

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry") reconsideration decision dated January 18, 2017 which denied the appellant income assistance because she failed to comply with the conditions of the 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 information before the ministry at the time of reconsideration included the following:

- The appellant has been in receipt of income assistance since July 2016 as a single parent of one dependent child.
- On July 25, 2016, an Employment Plan (EP) was created referring the appellant to the Employment Program of BC (EPBC) and stipulating that the appellant contact the EPBC contractor by August 9, 2016.
- On August 2, 2016 EPBC sent a letter to the appellant requesting contact as the appellant had not yet connected with them. The appellant contacted the program on August 19, and scheduled an appointment for August 23 which she later rescheduled for August 24. The appellant did not attend that appointment nor did she make further contact with the program. The next cheque was directed to the local office for pickup so that EPBC could discuss compliance with her.
- On September 29, 2016, the appellant spoke with an Employment and Assistance Worker (EAW) and stated that she had recently met with EPBC. She signed her EP and was reminded that continued eligibility for assistance was dependent on compliance with the conditions of her EP including maintaining contact with EPBC worker and participation in the EPBC program. The appellant indicated she understood the requirements and signed the EP confirming that she had read, understood and agreed with the conditions and consequences of not complying. The appellant's October assistance was released to her.
- On November 17, 2016, the appellant attended EPBC and the Career Exploration session where her results were reviewed. It was agreed that EPBC would contact her the following day to complete the requirements. EPBC attempted to contact the appellant but was unsuccessful and the appellant did not respond to phone messages or email.
- EPBC informed the ministry on December 13, 2016 that the appellant had not been compliant with her EP; that she appeared very resistant to participant in the EPBC program. The appellant was required to make contact every two weeks and though EPBC attempted several times to connect with her by phone and email on December 1 and December 12, she did not respond.
- The appellant contacted EPBC on December 15, 2016 and scheduled an appointment for 2:30 that same afternoon. EPBC noted that the appellant was in the building meeting with the EAW on that date at that same time but left without speaking with them. The appellant stated that she had to leave without meeting with EPBC because she had to drive a friend to a location 20 minutes away and did not have enough gas to return to the office.
- On December 21, 2016, the appellant contacted EPBC to advise that her cheque was being held due to non-compliance. A meeting was scheduled for December 28 to review the requirements for participating in the EPBC program. She was advised that EPBC would contact the ministry to inform them of the meeting and suggested that the appellant also contact them and inform them of her intent to attend the meeting. The appellant stated she did not have time to phone the ministry because she had a child to care for.

In her Request for Reconsideration, the appellant stated the following:

- Re September 7 – the reason she did not have a phone number is she was waiting to afford a new phone with a new carrier since her old phone would not work in her new location.

- Re December 13 – when EPBC sent her employment quizzes, she completed them the same day and emailed them back. However, she was told that the emails were never received. The appellant stated that she stopped by the Worker’s office twice but the Worker said she didn’t have time to speak to her. The appellant explained to the EPBC contractor that her phone wasn’t working properly so she tried reaching EPBC on many occasions. She stated that the EPBC worker only wanted a phone appointment and she did subsequently speak with her on three different occasions.
- Re the appointment on December 28, she called to ask why her cheque didn’t go through and was told that her account had been closed due to non-compliance with the Employment Plan and she would have to re-apply. She had a conversation with a man from a toll-free number and assumed that the appointment of that date was cancelled.

The appellant stated that she has been job searching this whole time and tried hard to comply. When she could not meet a scheduled time, she followed up with phone calls and by stopping in. She had many phone calls but none of those counted.

Her rent and bills well exceeded the income and it has been incredibly difficult to cover the rest of the basics such as gas. She lost her place because she did not receive her December cheque. She also needed a new car battery which ended up shorting out the electrical system and now she needs a new alternator for her car.

The appellant filed a Notice of Appeal of the Reconsideration Decision that was received by the Employment and Assistance Appeal Tribunal on February 7, 2017. A written hearing was requested.

The appellant submitted two requests to extend the deadline for written submissions; the first dated February 21; the second, March 6, in order to gather, print, scan and send information to the ministry. The requests were approved and the hearing was scheduled accordingly.

In the Notice of Appeal the appellant submitted a document describing circumstances in the appellant’s life that were not before the ministry at the time of reconsideration. The panel has determined that this information is not admissible as evidence under section 22(4) of the Employment and Assistance Act.

The appellant also provided an invoice from her mobile service provider in which is highlighted calls made from her phone in December. The appellant stated these are calls she made to EPBC. The panel finds the record of calls is in support of the information before the ministry at reconsideration as it tends to corroborate the information provided in the Request for Reconsideration. The panel therefore admits this information as evidence under section 22(4) of the Employment and Assistance Act.

For the appeal, the ministry adopted its reconsideration summary as its submission and did not introduce any new evidence.

In her Notice of Appeal, the appellant indicated that she believes she has made every reasonable effort to comply with the plan and her bi-weekly meetings. She stated that she stopped into the EPBC worker’s office December 2 and spoke to [her] for 20 minutes, at which time it was agreed that the next two-week follow-up, scheduled for December 13, would be by phone.

Mobile phone records list the following calls:

December 2 1 minute call at 3:08 pm

December 13	1 call for 1 minute at 2:49 pm; 2 calls for 1 minute each at 3:07 and 3:08 pm
December 14	1 call for 1 minute at 11:44 am; 1 call for 1 minute call at 11:45; 1 call for 4 minutes at 2:25
December 15	1 minute call at 10:24 am
December 16	3 calls for 1 minute each at 2:55, 2:56 and 2:57 pm
December 21	1 call for 11 minutes at 1:17; 1 call for 1 minute at 12:12 pm

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 her 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 circumstance.

The relevant legislation is as follows:

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*].

Positions of the parties

Ministry's Position

Under Section 9 of the Employment and Assistance Act a person is required to enter into and comply with the conditions of an Employment Plan in order to maintain eligibility for assistance for the family unit.

The appellant signed the Employment Plan agreement confirming she read, understood and agreed to the conditions and consequences of not complying. The conditions of the EP included meeting with the EPBC contractor, participating in the program activities, completing assigned tasks including those listed in the EPBC Activity Plan and working with the EPBC Case Manager. The agreement also noted the appellant was to contact the EPBC Contractor if she was not able to participate or if she moved to a different location.

The ministry's position is that the appellant established a pattern of not participating in the EPBC program. On several occasions, the appellant's obligations under the program were reviewed with her. She was provided with several "second chances" to establish compliance.

In the opinion of the minister, the appellant did not demonstrate a reasonable effort to comply with the conditions of the EP and on December 29th, the minister denied further assistance.

Appellant's Position

The appellant's position as laid out in her Notice of Appeal is that she did try to comply with the terms of her EP. She explained that she was without phone or email when she first moved to her new location in July which is why EPBC could not contact her. While she did not attend scheduled appointments, she did attempt to contact her EPBC contractor and conduct meetings by phone as per their agreement of December 2, 2016.

Panel Decision

In determining the reasonableness of the ministry's decision, the panel finds that the appellant entered into an EP on July 25, 2016 that included the condition that she attend the first appointment with the EPBC contractor on or before August 9, 2016. A condition of continued eligibility for assistance was that she participate in the EPBC program and as directed by the contractor. If unable to take part in services or complete steps agreed to in the EP, the appellant was required to contact the EP contractor. The EP clearly states that if the appellant failed to comply with the conditions of her EP, she would be ineligible for assistance.

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 appointments as required. The appellant's EP required that she meet with the EPBC contractor on or before August 9, 2016 but did not attend until month end when her cheque was held for pickup at the EPBC office.

Again, in September, the appellant's cheque was held for pickup. She had not had any contact since attending the office to pick up her cheque in August. She was reminded of her obligations and her cheque was released.

In November, the appellant attended the EPBC Career Exploration session, agreed to a scheduled telephone meeting the following day, but did not attend. Attempts to connect with the appellant in December were unsuccessful. On December 15, the appellant was meeting with her EAW worker in the same building and at the same time as her scheduled meeting with EPBC, but she left without making contact. Her explanation was that she had to leave to drive a friend to an appointment and was not able to return.

The appellant provided a list of calls she states were to the EPBC contractor, however; these calls, with the exception of one, were for one minute in duration and there is no explanation of who received the calls or the content.

The panel finds that the ministry determined that the appellant failed to demonstrate reasonable efforts to participate in her EP pursuant to Section 9(4) of the EAA, that there is no evidence she was prevented from participating in the program due to medical reasons, and accordingly, as she did not comply with the conditions of her EP, she 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 her EP was a reasonable application of the legislation and supported in the circumstance of the appellant and confirms the ministry's decision.