

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the "ministry") Reconsideration Decision of March 13th, 2017 in which the ministry declared the appellant ineligible for income assistance (IA) because he failed to comply with the conditions of his Employment Plan pursuant to Section 9(1)(b) & 9(4)(a)(b) of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

EAA *Employment and Assistance Act*, Section 9

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- 1) **May 27th, 2015 - A newly signed (by the appellant) Employment Plan (EP)** referring the appellant to the Employment Program of British Columbia (EPBC) employment contractor. The EP stated that the appellant would attend the program on or before April 23rd, 2015 and continue to participate in the EPBC programming regularly and as directed by the EPBC contractor.
 - 2) **On the May 27th 2015 dated (EP)** – the appellant agreed to work with the EPBC contractor to address any issues that may impact employability and the appellant was to make contact with the contractor if he could not make a session or when he started or ended employment. Further, the EP stipulated that if the appellant was to fail to comply with the conditions of the EP – the appellant would be ineligible for assistance. Noted on the EP was that by signing, the appellant acknowledged the conditions of the EP and the consequences for non-compliance.
 - 3) **A report by the EPBC contractor dated October 27th, 2016 and provided to the ministry on January 5, 2017 which indicated that;**

The appellant had not been participating in his EP since July 11, 2016. The EPBC reported that they had tried to reach the appellant numerous times but that the appellant had not responded. After a hold had been placed on the next month's IA, the appellant contacted the ministry worker and had stated that he had booked an appointment with the EPBC worker in December, but missed the appointment due to working that day. During the conversation with the ministry worker, the appellant was advised of the consequences for non-compliance with his EP. The appellant stated he understood and acknowledged that his IA would be placed on hold until it was confirmed that he attended his upcoming appointment with the EPBC worker.
 - 4) **On January 12, 2017** – Attendance was confirmed with EPBC. A hold was placed on the following month's IA to confirm attendance with EP.
 - 5) **A EPBC report dated January 20, 2017 indicating that;**

The appellant was not participating in the programming – that the appellant had completed his action plan but had not attended a scheduled two-day long workshop. EPBC noted that the appellant was scheduled to attend another upcoming workshop.
 - 6) **On January 31, 2017** – the appellant notified the EPBC worker that he had a rotator cuff injury.
 - 7) **On February 6th, 2017** – the appellant met with his ministry worker who discussed the appellant's non-compliance with his EP. The appellant was advised that a number of workshops had been scheduled for him by EPBC for Feb 8 and 9th, 2017. The ministry worker advised that the EPBC reported that the appellant failed to submit job search logs for January 23rd, 30th, and February 6th, 2017 and that to-date, only one job search log had been received. Further, EPBC reported that the appellant had not attended the resource room, as per the resource room record-of-use. In this meeting, the ministry advised the appellant that EPBC reported that no verification to-date had been provided to support the appellant's various reasons for missing workshops or other EPBC stated commitments.
 - 8) EPBC records indicate that the scheduled February 8 and 9th, 2017 workshops were not attended by the appellant.
 - 9) **February 16th, 2017** – the ministry worker reviewed the hold that was placed on the appellant's IA. The ministry worker contacted the appellant and was told by the appellant that he was attending EPBC, and had been signing in. The appellant stated that he had an appointment with his EPBC worker on February 21, 2017. The appellant was advised that his IA would not be released until it was confirmed that he attended the February 21, 2017 meeting with EPBC.
- An EPBC report dated February 16th, 2017 indicated that;**
The appellant had not been submitting job search logs as per his Action Plan. On this date, the ministry contacted the appellant to discuss this issue and was informed by the appellant that he had signed a new Action Plan, and had been submitting job searches. The appellant stated that he had dropped off additional job searches that morning. The appellant stated that he missed a workshop due to a fire in his apartment (non-verified), and that he missed a workshop; that his EPBC worker agreed to post-pone, due to an injury to his rotator cuff. The ministry worker asked for confirmation of this.

10) **On Feb 21, 2017 – the EPBC reported that;** the appellant signed a new Action Plan on January 17, 2017 and had been scheduled to attend skills classes on January 18 and 19th, 2017 but had failed to attend. Further, EPBC reported that multiple interventions (skills training) had been recommended by EPBC. As per the EPBC log book, the appellant had not attended the resource room. On this date, a ministry worker contacted the appellant and was told that EPBC was lying. The appellant stated he would be submitting a doctor’s note which confirmed the rotator cuff injury.

11) **March 7th, 2017** – A signed request for reconsideration package was received. The appellant wrote; “I attached a doctor note saying I can’t now go back to work. I have bad arthritis in right shoulder, I am on Tylenol 500 all day. I have an appointment at ultrasound in April. I am going to WBC to see (worker) Tuesday, March 7, 2017 at 1:30 pm to sign me up for a course – one month volunteer program”.

Additional Information

March 28th, 2017 - The appellant stated on his Notice to Appeal that he disagreed because he still has to go to a ultrasound appointment April 20th, 2017 at 8 am. For his very sore shoulder. On Tylenol 500 x 10 every day for pain.

At the hearing, the appellant submitted two additional pieces of evidence, 1) a physician signed note indicating the results of the appellant’s ultrasound – which confirms an aggravation to the appellant’s shoulder, and 2) a pain medication prescription signed by the same physician - which was accepted as admissible under section 22(4) of the Employment and Assistance Act. The panel agreed that both pieces of evidence were in support of the decision made at the time of the reconsideration decision. While the ministry had concerns regarding the content of the evidence, after it was made clear to the ministry that the content would only be admitted if it was determined to be in support of the original evidence at the time the reconsideration decision was made, the ministry did not object to the admissibility of the evidence.

At the hearing, the ministry relied on the reconsideration decision and did not introduce any additional evidence.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry of Social Development and Social Innovation's (the "ministry") Reconsideration Decision of March 6th, 2017 in which the ministry declared the appellant ineligible for income assistance (IA) because he failed to comply with the conditions of his Employment Plan pursuant to Section 9(1)(b) & 9(4)(a)(b) of the Employment and Assistance Act (EAA).

The relevant sections of the legislation are as follows:

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.

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for income assistance due to non-compliance with his Employment Plan (EP) as per Section 9(1)(b), of the Employment and Assistance Act (EAA). In his Notice of Appeal dated March 28th, 2017 the appellant stated that he disagreed with the decision because he was still waiting for the ultrasound results which would show his rotator cuff injury. The ministry notes that when the appellant signed the EP that he entered into a legal agreement with the ministry to comply with the conditions of the EP and follow through with the EPBC requirements. The ministry also notes that when the appellant signed the EP, he acknowledged that if he did not comply, he would be found ineligible for assistance. The ministry records indicate that the conditions of the EP were such that the appellant was required to attend the EPBC program on or before April 23, 2015, and continue to participate in the EPBC programming regularly and as directed by the EPBC contractor. The EP required the appellant to work with the EPBC to address any issues of employability, and to contact the contractor if he was unable to make a session, or when starting or ending employment.

The ministry records indicate that over 8 months, between July 2016 and February 2017 the appellant did not attend the majority of the scheduled EPBC appointments, did not call in advance to reschedule appointments, failed to make contact with or respond to EPBC, failed to follow the Action Plan by submitting job search records and attending the resource room. While reasons were provided as to why the appellant was not in a position to attend the scheduled appointments and workshops, the appellant failed to provide verification for these reasons. Although the ultrasound

results were accepted as supporting evidence at the hearing, the appellant did not provide an explanation as to how the shoulder pain would keep him from complying with attending workshops, returning phone calls, or providing job searches. Further, the appellant could not recall if he had brought the aggravated shoulder pain issue up to any other EP worker or ministry worker at any point prior to January 31st, 2017, and could not confirm that the shoulder pain was as a result of something that occurred at any time between May 27th, 2015 and before January 31st, 2017 – the date recorded as the first time the shoulder pain was provided as the reason for non-compliance with the EPBC over the previous 7 months.

The ministry wrote that given the appellant failed to make contact and attend appointments, as well as failed to work with EPBC, the appellant did not make reasonable efforts to comply with the EP agreement as per Section 9(4)(a) of the EAA – and did not provide any reason which indicated that medical reasons caused him to cease to participate in EP programming pursuant to Section 9(4)(b) of the EAA before January 31st, 2017. The ministry's position is that the conditions of the EP were reasonable, and that the appellant was given numerous opportunities to comply, and as such was deemed ineligible for income assistance under Section 9 of the EAA.

Section 9(1) of the EAA states that a recipient of income assistance must comply with the conditions of the EP in order to be eligible for continued income assistance, and subsection (4) specifies that, if an 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 in the program, or ceases, except for medical reasons, to participate.

The panel finds, that the evidence establishes that on May 27th, 2015 the appellant signed an EP in which he agreed to participate in employment programming, and would contact the contractor of EPBC if he was unable to attend. Further, the evidence establishes that the appellant was made aware that by signing the EP, he was bound by a legal agreement that if he did not comply with, the lack of compliance would render him ineligible of continued income assistance. Accordingly, the evidence establishes that the appellant's timeline from July 2015 through to February 2017 consisted of missed appointments, a general failure to call in advance to reschedule those missed appointments, a lack of responding to the multiple attempts made by the ministry to contact the appellant, and a general lack of engagement with EPBC. Although the appellant stated that he had a rotator cuff injury and could not work, he generally failed to work with EPBC to address any issues of employability, and failed to contact the contractor when he was unable to make a session.

Overall, the panel finds that the ministry reasonably determined that the evidence establishes a theme of non-compliance on behalf of the appellant with the conditions of his EP.

As such, the panel finds that the ministry reasonably determined that the appellant failed to demonstrate reasonable efforts to participate in the EP, more specifically; by regularly failing to attend scheduled EPBC appointments between July 2016 and February 2017, failing to respond to the multiple attempts to contact the appellant made by EPBC, as well as failing to notify the employment contractor in advance of any barriers to attending the appointments. The ministry also reasonably determined that the appellant failed to satisfy the ministry that he was unable to meet the obligations of the EP and that he ceased to participate for medical reasons; as the medical issue claimed by the appellant was only brought to the attention of the EP worker after months of non-compliance. Accordingly, the panel finds that the decision of the ministry to declare the appellant ineligible for income assistance for failure to comply with the conditions of his EP was a reasonable application of the applicable enactment in the circumstances of the appellant. Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(b) and section 24(2)(a) of the Employment and Assistance Act. The appellant therefore is not successful in his appeal.