

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) Reconsideration Decision in which the ministry determined that the appellant was ineligible for income assistance (IA) because she failed to enter into an Employment Plan (EP) pursuant to Section 9(1)(a) of the *Employment and Assistance Act* (EAA).

**PART D – RELEVANT LEGISLATION**

EAA *Employment and Assistance Act*, Section 9

## **PART E – SUMMARY OF FACTS**

The appellant is an applicant who has been denied IA by the ministry.

The information before the ministry at the time of reconsideration included the following:

- 1) **June 29<sup>th</sup>, 2017** – the appellant was contacted by the ministry to advise of the requirement to enter into an Employment Plan (EP). The ministry notes that the conditions of the EP were reviewed, and that the ministry advised that the EP would be mailed to the appellant and that she was to sign and return it. The ministry provides that the appellant was notified that her next month's cheque would be held at the ministry office to ensure the EP had been signed and returned.
- 2) **July 19<sup>th</sup>, 2017** – the appellant wrote a letter to the ministry indicating that she was in the middle of negotiations with her new employer, that she would be in training over the next few weeks and that she would submit more information as it became known to her in relation to her income at the end of the month.
- 3) **On July 20<sup>th</sup>, 2017** – the appellant confirmed that she received the EP documents and advised that she had found employment.
- 4) **July 21<sup>st</sup>, 2017** – the appellant contacted the ministry. She was advised that her August assistance was being held by the ministry pending receipt of the signed EP documents. The appellant stated that she did not want to sign the EP because she had found work.
- 5) **August 2<sup>nd</sup>, 2017** – the requirements to sign the EP were reviewed with the appellant. She was advised at this time that if she had a medical reason for not signing the EP, that she would be required to provide a medical report. The appellant did not stipulate whether or not there was a medical issue. The appellant indicated that she was working part-time, out of town and that she was not satisfied with the details of the EP.
- 6) **August 3<sup>rd</sup>, 2017** – the ministry record indicates that the appellant was advised that if she submitted a medical report that verified she had a medical condition preventing her from working that a new EP reflecting the situation would be required.
- 7) **August 4<sup>th</sup>, 2017** – the ministry notes that the EP requirements and conditions were reviewed with the appellant. A medical form was uploaded to the ministry's "My Self Serve" online portal. The appellant was reminded that eligibility for assistance was dependent on signing the EP.
- 8) **August 22<sup>nd</sup>, 2017** – the appellant requested that the ministry reconsider the decision to deny income assistance due to failure to enter into an EP.
- 9) **August 30<sup>th</sup>, 2017** – the appellant submitted the signed Request for Reconsideration forms and requested an extension of the submission time limits to complete the submission. No further documents were submitted.

### **Additional Information**

At the hearing, the appellant provided a publicly accessible (online) 8-page document relating to the ministry's Employment Plan policy. The Ministry did not object to the admissibility of the policy document. The panel determined that page 3, para. 2 of the document was admissible, as the information directly related to the information that was before the reconsideration officer at the time the decision was made.

At the hearing, the ministry relied on the reconsideration decision and did not introduce any additional evidence. The ministry did confirm its "non-referral" client policy, which allows for an applicant who is "able to secure employment without support or has imminent employment pending" to be offered what is referred to as a "DUAL EP for Supervised Independent Work Search (SIWS)".

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is the ministry's reconsideration decision in which the ministry declared the appellant ineligible for IA because she failed to enter into an EP pursuant to Section 9(1)(a) of the EAA.

The relevant sections of the legislation are as follows:

### 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].**

### Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for income assistance due to failing to enter into an EP as per Section 9(1)(a), of the EAA.

In her Notice of Appeal dated October 10<sup>th</sup>, 2017, the appellant stated that she was not aware that the information she would need for the reconsideration decision was limited (only what is forwarded to the reconsideration department by the local office), and therefore she had made a Freedom of Information Request so that she could review and decide what to include in her request for reconsideration.

At the hearing, the appellant argued that there were a lot of notes prepared by ministry staff summarizing phone conversations between the appellant and the ministry and that all of the details of those conversations were not included in the notes. In addition, she argued that the notes were written from the perspective of the ministry and some of them did not accurately reflect the conversations that occurred. The appellant stated that she is an educated woman, that the process has been exhausting for her to continue to seek and maintain employment at her age, while attempting to meet the demands of the ministry. The appellant stated that she had only wanted to discuss her file with supervisors, and at an office that was not the local office in her community. She indicated that she had a difficult time dealing with a few of the workers in the local office, and in order to get clear direction, she felt it was necessary to deal with a different office. Separately, the appellant had noted that she did not view the particular form and content of the EP she had been required to sign as the most fitting to her personal situation – she was working part-time, at an out of town job, and would not be able to meet the standard arrangements that were outlined in the EP (such as weekly meetings with an EPBP counsellor). The appellant believed that she needed to have an EP tailored for her situation that would allow some flexibility. The appellant indicated that she is still employed by the same company, and still on a part-time basis. The appellant indicated that she thought the ministry was unreasonably forceful in insisting she sign the standard EP, and that she had tried to explain to ministry staff that she felt she needed a different EP that offered more flexibility for her situation, but that the ministry failed to listen to her needs during several discussions that she had before her income assistance was cut-off.

At the hearing, the legal advocate of the appellant indicated that the appellant should have been considered a “non-referral” client, which is as defined in the online ministry EP policy as a person who is “able to secure employment without support or has imminent employment pending.” Further, the appellant’s legal advocate highlighted that according to the ministry policy the appellant should have been offered what is referred to as a “DUAL EP for Supervised Independent Work Search (SIWS)” – which would have afforded her the opportunity to work part-time and meet the demands of the ministry. The legal advocate for the client stated that the ministry unreasonably insisted that she sign an EP that was not appropriate for her client’s needs, and at no time was her client offered a different form of the EP that would have fit with her situation.

Further, the information noted in the ministry records, according to the appellant – was not captured fairly, as she explicitly indicated that she required flexibility due to working out of town, and that any reference to medical reports was as a result of her not being certain if she needed to file a medical report for the purposes of having her EP reviewed, or if there were other options available to her. The appellant indicates that none of this information was noted in the records of the ministry. Moreover, the appellant submits that she provided a letter to the ministry on July 19<sup>th</sup>, 2017 – which indicated that she was in the middle of negotiations with her new employer, that she would be in training over the next few weeks and that she would submit more information in relation to her income at the end of the month as it became known to her.

Section 9(1) of the EAA states that a recipient of income assistance must (a) enter into an employment plan in order to be eligible for income assistance.

The panel notes that the ministry records indicate that the appellant had several discussions with ministry worker(s) before her income assistance was cut-off. Specifically; June 29<sup>th</sup>, July 20<sup>th</sup>, July 21<sup>st</sup>, August 2<sup>nd</sup>, August 3<sup>rd</sup>, and August 4<sup>th</sup> 2017. In all instances, information was exchanged between the ministry and the appellant over the phone or in person. The panel finds that the evidence establishes that on June 19<sup>th</sup>, 2017 the appellant was contacted and advised of her requirement to enter into an EP. The panel finds that the evidence establishes that a month later, on July 19<sup>th</sup>, 2017 the appellant had sent a letter to the ministry, detailing that she was working part-time, out of town, and that she was in the middle of negotiating her employment - would be attending training over the next few weeks, and that when she learned more about her position she would submit the information on her monthly financial report at the end of the month. The panel finds that from July 20<sup>th</sup>, to August 4<sup>th</sup>, 2017 – the ministry had multiple (five) discussions with the appellant, and that the evidence shows that the only details provided in the ministry’s written summary of those discussions were that the appellant had refused to sign the standard form EP, that there was no information provided to the appellant by the ministry that

other forms of the EP were available or might be appropriate under the circumstances, and that she would need to submit a medical report if she felt she was unable to sign the EP that had been drafted for her for medical reasons. The panel finds that the evidence establishes that the appellant did provide compelling information regarding her needs for EP flexibility, that other forms of EPs are identified in the ministry's EP policy guidelines, and that on several occasions the ministry had the opportunity to provide such a tailored EP. Given the ministry acknowledged at the hearing that the ministry did have a "non-referral" client policy under which a DUAL EP for Supervised Independent Work Search (SIWS) EP is sometimes acceptable, the panel finds that the ministry had an obligation to provide the appellant alternative options for the EP to best facilitate successful labour market attachment.

However, Section 9(7) of the EAA states that a decision under 9(7)(a) requiring a person to enter into 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*]. Therefore, the panel determined that it does not have jurisdiction to make a decision as to the reasonableness of the ministry in their determination to deny the appellant income assistance due to not entering her employment plan, under Section 9(1)(a) of the EAA.