

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated March 16, 2017 whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA) for not complying with the conditions of his Employment Plan (EP), due to his failure to demonstrate reasonable efforts to participate in the employment-related program and with no medical reason for ceasing to participate.

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 the reconsideration decision included:

- 1) Letter dated November 8, 2016 to the appellant in which the ministry enclosed the Employment Plan (EP) for signature and wrote that any changes to the appellant's plan will require an amendment agreed to by the ministry;
- 2) (EP signed by the appellant and dated November 15, 2016. The terms of the EP include to:
 - Take part in the contractor program activities as directed by the contractor;
 - Complete all tasks given to him, including any activities set out in his Action Plan;
 - Call the contractor if he is unable to attend a session, or when he finds work;
- 3) Hospital emergency department visit summary dated January 25, 2017 and Discharge Instructions Order Report. These indicated the appellant was experiencing acute pain in the abdomen and a CT scan did not show any significant renal stone or obstructive pathology. The CT scan did indicate small gallstones but the assessment was that they were not the cause of his left sided flank pain. His other blood work was stable and he was discharged; and,
- 4) Request for Reconsideration dated March 13, 2017.

In his Request for Reconsideration, the appellant wrote:

- He had three different calls and he told them he was waiting for a call back. The person on the third call just wanted to argue and "continued to push my buttons."
- He has done everything that the contractor asked.
- He got a job offer but had an emergency and got fired before he started.
- His contact at the contractor told him she would call back, but she did not.
- He has continued looking for work and he took a [trade] course.

Additional information

In his Notice of Appeal dated March 24, 2017, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he did not get all his information together.

At the hearing, the appellant stated:

- He got a job without the contractor's help.
- He had a medical emergency (severe stomach pains) while flying to the job and had to get off the plane. At the hospital, he was given heavy medication to deal with the pain and a CT scan was conducted, which showed that his kidneys were inflamed and he has some gall stones, even though he previously had his gall bladder removed.
- Because of his medical emergency, he was not able to show up on time for the job he had gotten and he was fired.
- He got a medical note from the doctor, which he brought to the ministry and to the contractor. The contractor was fine with the medical information that he provided.
- He had been dealing with one worker at the contractor who said she would get back to him, but then went on sick leave for about 2 ½ weeks. He was waiting for her to call him back as she said she would.
- He had a call from the contractor and he explained what he was doing to find work, and the worker said that was okay. A little later that day, another worker from the contractor called him and he had to again explain what he was doing and the worker said that was okay. He got a third call about 10 minutes later, from a third worker who "flew off the handle" and said it was up to him to call the contractor and that they had decided to cut him off. He felt the contractor was treating him like a child. If it was not for that third call, he would still be doing his work searches as he had previously been doing.

- All the records of his work searches are on his phone and it is hard to find wireless printing to make copies. He has faxed out resumes with no responses.
- The work gear that the contractor wanted returned had been stained with diesel and he showed the worker.
- His community is very small and a person needs to know someone to be able to get a job. He did not finish high school because he joined his father working in his trade. All he knows is that one trade. Although he is not educated, he is in tune with what is going on.
- He took a course for another trade.
- He has had jobs in various industries but they were all seasonal employment. He would like to find something different. He preferred when the ministry let him do his work searches on his own.
- His knee is now “blown out” as he recently tore the ligaments badly. He is seeing a doctor this week and suspects he will need surgery.
- He cannot pay his bills or rent and he has had to sell things to get by.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry clarified that:

- The ministry has not received a letter or note from a doctor to confirm the nature of the appellant’s medical condition and his inability to participate in his EP for the short or the long term.
- The appellant has done supervised independent work searches in the past but he was referred to the contractor in this EP because it was determined that the appellant may have barriers to employment that the contractor could help with.
- The ministry does not typically amend an EP without a doctor’s note.

Admissibility of Additional Information

The ministry did not raise an objection to the admissibility of the information provided in the appellant’s oral testimony. The panel considered the information from the appellant, for the most part, as being in support of, and tending to corroborate, the circumstances relating to his efforts to comply with his EP, which were before the ministry at reconsideration. Therefore, the panel admitted this oral testimony in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

The panel did not admit the information from the appellant that he has recently injured his knee and that he may need surgery, as this medical information does not relate to his previous medical condition, was not before the ministry at reconsideration, and the ministry has not had an opportunity to consider this information.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's conclusion that the appellant did not comply with the conditions of his EP, due to his failure to demonstrate reasonable efforts to participate in the employment-related program and with no medical reason for ceasing to participate and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA) is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstances.

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].

Panel's decision

In the reconsideration decision, the ministry found that the appellant did not comply with the conditions of his EP, due to his failure to demonstrate reasonable efforts to participate in the employment-related program and with no medical reason for ceasing to participate and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the EAA. The ministry wrote that the appellant entered into an EP dated November 15, 2016, and the conditions of his EP require that he take part in the contractor program activities as directed by the contractor, complete all tasks given to him, and contact the contractor if he is unable to attend a session. The ministry wrote that on January 5, 2017 the appellant expressed that the contractor process was too slow regarding getting certification for a job opportunity and that he wanted to search on his own. However, the ministry required that the appellant participate in the existing EP.

The ministry wrote that on January 9 and 10, 2017 the appellant complained to the ministry about the contractor and, on January 25, 2017, the appellant reported that he had found full-time employment. The ministry wrote that on February 10, 2017 the appellant advised that he had not been able to start the job due to a medical emergency and, on February 22, 2017, the appellant provided medical

information that was reviewed and found not to indicate if the appellant was unable to work or to participate in the EP and, therefore, the appellant was still required to participate in the program. The ministry wrote that on February 22, 2017, the appellant stated that he would not contact the contractor, that the contractor could call him, he was much better looking for work on his own, and that he would only be looking for work in the trade with which he is familiar as he did not want to “go backwards” in his life.

Section 9(1) of the EAA provides that, when the ministry requires, a person must enter into an EP and comply with the conditions in the EP in order to be eligible for income assistance. Therefore, the ministry reasonably considered that the appellant signed an EP on November 15, 2016 and that the conditions were for the appellant to take part in the contractor program activities as directed by the contractor, complete all tasks given to him, and to contact the contractor if he is unable to attend a session. The panel finds that the ministry reasonably considered the appellant’s interactions with the contractor over the period since he signed the EP and also considered the medical information provided by the appellant.

Additional information was provided by the appellant in his Request for Reconsideration that he believes he has done everything requested by the contractor. The appellant wrote in his Request for Reconsideration that he has continued looking for work and took a trade course, and he was waiting for a call back from his contact with the contractor. At the hearing, the appellant explained that he had been dealing with one particular worker at the contractor who said she would get back to him, so he was waiting for her to call him back when another person from the contractor called and “flew off the handle” and said it was up to him to call the contractor. The appellant stated that if it was not for that call, which he found upsetting, he would still be doing his work searches as he has been doing all along.

After signing his EP, on January 5, 2017, the appellant expressed his frustration with the process of going through the contractor to prepare for and to search for work and that he wanted to search on his own. The ministry clarified at the hearing that the appellant has done supervised independent work searches in the past but he was referred to the contractor for this EP because it was determined that the appellant may have barriers to employment that the contractor could help with. While the appellant repeatedly expressed frustration with the conditions in his EP, and he acknowledged at the hearing that he preferred when the ministry allowed him to do his own searches, the panel finds that the ministry reasonably considered that the appellant agreed to these conditions when he signed the EP on November 15, 2016. The panel notes that Section 9(7)(c) of the EAA stipulates that the decision specifying the conditions in an EP is not subject to appeal.

The appellant acknowledged at the hearing that he was not going to contact the contractor after the upsetting call he received. To 'participate' is to take part in or to be actively involved in, and the panel finds that the ministry reasonably determined that the appellant failed to make reasonable efforts to participate in the program when he refused to take part in the program activities, including regular contact with the contractor, as directed.

The ministry considered the appellant’s medical information and found that the information provided did not indicate if the appellant was unable to work or to participate in the EP and, therefore, the appellant was still required to participate in the program. At the hearing, the appellant stated that he got a medical note from the doctor, which he brought to the ministry and to the contractor and he understood that the contractor was fine with the medical information that he provided. The hospital emergency department summary dated January 25, 2017 indicated the appellant was experiencing acute pain in the abdomen and that the CT scan did not show any significant renal stone, no

obstructive pathology, with small gallstones that are not the cause of his left sided flank pain, and the appellant was discharged.

While this report confirmed that the appellant sought medical attention for abdominal pain and he has small gall stones, there is no information as to any associated medical restrictions that would prevent the appellant from continuing to participate in his EP program. There was no additional medical information provided by the appellant on the appeal relating to the conditions that were before the ministry at reconsideration. The legislation requires that the appellant demonstrate reasonable efforts to participate in the program, or to provide a medical reason for ceasing to participate in the program, and the panel finds that the ministry reasonably concluded, pursuant to Section 9 of the EAA, that the requirements have not been met in this case.

Conclusion

The panel finds that the ministry decision, whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the EAA, was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision. The appellant's appeal, therefore, is not successful.