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**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated 6<sup>th</sup> June 2018 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). In particular, the Ministry was not satisfied that the appellant had demonstrated reasonable efforts to participate in the EP and failed to demonstrate that there were mitigating circumstances, such as a medical reasons, that had prevented the appellant from complying with the conditions of the EP.

**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:

1. An EP with a term commencing 21<sup>st</sup> February 2018 and ending on 21<sup>st</sup> February 2019, signed by the appellant on 21<sup>st</sup> February 2018, in which the appellant acknowledged that failure to comply with the conditions of his EP would render him ineligible for IA. In the EP, amongst other matters, the appellant agreed to:
  - Attend his first appointment with a designated EPBC Contractor on or before 9<sup>th</sup> March 2018;
  - Take part in the EPBC program activities as agreed 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 the appellant cannot take part in services or complete steps that were agreed to, or when he finds work; and
  - Call the EPBC contractor within one week, if the appellant were to move, to have his case file transferred.
2. A letter dated 21<sup>st</sup> March 2018 from the EPBC Contractor confirming that the appellant had attended the intake appointment on 26<sup>th</sup> February 2018 and was scheduled to attend an orientation on 29<sup>th</sup> March 2018, and thereafter start a group on 3<sup>rd</sup> April 2018 for 10 weeks;
3. An email from EPBC dated 6<sup>th</sup> April to the Ministry stating, among other matters, that: (i) the appellant only attended 30 minutes of the group meeting during that week; (ii) the appellant was reminded that he needed to be in the group on time and stay for the day; (iii) the appellant was not arriving for the group until 10 AM – 11 AM (the morning group met between 9 AM and 12 noon); (iv) the appellant complained about being in the group and stated that it was a waste of his time to be there; (v) the EPBC reminded the appellant that he was a Ministry referral and therefore the Ministry will be informed about his attendance; (vi) “nothing changed”; (vii) and the appellant was therefore exited from the program, and was informed;
4. A letter dated 19<sup>th</sup> April 2018 from the Ministry to the appellant that, amongst other matters, stated that: (i) the appellant had not followed through his referral to the designated EPBC; (ii) the appellant failed to attend the program as directed by the Case Manager of the EPBC; and as the appellant had not completed the said requirements, he was not eligible for income assistance;
5. Request for reconsideration signed by the appellant on 8<sup>th</sup> May 2018, which set out the appellant’s reasons for reconsideration.

The new information/evidence before the panel at the hearing included the Reconsideration Decision dated 6<sup>th</sup> June 2018 that, amongst other matters, sets out the following:

- The EPBC Contractor reported to the Ministry that: (i) on 6<sup>th</sup> April 2018 the appellant had only attended 30 minutes of the group that week; (ii) the appellant was reminded that the appellant needed to be in the group on time and stay for the whole day; (iii) the appellant had informed the EPBC Contractor that the appellant felt that his participation in the program was a waste of his time; and (iv) the appellant was exited from the program due to his non compliance;
- The appellant was informed by the Ministry on 19<sup>th</sup> April 2018 that: (i) not all regulatory criteria had been met by the appellant; (ii) as a result of non-compliance with the appellant’s EP, there was no eligibility for further income assistance; and (iii) based on the foregoing information, the appellant’s income assistance was denied on the grounds that the appellant: (a) failed to comply with the conditions in the EP; (b) failed to demonstrate reasonable efforts to participate in the employment related program specified in the EP; and (c) ceased to participate in the program;

The following additional new information/evidence was submitted by the appellant to the Tribunal and copied to the Ministry after the Reconsideration Decision:

(a) A Notice of Appeal dated 21<sup>st</sup> June 2016 (received by the Ministry on 21<sup>st</sup> June 2018) signed by the appellant in which it is stated by a person representing /assisting the appellant that the appellant was unable to attend scheduled meetings or the requirements of his EP; and

(b) Another Notice of Appeal dated 2<sup>nd</sup> June 2018 (received by the Ministry on 5<sup>th</sup> July 2018), signed by the appellant in which it is stated by a person representing/assisting the appellant that: (i) the appellant would like to provide new evidence; (ii) the appellant had filled out a referral form from a Mental Health Authority;

(c) A handwritten Note signed by the appellant dated 2<sup>nd</sup> July 2018, which states that: (i) the appellant was not capable of waking up on time; (ii) all that the appellant does is sleep; (iii) the appellant cannot make it to appointments; (iv) the appellant gets distracted and frustrated with his responsibility; and (v) the appellant suffers from depression and anxiety and is unable to take directives from the Ministry;

(d) A letter dated 2<sup>nd</sup> July 2018 from a support worker at a Mental Health Authority (received by the Ministry on 5<sup>th</sup> July 2018), which amongst other matter states that: (i) the appellant resides in a supporting housing complex where the support worker is employed; (ii) the appellant had requested the support worker to assist the appellant, as the appellant was not able to complete the EPBC Contractor's work program; hold down a job; or complete the requirements of the program due to the challenges the appellant has demonstrated since living in the supporting housing environment; (iii) the appellant had scheduled an appointment on 10<sup>th</sup> July 2018 to speak to a "Law advocate" and had filled out a referral to a Mental Health Authority in the hope of being able to provide necessary details to show that he is unable to work, and would benefit from being re-instated with the Ministry so that he could apply for disability status; (vi) the appellant had not seen the Reconsideration Decision until 18<sup>th</sup> June 2018; does not have an email or phone access; and the appellant had asked the support worker to assist the appellant with his correspondence and to attend scheduled service meetings and/or tribunal hearings with him.

The Ministry representative did not object to admission of the additional new written information and evidence described in paragraphs (a) to (d) above. The panel determined that the said new written information and evidence of the appellant was admissible under Section 22 (4) of the EAA, as it was in support of record before the Ministry at reconsideration.

At the hearing, the appellant was assisted by a representative. A Release of Information form was signed and submitted by the appellant on 17<sup>th</sup> July 2018 (in the Record of Appeal) was received by the Tribunal on 17<sup>th</sup> July 2018, and authorized the representative to receive documents relating to the appeal and attend the hearing.

At the hearing, the appellant submitted that:

- he faced many medical challenges including, (i) inability to concentrate i.e. he gets distracted easily; (ii) he had limited eyesight; (ii) he had limited hearing; and (iv) experienced difficulty in walking;
- because he gets distracted easily, he cannot finish whatever work he begins and moves away to other tasks without really understanding why he was doing that;
- he never told the EPBC Contractor that attending the program was a "waste of his time"; he actually informed the EPBC Contractor that he "should never have been in the program" because of medical reasons;
- as he had arrived late for a program meeting (after 10 AM), he was asked by the EPBC Contractor to come back in the afternoon on the same day; that he went and had lunch thereafter and fell off to sleep, as he always needs to do so after eating food; that for the said reason, he missed his afternoon appointment with the EPBC Contractor; and
- the EPBC Contractor did not give him an opportunity to continue with the program and exited him from the program.

With the appellant's permission, the appellant's representative submitted that: (i) the appellant was now living at a mental health facility and not an assisted-housing facility; (ii) he gets easily distracted; (iii) he was homeless and lived in "tent city" several years ago; (iv) he has an elevated level of anxiety; (v) it is impossible for him to secure and hold any kind of regular job; (vi) it is hard for him to refocus; (vii) he has a history of addiction that might have resulted in organic damage affecting his lifestyle, which is now "chaotic".

The Ministry representative, who attended the oral hearing by telephone with the prior approval of the Tribunal dated 20<sup>th</sup> July 2018, did not object to the admission of the new oral or written evidence of the appellant and his representative. The Ministry representative stated that the said evidence was not before the Ministry at the time of reconsideration; and that had it been available at reconsideration, the Ministry would not have denied income assistance to the appellant.

In response to questions from the panel members, the Ministry representative confirmed that the written medical evidence provided by the appellant, which included a letter dated 2<sup>nd</sup> July 2018 from a Mental Health Authority (received by the Ministry on 5<sup>th</sup> July) was adequate exception for the Ministry, as it demonstrated mitigating circumstances (medical reasons) that prevented the appellant from complying with the conditions of EP.

The Ministry representative further confirmed that evidence about the medical condition of the appellant was not required, either under the applicable law or under any internal policy guidelines of the Ministry, from a medical practitioner.

Having reviewed to what is stated above, the panel finds that the appellant:

- Had acknowledged in writing in the EP that active participation in the EPBC program was mandatory in order to maintain eligibility for income assistance;
- Has provided written and oral evidence, satisfactory to the Ministry, about his medical condition, which constitutes mitigation circumstances that prevented him from complying with the conditions of the EP, as envisaged in Section 9 (4) (b).

## PART F – REASONS FOR PANEL DECISION

The decision under appeal is the reasonableness of the Ministry's reconsideration decision of 6<sup>th</sup> June 2018 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). In particular, the Ministry was not satisfied that the appellant has demonstrated reasonable efforts to participate in the EP and failed to demonstrate that there are mitigating circumstances, such as a medical condition, that have prevented the appellant from complying with the conditions of the 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*].

#### 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 21<sup>st</sup> February 2018 and agreed to the conditions that required him to take part in the employment program activities as agreed to with a designated EPBC 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 to 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.

Since the date of the Reconsideration Decision, the appellant has provided written evidence about his medical condition and supported such with the oral evidence of himself and his representative at the hearing. The Ministry representative confirmed at the hearing that the evidence of the appellant constitutes adequate medical reasons, which constitutes mitigation circumstances that prevented him from complying with the conditions of the EP, as envisaged in Section 9 (4) (b) of EAA.

As noted above by the panel, the Ministry representative did not object to the admissibility of the said new oral and written evidence of the appellant and that the panel has determined that the said evidence of the appellant was admissible under Section 22 (4) of the EAA, as it was in support of record before the Ministry at reconsideration

Having regard to the foregoing analysis 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 failure to comply with the conditions of his EP pursuant to Section 9 of the EAA, as he failed to demonstrate a reasonable effort to participate in an employment related program, was not reasonably supported by evidence as required under Section 24 (2) (a) of EAA and therefore rescinds the decision of the Ministry.

The appellant's appeal is, therefore, successful.

**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  
TAJDIN MITHA

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)  
2018/07/26

PRINT NAME  
KULWANT BAL

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)  
2018/07/26

PRINT NAME  
MARCUS WONG

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)  
2018/07/26