province for more than 30 days because they need to keep tabs on you”. She said that the ministry told her about the rule after she returned to BC and they told her (in a letter) that she was denied IA for both reasons: being out of the province for more than 30 days and for not following her EP.

When asked whether she participated in her EP in Province B, the appellant said “no”, but her friend told her about a “get rich quick scheme” and she worked in Province B for 2 weeks in order to get enough money to travel back home. She said that she submitted her bank statements to the ministry showing she had worked. When asked whether her employment in Province B was through an employment program, the appellant said “no”, she arranged the work on her own through a friend.

At the hearing, the ministry reiterated its position that the appellant had not made reasonable efforts to comply with her EP and is therefore ineligible for IA. The ministry explained that even though the appellant’s residence in BC was retained (as further confirmed by her rent receipts), she was outside of the province and not able to comply with her EP. In response to the advocate’s question on whether depression and anxiety are medical conditions that would affect the appellant’s ability to participate in the EPBC program, the ministry confirmed that no medical information was available when the appellant signed her EP and she had not picked up a PWD package before leaving for Province B.

The ministry stated that “if this information came in after the fact, the denial [of IA] would still stand.” The ministry explained that typically, if a client has medical issues that significantly affect their participation in the contractor’s program, the case manager refers the client back to the ministry as not being a good fit for the program. The ministry stated that the appellant was not referred back to the ministry. The appellant added that prior to going to Province B, her focus was on her family and EPBC, and she did not think of obtaining medical documentation.

When asked whether a client could participate in their EP while outside the province, the ministry stated that although “it would create significant difficulties”, it may be possible, but the appellant would need to discuss it with her case manager and looking for work from outside of BC would need to be part of her EP. However, the only information the case manager provided to the ministry was confirmation that the appellant was away in Province B. To clarify the “30-day rule”, the ministry explained that there is another piece of legislation under which recipients are not eligible for IA if they are out of the province for more than 30 days; however, the appellant was denied IA for non-compliance with her EP under section 9 of the EAA.

When asked why the ministry did not receive the case manager's information that the appellant was in Province B until 5 months after the appellant first informed the case manager via e-mail, the ministry stated she did not know why but sometimes the ministry does not receive all of the information right away. When asked whether the appellant needed to inform both the case manager and the ministry of her absence, the ministry explained that the EP is a contract between the client and the ministry and if there are circumstances that can impact the client's participation in the EPBC program, the ministry needs to know about it.

When asked if there are any exceptions for "family emergency or death", the ministry explained that it looks at situations on a case by case basis to determine if it is possible to work around any extenuating circumstances, but the client must make them aware of the situation. The appellant replied that she did not inform the ministry that she was going to Province B because she felt they would "stonewall" her request, on the basis of denying her funding for a previous trip to Province B.

The panel finds that the oral testimony is in support of the information and records that were before the minister at reconsideration and it provides more detail on the relevant legislative provisions and clarifies what information the ministry had at reconsideration. The panel therefore admits the oral submissions under section 22(4)(b) of the EAA.

PART F – Reasons for Panel Decision

The issue to be decided is whether the reconsideration decision of February 6, 2017, in which the ministry denied the appellant 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 because she was outside the Province of BC.

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:

- 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.”

Positions of the parties

The appellant's position is that she did not move out of BC but had to travel to Province B for a family emergency and was stranded there for much longer than she expected despite her efforts to try and return sooner. She submits that she is suffering from depression - she is currently applying for PWD.

The ministry's position is that the appellant is not eligible for IA due to non-compliance with her EP. The ministry argues she did not demonstrate a reasonable effort to comply with her EP because she was outside the province from mid-August to mid-November and did not participate in the EPBC program while in Province B. The ministry notes that when the appellant signed the EP she understood and agreed to the conditions and consequences of not complying.

Panel's decision

The panel finds that the ministry reasonably determined the appellant is not eligible for IA due to non-compliance with her EP. The appellant does not dispute that she was outside the province, though her evidence is that she was away for 2 months, not 3 months as reported by the ministry. She also does not dispute that she was not in compliance with her EP but argues that she had valid reasons for not complying, including a family emergency; being "stuck" in Province B with no funds to return home; as well as her ongoing struggles with depression. The EP confirms that she was required to set up an Action Plan with the contractor, take part in program activities and complete all assigned tasks, and notify the contractor if she was unable to take part in the program or had moved to a new area.

While the panel accepts that the appellant was temporarily out of the province for a family emergency and had not moved, the issue is not whether she left the province but whether she complied with the conditions of her EP by fully participating in the EPBC program. As noted by the ministry, being outside the province for more than 30 days would be governed by other legislation that could impact IA eligibility; however, the ministry found her non-compliant with her EP pursuant to subsection 9(4)(a) of the EAA and ineligible for IA pursuant to subsection 9(1)(b).

One of the conditions of the EP was to inform the contractor if she "cannot take part in services or complete steps that she agreed to." While the evidence is that she informed the contractor on two occasions that she was away in Province B, the EP also requires consistent participation in the program and there is no evidence that she participated in the program while in Province B. The appellant acknowledges that she did not participate while she was away and even though she worked for 2 weeks in Province B, this activity was outside of the parameters of her EP as her evidence was that she arranged the work through a friend, it was not part of her EP.

Regarding the appellant's reasons for not complying with her EP, the ministry indicated it was not aware that she was going to be away for a family emergency. While she did send e-mails to the contractor, she did not inform the ministry directly until November 2016 when she told the ministry she was back in BC. While the ministry indicated it will look at a client's circumstances on a case by case basis, it also stated that the client would have to make them aware of the situation from the start. Similarly, regarding the appellant's depression, the ministry testified that no medical information was provided to either the contractor or the ministry and the ministry would need the information at the time the EP was signed.

In any event, section 9(4) of the EAA indicates that reasonable efforts to participate in a contractor's program are required, and "medical reasons" is the only exception that would excuse a client from participating in the program. While there is no legislative requirement to provide medical information at the time the EP is signed as required by the ministry, the evidence is that the appellant has not confirmed that she ceased participating in the contractor's program for medical reasons during the time that she was in Province B. The appellant stated that she struggles with depression but was, nevertheless, doing her job search and related activities in the first few months of her EP despite her depression and family situation. She testified that she is only now applying for PWD as she did not have a family physician before. She confirmed that she did not provide medical documentation for her condition to either the contractor or the ministry after she signed her EP.

While the panel is sympathetic to the appellant's circumstances, it 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 and there is no evidence that she ceased 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 her discussion with the ministry at the time of signing, confirms that she understood the consequences of non-compliance with the conditions. As the evidence indicates that she did not participate in the contractor's program while she was away in Province B, 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.