

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision, dated March 1, 2017, in which the Ministry found that the Appellant and her spouse were not eligible for income assistance due to their failure to enter into an Employment Plan (“EP”) as required by section 9 of the EAA.

## PART D – Relevant Legislation

*Employment and Assistance Act* – EAA, section 9

## PART E – Summary of Facts

The evidence before the Ministry at the time of reconsideration consisted of the following:

- The Appellant's Request for Reconsideration ("RFR"), dated February 27, 2017.
- A six page typed submission from the Appellant;
- An attachment page from the Appellant, listing three phone calls, dated September 1, 2017, September 15, 2017, and September 21, 2017;
- A three page attachment from the Appellant, consisting of three documents, titled "Confirmation of Assistance", dated November 23, 2016, October 26, 2016, and October 12, 2016;
- A one page attachment from the Appellant, consisting of a letter to the Appellant from the Ministry, dated October 7, 2016;
- A one page attachment from the Appellant, consisting of page 2 of the RFR;
- A February 24, 2017 letter from the Appellant to the Ministry, requesting a supplement while awaiting the reconsideration decision;
- A one page document providing an overview of the reconsideration process and the process for requesting a reconsideration appeal supplement;
- The Employment Plans for the Appellant and her spouse, prepared by the Ministry case worker;
- Letters to the Appellant and her spouse, dated September 21, 2016;
- Letters to the Appellant and her spouse, dated October 7, 2016

In her Notice of Appeal, the Appellant:

Stated that she disagreed with the reconsideration decision because it was based on what the Appellant described as distorted or inaccurate facts and that it disregarded evidence that the Appellant presented. The Appellant also stated that non-compliance with the provisions of section 9 of the EAA by the Appellant was caused by the Ministry itself.

The Appellant also provided a ten page typed written submission to the tribunal, dated March 28, 2017, which described, in considerable detail, the interactions between herself and her spouse and various Ministry representatives between approximately September 12, 2016 and February 1, 2017.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision that the Appellant was not eligible for income assistance, due to her failure to enter into an EP, as required by section 9 of the EAA, was reasonable.

The requirement to enter into an EP in order to be eligible for income assistance is set out in section 9 of the EAA as follows:

### **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**

### Appellant's Position

The Appellant's position is that the Ministry's reconsideration is rife with inconsistencies and inaccuracies and that the reconsideration decision ignored key facts and dates and events set out in the Appellant's response to the RFR.

The Appellant refers to a September 12, 2016 letter from the Ministry and states that, contrary to what was set out in the reconsideration decision, the September 12, 2016 letter was not the first correspondence between the Appellant and the Ministry. The Appellant does not deny receiving the September 12, 2016 letter but states that she and her spouse attended a Ministry office on September 1, 2016 and September 8, 2016. The Appellant states that it was the intention of her and her spouse to sign their respective EPs on those dates. The Appellant confirms that the EPs were not ready on September 8, 2016 when she and her spouse attended at a Ministry office in person.

The Appellant states that she and her spouse could not have stated that they refused to sign the EP on September 15, 2016, contrary to what was set out in the reconsideration decision, as neither she nor her spouse had received their EPs. The Appellant states that on September 15, 2016, she and her spouse had merely spoken to a Ministry representative about taking an alternative employment program because of their belief that the previous program that they had taken had not been useful. The Appellant also states that in this conversation, she and her spouse were told that "everything" they would need was on their file online system under "My Self Serve."

The Appellant states that the Ministry finding that she and her spouse had advised a representative of EPBC that they would not be attending a program at EPBC is also incorrect. The Appellant states that she had merely advised EPBC that she and her spouse were still discussing an alternative employment program with the Ministry. The Appellant states that there is a significant difference between refusing to attend at EPBC and merely advising EPBC that she and her spouse would "not be beginning a course on a particular date."

The Appellant states that on September 21, 2016, she and her spouse had another conversation with a different Ministry representative that resulted in her and her spouse coming to an understanding that they could "request different classes or a different type of training." The Appellant and her spouse were expecting to receive written confirmation of this but did not receive any. The Appellant states that she and her spouse received their respective EPs for the first time on September 26, 2017.

The Appellant states that she received a letter, dated October 7, 2016, from the Ministry, which included the confirmation that "A decision on your eligibility will be determined once all documentation is reviewed." The Appellant states that she took this to mean that the Ministry had not yet made a decision on her eligibility, despite the finding in the reconsideration decision that she and her spouse were advised of the Ministry's decision on October 7, 2016.

The Appellant denies that the next contact between her and her spouse and the Ministry was on

January 31, 2017 and that, in fact, she and her spouse attended at a Ministry office on February 1, 2017.

Finally, the Appellant denies having refused to answer a question about how she and her spouse supported themselves since October, 2016, in a conversation with a Ministry representative on February 28, 2017 and states that the question about how she and her spouse had supported themselves had actually come up in their February 1, 2017 meeting and that the February 28, 2017 meeting was only about a supplement during the period of the reconsideration.

The Appellant states that the alleged inconsistencies and inaccuracies in the reconsideration decision show that the non-compliance with the requirements of section 9 of the EAA by the Appellant and her spouse are a result of “continuous administrative unfairness and wrongful execution of the Ministry's own process.”

### Ministry's Position

The position of the Ministry, as set out in the reconsideration decision, is that eligibility for assistance is contingent on each member of a family unit entering into an Employment Plan and complying with the terms of the Employment Plan, pursuant to section 9 of the EAA.

In this Appeal, the Ministry relied on the reconsideration decision and, in particular, the reconsideration summary.

### **Panel's Decision**

Section 9 of the EAA states clearly that, in order to be eligible for income 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.”

The Appellant cites numerous reasons for not having entered into the EP provided by the Ministry. The Appellant denies that either she or her spouse refused to sign an EP, on either of September 15, 2016 or on September 21, 2016, dates that the reconsideration decision describes the Appellant's spouse as having, respectively, advised the Ministry that neither he nor the Appellant would sign the EP and that the employment program required by the plan had already been taken by the Appellant and her spouse and was not useful.

While there is no correspondence from the Ministry to the Appellant, dated September 12, 2016, before the panel, the panel notes that the EPs for the Appellant and her spouse run from September 12, 2016 through September 12, 2018, suggesting that it was prepared on or before September 12, 2016.

Whether or not the Appellant or her spouse ever refused to sign their EP or received them any time before September 26, 2017, the Appellant confirms that she and her spouse received their EPs on September 26, 2017. Prior to that, the Appellant acknowledges that she and her spouse did have conversations with representatives of the Ministry on September 15, 2016 and September 21, 2016 in which they advised that they had already taken the EPBC program and did not find it useful and that they hoped to have approval to participate in an alternative program which might provide more useful employment training for them.

The EPs themselves clearly state that the Appellant was to meet with the EPBC Contractor on or before September 27th (2016) and that "if you do not follow this employment plan, the ministry may stop your income assistance payments." Although the Appellant stated that, following the conversation between her and her spouse and a Ministry representative on September 21, 2016, she and her spouse were waiting for some kind of written confirmation that an alternative program could be arranged for them, there is no evidence that either she or her spouse attempted to contact the Ministry to discuss what should then have been, to the Appellant and her spouse, a significant contradiction between what was contained in the EPs they had received on September 26, 2016 and what the Appellant states she and her spouse understood might be happening with their EPs based on their September 21, 2016 conversation with the Ministry. Moreover, Part 6 of the EPs contained an acknowledgment that "I understand that if I do not comply with the conditions of this employment plan, the assistance issued to me and/or my family **will be discontinued** (emphasis added)."

Further, the Appellant acknowledges receipt of an October 7, 2016 letter from the Ministry to her. Although the Appellant appears to have focused on the words "A decision on your eligibility will be determined once all documentation is reviewed", the October 7, 2016 letter also states that an "Employment Plan review is required" and that the Appellant's cheque would be held at the Ministry office until the EP review was received. Moreover, the words "A decision on your eligibility will be determined once all documentation is reviewed" appear at the end of the October 7, 2016 letter, indicating that the documentation to which the letter referred was the EP review itself.

The Appellant gives no reason in her submissions as to why neither she nor her husband signed or took steps to comply with their respective EPs after having received them on September 26, 2016 or after receiving the October 7, 2016 letter, other than that she and her spouse relied on the "Confirmation of Assistance" documents on the "My Self Serve" portion of the Ministry's online system, which did not flag the non-compliance of the Appellant and her spouse with their respective EPs and indicated the dates that assistance cheques would be issued.

The panel finds that the Appellant's belief that she and her spouse would not be denied income assistance and that they need not comply with their respective EPs until the Ministry confirmed that they would not be able to take an alternative employment program was not a reasonable belief in light of the contents of the EPs, the warning in the October 7, 2016 letter to the Appellant that an EP review was required, and the fact that the Ministry had not actually issued any assistance cheques to the Appellant and her spouse, which the Appellant confirmed in her initial attachment to her RFR.

In view of all of the foregoing, the panel finds that the Ministry's decision was both a reasonable application of section 9 of the EAA in the Appellant's circumstances and was reasonably supported by the evidence and the panel confirms the Ministry's decision.