

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated November 29, 2017, which held that the appellant is not eligible for income assistance (IA) due to a failure to demonstrate reasonable efforts 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 - section 9

PART E – SUMMARY OF FACTS

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

- EP signed and dated June 20, 2017. The conditions of the EP were that he participate in the Employment Program of British Columbia (EPBC), attend his first appointment with EPBC on or before March 8, 2017, participate regularly as directed, work with the contractor to address any issues that may impact his employability, complete all tasks assigned including any activities that may be set out in an action plan; notify the EPBC if unable to attend a session or when he started or ended employment; declare all income and report any changes; and that failure to comply with these conditions will deem him ineligible for assistance.
- A letter, dated August 15, 2017, which offers funding for complete training for heavy equipment operator certification. The letter explains that the education agency will pay for the training and the appellant must cover all other costs associated with the 3-week training program.
- An appointment card indicating an appointment with the EPBC worker on June 22, 2017 at 9AM.
- June 19, 2017 the appellant's July assistance cheque was directed to the local office to ensure a discussion about employment related obligations. EPBC reported that the appellant was not actively participating in the program and did not respond to 4 attempts to contact him.
- November 3, 2017 EPBC reported that the appellant had not been participating in the program and that he had not responded to 4 attempts to reach him by phone and email.
- November 22, 2017 the appellant confirmed that he understood the requirements to participate in the EPBC program in order to maintain eligibility for assistance. At this time the appellant stated that he had lost his phone and his mailbox was tampered with but that he may have received a letter. The appellant was not able to provide an explanation for not maintaining contact with the EPBC program.
- Request for Reconsideration (RFR), which is signed and dated November 24, 2017, and the appellant stated in it that he is facing many obstacles securing employment due to the lack of many skills and updated certification. The appellant also stated that he has grade 12, a driver's license and has an agreement with a worker to work more closely together, attend workshops on a regular basis until he secures a job.

Evidence on Appeal

Notice of Appeal (NOA), which is signed and dated November 29, 2017, and the appellant stated in it that he "recently moved to the province and am still in need of income assistance". He further stated that he "regrets not informing [the] case worker why [he] missed such an important appointment, however [they] have touch base and [the appellant] has signed an Action Plan".

Evidence at the Hearing

At the hearing the appellant stated:

- He has a history of substance use and has been incarcerated.
- He raised his four children and step-child for 10 years however due to injuries suffered in a physical altercation and hard times he returned to substance use and children services got involved.
- He is unable to sleep at night since he missed his children and due to his substance use he missed the appointments with the EPBC contractor.
- He was unable to take advantage of the funding offered for heavy equipment operator certification because he would have to pay for his personal and living expenses in another community. He could not pay rent for two places. This led him to use again.

- During this relapse he was the victim of theft and as a result of that theft his social insurance number and phone went missing. He has difficulty interacting with the ministry without his social insurance card. At that point, he “gave up” and missed an appointment with the EPBC contractor.
- He has been sober now from alcohol for 2 months and other substances for 3 months.
- He received the EPBC contractor’s emails but missed reading them.
- He has now met with the contractor, signed a new action plan and has been approved for certification in another program.
- Since August 2017, he has been putting in an effort and has a roof over his head but does not know what will happen if his IA remains cut off.
- He has not had income for a month and therefore no phone. Without a phone it is difficult to look for work or stay in contact with the ministry.

At the hearing the ministry relied on its reconsideration decision and reiterated that on November 20, 2017 the appellant did not provided any explanation for not attending his meetings. In response to a question, the ministry stated that on June 20, 2017 the terms and obligations of the EP were verbally explained to the appellant and he also had an opportunity to read them. The ministry also stated that at the time the EP was being developed, the appellant was asked if there were any barriers to employment and at that time the appellant did not disclose his substance use problems.

Admissibility of Additional Information

The ministry did not object to the admissibility of any information regarding the appellant’s substance use.

The panel considered the information regarding the appellant’s struggles with substance use as not being in support of, and tending not to corroborate the information, referred to in the EP and the Request for Reconsideration, which were before the ministry at reconsideration. Therefore, the panel did not admit any reference to substance use in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

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.

Section 9 of the EAA outline the stipulations of an EP and states that:

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*].

The Appellant's Position

The appellant argued that he still needs IA as he lacks skills and updated certification. He also argued that he has now come to an agreement with the EPBC worker.

The Ministry's Position

The ministry argued that the appellant was “required to participate fully in the program, complete all assigned tasks and to advise the contractor if not able to participate in the program for any reason” and he did not fulfill this obligation. The ministry argued that the appellant was “aware that active participation in the EPBC program was mandatory to ensure continued eligibility for assistance” which is evident by his signature on the agreement. The ministry further argued that the appellant “did not attend several meetings with the EPBC program and failed to make contact to advise when not able to attend”. The appellant did not demonstrate a reasonable effort to comply with the conditions of the Employment Plan which contravenes section 9 of the EAA.

The Panel's Decision

Section 9(1) of the EAA sets out that to be eligible for assistance, the recipient must, when required to, enter into an EP, and comply with the conditions of the plan. The panel notes that by signing the EP the appellant acknowledges that he was aware of the requirements of his EP and aware of the consequences of not complying with the EP, and this, the appellant does not dispute. A condition of the appellant's EP was to participate in an EPBC program, and to notify the EPBC worker if he was unable to attend a session. The appellant admits that he did not stay in contact with the EPBC worker, missed several appointments and did not provide an explanation for his absence that was before the ministry at reconsideration. The appellant wrote in the Request for Reconsideration that he is facing obstacles securing employment due to the lack of many skills and updated certification; however, he also acknowledged at the hearing that training had been funded for heavy equipment operator certification in August 2017 but he did not attend the training because he felt he could not make the trip to the other community and he could not afford to pay rent in two places. The appellant wrote in his Notice of Appeal that while he regrets not explaining the missed appointments to the EPBC case worker, they have now “touched base” and he has signed a new Action Plan. The panel notes that the ministry considered the appellant's efforts to participate in the EPBC program since signing the EP in June 2017 and that his recent efforts to enter into a new plan with the EPBC have occurred after the ministry found he was ineligible for income assistance.

The panel finds that the ministry's decision to deny the appellant income assistance due to the failure to comply with the conditions of his EP pursuant to section 9(1) of the EAA was a reasonable application of the legislation in the circumstance of the appellant. Since a condition of his EP was to participate in an employment program (EPBC) under section 9(4) EAA, the appellant failed to demonstrate reasonable efforts to participate and he did not demonstrate that there were medical reasons that prevented his participation.

Conclusion

The panel finds that the ministry decision which found that the appellant is ineligible for IA due to failure to comply with his EP pursuant to section 9 of the EAA was a reasonable application of the applicable legislation and a reasonable interpretation of the evidence. The panel confirms the ministry's decision and the appellant is not successful in the appeal.