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**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry's) reconsideration decision dated March 5, 2019 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), due to his failure to demonstrate reasonable efforts to participate in the employment-related program and with no medical reason for ceasing to participate.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance Act* (EAA), Section 9

**PART E – SUMMARY OF FACTS**

With the oral consent of the appellant, a ministry observer attended but did not participate in the hearing.

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

- 1) EP signed by the appellant and dated February 23, 2018. The terms of the EP include to:
  - Meet with the EP contractor on or before March 7, 2018.
  - Take part in the contractor program activities as agreed to with the contractor;
  - Complete all tasks given to him, including any activities set out in his Action Plan;
  - Call the contractor if he is unable to attend a session, or when he finds work or moves;
- 2) Letter dated March 9, 2018 in which the ministry requested income verification from the appellant as well as contact with the ministry for an EP review;
- 3) Action Plan dated March 16, 2018 which includes identified strengths for the appellant of “good experience” in two particular fields, as well as considerations that he has no work experience in Canada, has no certificate or license, English language skills level at 2, which make the job search more difficult. The appellant does not have a driver’s license and does not know how to use the computer for a job search. The activities and services that the appellant must undertake on his own are: “finding jobs and work experience.” The appellant agreed to inform the contractor of any changes in his employment status and he agreed to be contacted by the contractor at the 4, 12 and 24-week follow up period, by phone or email, after attaining employment;
- 4) Letter dated September 13, 2018 in which the ministry requested income verification from the appellant. The ministry congratulated the appellant on finding employment and required information about his hourly wage, hours per week, start date and initial pay date;
- 5) Letter dated February 7, 2019 in which the ministry advised the appellant that he was not eligible for income assistance due to his non-participation in his EP; and,
- 6) Letter dated February 19, 2019 in which a worker with an Immigrant Settlement & Integration Program confirmed that the appellant is registered in the language instruction for new comers to Canada since June 1, 2017 and he attends classes three days per week from 6:30 to 9:00 pm; and,
- 7) Request for Reconsideration dated February 25, 2019.

In his Request for Reconsideration, the appellant wrote:

- He is still a student in an English class (Level 2) and he needs to attend school every day.
- His situation did not change and he included the school’s sheet.
- He lives alone and does not have anyone for support and the income assistance is all he has for survival.
- Looking for work is difficult but he keeps applying and no one is hiring him.
- English is the main issue for him.

### ***Additional information***

In his Notice of Appeal dated March 13, 2019, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that he has no one in Canada, no siblings and no family. He borrowed money from friends to pay last month's rent. He is not sure what he will do for rent if he does not have income assistance. He wants to go to English school and work on his language skills to find work as soon as possible.

At the hearing, the appellant and his advocate stated:

- He is a newcomer to Canada and he just needed money from the ministry to get him started. There are many barriers, especially language, and he needs support in the beginning.
- There is a lack of employment opportunities. The advocate's agency provides information about the importance of employment, of paying taxes, and explains about EI and CPP requirements. The agency helps newcomers get settled.
- The appellant has an interest and passion for a particular service-oriented job that he would like to focus on. He found a business offering this type of job where the other workers speak the same language and they are from the same country of origin. The appellant works as a volunteer in this chosen service-oriented job with the expectation that he will be paid later when he develops some skill. The owner of the business said the appellant needs Level 3 or 4 English skills and then he can get paid. The appellant currently has Level 2 English skills.
- The contractor had no training available for the appellant's chosen service-oriented job. The contractor suggested that the appellant consider other types of work and the appellant thought he could do another type of work as well. The appellant has also been working at home in his chosen service-oriented job and not charging clients so he will learn more skill.
- He went to all meetings and interviews required by the contractor. He was attending workshops when the contractor told him that they had closed his file and said "that's it!" He is not sure why this happened.
- His room-mate does a particular type of work and he thought he could do this work if he had a driver's license, which he is pursuing.
- He is trying to open more doors for himself, with the goal of getting Canadian work experience.
- The appellant resides close to the advocate's office and the appellant often attends to get help. Most newcomers want to be working to be in a position to sponsor family remaining in their country of origin.
- The appellant did not work in his chosen job in his country of origin.
- He acknowledges that he signed the EP on February 23, 2018 and that he is attending ESL classes three days per week, not every day, from 6:30 to 9:00 pm.
- The appellant attended most of the appointments set up by the contractor.
- The appellant finds the Canadian system challenging. He contacted the contractor so many times. Even though the contractor's employee (the "worker") spoke his original language, the worker was not very friendly or cooperative. He believes there should be

understanding if the person does not attend one or two meetings.

- He signed in at the contractor's through the computer and he had a hard time with the password and this may have resulted in his attendance not being recorded. He had lots of contact with the contractor over the telephone.
- There were times when he had problems with his phone and was not able to contact the contractor.
- He tried to attend at the contractor's as much as he could but he did not realize that he had to comply in a certain way. There was a misunderstanding about the process.
- He had gone to the contractor to ask about any workshops or training for his two preferred jobs but they said that there was nothing available. The contractor did not have specific dates for any training and no brochures or information and they just asked the appellant to "communicate with us." The advocate's agency helped the appellant to prepare a resume and has been assisting him in preparing for his job search.
- The advocate has noticed a different philosophy towards appointments among new comers to Canada. Many believe, as does the appellant, that maintaining a connection can occur over the telephone and that it is not required to be a face-to-face meeting.
- The appellant received the letter from the ministry dated September 13, 2018 and the information that the appellant had been working since July 2018 was a mistake. The advocate contacted the ministry on the appellant's behalf to advise that the appellant was not working in the field as described by the contractor.
- In March 2018, the appellant was working part-time for a company about 18 hours per week, but he was on call and did not get much work. In July 2018 and again in September 2018 he had applied for a job but was not working.

The ministry relied on the reconsideration decision, as summarized at the hearing. At the hearing, the ministry clarified that the contractor involved with the appellant's file is one of many agencies, including the advocate's agency, that work together to support new comers to Canada to help them get settled and to find employment. The ministry clarified that the aid of a language interpreter was used to communicate with the appellant on March 9 and September 19, 2018 that compliance with his EP was a condition of his continued eligibility for income assistance. The ministry relies on the report from the contractor, which includes a description of the contractor program activities as agreed to with the appellant and details of the way that he failed to meet these expectations and was, therefore, not compliant with his EP.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision that the appellant did not comply with the conditions of his EP and, therefore, the appellant 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.

### 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's decision*

In the reconsideration decision, the ministry determined that the appellant did not comply with the conditions of his EP, due to his failure to demonstrate reasonable efforts to participate in the employment-related program and with no medical reason for ceasing to participate and that, therefore, the appellant is not eligible for income assistance pursuant to Section 9 of the EAA. The ministry wrote that the appellant entered into an EP dated February 23, 2018, and the conditions of his EP required that he meet with the EP contractor on or before March 7, 2018, take part in the contractor program activities as agreed to with the contractor, complete all tasks

[REDACTED]

given to him including any actions set out in his Action Plan, and to contact the contractor if he is unable to attend a session or when he found work.

The panel finds that the ministry reasonably considered the appellant's interactions with the EP contractor over the period since he signed the EP on February 23, 2018 until he was found ineligible for income assistance on February 7, 2019. The ministry wrote that the EP contractor advised that the appellant did not attend his initial appointment on March 7, 2018 as he had found a part-time job. At the hearing, the appellant clarified that was working part-time for a company about 18 hours per week, but he was on call and did not get much work. The ministry wrote that the appellant was advised by the ministry on March 9, 2018, with the assistance of language interpretation, that he needed to continue to attend sessions with the contractor if he worked less than 20 hours per week and that he was required to connect with the contractor immediately. The ministry wrote that the appellant entered into an Action Plan on March 16, 2018, which describes the activities and services that the appellant must undertake on his own as: "finding jobs and work experience." The contractor subsequently advised the ministry that the appellant had been working since July 20, 2018 for 25 hours per week for \$15 per hour and that the appellant had informed the contractor that he was no longer interested in receiving services from them.

The ministry sent a letter dated September 13, 2018 requesting that the appellant verify his income from this employment. At the hearing, the advocate clarified that he contacted the ministry on the appellant's behalf on September 19, 2018 and informed the ministry that there had been a mistake because the appellant was not working; however, he informed the ministry that the appellant was taking Level 2 ESL classes for 3 evenings a week, for 2.5 hours a class. In his Notice of Appeal, the appellant wrote that he wants to go to English school and work on his language skills to find work as soon as possible. The ministry reasonably considered the letter dated February 19, 2019 in which a worker with the Immigrant Settlement & Integration Program confirmed that the appellant had been registered in language instruction since June 11, 2017 and the appellant attends classes three days per week from 6:30 to 9:00 pm. The panel finds that the ministry reasonably concluded that the classes occur for 7.5 hours each week and do not prevent the appellant from actively participating with his EP.

The appellant did not dispute that the ministry reiterated to him in September 2018, with the language assistance of the advocate, that he must remain available during the day to fully participate with the contractor and that he must contact the contractor. On September 20, 2018, the appellant indicated to the ministry that he was applying for work. At the hearing, the appellant confirmed that he applied for work but stated that he was not successful in getting work. On February 6, 2019, the contractor reported to the ministry that the appellant had not been participating with his EP and the ministry confirmed at the hearing that this report included details of the specific expectations that the appellant failed to meet.

At the hearing, the appellant stated that he “went to all meetings and interviews required by the contractor,” that he was attending workshops when the contractor told him that they had closed his file and said “that’s it!” The appellant stated that he is “not sure why this happened.” The appellant also alternatively stated at the hearing that he attended “most” of the appointments set up by the contractor, that even though the worker spoke his original language, he felt the worker was not very friendly or cooperative and he believes that the contractor should understand if “one or two” meetings are missed. The appellant stated that he had a hard time with the password to sign into the computer when attending sessions and this may have resulted in his attendance not being recorded on some occasions.

The advocate stated at the hearing that he has noticed a different philosophy towards appointments among new comers to Canada and the appellant believes that “maintaining a connection” is sufficient by telephone and does not require a face-to-face meeting. The appellant stated that he had “lots of contact” with the contractor over the telephone. However, the appellant also stated at the hearing that there were times when he had “problems with his phone” and was not able to contact the contractor.

To 'participate' in the EP is 'to take part in' or 'to be actively involved in,' and the panel finds that the ministry reasonably determined that the appellant failed to make reasonable efforts to participate in the program when he neglected to attend the program activities and to maintain contact with the contractor in the manner required by the contractor.

The legislation requires that the appellant demonstrate reasonable efforts to participate in the program, or to provide a medical reason for ceasing to participate in the program, and the panel finds that the ministry reasonably concluded, pursuant to Section 9 of the EAA, that the requirements have not been met in this case.

### *Conclusion*

The panel finds that the ministry decision, whereby the appellant was found to be ineligible for income assistance pursuant to Section 9 of the EAA, was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision. The appellant’s appeal, therefore, is not 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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-04-03

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-04-03

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-04-03