

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry's) reconsideration decision dated May 9, 2018 whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA) for not complying with the conditions of his Employment Plan (EP), and more particularly, for failing to participate in Employment Program of British Columbia (EPBC) programming.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Act (EAA), Section 9

Employment and Assistance Regulation, Section 16

## PART E – SUMMARY OF FACTS

### The evidence before the ministry at the time of the reconsideration decision included:

- September 5, 2017 – the appellant signed her Employment Plan (EP) agreeing to the following:
  - a) Take any actions she can that make her more financially independent and explore any community resources to help her become more employable.
  - b) Visit the local WorkBC Employment Services Center to see how they can help and pursue any help they provide.
  - c) Keep ministry informed of her plans and progress and if she has any medical conditions that affect her ability to find or keep work.
  - d) On or before March 4, 2018 she must visit the local WorkBC Employment Services Centre (EPBC) Contractor. If accepted in case management, she must take part in EPBC program activities as agreed to with the contractor.
  - e) She must call the EPBC contractor if she cannot take part in services or complete steps that she agreed to, when she finds work, and if she moves.
  - f) If not accepted into EPBC case management, she must continue her Activities toward Independence as detailed in a) to c) above.
- December 1, 2017 – the appellant attended EPBC and advised that she was on a waitlist for a full-time ESL course and wanted to receive income assistance and attend full-time school.
- December 6, 2017 – EP advised the appellant that the ministry will not approve the full-time schooling for ESL Level 7 and that her EDL level is sufficient to find employment. The appellant was advised that she can attend ESL part-time (no more than 40%) on her own time and look for employment. The ministry noted that the appellant's EP stated that on or before December 20, 2017 she must visit her local WorkBC Employment Services Centre, it has been nearly six months since she signed her EP and that she must contact EPBC to be assessed for case management in their program.
- December 8, 2017 – the appellant signed and EPBC Action Plan with the goal to look for first employment after English update; To attend ESS workshops and 1-1 Sessions that focus on preparing for employment, maintaining contact with his Case Manager, conducting an active job search, and develop/renew his action plan; The action plan was dated December 8, 2017 with activities ending January 7, 2018.
- December 13, 2017 – the appellant attended EPBC and was advised that she was required to continue attending the program.
- February 22, 2018 – the appellant attended EPBC and was advised again of the ministry expectations to participate and that she was expected to look for employment. The appellant was advised that she can attend ESL but it cannot interfere with EPBC. The appellant stated that she understood and was willing to participate in EPBC workshop.
- April 11, 2018 – EPBC reported that the appellant declined to participate in their programming as there was a conflict with the appellant's ESL classes. The appellant was advised that her ESL was sufficient to find employment.
- April 17, 2017 – the ministry confirmed that the appellant was still in ESL full-time and stated that she was trying to get her PHD in engineering. The ministry discussed compliance with the appellant advising that in December 2017 she agreed to attend EPBC and that she can only take ESL part-time. The ministry notes that the college Student Schedule and Registration document confirms that the appellant registered for ESL Reading and Writing 7 with a start date of January 2, 2018 and end date of March 29, 2018.

- April 20, 2018 – the ministry determined that the appellant was no longer eligible for assistance due to her non-compliance with the EP as she failed to demonstrate reasonable efforts to participate in EPBC.
- April 27, 2018 – the appellant signed a Request for Reconsideration submitting that there is a misunderstanding between her and WorkBC case Manager and that it has now been solved.

**Notice of Appeal dated May 14, 2018, the Appellant stated the following (in part):**

On December 13, 2017 I attended EPBC and my ex-case manager suddenly told me that I didn't need to come to workshops because my husband would look for work. I needed just to email her to inform I was enrolled in an English course. So, I emailed each fifteen days until February 22, 2018. My ex-case manager also told me that I could go for 2 year's English courses on February 22, 2018. She advised me that I had to attend a workshop once at least a month. In April I prepared myself to attend a workshop and I attended labour Market Information workshop in April. But just before that, on April 11, 2018, my case worker declined to me. She had wanted me to respond all her emails ever they are about informing. I had not known that I am looking for work for one year. My specialty is [REDACTED] chaplain. I don't have experience in Engineering request with poor English and experience. I applied to firms but couldn't get a response. Now I am searching for work in my specialty of [REDACTED] Chaplain. I applied to 4 firms and one of them accepted me as a volunteer. My husband started work at a [REDACTED] company, but he couldn't get enough work. He informed Employment Service by monthly statements. When the reconsideration package came, I took it to my case manager and she told me she hadn't seen it before. (She mentioned) an updated employment plan would be enough for getting income assistance. That is why I wrote there was a misunderstanding. What I said at the end of this letter; case-manager explanation while looking for work are not enough for a new refugee that worker (??) with WorkBC.

**The appellant's submission to the written hearing:**

The appellant did not provide additional information to the written hearing.

**The ministry's submission to the written hearing:**

June 7, 2018 the ministry submitted that their reliance in this matter will be the reconsideration summary provided in the Record of Ministry Decision.

The panel admitted the appellant's written testimony, which either substantiated or further explained information already before the ministry, as being in support of the information and records before the ministry at reconsideration in accordance with section 22(4) of the Employment and Assistance Act.

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

The issue on appeal is whether the ministry's conclusion that the appellant did not comply with the conditions of his EP, and more particularly, for failing to participate in EPBC programming and is not eligible for income assistance pursuant to Section 9 of the *Employment and Assistance Act* (EAA) is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstances.

### **Relevant Legislation:**

#### **Section 9 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].*

#### **Section 16 EAR Full-time student**

*Effect of family unit including full-time student*

*16 (1) Subject to subsection (1.1), a family unit is not eligible for income assistance for the period described in subsection (2) if an applicant or a recipient is enrolled as a full-time student*

*(a) in a funded program of studies, or*

*(b) in an unfunded program of studies without the prior approval of the minister.*

*(1.1) Subsection (1) (a) does not apply to a family unit that includes a recipient who is enrolled in a funded program of studies with the prior approval of the minister under subsection (1.2) during the period described in subsection (2).*

*(1.2) For the purposes of subsection (1.1), the minister may approve a person to enroll in a funded program of studies if the person*

- (a) is a sole recipient of income assistance who*  
*(i) has a dependent child, or*  
*(ii) provides care to a supported child,*  
*(b) is required to enroll in the program of studies as a condition of an employment plan and*  
*(c) was receiving income assistance, hardship assistance or disability assistance in each of the immediately preceding 3 calendar months, unless the minister is satisfied that exceptional circumstances exist.*
- (2) The period referred to in subsection (1)*  
*(a) extends from the first day of the month following the month in which classes commence and continues until the last day of the month in which exams in the relevant program of studies are held, and*  
*(b) is not longer than one year.*

**Panel's 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 evidence in this case is:

1. The appellant signed an EP on September 5, 2017 and agreed to the conditions which required the appellant to start the EP with activities toward independence, then, if accepted, to participate with EPBC.
2. As part of the EP, the appellant signed an EPBC Action Plan on December 8, 2017 that required her to attend ESS Workshops and 1-1 Sessions that focus on preparing for employment, maintain contact with her Case Manager, conduct an active job search. The action plan activities ended January 7, 2018.
3. On December 1, 2017 the appellant attended EPBC and advised EPBC that she was on a waitlist for full-time ESL at her local college and requested income assistance to attend full-time school.
4. On December 6, 2017 the appellant was advised that the ministry will not approve the appellant attending school full-time for ESL studies and that her EDL level is sufficient to find employment.
5. On December 13, 2018 the appellant was advised that she was required to continue attending the program, to keep the ministry informed of all her plans and progress, when requested. If she does not follow this employment plan, the ministry may stop her income assistance benefits.
6. On February 22, 2018 the appellant attended EPBC and was advised again of the ministry requirements to participate in the EPBC program, that she could attend ESL, but it cannot interfere with EPBC. The appellant stated that she understood and was willing to participate in EPBC workshop.
7. On April 11, 2018 EPBC reported that the appellant declined to participate in their programming as there was a conflict with the appellant's ESL classes.
8. On April 17, 2018 the ministry confirmed that the appellant was attending ESL at her local college full-time 8am – 4pm daily with a start date of January 2, 2018 and end date of March 29, 2018.
9. April 20, 2018 the ministry determined that the appellant was no longer eligible for assistance due to her non-compliance with her EP as she failed to demonstrate reasonable efforts to participate in EPBC.

Section 16 EAR states that a family unit is not eligible for income assistance if an applicant or a recipient is enrolled as a full-time student; (b) in an unfunded program of studies without the prior approval of the minister. The panel finds the appellant was registered as a full-time student for ESL Reading and Writing 7 with a start date of January 2, 2018 and end date of March 28, 2018 and that she declined to participate in EPBC programming during this period as there was a conflict with the appellant's ESL classes.

Section 9(4) of the EAA provides that if an employment plan includes 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. The appellant states that she did not follow through with her EP because there was a misunderstanding between her and her WorkBC Case Manager.

The panel notes that the appellant's file history shows that the ministry had no compliance concerns with the appellant's EP prior to December 2017. Effective in December 2017, the appellant was required to actively participate in the EPBC program, as agreed by signing the EPBC Action Plan ending January 7, 2018. Further, there is no evidence of a medical condition that may have prevented the appellant from participating in her employment program. As such, the panel finds that the ministry reasonably concluded, pursuant to Section 9(1) of the EAA, that the appellant did not comply with the conditions of her employment plan.

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for income assistance for failure to comply with the conditions of her EP pursuant to Section 9(1) of the EAA was reasonably supported by the evidence, and therefore confirms the decision.

The appellant is not successful on appeal.

**PART G – ORDER**

THE PANEL DECISION IS: (Check one)

X  UNANIMOUS BY MAJORITY

THE PANEL

X  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) X  or Section 24(1)(b) 

and

Section 24(2)(a) X  or Section 24(2)(b) **PART H – SIGNATURES**

PRINT NAME

Ron Terlesky

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/06/27

PRINT NAME

Robert Kelly

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/06/27

PRINT NAME

Rosalie Turcotte

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/06/27