

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated 07 May 2018 that found the appellant ineligible for income assistance. The ministry determined that the appellant failed to demonstrate reasonable efforts to comply with the employment-related program specified in his employment plan, as required under section 9(4) of the *Employment and Assistance Act*, and is therefore not eligible for income assistance under section 9(1) of the *Act*.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA), section 9.

PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included the following:

1. From the ministry's files, as set out in the ministry section of the Request for Reconsideration, with supporting documentation:
 - 17 July 2017: the appellant signed an employment plan (EP) agreeing to work with a Work BC contractor for the Employment Program of BC (EPBC). The EP states:
"To be eligible for assistance, each applicant or recipient in the family unit must, when required to do so, enter into an employment plan, and comply with the conditions set out in the employment plan."
The EP also states:
"In accordance with the conditions of Employment and Assistance Act... I understand that if I do not comply with the conditions of this employment plan, the assistance issued to me and/or my family will be discontinued."
 - 15 August 2017: a ministry worker explained that compliance with his EP is a condition of eligibility for income assistance. The appellant stated that he understood.
 - 21 November 2017: the EPBC contractor reported that the appellant had missed his last three schedule events on 03, 08 and 10 November 2017. The EPBC contractor emailed him reminders of the dates.
 - 22 November 2017: the ministry placed a hold on his next check (for January). The ministry sent him a letter advising him of the hold.
 - 23 November 2017: the appellant contacted the ministry. A worker reviewed the appellant's EP responsibilities and consequences of non-compliance. The appellant stated he would contact the EPBC contractor that day.
 - 18 December 2017: the appellant advised a ministry worker he that he was unaware of the appointments scheduled with the contractor in November and did not see any emails from the contractor regarding those dates. He stated that he has contacted his EPBC case manager multiple times and left messages but had not received a return call. The worker advised him to contact the EPBC contractor front desk to set up another appointment. The worker advised the appellant to contact the ministry with the appointment information and then this cheque would be released. The appellant contacted the contractor, scheduled an appointment for 27 December 2017 at 2:00 PM, reported this to the ministry and his cheque was released.
 - 26 February 2018: the EPBC contractor reported that they had not had any contact with the appellant since December when he booked the 27 December appointment, which he did not attend. The contractor advised that they were closing the appellant's file due to noncompliance and the ministry placed a hold on his next cheque (for April) and sent him a letter to that effect.
 - 12 March 2018: having not heard from the appellant as a result of the 28 February 2018 letter, the ministry sent a second letter advising of the hold on his cheque.

- 16 March 2018: the appellant left a message with the worker, who returned his call and left a message advising that he must reconnect with the EPBC contractor.
 - 21 March 2018: the appellant contacted the ministry worker by phone. He gave the worker detailed information regarding his efforts to connect with the EPBC contractor. The worker advised him to keep records if he was having problems connecting with the contractor. The appellant submitted a new EPBC Action Plan to the ministry on that day and the appellant's cheque was released, along with him being advised that any further issues of noncompliance without mitigating circumstances would result in ineligibility for income assistance.
 - 13 April 2018: the EPBC contractor reported that the appellant did not attend his appointment with them on 06 April 2018 and did not contact them to reschedule.
 - 20 April 2018: the ministry contacted the appellant and left him a message advising him that he was no longer eligible for income assistance, and also sent him a letter to that effect.
 - 20 April 2018: the appellant returned the ministry's call and asked for a reconsideration.
2. The appellant's Request for Reconsideration, dated 25 April 2018. In hand-written notes on the ministry section and in his submission under Reasons, the appellant writes that:
- As he informed his EPBC case manager, he does not have childcare for his 10-year-old son, who lives with him half of each week. He asked the case manager not to book meetings with him when he was looking after his son.
 - His family resides in another city and he has no other childcare.
 - He missed his appointment on 27 December 2017 because he was delayed returning from another city where his family resides and he tried to reschedule but not receive a call back.
 - He could not attend on 28 March 2018 because it was spring break and he did not have anyone to take care of this child.
 - He was unable to attend the appointment on 06 April 2018 because his son was with him.
 - He has gone to "many, many 4-hour and full day courses" with the EPBC contractor. His only issue is that his case manager is very busy and says he does not have flexibility with his schedule. As the appointments are only 10 to 15 minutes long he thinks he should be able to complete them by phone.

Notice of Appeal

In his Notice of Appeal, dated 15 May 2018, the appellant writes:

"I will send in additional information regarding all of the many employment courses that I attended at [the BCEP contractor]. Not just the few appointments missed due to not having childcare at those specific times, which I had informed the [BCEP contractor] worker of at

the time of booking.”

Information submitted before the hearing

On 05 June 2018 the appellant submitted a printout of a report prepared by the EPBC contractor of his attendance at scheduled events. (A covering email from the EPBC contractor explains that case notes and documentation other than that provided requires a formal request through the *Freedom of Information & Protection of Privacy Act*.) In summary:

Date - attendance	Date - attendance	Date - attendance
06 July/17 - attended	18 Oct/17 - attended	22 Nov/17 - no show
06 Sep/17 - attended	19 Oct/17 - attended	20 Mar/18 - cancelled
07 Sep/17 - attended	25 Oct/17 - no show	22 Mar/18 - attended
19 Sep/17 - attended	03 Nov/17 - no show	26 Mar/18 - no show
22 Sep/17 - cancelled	08 Nov/17 - no show	27 Mar/18 - cancelled
06 Oct/17 - attended	10 Nov/17 - no show	29 Mar/18 - attended

The hearing

At the hearing, the appellant took issue with the accuracy of the chronology set out by the ministry in the reconsideration decision. For example:

- The appellant argues that he was never booked for the courses on 03, 08, and 10 November 2017, so how could he be a no-show?
- When he found that he could not make it back for the 27 December 2017 meeting with his EPBC contractor case worker, he tried to phone him, but when he could not get through he emailed him explaining the situation and asking for the meeting to be rescheduled. He never heard back.
- He disputes being scheduled for a meeting with the case manager on 06 April 2018. There was a meeting scheduled for 28 March 2018, but that was on spring break, he had to care for his son that day, and the case manager knew that he could not attend. He does remember going to the office on 30 March for a drop-in session, and discussing his progress with the person supervising the drop-in event.
- He has had only two conversations with a ministry EAW about his issues with dealing with the EPBC contractor and the caseworker assigned to him. These conversations lasted only 10 to 15 minutes, during which he tried to convey to the EAW how difficult it was to contact the caseworker, and that voicemail messages were never returned or email messages acknowledged.

The appellant referred to the covering email of his attendance printout. He explained that any ministry client going to the EPBC contractor’s office must swipe a card to gain entrance. Information generated by this technology would show that he had gone to the office many more times than that shown on the print out, for instance to access the resource room or to attend a drop-in session. This information is not available to him for the hearing because of the FOI requirement.

In answer to questions, the appellant stated that he never thought to ask about whether he could bring his son along when he met with the caseworker – the office does not have a daycare. He also stated that, while he has multiple email addresses, one is reserved for dealing with the contractor and related job search activities.

The balance of the appellant's presentation went to argument (see Part F, Reasons for Panel Decision, below).

The ministry stood by its reconsideration decision. In answer to a question, the ministry stated that it does not ask for information from its EPBC contractors on client attendance at their offices and bases its decisions solely on the information provided to it by the EPBC contractor.

Admissibility of additional information

The panel finds that the information in the attendance printout submitted before the hearing is in support of the information before the ministry at reconsideration, as it tends to corroborate the appellant's statement in his request for reconsideration that he attended "many, many 4-hour and full day courses" with the EPBC contractor. The panel therefore admits this information as evidence pursuant to section 22(4) of the EAA.

The panel also finds that the points raised by the appellant's testimony at the hearing regarding the November 2017 courses, the 27 December 2017 appointment, the 26 March/06 April 2018 confusion and the discussions with the EAW were all referenced in the reconsideration decision, and therefore accepts this information as argument.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in finding the appellant ineligible for income assistance. More specifically, the issue is whether the ministry's determination, that the appellant failed to demonstrate reasonable efforts to comply with the employment-related program specified in his employment plan as required under section 9(4) of the EAA and is therefore not eligible for income assistance under section 9(1) of the EAA, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The applicable legislation is from the 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].

Analysis

The positions of the parties

In the reconsideration decision, the ministry reviewed the chronology of the appellant's signing of, and participation in, his EP (see Part F above). The ministry noted that by signing this EP the appellant confirmed that he had read, understood and agreed to the conditions specified in the plan. The ministry was therefore satisfied that the appellant was aware of the consequences for noncompliance with his EP and noted that he was reminded of these requirements by Ministry staff on 15 August 2017, 23 November 2017 and 21 March 2018. In addition to the verbal reminders, a review of his file history shows that he received notification in writing on 20 to November 2017 26 February 2018 and 12 March 2018.

The ministry explained that section 9 of the EAA states that the only acceptable reason for ceasing to participate with the program is for medical reasons. The appellant has indicated that childcare is an issue for him; However, as his son is 10 years old, he is still considered an employment-obligated person and required to participate as directed by the EPBC contractor. The ministry acknowledges that there may be some days that attending may be more difficult for him because school was closed and he is unable to find someone to watch his son. However, ministry noted that he is required to work with the EPBC contractor to resolve the issues of how he is going to attend appointments and search for employment.

The ministry found that the appellant has failed to demonstrate that there are other mitigating circumstances, such as a medical condition, that have prevented him from complying with the conditions of his EP. Although the appellant attended the EPBC contractor on 9 March 2018 to have his file reopened in response to a noncompliance letter mailed to him on 26 February 2018, prior to that he had not attended since before 03 November 2017. As a result the ministry was not satisfied that he has demonstrated reasonable efforts to participate in the program according to section 9(4) of the EAA. As such the Ministry has determined that the appellant has failed to comply with the conditions of his EP in accordance with section 9 of the EAA and therefore he is not eligible for assistance.

The position of the appellant, as explained at the hearing, is that the evidence shows that he has demonstrated reasonable efforts to participate in his EP. As shown in the attendance printout, he has taken nine 4-hour or daylong courses from the EPBC contractor. He has also attended the contractor's resource room many times as well as attending several drop-in sessions. He argues that none of this was taken into account when the ministry made its determination that he had failed to demonstrate reasonable efforts. Instead, the ministry relied on limited information provided by his EPBC contractor's caseworker, who reported to the ministry only about missed appointments with him, without providing any information as to meetings that actually took place or courses he had taken.

The appellant expressed the view that he finds it is difficult to accept that the ministry would base its decision on the information provided by a worker for a third party contractor without the ministry having assigned him a ministry worker to manage his file. Such a ministry case manager would make an effort to get to know him, advise him in concrete terms of what was expected, and act as an intermediary between the ministry and the EPBC contractor, while being in a position to challenge and interpret any information provided by the contractor. Without such support, he feels his situation is "beyond overwhelming."

Panel decision

The jurisdiction of the panel is limited to, and must focus on, the reconsideration decision. In its decision, the ministry relied on two sets of facts:

- The numerous verbal and written communications between the ministry and the appellant regarding the consequences for noncompliance with his EP; and
- The evidence that since before early November 2017 and 09 March 2018, there is no record of the appellant attending the EPBC contractor's office to participate in an employment related program as directed by the contractor pursuant to the EP.

In the reconsideration decision, the ministry acknowledged that the contractor reopened the appellant's file in early March 2018 and the ministry released the appellant's cheque for April that had been placed on hold. Despite these actions by the ministry and the contractor, the

panel considers it reasonable that the ministry would then take a step back and make a longer-term review of the appellant's file to determine whether he had demonstrated reasonable efforts to participate in the program. While the ministry acknowledged that there may have been issues with arranging appointments due to the appellant's childcare responsibilities, and while the appellant argues that he finds it difficult to make contact with or arrange appointments with the contractor's caseworker, the panel finds that a gap of more than four months in the appellant's participation in any EP programming with the contractor, as noted by the ministry in its file review, is sufficient evidence for the ministry to conclude that the appellant had failed to demonstrate reasonable efforts to participate in the program.

The appellant argues that he has attended the EPBC's office many times since signing an EP in July, 2017, including during the 4+ month period under review by the ministry, and spoke to staff other than his case manager frequently. He stated that each time he attends the EPBC office, he must use his bar code pass key to gain entrance to the facility and, if he could obtain a print out of the number of times he was at the EPBC office, he could prove that he demonstrated reasonable efforts to participate in the program. However, the issue is compliance with the EP, which reads "You must take part in EPBC program activities as agreed to with the EPBC contractor." There is no record that during the 4+ month period the appellant took part in activities at the contractor's office consistent with any agreed plan. Simply attending the office does not satisfy the conditions of the EP.

Conclusion

Based on the foregoing, the panel finds that the ministry decision, which found the appellant had failed to demonstrate reasonable efforts to participate in his EP and was therefore not eligible for income assistance, is reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is not successful in this appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one)

UNANIMOUS

BY MAJORITY

THE PANEL

CONFIRMS THE MINISTRY DECISION

RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Richard Roberts

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018 June 08

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 June 08

PRINT NAME

Ronald Terlesky

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018 June 08