

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "ministry") reconsideration decision of September 17, 2018, that denied the appellant income assistance for failing to comply with the conditions of her employment plan as set out in the Employment and Assistance Act (EAA) section 9 (1)(b); the ministry found that the appellant failed to demonstrate a reasonable effort to participate in the program and there were no medical reasons that prevented her from participating pursuant to section 9(4) of the EAA.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Act (EAA) Section 9.

## PART E – SUMMARY OF FACTS

The information before the ministry at the time of reconsideration included the following:

The appellant is sole employable recipient of income assistance with one dependent child 10 years of age.

On July 9, 2018 the appellant signed an employment plan agreeing to take part in EPBC program activities as agreed with the local EPBC WorkBC contractor. The appellant agreed to complete all tasks given to her including any actions set out in her Action Plan. She agreed to call the local contractor if she cannot take part in services or complete steps that she agreed to or when she finds work. If she moved, within one week, she agreed to ask the EPBC contractor serving her new area to transfer her EPBC case file. Her employment plan conditions would continue to apply. Additionally, she was required to arrange suitable child care so that she could seek work. She agreed to participate fully and to the best of her ability in the activities required by the contractor and she acknowledged that she understood that if she did not comply with the conditions of her employment plan, the assistance issued to her and her family would be discontinued.

On July 31, 2018, EPBC reported to the ministry that they had attempted to contact her by phone on July 13, 18, 24 and 30 as well as emails on July 13 and 18 with no response from her. The ministry then contacted her by phone noting that the following was discussed with her:

- Compliance is a condition of eligibility when her employment plan was signed.
- Signature on the employment plan tells the ministry that she understood and must comply with the conditions laid out in her employment plan.
- Must contact and attend WorkBC.
- Must participate fully and attend all workshops, appointments and referrals as directed by EPBC.
- If she does not attend or is late, the onus is on her to provide confirmation of mitigating circumstances that prevented attendance.
- If non-compliant with her employment plan she may no longer be eligible for income assistance.
- EPBC was there to assist with any barriers impacting her ability to secure/sustain employment and to move along the employment continuum towards greater independence.

The appellant stated she understood the conditions of her employment plan and the consequences of non-compliance. She confirmed that she had a booked appointment with WorkBC on August 3, 2018 at 1:30 pm with her case manager. The ministry emphasized the importance of her EPBC participation to be eligible for income assistance. She advised she understood and she would attend the appointment with EPBC on August 3, 2018.

On August 7, 2018 EPBC reported to the ministry that the appellant failed to show for her appointment on August 3, 2018.

On August 8, 2018 EPBC the ministry sent a letter to the appellant advising that she did not attend her August 3, 2018 appointment with WorkBC and did not call to cancel or reschedule. As she had not completed the requirements, she was not eligible for income assistance.

On August 22, 2018 the appellant submitted a Work/School Absentee Certificate from a medical clinic. The physician noted that from August 16, 2018 for 5-7 days, the appellant was unable to attend work/school due to illness or injury.

In a ministry Medical Report – Employability dated August 29, 2018 a doctor identifies the appellant’s medical condition as moderate extensive tendonitis of her left hand with onset July 15, 2018. Her restrictions are “unable to use left wrist/functional/hand” for a period of 1 to 3 months. The doctor indicates that this is the appellant’s first episode and that he/she has not examined previous medical records.

On September 4, 2018 the appellant submitted her Request for Reconsideration dated August 31, 2018 and wrote:

- On July 6, 2018 she accidentally dropped her cell phone, her only means of communication. She was not able to answer calls, check her voicemail or email.
- She had to create a new email account a few weeks ago because she did not remember her password.
- She had not booked her appointments and went to the WorkBC office to tell them about her situation. She rebooked her missed appointments.
- She saw her case manager who suggested that the appellant should see a doctor due to her medical condition. She has not been able to work or take a course or seek health support. She saw a doctor and was signed off for a week, got a splint and was put on pain killers and other medication. She took her week off and then was signed off for a longer period of time because of her health condition re-occurred when she tried to work.
- She has submitted everything she got from the doctor.
- Income assistance is her only income as she cannot work. She is also receiving child tax benefits.
- Without work she can attend more appointments or courses that are suggested. She may have to look into another career path as she can barely use her dominant hand anymore.
- “My doc said 1 to 3 months.”
- “My phone kind of works now.”

In her Notice of Appeal the appellant writes: “I have had a death in my family and really need the supplement and help as I’m in a lot of counselling and on new meds and can’t work. I was signed off for a few months due to my health already. I need the help.”

The appellant did not attend the hearing. Upon confirming that the appellant was notified the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The ministry presented the reconsideration decision and added the following information: Prior to entering into her employment plan the ministry talked to the appellant about her obligations and the consequences of non-compliance. Before clients signs an employment plan they talk to a specialized Employment Plan Team that reviews the employment plan and its conditions with them in order to make sure they understand their obligations and the importance of compliance. Appointments with the case manager include helping clients find employment, increase their employability skills, identify training opportunities, and improve their resume etc. Case managers meet with their clients over a period of several months. No physical labour is involved at these meetings.

The ministry stated that the appellant’s information in her Notice of Appeal was new information but did not object to this information being admitted into evidence.

#### Admissibility of new evidence

Pursuant to section 22(4) of the *Employment and Assistance Act* the panel admitted the appellant’s information on appeal that she was “having been signed off” for a few months and unable to work as this

information was in support of information contained in the medical report and the Work/School Absentee Certificate that were before the ministry at reconsideration. The panel did not admit information respecting a death in the family, counselling, and new medications as this was new information and did not corroborate information that was before the ministry at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which found that the appellant was ineligible for income assistance, was reasonably supported by the evidence or was a reasonable application of the legislation. In particular, was the ministry reasonable in determining that

- the appellant did not comply with the conditions of her employment
- the evidence did not establish the appellant made a reasonable effort to participate in the program; and
- there were no medical reasons for this failure to participate.

**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.

...

The appellant argues that she needs help because she has no income and cannot work. Her cell phone was damaged and she could not communicate with anyone. She had to create a new email account because she forgot her pass word and could not check her emails. She could not attend the appointment because she has tendonitis and her wrist swelled up when she tried to work. She can barely use her dominant hand any more, and her physician determined that she was unable to use her wrist and functional left hand for 1 – 3 months.

The ministry determined that the appellant has not demonstrated that she made a reasonable effort to comply with the conditions of her employment plan, or that she has any mitigating circumstances that prevented her from complying with the conditions of her employment plan, and therefore she is not eligible for assistance, as per section 9 of the EAA because of the following reasons:

By signing her employment plan she confirmed that she read, understood and agreed to the conditions specified in the plan. She was required to comply with activities agreed with WorkBC and to call them if she could not take part or complete the tasks assigned. She had an appointment scheduled on August 3, 2018 which she failed to attend and she did not call to reschedule even though she advised the ministry she understood the consequences of failing to comply.

Although she has supplied medical documentation that indicates she has a medical condition of tendonitis which restrict her ability to use her left hand/wrist she has not provided any information that indicates that she suffers from any medical issues that would impact her ability to attend employment programming.

#### Panel Decision

Section 9(1) of the Employment and Assistance Act states if income assistance is to be given to a recipient, the recipient must comply with the conditions of an employment plan. A condition of the appellant's employment plan was that she participate in an employment program and, as per section 9(4) EAA, this condition is not met if the person does not demonstrate reasonable efforts to participate, unless there was a medical reason.

The panel finds that there is sufficient evidence that the appellant did not demonstrate reasonable efforts to participate in the EPBC and as a result did not comply with her Employment Plan under section 9(4) of the EAA: EPBC reported that the appellant did not attend the program on August 3, 2018, and she did not call to cancel or reschedule, despite a detailed discussion with the ministry about her obligations prior to her appointment. During this discussion the ministry also reminded her that she may no longer be eligible for income assistance if she is non-compliant with her employment plan. The appellant stated she understood the conditions of her employment plan and the consequences of non-compliance. She confirmed that she had a booked appointment with WorkBC on August 3, 2018 at 1:30 pm with her case manager and would attend the appointment.

While there is some medical evidence that the appellant was unable to attend work/school due to illness or injury for 5-7 days and was also "unable to use left wrist/functional/hand" for a period of 1 to 3 months the panel finds that the ministry reasonably concluded that there is insufficient evidence that the appellant was unable to participate in the program due to medical reasons: The ministry reasonably concluded that there was insufficient evidence that tendonitis of the left wrist/hand would prevent her from attending the EPBC program. Further, the panel notes that at some point between July 30 and August 3, the ministry and the appellant spoke, at which time the appellant indicated that she was able to attend her August 3 appointment, with no indication of a medical issue preventing her attendance.

Consequently, the panel finds that the ministry's decision that the appellant failed to comply with her EP was reasonable as she failed to demonstrate reasonable efforts to participate in the employment program as per section 9(4); as a result she is ineligible for income assistance as per section 9(1).

## Conclusion

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 her employment plan pursuant to section 9 of the EAA was reasonably supported by the evidence, and therefore confirms the decision. The appellant is not successful in her appeal.

<b>PARTG-ORDER</b>	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PARTH-SIGNATURES</b>	
PRINTNAME Inge Morrissey	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/10/22

PRINTNAME Glenn Prior	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/10/22

PRINTNAME Jim Jones	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/10/22