

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the "ministry") April 13, 2017 reconsideration decision denying the appellant income assistance because the appellant failed to comply with the employment plan he signed 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

1. For its reconsideration decision, the ministry considered the following evidence:

A. The appellant agreed to and signed an Employment Plan (EP) on November 19, 2014 and then electronically signed a second EP on January 18, 2017 after the first EP expired. As a condition of continued eligibility for Income Assistance (IA), both of these EPs require the appellant to make reasonable efforts to specifically comply with the tasks and conditions agreed to with the Employment Program of BC (EPBC) provider. The most current plan required that the appellant:

- Meet with the EPBC contractor before a specific date at the end of 2016;
- Take part in EPBC programming activities as agreed to with the contractor;
- Complete all tasks given to you (the appellant), including any actions set out in your EPBC Action Plan;
- Call your EPBC contractor if [you] cannot take part in services or complete steps that you agreed to, or when you find work; and
- If you move, contact the contractor within one week and request a transfer to your new area.

B. Information from its records that:

The appellant is a single parent on IA who is designated Employment Obligated.

C. The reconsideration decision which contains the following timeline:

- November 19, 2014 – the appellant signed an EP which stipulates certain obligations to work with EPBC to assist the appellant with acquiring employment and specifies consequences of non-compliance;
- Five noteworthy incidents between December 3, 2015 until April 6, 2016 following which the ministry worker concluded there was no current issue of non-compliance;
- August 12, 2016 – EPBC reported that the appellant advised them of pending surgery on August 2 which was scheduled for August 14, 2016. The notation states the case manager requested the appellant “submit a form for the ministry to advise if you have been medically excused from EPBC following surgery.”
- August 25, 2017 (sic) – the appellant reported he had missed one appointment following minor surgery but that he was able to continue EPBC programming again and that an appointment had been made with the case manager;
- November 17, 2016 – the original EP had expired and on December 20, 2017 the ministry worker created a new EP which included conditions for:
  - attendance and full participation in EPBC programming as directed by the EPBC contractor;
  - a requirement to address any issues that may impact employability;
  - contacting the EPBC contractor if the appellant was unable to attend a session;
  - contacting the EPBC contractor when the appellant starts or ends employment; and
  - a statement that if the appellant failed to comply with the conditions of the EP he would be deemed ineligible for IA.
- January 18, 2017 the terms of the EP drafted on December 20, 2017 were reviewed with the appellant and he then signed the document electronically.
- March 9, 2017 – the ministry worker received a phone call from EPBC stating EPBC was frustrated with the appellant’s level of commitment to the program and that he had worked with a few different case managers but had not been responding to them, and that they wanted to close the case. The EPBC case manager reported the appellant only did the bare minimum and was not participating fully in programming. Specifically, they noted that the appellant refused to participate in unpaid work experience, failed to attend scheduled forklift training the costs of which were not recouped and other issues. Finally, the case manager opined that the appellant

would benefit from work experience because his work experience is not recent and that such work experience could be arranged immediately, not with a 4-8 week waiting period as alleged. The case manager reported the appellant stated he could have employment anytime but that he was planning on moving back to another province. The panel notes that the appellant disputes the statement that he could have employment anytime and explained in his submission that he was referring to the suggestion that he pursue opportunities for unpaid work experience, by suggesting he could do that at any time. Following this contact with EPBC, the ministry worker unsuccessfully attempted to contact the appellant by phone, so a letter was mailed to him advising him that a hold had been placed on his IA cheque.

- March 15, 2017 – Another unsuccessful attempt to contact the appellant was made by the ministry worker and then a MySS electronic message was sent to him.
- March 24, 2017 – the appellant contacted the ministry and disputed the information provided by EPBC stating that he felt his attitude and efforts were sufficient. He was advised by the ministry worker that his case would be discussed with a supervisor but that he should attend his appointment with EPBC.
- March 29, 2017 – EPBC reported that the appellant attended their offices on this date and had been advised that he had been connected to the program for 2.5 years during which time he had access to numerous supports such as unpaid work experience, short term occupation and certificate courses, job search workshops, resume and cover letter workshops but that he had failed to participate in these resources for various reasons.
- March 30, 2017 – the ministry denied the appellant IA for non-compliance with his EP under Section 9 of the EAA.
- April 5, 2017 – the ministry received a signed request for reconsideration of the decision to deny IA.

D. Appellant's request for reconsideration dated April 5, 2017 in which he stated that:

- The details of the EP have been met via job searches and attendance at scheduled meetings so he is in compliance with part 2 Section 9(1) of the EAA;
- He states the ministry failed to identify any given incidents where he is non-compliant with the EP;
- He says the only incident where he was non-compliant was when he did not attend the forklift training and for that he took reasonable steps by notifying his case manager by email that he could not attend for health reasons;
- He states that if he is deemed non-compliant then section 13 of the EAA should have been applied to him because he has dependant children. The effect of section 13 and the associated regulation would have been a reduction in his IA of \$100 a month.

2. At the hearing:

The appellant did not attend the hearing.

The ministry relied on the reconsideration decision and highlighted parts of the decision emphasizing that there are different types of EPs. Some EP are focused on training while others may be focused on training and job searches. The ministry noted that from the time the first EP was signed in November 2014, nearly a full year went by before the appellant was asked to meet with the case manager in December of 2015 and that he was resisting meeting with the case manager until his cheque was flagged in January 2016. Then in April 2016 the appellant refused to participate in unpaid work experience citing he was returning to another province in two months. Even when the EP expired in November 2016, the new plan was not signed off until January of 2017. The ministry noted the reconsideration decision found section 13 of the EAA was not applicable in the appellant's circumstances.

The panel admitted the testimony of the ministry representative because there was no new information provided and it was supportive of the information already before the ministry.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision denying the appellant income assistance because he failed to comply with the conditions of his employment plan, as required by section 9 of the EAA, was reasonably supported by the evidence and/or was a reasonable application of the applicable legislation in the appellant's circumstances.

### **Applicable Legislation**

The following legislation applies to the Appellant's circumstances in this appeal:

#### ***Employment and Assistance Act, Part 2, Section 9***

##### ***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.*

### **The Panel's Findings and Decision**

The purpose of an Employment Plan is to outline the specific activities and expectations of someone on income assistance in order to assist them in finding employment or to make them more employable.

Section 9 of the EAA mandates when required by the ministry, each applicant for income assistance must enter into and comply with the conditions of an EP. There is no dispute that the appellant was under a valid EP signed on January 18, 2017 which included an acknowledgement that, if he did not comply with the conditions of the plan, income assistance would be discontinued, and that while the conditions of an EP may be reconsidered by the ministry, they cannot be appealed.

Other than a verbal statement, the appellant provided no written confirmation from a physician of any medical issues which would prevent him from complying with the EP and invoke an exception under section 9(4)(b).

The remaining issue then is whether the appellant made reasonable attempts to fully participate in the EP as required by the ministry and by the EAA.

The appellant's position is that he was actively looking for employment as evidenced by his job searches and that he attended all scheduled meetings with the EPBC contractor. He admits that he missed the forklift training which had been scheduled for him to attend but submits he notified his case manager by email that he was unable to attend due to illness. He states this is sufficient for the panel to find that he did make reasonable effort to comply with the EP.

The ministry's position is that the appellant was made aware of his obligation to participate fully in the EP as directed by the EPBC worker and as required under the EAA. The ministry adds that the appellant was aware that failure to do so would result in the denial of IA. The ministry submits that by signing the EP the appellant would have agreed to and been aware of his obligations under the EP and the consequences of non-compliance. This was reinforced when he signed the original EP and again by a ministry worker on January 18, 2017 when he signed the new EP. The ministry submits the appellant failed to make reasonable efforts to participate in the EP because the EPBC case manager reported the appellant had been active with the program for 2.5 years during which he had neglected to participate in numerous suggested support activities such as unpaid work experience, short term occupation and certificate course, job search workshops, resume/cover letter workshops citing a variety of reasons which he was unable to articulate to EPBC.

The panel acknowledges the appellant was making attempts on his own to search for work and that he had a good record of attending scheduled meetings with the EPBC provider. However, given the lack of success finding work for 2.5 years with this strategy, the panel finds the appellant's decision not to avail himself of assistance suggested by EPBC such as updating his resume, acquiring more recent work experience (paid or unpaid) and not acting on the other job search strategies suggested by EPBC do not indicate a reasonable effort by the appellant to participate in the program and become more employable or find employment. A reasonable effort extends beyond mere attendance at meetings. The EP the appellant signed requires the appellant to "complete all tasks given to you... to find work or become more employable as quickly as possible." This means engaging in all reasonable activities suggested by the case manager. The EP is clear that a failure to do so will lead to discontinuance of assistance issued by the ministry. The onus is on the appellant to provide reasonable explanations why it was not possible for him to comply with the requests of the EPBC.

The appellant suggests that the only event he missed was the forklift training because he had a medical reason not to do so and he advised his case manager of this by email. He contends nobody asked him to provide written confirmation from his medical practitioner excusing him from participation in the EP.

According to the reconsideration decision, on August 12, 2016 the ministry worker advised the appellant to "submit a form ... to advise if you have been medically excused from EPBC following surgery." The onus is on the appellant to provide this proof. Without this confirmation of mitigating circumstances exempting the appellant from the EP, the ministry has no option but to find the appellant has not made reasonable efforts to comply with the EP.

The appellant submits that section 13 of the EAA applies in his case because he has 2 dependents, and so it follows that section 29 of the *Employment and Assistance Regulation* should have been applied in his circumstances which would result in a reduction to his income assistance by \$100 a month for non-compliance rather than having his assistance stopped completely.

The ministry argues that section 13 is not applicable in cases of non-compliance with an EP such as the one the appellant was under. It is applicable in situations where someone on assistance fails to meet employment related obligations, specifically it applies if the person has:

- a) failed to accept suitable employment,

- b) voluntarily left employment without just cause, or
- c) been dismissed from employment for just cause.

The panel notes that section 13(1)(a) applies in circumstances where a person fails to accept suitable employment. There was no offer of employment made to the appellant and so this section does not apply in his case. Neither did the appellant leave employment voluntarily nor was he dismissed.

The panel notes Section 13(1)(b) applies where a recipient of IA fails to demonstrate reasonable efforts to search for employment. The ministry is not alleging that he failed to search for employment. The panel concurs with the ministry that section 13(1) is not applicable in the appellant's case because he has not failed to accept suitable employment as none was offered to him.

The panel finds the ministry did not stop income assistance because the appellant failed to search for or accept employment. The ministry stopped income assistance because the appellant failed to follow the EP, specifically by not following through on recommendations made by the EPBC case manager; to attend suggested programming such as participation in unpaid work experience, participation in workshops aimed at improving his resume and cover letter writing skills, participation in workshops to improve job search skills, and not showing up for a scheduled forklift course without providing adequate confirmation of mitigating circumstances. The ministry determined these failures to comply with the EP showed a lack of reasonable effort to comply with the EP, the panel agrees.

In the request for reconsideration the appellant explains other difficulties experienced by the family unit including court battles and medical coverage which are beyond the jurisdiction of this panel or the ministry to resolve.

Based on the foregoing, the panel concludes the appellant did not demonstrate a reasonable effort to comply with the EP.

**Conclusion:**

The panel finds that the evidence establishes the ministry reasonably concluded the appellant did not make reasonable efforts to participate in the EP, and that he provided no evidence of any medical reason which precluded him from participating as required by section 9 of the Act. The Panel finds that the ministry's decision was a reasonable application of the legislation and supported by the evidence. The panel confirms the ministry's reconsideration decision pursuant to section 24(1)(a) of the EAA. The appellant is not successful in his appeal.