

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of December 4, 2017 in which the Ministry denied further income assistance (IA) to the appellant for failure to comply with the terms of his employment plan (EP) pursuant to Section 9 of the Employment and Assistance Act (EAA), as he failed to demonstrate reasonable efforts to participate in his employment program.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 9

PART E – Summary of Facts

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

Employment and Assistance (EAA), Section 9

The relevant evidence before the Ministry at the time of the reconsideration decision included the following:

- An EP with a term commencing on November 4, 2016 and ending on November 4, 2018, signed by the appellant on November 07, 2016, in which the appellant acknowledged that failure to comply with the conditions of his EP would render him ineligible for income assistance (IA), and in which he agreed to:
 - attend a first appointment with Employment Program of BC (EPBC), the contractor on or before November 18th, 2016;
 - take part in EPBC program activities as agreed to with the EPBC Contractor;
 - complete all tasks given, including any actions set out in the EPBC Action Plan, which sets out: the steps, services and supports that he agrees are needed to find work or become more employable as quickly as possible;
 - call the EPBC contractor if he cannot take part in services or complete steps that were agreed to, or when he finds work; and
 - call the local EPBC contractor within one week, if he were to move, to have his case file transferred.
- A letter dated July 27, 2017 from the appellant's EPBC contractor confirming that the appellant had attended the contractor's office on July 27, 2017 and had made an appointment to see his case manager on August 1st, 2017 at 9:30 am.
- Request for reconsideration signed by the appellant on November 29th, which set out the appellant's reasons for reconsideration. Amongst other matters, the reasons include the following:
 - the appellant was in the process of being hired (interviews, references, fingerprints), but was not yet hired;
 - the job opportunity came through a worker at his EPBC contractor;
 - once the said process started, the appellant thought that he was done with the EP;
 - a representative of the EPBC contractor did contact the appellant once by phone and by email, and the appellant informed her about what was going on;
 - the appellant never received any mail through his MYSS Portal; that he could not sign into MYSS Portal as a result of a change in his password to a PIN number on November 28th, 2016; and he reported this problem to a representative of his EPBC contractor;
 - the appellant now had access to his MYSS Portal and his emails, which he did not have in the past;
 - the appellant has a medical condition that now requires him to be reliant upon a medical device; and
 - the appellant did not comply with the EP as he was in the process of getting a job (as described above).

- Reconsideration Decision of the Ministry dated December 4, 2017, which amongst other matters, sets out the following relevant information:
 - the EP was signed on November 7, 2016, in which the appellant had confirmed that he had read and understood the conditions of the EP and the consequences of not complying with them;
 - the appellant was required to contact the EPBC contractor; complete all tasks assigned by the contractor; participate fully in the program; and contact the contractor if he was not able to attend or participate in the program for any reason;
 - on November 21, 2016, the EPBC contractor reported that the appellant had not responded to phone calls or email requesting him to contact the contractor;
 - on December 26, 2016, the appellant stated that he had responded to the EPBC email and that he would follow-up with EPBC to schedule an intake appointment. The appellant was reminded on that day by a Ministry representative that active participation was mandatory in order to maintain eligibility for assistance;
 - on May 26, 2017, the EPBC reported that the appellant had not submitted his job search records and had missed appointments on May 4th and 18th;
 - on July 27, 2017, the appellant had submitted a letter from his EPBC contractor confirming that he had attended a meeting at the contractor's office and had scheduled an appointment for August 1, 2017;
 - on October 31, 2017, the EPBC contractor had reported that the appellant had not responded to phone messages or emails requesting the appellant to make contact with the contractor and that the appellant did not attend scheduled meetings;
 - the appellant did send an email to the contractor on October 19, 2017 advising that he had an appointment with his potential employer and would be available to meet the contractor's Case Manager on October 23rd or 24th. The Case Manager responded by advising the appellant that a meeting had been scheduled for October 31st. The appellant did not respond or attend the scheduled meeting;
 - on November 24th, 2017 the appellant advised that he did not think that he had to participate in the EPBC program as he might have a job. A representative again reminded the appellant that active participation in the EPBC program was mandatory in order to maintain eligibility for assistance, and the appellant confirmed that he understood the employment related obligations. The appellant was also advised that he was not eligible for assistance due to failure to comply with the conditions of the EP by not actively participating in the EPBC program; and
 - the appellant requested the minister to reconsider the said decision and submitted a completed Request for Reconsideration on November 29, 2017. At that time, he also informed the Ministry that he had a medical condition for which he was reliant upon a medical device.

In his Notice of Appeal dated December 4, 2017, the appellant stated that he disagreed with the Ministry's Reconsideration Decision on the following reasons:

- Hopefully, he would be hired during the month of December or "soon – in process";
- During the past 6 months he had a medical condition and was reliant upon a medical device for his medical condition; and that he was now getting better;
- The appellant had made some written comments on the Ministry's Reconsideration Decision, which include the following:
 - The appellant's May 4th appointment was rescheduled;
 - The appellant could not access his MYSS Portal;
 - On November 24, 17 when a Ministry representative attempted to return the appellant's call, she had not left any message and that he could not sit and wait for her call, as "we all have stuff to do".

At the hearing, the appellant provided evidence that:

- his main reason for the appeal was that he was in the process of being hired from the month of October 2017 by a potential employer and was going through interviews, reference checks and fingerprinting requirements of the potential employer;
- in view of the foregoing, and using common sense, he did not believe that there was any ongoing need for continuing interaction with the EPBC, and using common sense, felt that his place could be used for another potential applicant for support from EPBC;
- that he had difficulty using his self serve portal because of a possible mix up of passwords and pin numbers;
- during the past summer of 2017, he has had a medical condition, which required him to be reliant upon a medical device; and that he was now getting better;
- that he did not recall whether he contacted the EPBC before 18th November 2016, as was expressly stated in his EP; that he did attend a meeting with EPBC on 27th July 2017 and 1st August 2017; but he did not attend the meeting scheduled on 31st October for the reasons stated above.

The Ministry representative relied upon the Reconsideration Decision and reiterated that:

- the appellant had signed the EP on November 7, 2016, in which the appellant had confirmed that he had read and understood the conditions of the EP and the consequences of not complying with them;
- the appellant was required to contact the EPBC contractor; complete all tasks assigned by the contractor; participate fully in the program; and contact the contractor if he was not able to attend or participate in the program for any reason;
- the appellant was non-compliant with the conditions of his Employment Plan in that the appellant (i) did not attend several meetings (at least two) with the EPBC program contractor; (ii) failed to advise the contractor in person, by email or telephone when he was unable to participate in the program for any reason; (iii) failed to provide job search records to EPBC, as was required of him under the EP and (iv) did not actively participate in the EPBC program on a regular basis;
- the self-serve portal, which according to the appellant was non-functional, was intended to be a means of communication only between the appellant and the Ministry – and not between the appellant and EPBC; that the appellant had an option of contacting the Ministry or EPBC either in person or by telephone; that he never contacted EPBC or the Ministry in person or by phone –not even to check whether it was necessary for him to continue with the EP as he was in the process of being hired;

The panel determined that the oral evidence of the appellant at the hearing was admissible under Section 22 (4) of the EAA, as it was in support of record before the Ministry at reconsideration.

After review of the foregoing evidence, the panel finds that the appellant:

- had acknowledged in writing in the EP, and was reminded by the Ministry on November 21, 2017, that active participation in the EPBC program was mandatory in order to maintain eligibility for income assistance;
- failed to contact the EPBC contractor on or before November 18, 2016, as was required under the EP;
- missed his appointments with the contractor in the Month of May, 2017 and in the month of October 2017;
- did not contact the EPBC contractor to advise when he was not able to attend; and
- he had not submitted his job search records to the EPBC contractor by May 26, 2017, as was required by the contractor.

PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the Ministry's reconsideration decision of December 4, 2017 in which the Ministry denied further income assistance (IA) to the appellant for failure to comply with the terms of his employment plan (EP) pursuant to Section 9 of the Employment and Assistance Act (EAA), as he failed to demonstrate reasonable effort to participate in an employment related program, which was a condition of his EP.

The relevant legislation is 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.
- (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*].

According to the appellant, his main argument was that as he was in the process of obtaining a job in October, he was under the impression that he was “*done*” with the EP, and did not have to comply with the terms and conditions thereof. His place at the EPBC could, instead, be made available to another individual requiring assistance from EPBC. Furthermore, for sometime during the summer of 2017, he had no access to his self-serve email portal and he also had a medical condition that made him reliant upon a medical device. He might have missed one of the appointments with EPBC during that period because of his medical condition. He never provided any medical evidence to the Ministry in support of his medical condition.

The Ministry argued that the appellant signed an EP and agreed to work with the EPBC contracted agency between November 4, 2016 and November 4, 2018. Under the EP, the appellant was required to participate fully in the program, complete all assignment tasks and to advise the contractor if the appellant was not able to participate in the program for any reason. The appellant did not attend several meetings with the EPBC program; failed to inform the contractor in person, by email or by telephone when the appellant was unable to attend scheduled meetings; did not actively participate in the EPBC program on a regular basis; and did not demonstrate a reasonable effort to comply with the conditions of the EP. Therefore, the Ministry found that the appellant did not comply with the conditions of the EP and that he was therefore ineligible for income assistance under Section 9 of the EAA.

Panel Decision

Section 9 (1) of the EAA provides that, when the ministry requires, a person must enter into an EP and comply with the conditions in the EP in order to be eligible for income assistance. The appellant signed an EP on November 7, 2016 and agreed to the conditions that required him to take part in the employment program activities as agreed to with the contractor, to complete all tasks given to him, including any actions set out in his Action Plan, and to call the EPBC contractor if he could not take part in services or complete agreed to steps, or when he found work or if he were to move, or when he ceases, except for medical reasons, to participate in the program.

The appellant had acknowledged in writing in the EP, and was reminded by the Ministry on November 21, 2017, that active participation in the EPBC program was mandatory in order to maintain eligibility for income assistance. He has not denied that he (i) failed to contact the EPBC contractor on or before November 18, 2016, as was required under the EP; (ii) missed his appointments with the contractor on May 18, 2017 and October 31, 2017, as was required of him under the EP; (iii) did not contact the EPBC contractor to advise when he was not able to attend as was required of him under the EP; and (iv) had not submitted his job search records to the EPBC contractor by May 26, 2017, as was required under the EP.

The panel also considered the provisions of Section 9 (4) (b), which envisages the possibility of an income recipient ceasing to participate in an employment program for “medical reasons”. The appellant had stated to the ministry on November 24, 2017 (and also in his Notice of Appeal) that he has had a medical condition over the past six months that makes him reliant upon use of a medical device, but that he is now feeling better. The appellant has, however, not provided a medical report to the Ministry before the reconsideration decision nor to the panel at the hearing to confirm that his medical condition had prevented him from attending, participating in the EP program, or maintaining contact with EPBC or advising EPBC when he was not able to attend. Although the legislation does not specifically require a physician’s confirmation of a medical condition, it is reasonable to expect, and the Ministry’s internal guidelines require the appellant with a medical conditions to submit confirmation of whether the relevant medical condition affected his participation in a program or contacting EPBC. In the absence of such confirmation before the Ministry on the date of the reconsideration decision and the hearing of the appeal, the panel finds that the “medical reasons” described in Section 9 (4) (b) have not been satisfactorily established by the appellant.

Having regard to the foregoing analysis of the evidence before the panel and the findings of fact made by the panel in Part E above, the panel finds that the ministry’s reconsideration decision, which determined that the appellant was not eligible for income assistance for (a) failure to comply with the conditions of his EP pursuant to Section 9(1) of the EAA, as he failed to demonstrate a reasonable effort to participate in an employment related program, which was a condition of his EP, was a reasonable application of the applicable enactment in the circumstances of the appellant. Therefore the panel confirms the reconsideration decision. The appellant’s appeal, therefore, is not successful.