

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated July 6, 2018, which denied the appellant's request to maintain her eligibility for income assistance because of the appellant's non-compliance with her signed Employment Plan to participate in the Employment Program of BC (EPBC) as required under Section 9 of the Employment and Assistance Act (EAA).

PART D – RELEVANT LEGISLATION

Employment and Assistance Act, Section 9

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.

PART E – SUMMARY OF FACTS

In her Notice of Appeal dated July 23, 2017 the Appellant requested a written appeal and waived support at the hearing. The Ministry provide written information for the hearing.

Information before the Ministry at reconsideration:

On November 22, 2016 the Appellant signed an Employment Plan to participate in the EPBC. The Ministry referred the Plan to a Case Manager. The end date of the Plan is noted as November 22, 2018.

The Case Manager reported non-compliance issues on April 19, April 25, May 3 and June 19 of 2018 where the Appellant did not attend appointments, missed rescheduled appointment and did not contact the Contractor.

On June 20, 2018 the Ministry determined that the Appellant was no longer eligible for assistance due to non-compliance with the Appellant's Employment Plan.

Notice of Appeal

On June 23, 2018 the Appellant submitted a Notice of Appeal. The Appellant stated that she lived in a rural community with the nearest Ministry office being 180 Km away; Work BC is 20 Km away and no transportation means to and from job search.

On July 22 and 24, 2018 the Appellant e-mailed the Employment and Assistance Appeal Tribunal (EAAT) explaining her situation and requesting information and assistance. The EAAT replied and indicated on July 25, 2018 the EAAT's role and inability to provide funding and directed questions to the Ministry.

On July 31, 2018 the Appellant again contacted the EAAT expressing confusion with the appeal process and what information the Appellant should provide and when and indicated it was difficult to find an advocate. On August 8, 2018 the Appellant requested an extension of the date by which the Appellant's submission must be filed. A Written Submission Extension Request form was approved Aug. 10, 2018.

On August 16, 2018 a transition housing society was designated as the Appellant's Advocate and on August 17, 2018 provided a letter of support for the hearing. The Advocate indicated that the Appellant has faced persistent multiple barriers to employment which have hindered her ability to meet her employment related obligations and referred to Section 29.4 of the Employment and Assistance Regulation. The Advocate related a number of instances where the Appellant's medical difficulties and situation as an abused partner interfered with her ability to fulfill her employment related obligations.

On August 28, 2018 the Ministry confirmed review of the information submitted by the Appellant's Advocate. While acknowledging that such information would have resulted in a different decision, they assert that this additional information was not available at the date of the reconsideration. The Ministry went on to note that the Appellant is currently being assisted by the Ministry with her current situation.

Hearing

The Panel conducted a written hearing as requested by the Appellant pursuant to section 22(3) (b) of the Employment and Assistance Act and reviewed the written submissions of the Appellant, the Appellant's Advocate and the Ministry.

The Panel can only admit evidence that was before the Ministry at the time of reconsideration and evidence that is in support of the information and records that were before the Ministry at the time of reconsideration.

The panel first considered the admissibility of new evidence in the form of the various e-mails to and from the Appellant and the EAAT concerning filing the Notice of Appeal (July 22, 23 and 24, 2018) and leading up to the Appellant filing her written submission including the extension of the filing date (July 24, 25 and 31, 2018). These were not available to the ministry at the date of reconsideration and were filed in the record of appeal at the request of the Appellant. The Panel considers this information to be largely process oriented. The information is not relevant to the issue the Panel must decide and does not need to be excluded.

The Panel also considered the information contained in the Notice of Appeal from an admissibility perspective. The specific circumstances of transportation issues outlined by the Appellant in the Notice of Appeal may have been unknown to the Ministry. The Reconsideration decision makes reference only to the record of the Appellant's movements and the fact that they were out of touch for a considerable period of time. The Panel considers the specific information new evidence not before the Ministry and not admissible.

The panel then considered the admissibility of new evidence in the form of the Advocate's letter dated August 17, 2018. The panel considers this information to be new and not admissible as it was not before the Ministry on the date of its reconsideration decision and not information in support of the information available as at the date of reconsideration. The panel noted that the Ministry acknowledged that this information was not available at the time of reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry's decision to deny the Appellant's request to maintain her eligibility for income assistance because of the appellant's non-compliance with her signed Employment Plan to participate in the Employment Program of BC (EPBC) is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the Appellant.

Ministry Position

The Ministry's position is that Appellant signed an Employment Plan dated November 22, 2016 and that the Appellant failed to make a reasonable effort to comply with that plan. The Ministry determined that the Appellant is ineligible for income assistance due to non-compliance with the Plan.

The Ministry provide evidence in the form of a review of their file indicating several instances of failed appointments, re-scheduled appointments and failure to contact the Contractor between the dates April 25, 2018 and June 12, 2018. These instances of non-compliance were suggested by the Ministry as evidence of a lack of reasonable effort to meet her obligations under the Employment Plan. The Ministry noted the Appellant had provided no new information that would indicate there were factors beyond the Appellants control to explain the non-compliance and no medical evidence was provided.

Appellant's Position

The Appellant's position as stated in the Notice of Appeal is that she disagrees with the Ministry position because she is 180 KM from the nearest Ministry office and 20 KM from the nearest Work BC offices without transportation available for a job search.

Legislation

Section 9 of the Employment and Assistance Act requires a family unit to enter into an Employment Plan in order to be eligible for assistance when required to by the Minister and to comply with the conditions of that plan. 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.

Panel Decision

The decision under appeal is that the Ministry found the Appellant ineligible for assistance because she failed to make a reasonable effort to comply with the terms of her Employment Plan.

The Ministry has provided a record of performance under the Appellants Employment Plan consistent with a view of non-compliance.

The Appellant has provided no information considered admissible which would explain the non-compliance as required by the legislation.

Conclusion

The panel finds that the ministry did reasonably determine that the appellant is not eligible for income assistance. Therefore, the panel confirms the ministry's reconsideration decision. The Appellant's appeal is unsuccessful

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

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018-09-10

PRINT NAME

Fazal Bhimji

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-09-10

PRINT NAME

Inge Morrissey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-09-10