

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated January 31, 2018 in which the ministry found that the appellant was not eligible for income assistance ("IA") because he failed to comply with the conditions of his Employment Plan ("EP") as required by section 9 of the Income and Assistance Act ("EAA").

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance Act - EAA - section 9*

## **PART E – SUMMARY OF FACTS**

The evidence and documentation before the minister at the reconsideration consisted of:

1. A Request for Reconsideration (“RFR”) signed by the appellant on January 7, 2018 in which he wrote, “food, rent, (phone, TV).”
2. Information from the ministry’s record of decision which included:
  - A letter dated January 31, 2018 in which the ministry advised the appellant that he was not eligible for IA for failing to comply with the conditions of his EP.
  - The reconsideration decision which stated:
    - The appellant is a sole recipient of IA. His file was opened on March 15, 2012.
    - On May 16, 2016, the appellant signed an EP agreeing to work with an Employment Program of BC (“EPBC”) contractor and abide by the contractor’s requirements. The appellant acknowledged that failing to comply with his EP could result in him being found ineligible for IA.
    - On February 9, 2017, EPBC advised the ministry that the appellant had not been following through on his Action Plan. He cancelled his January 19, 2017 appointment because “he missed the bus”, and he declined the case manager’s offer to meet with him when he could get there. EPBC reported that the appellant provided an inadequate job search on February 7, 2017 (indicating 5 in-person applications) and the last job search he submitted was September 13, 2016. The ministry placed a hold on the appellant’s IA cheque.
    - On February 17, 2017, the ministry contacted the appellant to discuss the hold on his IA cheque, and his lack of participation with EPBC. The appellant advised that he would attend his appointment on February 21, 2017. The ministry discussed the job search requirement and advised the appellant that he is required to look for all types of employment and not limit his search to a single job or wage category. The ministry inquired if the appellant had medical or other reasons for not participating with EPBC and the appellant indicated he did not. The ministry reminded him of the consequences for non-compliance with his EP and the appellant acknowledged that he understood. The hold was removed from the appellant’s IA cheque with the understanding that he would remain in compliance with his EP.
    - On November 14, 2017, the appellant advised EPBC that he had not been looking for work because his IA cheque was being held by the ministry and he “couldn’t afford bus tickets” to apply for jobs in person. EPBC reminded the appellant that he could access the library computers at no cost.
    - On November 29, 2017, EPBC reported that the appellant’s job searches were for in-person applications only, with 3-4 applications per week. The ministry noted that the appellant resides within walking distance of the library where he could access a computer and that EPBC confirmed that the appellant was enrolled in on-line application platforms and internet/email workshops. The ministry attempted to call the appellant and was unable to reach him. The ministry sent the appellant a letter advising him of work search requirements and requesting that he contact the ministry to address the hold on his next IA cheque.
    - On December 4, 2017, the appellant indicated he still had not looked for work because “life got in the way” and he was “dealing with the ministry around the fallout of his last cheque being held.” The appellant advised that he had applied for jobs at 3 companies (in the same line of business) and had “run out of places to apply.” The EPBC case manager reminded the appellant that he was expected to apply for 3-4 jobs per day. EPBC reported that the job search the appellant provided consisted of a few company names, and no dates or information on the method of application or the position applied for.

- On December 15, 2017, the ministry contacted the appellant. The appellant advised that he had done a work search on the computer but he could not submit it. The appellant acknowledged being non-compliant and indicated that he “only needed on more cheque” as he was moving out of province to find work. The ministry advised the appellant that he was not eligible for IA.
  - On January 17, 2017, the appellant requested reconsideration of the ministry’s decision.
  - On January 29, 2018, EPBC reported that the appellant’s case was being closed as no response was received to letters and other attempts to contact the appellant.
- An EP signed by the appellant on May 16, 2016 in which he agreed to participate in the contractor’s program fully and to the best of his ability. The program dates were May 9, 2016 to May 9, 2018. The EP contained the following details and requirements:
    - The appellant must meet with the EPBC contractor within 10 days of signing the EP, take part in program activities as agreed to with the contractor and complete all assigned tasks including any actions set out in the appellant’s Action Plan.
    - The appellant must call the contractor if he cannot take part in services or complete steps that he agreed to, and if he does not follow the EP, the ministry may stop his IA payments.
    - 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 the appellant’s activities. He understands that he may be required to provide verification of his compliance with the conditions of the EP including proof of active work search and/ or records of attendance and participation in a specific program.
    - The appellant acknowledges and understands that the assistance issued to him and/or his family will be discontinued if he does not comply with the conditions of his EP and assistance will be discontinued if he does not demonstrate reasonable efforts to participate in the contractor’s program or ceases, except for medical reasons, to participate in the program.
  - *Job Search Verification* signed by the appellant and listing 5 in-person applications for Feb 3 - 5 (year not provided).
  - A letter dated November 30, 2017 in which the ministry requested a work search from the appellant, to be submitted by November 9, 2017 to ensure that his IA cheque is not delayed. The ministry indicated that the work search needs to contain at least 5 contacts per day including telephone inquiries, fact finding interviews, cold calling potential employers, networking with contacts, submitting applications and resumes, and participating in employment interviews and workshops. The ministry indicated that the work search documentation must contain the contact name/ information for the employer and the job number or email confirmation for on-line applications.

*Additional information*

The appellant and the ministry did not submit any new evidence. On February 22, 2018, the Tribunal received a Notice of Appeal containing the appellant’s argument on appeal.

*Procedural matters*

Neither the appellant nor the ministry attended the hearing. Upon confirming that the parties were notified of the date and time for the hearing, the panel proceeded to consider the appeal in their absence as it is authorized to do under section 86(b) of the Employment and Assistance Regulation.

## **PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the ministry reasonably concluded that the appellant was not eligible for IA because he failed to comply with the conditions of his EP as required by section 9 of the EAA, and failed to demonstrate reasonable efforts to participate in a specific employment-related program pursuant to subsection 9(4)(a).

The ministry based its reconsideration decision on the following 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.

**(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.

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### *Analysis*

The appellant's position is that he needs his IA cheque to cover his expenses (which include food, rent, phone, and TV). In his Notice of Appeal, he cited "access to resources" as the reason he disagrees with the ministry's decision.

While the appellant acknowledged that he was non-compliant with his EP, his reasons included a lack of money for transportation for his in-person job search; and "life getting in the way"; in particular, the ministry's hold on his IA cheque. The appellant indicated that he needed one more IA cheque because he intended to move out of province to look for work. The appellant also argued, in December 2017, that his non-compliance "should be overlooked because it is Christmas."

The ministry argued that the appellant is not eligible for IA because he did not demonstrate reasonable efforts to participate in the EPBC program. The ministry argued that he also failed to demonstrate mitigating circumstances such as a medical condition that prevented him from complying with the conditions of his EP in accordance with subsection 9(4) of the EAA.

The ministry stated that the purpose of the EP is to assist the appellant to become more employable, and that by signing the EP, the appellant understood and agreed to the conditions specified in the plan. The ministry indicated that both the ministry and EPBC reminded the appellant of the EP requirements 4 times between February and December 2017, including written notification on November 30, 2017 of the requirement to provide adequate work search records. The ministry argued that the appellant was required to work with EPBC to resolve any issues of transportation and computer access in order to carry out his job search obligations. The ministry noted that EPBC was closing the appellant's file as he had not contacted the program as requested.

#### *Panel's decision*

To be eligible for IA, section 9(1) of the EAA requires employable recipients to enter into an EP and comply with its conditions. 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. Section 9(4) also 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 he "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 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 as well as ministry file notes, to assess the appellant's efforts to participate.
- Under subsection 9(4)(b), the recipient has not met the condition of participation if he "ceases, except for medical reasons, to participate."

It is clear on the evidence that the appellant signed his EP on May 16, 2016 agreeing to participate "fully and to the best of my ability" in the EPBC program as a condition of the plan. At the time of signing the EP, the appellant acknowledged that he understood the participation requirements and the consequences of non-compliance. He also conveyed his understanding in a subsequent compliance discussion with the ministry in February 2017.

In November and December 2017, the ministry and EPBC reminded the appellant of his obligations and the ministry sent him a letter detailing the expectations for the work search requirement. The *Job Search Verification* in the reconsideration record falls short of the EPBC requirement to apply for 3-4 jobs per day with work search activities fully documented. While the appellant's *Job Search Verification* indicates 3 applications on one date, 2 other dates list one application each. All of the applications listed were in-person (no on-line activities were recorded), and no name or contact information for the employer's representative, or any follow-up activities were listed. In addition, EPBC reported to the ministry that the appellant had submitted only 2 job search records between September 2016 and February 2017. He had also missed appointments and did not return calls or written requests to contact the EPBC case manager. By the end of January 2018, EPBC was closing the appellant's case as the appellant had not responded to requests for contact.

Based on the analysis of the evidence, the panel finds that the ministry reasonably determined that the appellant had not complied with the conditions of his EP as required under section 9 of the EAA and that he failed to demonstrate reasonable efforts to participate in the EPBC program pursuant to subsection 9(4)(a) of the EAA. The panel further finds that the ministry reasonably determined that the appellant did not cease to participate in the EPBC program for medical reasons as set out in subsection 9(4)(b) of the EAA. When the ministry inquired if the appellant had a medical reason for not complying with his EP, the appellant replied that he did not and, in fact, the reasons the appellant gave for non-compliance (transportation issues among other things) were of a non-medical nature.

### *Conclusion*

The panel finds that the ministry's reconsideration decision that found the appellant ineligible for income assistance for non-compliance with his EP was reasonably supported by the evidence. The panel confirms the decision and the appellant is not successful in his appeal.