

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated November 9, 2017 which found that the appellant is not eligible for disability assistance under section 9 of the Employment and Assistance Act due to failure to comply with the conditions of his employment plan. The ministry found that the appellant did not demonstrate reasonable efforts to comply with his employment plan and there was no information from a medical practitioner to establish that he ceased to attend due to medical reasons.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA) section 9

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- A letter from the ministry to the appellant dated August 22, 2016 requesting him to sign a new employment plan.
- A letter from a case manager at an employment service provider dated September 27, 2016 stating that the appellant attended a workshop to develop an action plan.
- A copy of the appellant's Employment Plan signed September 30, 2016.
- The appellant's Request for Reconsideration signed November 2, 2017.

At the hearing, the appellant submitted a note from his physician dated November 30, 2017 stating that the appellant has been assessed and has significant outstanding medical issues that will prevent him from obtaining employment. The ministry objected to the admission of this document as this information was not before the ministry at the time of reconsideration. The Panel admitted this document as evidence under s. 22(4) of the EAA as it is written testimony in support of the information and records before the ministry at reconsideration. The appellant informed the ministry that he was unable to attend his employment program due to a medical reason and the ministry asked the appellant for a doctor's note, as stated in the record of the ministry decision.

The appellant stated that he was compliant with his employment plan until July, 2017, when he hurt himself and was too sore to participate. He stated that he informed the employment service provider. He stated that he lives in a rural area with no car and no telephone and had to hitchhike to his training. He stated that he would have attended the training if he had not been hurt in June. In response to questions from the ministry, the appellant stated that he was looking for work on his own, but cannot now due to his injury. In response to a question of why he told the ministry his shoulder was fine in his October, 2017 conversation with a ministry worker, the appellant stated that he was just told to sign the paper.

The ministry stated that the appellant was aware of his obligation to let the service provider know of any circumstance that prevents him from participating in his employment plan, and he was asked for verification of his medical condition in October, 2017, but it was not provided. The ministry stated that the appellant continued to submit his monthly reports stating that he was looking for work, and there was no mention of a medical issue. The ministry was advised in September that the appellant was not compliant with his employment plan. In response to questions from the Panel, the ministry stated that the appellant's income assistance was terminated in October, but he could have submitted his medical report and been reinstated before his reconsideration request was decided.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry's decision which found that the appellant is not eligible for disability assistance under section 9 of the Employment and Assistance Act due to failure to comply with the conditions of his employment plan. The ministry found that the appellant did not demonstrate reasonable efforts to comply with his employment plan and there was no information from a medical practitioner to establish that he ceased to attend due to medical reasons.

Legislation

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.
- (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 is that he was compliant with his employment plan until he was injured and that he informed the service provider that he was unable to attend. He argued that he lives in a rural area and has no car or telephone, which makes communication difficult. The appellant argued that he was in compliance with his employment plan for 11 months prior to June, 2017.

The ministry's position is that the appellant is not eligible for income assistance because he ceased to comply with the conditions of his employment plan by failing to attend the employment service provider. They were made aware of the appellant's non-compliance from July onward by the service provider and the appellant was told of the need to submit a doctor's note. The ministry argued that the appellant told them his shoulder was fine when they contacted him.

Decision

The EAA, section 9 requires that when required to do so, a recipient of income assistance must enter into an employment plan and comply with the conditions in the plan, and if the plan contains a condition requiring a recipient 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 in the program. In this instance, the appellant informed the ministry that he had been unable to participate in his employment program due to a sore shoulder, and he was asked to provide a doctor's note. The ministry stated that the appellant informed them that his shoulder was "OK now" when they spoke to him in October, 2017 and that he would return to the service provider. The appellant argued that the doctor's note submitted to the Panel provides the information requested by the ministry. The appellant argued that he informed the service provider of his inability to attend. The appellant argued that he received no mail from the service provider.

The Panel notes that the appellant has difficulty with communications in a rural area. There is no disagreement that the appellant did comply with his employment plan for 11 months until July, 2017, however when he ceased to attend, he did not provide verification of his medical condition. The ministry, in the Decision to be Reconsidered section of the Request for Reconsideration, stated that the appellant was advised the without a doctor's note to confirm his injury he would be denied further income assistance. The ministry confirmed this statement at the hearing. The Panel notes that this requirement has been satisfied by the submission of a doctor's note at the hearing.

The Panel finds that the ministry did not reasonably determine that the appellant did not comply with the conditions of his employment plan and therefore did not meet the conditions set out in section 9 of the Employment and Assistance Act, section (4)(b). The Panel rescinds the ministry decision.

The appellant is successful on appeal.