

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("ministry") reconsideration decision dated July 26, 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 and that she did not meet the medical exception under subsection 9(4)(b) of the EAA.

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 December 17, 2015, in which she agreed to participate in the contractor's program fully and to the best of her ability. The program dates were December 9, 2015 to December 8, 2017. The EP contained the following details and requirements:

- The appellant must meet with the EPBC contractor on or before December 23, 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. An Action Plan signed by the appellant on May 10, 2016 in which she committed to carry out the activities and participate in the services identified in the Action Plan to the best of her ability. Employment readiness factors included a list of the appellant's strengths as well as considerations, specified as "no driver's license, no email or internet, financial hardship." The start date was May 25, 2016 and the activities specified included the following:

- Work with her case manager to achieve her employment goals; and follow up on their agreed upon schedule to review her progress and update or revise her Action Plan;
- Attend *Employment Readiness* workshops;
- Contact her Employment Advisor if she finds employment;
- Attend appointments that were scheduled for May 10 and 31, 2016;
- Attend a 2-day *Career Exploration* workshop in May 2016;
- Contact WorkBC every 2 weeks by phone, e-mail, workshop, or appointment, and bring career assessment results to her appointment in January/ February 2016; and
- Participate in an *Employment Focused Group Workshop* in January/ February 2016 including attending workshops as needed to gain skills and knowledge to assist, achieve, and maintain her employment goals.

3. A referral letter from the appellant's family physician dated March 2, 2017, indicating recent clinic visits and illnesses which "required her to miss work." The appellant was seen at the clinic on November 14, 2016 with bronchitis, December 1, 2016 also for bronchitis, and January 10, 2017 with sinusitis.

4. A Request for Reconsideration (“RFR”) signed by the appellant on July 18, 2017 with attached letter from her family physician dated July 16, 2017. The physician certified that the appellant suffers from cholecystectomy syndrome and indicated that “for the most part this condition is well controlled with medication but on occasional days when the medication is not effective she gets repeated episodes of diarrhea.” The physician added that “during these episodes she finds it difficult to leave home to attend classes or to attend to other outside of the home activities.”

5. Letters to the appellant from the ministry:

- June 27, 2017 advising that the appellant’s July 2017 IA cheque will be held at the office and that she is currently not eligible for IA as she “has not been in compliance with her EP and connection with WorkBC.”
- March 14, 2017 advising that her March 2017 IA cheque will be held at the office and stating that the appellant must follow through with her case manager at WorkBC and “to date you have failed to do so and your eligibility is now in question”, and she must contact her EP worker directly.
- December 9, 2015 asking the appellant to review and sign her EP and advising that EP expectations are requirements under the legislation; that it is important to follow through with the conditions of her EP; that she should advise the ministry if she is unable to follow through; and that she will be ineligible for IA if she fails to comply with her EP.

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

- The appellant is in receipt of IA as a single parent recipient of two dependent children and is deemed employment obligated by the ministry. Her file has been opened since 2008.
- On December 17, 2015 she signed her most recent EP confirming that she had read, understood, and agreed to the conditions and the consequences of not complying. The ministry referred her to the EPBC program.
- On December 21, 2015, EPBC reported that the appellant had made no contact since her referral to the program. The ministry file was signaled so that a worker could discuss compliance with her.
- On March 7, 2016 the ministry noted that the appellant had attended her appointment on January 8, 2016 and EPBC reported that she had returned to the program and was actively engaging in services.
- On April 19, 2016 EPBC reported phone calls made to the appellant to remind her of appointments as well as to re-schedule her missed appointment on April 7, 2016. EPBC reported that there was no answer or voicemail at either number the appellant had provided and a letter was therefore sent to the appellant on April 19, 2016 regarding her non-participation/ non-contact.
- On January 20, 2017, EPBC reported that she had not been participating in the program since October 19, 2016 and did not attend meetings on October 27 or December 9, 2016 despite EPBC reminding her on November 30, 2016 after repeated attempts to make contact with her. The appellant subsequently did not make contact with EPBC by January 10, 2017 and after 12 weeks of non-participation EPBC indicated they were closing down her case. A ministry worker tried, unsuccessfully, to contact the appellant by phone, and then sent her a letter asking her to contact the ministry regarding compliance.
- On March 1, 2017, ministry staff spoke with her and she stated that she did not attend in October 2016 due to two injuries and that she her children had been sick with the flu for two months. She stated that she had contacted EPBC when she started to feel better and was waiting for a call back. She advised that she was attending a training course one day per week from January 9 to March 13, 2017 that EPBC was aware of. The ministry reminded her that active participation in the program, including advising EPBC when unable to attend, were mandatory requirements to ensure continued eligibility for IA.

- On March 2, 2017, she submitted a note from a family physician stating that she attended three appointments for bronchitis and sinusitis (November and December 2016, and January 2017).
- On March 14, 2017, EPBC reported that they had sent the appellant a letter on March 2, 2017 advising that an appointment had been scheduled and they left her reminder messages on March 8 and 14, 2017. The appellant left a message with EPBC on March 14, 2017 advising that she and her child were sick. EPBC called her message phone to re-schedule but there was no answer and no voicemail. Ministry staff left a message for the appellant to make contact. It was noted that the appellant had not been participating regularly for a year.
- On March 27, 2017, the appellant attended the ministry office and advised that she had scheduled a meeting with EPBC for the next day. On March 28, 2017 she submitted a copy of her Action Plan. The ministry reminded her that active participation in the EPBC program including advising EPBC when unable to attend, was mandatory to maintain eligibility for IA and indicated that the onus was on her to provide confirmation of mitigating circumstances that prevented her from participating in the program. The appellant stated that she understood.
- On June 27, 2017, EPBC reported that the appellant was not participating in the program. She indicated that she did not attend because she was not feeling well. She was reminded that active participation in the program was mandatory to maintain eligibility for IA and if she was unable to attend, she was responsible for providing confirmation of the reason for not attending.
- On July 10, 2017, the ministry advised that she was not eligible for further IA due to non-participation in the EPBC program and non-compliance with her EP. On July 11, 2017, EPBC reported the appellant had advised that she had not attended the program due to health issues and was planning to apply for Persons with Disabilities (PWD) designation.
- On July 18, 2017 she returned her completed RFR with attached letter from her family physician regarding her episodic medical condition: cholecystectomy syndrome.

Additional submissions

Subsequent to the reconsideration decision, the appellant filed two Notices of Appeal:

- July 26, 2017 indicating that she has medical evidence to support that she was unable to do a work search; and
- August 2, 2017 stating her argument on appeal and indicating that she is applying for PWD designation.

The appellant also submitted information from her PWD application: two medical reports (“MR” and “AR”) completed and signed by her family physician on July 31, 2017, and a letter from a medical specialist (gastroenterologist) dated January 6, 2014. The MR and AR indicated that the appellant has “severe diarrhea due to cholecystectomy syndrome” that restricts her daily living activities as well as her physical functions to the extent that she can walk less than one block “on a bad day”, and is also limited with remaining seated as she has to make frequent trips to the bathroom. The physician reported in the AR that she can have 10-15 episodes of diarrhea per day and “on bad days, activities are severely limited.” The physician added that “even with daily use of medication, severe symptoms persist several days per month.” The letter from the gastroenterologist includes a review of the appellant’s symptoms including diarrhea, abdominal cramps, and heartburn.

While noting that a PWD application is not intended to assess employability or the ability to comply with an EP, the panel finds that the PWD medical documentation addresses the same condition (cholecystectomy syndrome) and symptoms (diarrhea) outlined in the physician’s letter of July 16, 2017 that was provided for the reconsideration of the EP decision. The panel therefore admits the PWD application under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister when the decision being appealed was made.

Oral submissions

The hearing was re-scheduled to accommodate the advocate's availability and the appellant and advocate attended the hearing. The ministry did not attend the hearing and upon confirming that they had been notified of the new date and time, the panel proceeded in the ministry's absence pursuant to section 86(b) of the Employment and Assistance Regulation.

At the hearing, the advocate addressed the appellant's medical condition and the appellant stated that she has "bad days up to 4-5 days per month" and her condition is unpredictable and "can occur any time during the day or night." The advocate provided argument and the panel will consider the arguments of both parties in the next section, Part F.

In response to questions from the panel concerning the appellant's access to a phone, the appellant testified that she has only had a phone for 6 months in the last 5 years and while the letters from her physician indicate a home number and an emergency number, she stated that she can only use the pay phones in her neighbourhood and receive messages at her mother's place. She stated that some of the buttons on the nearest pay phone do not work so she cannot press '1' to reach the ministry. She explained that while there is another pay phone "down the block", it is further away and she cannot make it there when she is "having a bad day." While she acknowledged that messages were left at her mother's place, she stated she does not see her mother every day and her mother does not give her all of her messages.

The panel finds that the oral testimony is in support of the appellant's information regarding her medical condition that was provided for the reconsideration, elaborating on the frequency of her "bad days". The panel further finds that the appellant's testimony regarding her access to a phone elaborates on the information in the ministry's record regarding the ministry's and EPBC's attempts to contact the appellant. The panel admits the testimony under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister when the decision being appealed was made.

PART F – Reasons for Panel Decision

The issue to be decided is whether the reconsideration decision of July 26, 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 the EPBC program and that she did not meet the medical exception under subsection 9(4)(b) of the EAA.

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.” 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.
- Under subsection 9(4)(b), the recipient has not met the condition of participation if she “ceases, except for medical reasons, to participate.”

In her Notice of Appeal of August 2, 2017 the appellant noted that she is applying for PWD designation, arguing that her medical condition prevented her from complying with the contractor's instructions. At the hearing, her advocate argued that her PWD application is in support of her EP appeal as the medical reports confirm that she has a lifelong medical condition that restricts her daily living activities. The advocate argued that her restrictions, including being able to walk less than one block on her bad days, "prohibit her from doing employment-activities."

The ministry's position is that the appellant is not eligible for IA due to non-compliance with her EP. The ministry argued that she did not demonstrate a reasonable effort to comply with her EP because she did not participate fully with the contractor despite being aware that participation was mandatory to ensure continued eligibility for IA. The ministry acknowledged the March 2, 2017 letter from the appellant's physician that indicated the appellant had been seen for medical conditions on three occasions between November 2016 and January 2017. However, the ministry argued that "there is no indication that the medical conditions prevented you from attending the EPBC program or maintaining contact with the program from October 2016 to March 2017 to advise you were not able to attend."

The ministry further acknowledged the second letter from the physician (July 16, 2017), indicating that it is difficult for the appellant to leave her home when she has episodes of diarrhea. The ministry argued that the information was insufficient to confirm that the appellant had ceased to participate in the contractor's program for medical reasons, noting that the physician did not mention the frequency and duration of the episodes, and there was no indication that the appellant was unable to participate in the program from March to July 2017, "or at least maintain contact with EPBC to advise you were not able to attend due to a medical condition."

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 a pattern on non-compliance that began soon after she signed her EP when the contractor reported on December 21, 2015 that she had not made contact with the program. While there is some indication that she was "actively engaging in services", from January to March 2016, the record indicates she then missed her appointment on April 7, 2016. In January 2017, EPBC reported that the appellant had not been participating in the program since October 19, 2016.

Despite being given the opportunity to get back on track, the appellant missed meetings in late October and early December 2016 and did not make contact with the program in January 2017 as requested. The evidence indicates that the contractor was closing her file after 12 or more weeks of non-compliance. While the appellant told the ministry she was attending a training course one day per week from January to March 2017, the record indicates that by March 2017, the appellant was reported to have "not been participating regularly for a year" despite reminders including messages (after numerous attempts to reach her by phone) as well as letters sent. Overall, the evidence indicates that she missed at least three appointments and did not always call the contractor to re-schedule or set up new meetings. There is also insufficient evidence to show that she followed the steps in her Action Plan which specified workshops and meetings that she was required to attend.

Regarding the medical evidence the appellant submitted to the ministry, the panel finds that the ministry reasonably concluded that the letters from her physician were insufficient to confirm that she meets the exception under subsection 9(4)(b) of the EAA: ceased to participate in the program for medical reasons. The first letter she provided covers the period November 2016 to January 2017 when the appellant had bronchitis and sinusitis that "required her to miss work." As noted by the

ministry, there was no indication that her medical conditions prevented her from attending, or maintaining contact with the program from October 2016 to March 2017 to advise she was not able to attend. The EP that the appellant signed required her “to call the contractor if she cannot take part in services or complete steps that she agreed to.” The record indicates that the appellant acknowledged on more than one occasion that she understood the requirements.

While the second letter from the physician confirmed that it is difficult for the appellant to leave her home when she has episodes of diarrhea, the ministry noted that there was no information on the frequency or duration of these episodes and no indication that she was unable to participate in the program from March to July 2017 or at least contact EPBC to advise she was unable to attend due to a medical condition. The record indicates that the ministry reminded the appellant (when meeting with her on March 27, 2017), that the onus was on her to provide confirmation of mitigating circumstances that prevented her from participating in the program. The panel finds that the ministry reasonably concluded that the letters lack sufficient detail to confirm that she was unable to participate for the entire term of her EP. Regarding her testimony on her difficulties in accessing a phone and receiving messages, this was not mentioned in her Action Plan as a consideration. It was noted in her Action Plan that she did not have access to email or internet communication and the evidence indicates that both EPBC and the ministry sent letters when they were unable to reach her by phone.

Regarding the medical reports from her PWD application that the appellant presented on appeal, the advocate argued that these confirm that the appellant is unable to carry out employment-related activities as her daily living activities and physical functions are restricted by her medical condition. Nevertheless, as noted earlier, employability is not a criterion for PWD designation and in any event, the PWD medical information does not specifically assess why the appellant was unable to comply with her EP, including advising the contractor and providing confirmation of her circumstances whenever she was unable to attend the program. While the AR indicated that the appellant has “bad days” in which she can experience 10-15 episodes of diarrhea, and the appellant indicated at the hearing that she has 4-5 unpredictable bad days per month, the physician’s letter of July 16, 2017 indicates that her symptoms is well controlled by medication for the most part.

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. Despite numerous attempts to contact the appellant regarding her obligations, as well as her acknowledgments that she understood the requirements, the record shows a pattern of non-compliance including missed appointments, non-participation or inconsistent participation in the program (for up to a year), and not advising the contractor or providing confirmation whenever she could not attend for medical reasons. The panel therefore finds that the ministry’s reconsideration decision to deny IA under section 9 of the EAA was reasonably supported by the evidence. The panel confirms the decision under section 24(2) of the EAA and the appellant is therefore not successful in her appeal.