

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated May 18, 2017, which held that the appellant is not eligible for income assistance (IA) due to a failure to comply with the conditions of his Employment Plan (EP) pursuant to Section 9 of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

Employment and Assistance Act (EAA) - Sections 9 and 22(4)

PART E – Summary of Facts

The Appellant is in receipt of IA as a sole recipient.

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

1. A chronology of events in the May 18, 2017 Reconsideration Decision Summary of Facts in which the Ministry states that:
 - The Appellant missed his initial appointment with the Employment Program of British Columbia (EPBC) Contractor (the Contractor) on December 19, 2016, did not respond to two emails from the Ministry on December 20, 2016 and January 4, 2017, and failed to schedule a follow-up appointment with the Contractor;
 - The Ministry reminded the Appellant of the requirement for a follow-up meeting with the Contractor in February 2017, that a follow-up meeting with the Contractor was set for March 1, 2017, and that at that follow-up meeting the Appellant indicated that he intended to search for work independently;
 - The Appellant was advised by the Contractor at a meeting on March 22, 2017 that he must continue to work with the Contractor; and,
 - At a subsequent meeting with the contractor on April 27, 2017 the Appellant had refused to complete the paperwork necessary to develop an Action Plan and had made no further contact with the Contractor after that date.
2. EP signed by the Appellant and dated December 6, 2016. The conditions of the EP were that the Appellant:
 - Participate in the EPBC;
 - Attend his first appointment with EPBC on or before December 19, 2016;
 - Take part in EPBD activities as agreed to with the Contractor;
 - Complete all tasks assigned including any activities that may be set out in a plan developed by the Appellant and the Contractor which sets out the steps, services and supports that the Appellant agrees are needed for him to find work or become employable as quickly as possible (the Action Plan);
 - Notify the Contractor if he is unable to take part in services or complete steps to which he had agreed or when he found work; and
 - Ask the Contractor to transfer his EPBC case file to another contractor within one week of a move.

The EP also advises the Appellant that the Ministry might stop his income assistance payments if he does not follow the EP.
3. Letter from the Ministry to the Appellant dated May 4, 2017 stating that the Appellant did not follow his EP requirements and as a result that he is not eligible for income assistance.
4. Request for Reconsideration (RFR), which is signed by the Appellant and dated May 16, 2017 and states that:
 - He has been looking for work and “following the rules”;
 - He had made multiple attempts to meet with the Contractor, including on the first occasion when he was told that he was capable of finding work and told to try to do so, and then sent a letter saying that he had refused service;
 - He had been treated rudely and was “pushed off on another office” the last time he tried to approach the Contractor, and then called “management” but had not received a call back;
 - He is continuously looking for work and is not receiving any help in looking for work; and,
 - He is homeless, has no clothes and is dealing with a lot of stress.

Evidence On Appeal

In his Notice of Appeal (NOA), the Appellant did not indicate why he disagreed with the Ministry's Reconsideration Decision but stated that he does not have a current address and would like to receive future correspondence at an email address which he provided in the NOA.

Evidence at the Hearing

At the hearing, the Appellant stated that had applied for IA because he had lost his job due to a drug addiction. He said that he had agreed to participate in the development of an EP and an Action Plan because he wanted to follow the rules and felt he was able to work. He stated that he had met with a representative of the Contractor who had agreed that he was capable of looking for work on his own and who told him that she would write the Ministry to let it know that he was capable of looking for work on his own. The Appellant said that the Contractor's subsequent letter to the Ministry actually said that he was not cooperating.

The Appellant stated that he was told by the Ministry that his IA cheque was being held at a local office for non-compliance and that he tried to make an appointment with the Ministry to explain what had happened but there was no Ministry office near where he was living and he didn't have a bus pass. He said he tried to set up a meeting with a supervisor in the Ministry and at the Contractor's office but that he was "pushed off" and no one would schedule an appointment.

The Ministry stated that it was aware that he had been evicted from his residence and fired from his job when he applied for IA in December 2016. The Ministry said that it was also aware that the Appellant had some anger management issues, and had been told by the Appellant that he had been fired from his job for being sick before the Ministry made its Reconsideration Decision. Because of the circumstances around his eviction and dismissal from employment, the Ministry suspected that the Appellant might also have mental health issues and/or an addiction to drugs and acknowledged that, in hindsight, it should have picked up on these clues. At the hearing, the Ministry initially stated that it became aware of the Appellant's addiction to drugs at the same time that the Reconsideration Decision was made. However, upon checking the information on file, the Ministry acknowledged that it was not able to confirm that the Appellant had a drug addiction until May 23, 2017 when he told the Ministry that he could not participate in an EP because he was going into treatment. The Ministry also stated that the Appellant is awaiting a mental health assessment and as a result any mental health issues have not yet been diagnosed.

The Ministry explained that the requirement for an IA recipient to enroll in an EP is at the discretion of the Ministry and that it is Ministry practice to waive this requirement in circumstances where a recipient has either mental health issues, a drug addiction, or both, and under those circumstances a recipient is enrolled in a treatment or rehabilitation program, the cost of which is covered by the Ministry, and the recipient's IA benefits have been reinstated.

The Ministry also confirmed that, because an addiction to drugs has been confirmed in this instance, the Appellant has been reinstated by the Ministry, is now enrolled in a Ministry-funded treatment program and is receiving IA benefits. The Ministry said that a new EP with the Appellant was in place. The Ministry stated that, under the circumstances, it would not object to a decision of the panel which would result in a rescinding of the Reconsideration Decision "taking into account the current situation". The Ministry further stated that if the Reconsideration Decision was not rescinded, the Appellant would have to repay all of the benefits he has been receiving pending a decision on appeal,

and possibly even the cost of his treatment program, and that the Ministry would have no discretion in this regard.

The panel notes that Section 22(4) of the EAA states that it may admit as evidence only the information and records that were before the Minister when the decision being appealed was made, and oral or written testimony in support of the information and records that were before the Minister when the decision being appealed was made. The panel further notes that the Ministry was not aware of the information relating to the Appellant's drug addiction until May 23, 2017. As the Reconsideration Decision was made on May 18, 2017, the panel finds that the information relating to the Appellant's drug addiction, possible mental health issues and the subsequent reinstatement of his IA benefits cannot be admitted as evidence in the appeal.

PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the Ministry's Reconsideration Decision, which held that the Appellant is not eligible for assistance due to noncompliance with his EP pursuant to Section 9 of the EAA.

The relevant sections of the EAA read as follows:

Employment plan

- 9 (1) For a family unit to be eligible for income assistance ... each ... 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 ... recipient ... to participate in a specific employment-related program that, in the minister's opinion, will assist the ... recipient ... to
- (a) find employment, or
 - (b) become more employable.
- (4) If an employment plan includes a condition requiring ... a recipient ... 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 ...
- (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*].

Panels of the tribunal to conduct appeals

- 22 (4) In a hearing referred to in subsection (3), a panel may admit as evidence only
- (a) the information and records that were before the minister when the decision being appealed was made, and
 - (b) oral or written testimony in support of the information and records referred to in paragraph (a).

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With respect to the Ministry's statement that the Appellant would have to repay all of the benefits he has been receiving pending a decision on appeal, the panel notes that Section 28 of the EAA states that an amount that a person is liable to repay under the EAA is a debt that **may** be deducted from any subsequent income assistance or supplement for which the person's family unit is eligible. The panel notes that the Ministry, through the use of "may", has the discretion in regards to the amount a person is liable to repay. Further, the Ministry, once aware of the Appellant's health issues, made a different decision, assisting the Appellant to obtain treatment for his addiction, and that decision is not being appealed.

The Appellant's Position

The Appellant's argues that he is capable of finding work without the assistance of the Contractor or the need for an EP, and that he had tried without success on a number of occasions to demonstrate this to the Ministry and the Contractor, who he also found dismissive.

The Ministry's Position

The Ministry position in its Reconsideration Decision is that the Appellant agreed to an employment plan which referred him to the Contractor. The Ministry takes the position that the Appellant was required to participate fully in the EP, including completing all tasks, and to advise the Contractor if he was unable to participate for any reason. Because he did not maintain contact with the Contractor, participate actively in the programs, or complete an Action Plan, the Appellant had not fulfilled the requirements of Section 9 of the EAA and is therefore not eligible for IA.

The Panel's Decision

Section 9(1) of the EAA states that to be eligible for assistance, the recipient must, when required, enter into an EP and comply with the conditions of the plan. The panel notes that by signing the EP the Appellant acknowledged that he was aware of the requirements of his EP and aware of the consequences of not complying with it. A condition of his EP was to participate in the EPBC, to develop an Action Plan, and to notify the Contractor if he was unable to attend a session.

The panel further notes that the Appellant missed his initial appointment with the Contractor on December 19, 2016, did not respond to two emails from the Ministry on December 20, 2016 and January 4, 2017, and failed to schedule a follow-up appointment with the Contractor. The panel further notes that the Ministry reminded the Appellant of the requirement for a follow-up meeting with the Contractor in February 2017, that a follow-up meeting with the Contractor was set for March 1, 2017, and that at that follow-up meeting the Appellant indicated that he intended to search for work independently. The panel also notes that the Ministry contends that the Appellant was advised by the Contractor at a meeting on March 22, 2017 that he must continue to work with the Contractor, and that at a subsequent meeting with the contractor on April 27, 2017 the Appellant had refused to complete the paperwork necessary to develop an Action Plan and had made no further contact with the Contractor after that date.

The panel finds that the Ministry's decision to deny the Appellant income assistance due to his failure to comply with the conditions of his EP pursuant to section 9(1) of the EAA was both a reasonable interpretation of the evidence available to the Ministry at the time of the Reconsideration Decision and a reasonable application of the applicable enactment in the circumstances of the Appellant, as a condition of his EP was that he participate in an employment program (EPBC) under section 9(4) EAA and develop an Action Plan with the Contractor. The panel finds that the Appellant failed to demonstrate reasonable efforts to participate based on the information the Ministry had at the time that the Reconsideration Decision was made.

Conclusion

The panel finds that the Ministry's Reconsideration Decision, which found that the Appellant was ineligible for income assistance due to failure to comply with his EP pursuant to Section 9(1) of the EAA was a reasonable application of the applicable legislation and a reasonable interpretation of the evidence in the circumstances of the Appellant. The panel therefore confirms the ministry's decision. The appellant is not successful in his appeal.