

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") reconsideration decision dated March 13, 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 an Employment Program of BC (EPBC) program that was offered by a contractor ("the contractor").

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 August 4, 2015, in which she agreed to participate in the contractor's program fully and to the best of her ability. The program dates were June 3, 2015 to June 2, 2017. The EP contained the following details and requirements:

- The appellant must meet with the EPBC contractor on or before June 17, 2015, take part in 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, 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 a specific program. She acknowledges and understands that if the ministry refers her to a 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. A Request for Reconsideration ("RFR") signed by the appellant on March 7, 2017 in which she indicates she has to take care of two children and needs her pay cheque in order to live at her home near the children's school. She states that she is going to look for a job through her EP with the contractor, and she should find out availability of childcare or part time daycare.

3. Letters to the appellant from the ministry:

- March 15, 2016 indicating the appellant's April 2016 cheque will be held at the ministry office until the appellant contacts a worker. The letter explains that the appellant's IA eligibility is under review due to non-compliance with her EP and EPBC, and a decision on her eligibility will be determined once all documentation is reviewed.
- September 28, 2016 indicating the appellant's October 2016 cheque will be held until she calls the ministry to discuss why she did not follow through with her EP. The ministry advises that clients who are expected to work must comply with the terms of their EP in order to remain eligible for IA, and notes that the appellant has not followed through on the condition that required her to attend the EPBC program.

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

- The appellant is in receipt of IA as an employable single parent recipient of two dependent school-aged children.
- She signed her most recent EP on August 4, 2015 confirming she had read, understood, and agreed to the conditions and the consequences of non-compliance. Her obligations were also explained to her and she confirmed that she was able to look for work.

- On January 5, 2016, the contractor reported that the appellant had missed the last three program events and had not responded to e-mail or phone messages. The contractor noted her history of non-compliance in the program beyond the three events.
- On February 25, 2016, she advised the ministry that she was having difficulty attending ESL classes at the contractor's location at 9:00 a.m. as her children started school at the same time.
- On both March 14 and April 14, 2016, EPBC reported that she had not attended scheduled events [she missed eight dates in February and March 2016] and had not made any proven attempts to secure daycare despite being provided information and resources concerning daycare options.
- On April 22, 2016, she advised the ministry worker that she had not been able to find daycare and she had an injury. The ministry states that she did not provide confirmation of the injury or that it prevented her attendance with EPBC. She confirmed that her children were attending school and the ministry advised that she could attend EPBC while her children were in school and if the schedule conflicted she would need to find daycare. She was asked to reconnect with EPBC and she confirmed an appointment for May 3, 2016.
- On May 5, 2016, EPBC advised that she did not attend the May 3rd meeting.
- On July 6, 2016, EPBC reported her continued non-participation [she had missed eight consecutive appointments since February 18, 2016].
- On September 28, 2016, the ministry sent her a letter requesting that she contact them to discuss compliance with her EP, and reminding her of the requirement to comply.
- On October 28, 2016, the appellant stated that she had not attended the EPBC program because of daycare issues. She was reminded that she had been advised in April 2016 to obtain daycare and that she could attend the program when her children were at school. She stated that she would obtain daycare and attend the program. The requirements of the EP were reviewed and she was advised that attendance at the program was mandatory to ensure continued eligibility for IA and that if the ministry received another report of non-compliance, further assistance may be stopped. The appellant confirmed that she understood.
- On January 9, 2017, EPBC reported that the appellant had not attended their office since October 28, 2016, had not committed to a work search, and had missed her last appointment on October 31, 2016. The contractor noted three attempts to contact her without success and that she had a history of non-compliance.
- On February 9, 2017, the ministry attempted to contact the appellant but her number was out of service. The ministry noted there had been two previous discussions with her regarding her non-compliance.
- On February 27, 2017, she advised the ministry worker that she could not attend the program from 9:00 a.m. to 3:00 p.m. as she did not have daycare. When asked about her efforts to arrange childcare, she stated that she had looked into three childcare options since April 2016. She stated that she had found another program on her own that had open sessions, but she missed the first appointment as her child was sick. The ministry noted that she had not attended an appointment with the contractor since October 28, 2016, and advised that she was not eligible for further IA due to failure to comply with the conditions of her EP.

Additional submissions

Subsequent to the reconsideration decision, the appellant filed her Notice of Appeal dated March 21, 2017 stating that she needs to take care of her two school-aged children. She added that they want to live here and attend their school and they want their mother to take care of them. The panel

accepts her submission as argument that corroborates information she provided for the reconsideration.

Oral submissions

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

At the hearing, the ministry summarized its position that the appellant had not made reasonable efforts to comply with her EP. The ministry explained that it understands the consequences of denying IA to a family, and does not make the decision lightly without giving the client every opportunity to comply with EP requirements. However, recipients with children over the age of three are expected to work and EPBC assists clients with English language training and childcare arrangements including daycare subsidy information.

The ministry stated that the appellant did not verify her attendance at ESL classes or state why she could not participate in the program while her children were at school. The ministry explained that under the legislation, the ministry has no discretion to continue providing IA once a pattern of non-compliance is reported by the contractor and the client is given reminders and further opportunities to comply. The panel finds that the oral testimony is in support of the information and records that were before the minister at reconsideration, providing more detail on how any barriers to compliance with the EP are addressed. The panel admits the oral testimony 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 March 13, 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 legislation in the circumstances of the appellant. The ministry found that the appellant did not demonstrate reasonable efforts to participate in EPBC programming.

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...

Analysis

Section 9(1) of the EAA requires employable recipients to enter into an EP and comply with its conditions 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 program:

- Subsection 9(4)(a) requires “reasonable efforts to participate in the program” and the recipient has not met the condition of participation if she “fails to demonstrate reasonable efforts to participate”.
- Under subsection 9(4)(b), the recipient has not met the condition of participation if she “ceases, except for medical reasons, to participate.”

Positions of the parties

The appellant’s position is that she cannot participate in the program due to childcare issues. She states that she cannot participate between the hours of 9:00 a.m. and 3:00 p.m. The ministry's position is that the appellant is not eligible for IA due to non-compliance with her EP. The ministry argues that she did not demonstrate a reasonable effort to comply with her EP because she did not participate fully with the contractor despite being reminded of the requirements on two occasions [April and October 2016], and she did not obtain daycare as required to ensure that she was able to attend. 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 record indicates that she missed eight consecutive appointments with the EPBC contractor in February and March 2016. In January 2017, the contractor further reported that she had not attended the program since October 28, 2016 and could not be contacted despite several attempts that were made. The record further shows that the appellant was sent letters in March and September 2016 to address non-compliance with her EP and she was reminded of the consequences of non-compliance in these letters and in discussions with the ministry. Despite her confirmed need for ESL training, she verified, on more than one occasion, that she clearly understood the requirement to comply with her EP and she agreed to arrange childcare and participate with the contractor.

Regarding the appellant's childcare issues [which she confirmed was her only reason for her non-compliance] the record indicates that her children are school-aged and the ministry determined she could participate in the program during school hours and arrange childcare before and after school. While the appellant maintains that she cannot participate in the program from 9:00 a.m. to 3:00 p.m., she confirmed that her children are in school and she has not explained why she cannot attend the program during school hours. The evidence is that EPBC gave her childcare information and resources, and despite communicating her lack of childcare to the ministry on four occasions and reporting that she made three attempts since April 2016 to arrange childcare, there is no verification that she contacted any childcare providers.

Under subsection 9(4)(a) of the EAA, the onus is on the client to demonstrate reasonable efforts to participate in a specific employment-related program where participation in such program is a condition of the EP. The condition is not met and the client is ineligible for IA if the ministry is not satisfied that reasonable efforts have been made. What constitutes "reasonable efforts" is not defined in the legislation and the ministry relies on reports from the contractor to assess the appellant's efforts to participate.

The panel has considered all of the evidence regarding the appellant's participation in the program including any direction she received regarding what constitutes satisfactory participation and evidence that she was aware of the requirements. The record shows a pattern of non-compliance including a series of missed events, not attending appointments for months at a time, and not committing to a work search. Further, the ministry addressed compliance with her in two letters and at least three discussions and she confirms all along that she understood the consequences of non-compliance. The panel finds that the ministry reasonably determined the appellant failed to make a reasonable effort to participate in the EPBC program as required under subsection 9(4)(a) of the EAA and, is therefore not eligible for IA for failing to comply with the conditions of her EP. The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the decision. The appellant is not successful in her appeal.

PART G – Order

THE PANEL DECISION IS UNANIMOUS BY MAJORITY (Check one)