

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated March 4, 2019, which held that the appellant did not comply with the conditions of her Employment Plan (EP) because she did not make reasonable efforts to participate in her employment program and was therefore not eligible for income assistance in accordance with section 9 of the *Employment and Assistance Act*.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act, section 9

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration

The appellant entered into an EP with a start date of May 4, 2018 and end date of May 3, 2020. The EP referred the appellant to the Employment Program of BC (EPBC). Section 2 of the employment plan sets out the details, including that the appellant must:

- Meet with the EPBC contractor on or before May 18, 2018.
- Take part in the EPBC program activities as agreed to with the contractor.
- Complete all tasks given to you, including any actions set out in your EPBC Action Plan.
- Call your contractor if you cannot take part in services or complete steps that you agreed to, or when you find work.

Section 5 of the EP, "Compliance with Employment Plan and Actions for Non-Compliance," states that assistance will be discontinued if a person a) fails to demonstrate reasonable efforts to participate in a program in which he or she is required to participate, or b) ceases, except for medical reasons, to participate in the program.

Section 6 of the EP, "Acknowledgement," states "...I understand that if I do not comply with the conditions of this employment plan, the assistance issued to me and/or my family unit will be discontinued."

Ministry records note the following:

- May 30, 2018, EPBC reported to the ministry that the appellant's daughter called and advised that the appellant's business is going well and that the ministry supported the business plan. The daughter advised EPBC that the ministry agreed that the appellant did not need to attend EPBC any longer. The EPBC case worker advised the appellant's daughter that verification from the ministry was required.
- June 8, 2018, the appellant spoke with the ministry. The appellant was advised of her employment obligations. The appellant stated that she was trying to start her own business and that she had contacted EPBC but had not received another call from them. The appellant stated that she had not made any income from her business to date as she needs contracts and someone to help with those. The appellant stated that her daughter called the appellant's EPBC case manager and was advised that the appellant did not have to attend [EPBC]. The ministry advised the appellant that she is required to attend and participate fully with EPBC and that she can continue to work on her business but needs to apply for alternate jobs as well. The appellant stated that she understood and would reconnect with EPBC on Monday [June 11].
- June 19, 2018, EPBC advised that the appellant met with her case manager on June 13, 2018.
- July 9, 2018, EPBC advised the ministry that the appellant reported to EPBC that her business was going well, she was earning income, and that she was not actively seeking employment as she was busy with her business.
- December 27, 2018, EPBC reported to the ministry that the appellant had been self-employed since July and had completed 24 follow-up appointments.

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- December 28, 2018, the ministry reviewed the appellant's file and found that her earnings from her business had been minimal and placed a hold on her February assistance cheque to discuss the requirements of the EP and the consequence of non-compliance.
 - January 9, 2019, a ministry worker spoke with the appellant and advised her that she must comply with the conditions of her EP and of the consequences of non-compliance. The appellant stated that she understood.
 - February, 8, 2019, EPBC reported to the ministry that the appellant advised her EPBC case manager that she is not looking for work because she is self-employed. The appellant stated that she cannot do more than she already is with her business because she had previous health issues and that full-time work would be too hard for her. It was noted that the appellant had not provided any documentation from a medical professional advising she cannot work full time. A hold was placed on the appellant's next cheque to discuss non-compliance.
 - February 21, 2019, the appellant contacted the ministry and stated that she has a business, is looking for more clients and does not think she should have to attend EPBC. She stated that she is working part time. The appellant was advised that to be eligible for assistance she must comply with the conditions of her EP. The appellant stated that the ministry did not understand that her business was her work. The ministry asked the appellant if she was refusing to attend EPBC and look for work – the appellant refused to answer and requested to speak with a supervisor.
 - February 22, 2019, the appellant spoke with a supervisor and stated that she has a company with a few clients and was sent to EPBC but does not need to go because she is looking for more clients. The appellant stated that she wanted only one ministry worker. The supervisor reminded the appellant of her employment related obligations outlined in her EP and of the consequences of non-compliance. The appellant stated that she was advised to attend a [city] ministry office instead of EPBC; however, when asked to identify who provided that information, the appellant refused. The appellant stated that she does not speak English well. The supervisor asked the appellant if she understood that she was required to attend EPBC and the appellant responded yes but that she has her own company. The appellant was advised that she was no longer eligible for income assistance.
 - February 27, 2019, the appellant's daughter contacted the ministry and advised that the appellant does not speak English well enough to understand. The ministry worker advised the appellant's daughter that the appellant was able to carry on conversations and respond appropriately and had been repeatedly offered an interpreter by ministry staff but had declined, stating that she could communicate on her own. The ministry worker was unable to provide additional information because the appellant's daughter was speaking over the ministry worker. The call was ended. The appellant's daughter called back later on the same day, with the appellant present. The appellant was offered an interpreter. The appellant declined the offer, stating that she had never asked for one and that her daughter is a capable translator.

In support of her Request for Reconsideration, the appellant provided:

- 1) A letter dated February 14, 2019, from a respiratory therapist who states that the appellant has been diagnosed with sleep apnea and needs to be on CPAP consistently, which is the most appropriate treatment for the appellant in order to prevent daytime sleepiness, and long-term complications such as hypertension, congestive heart failure, coronary artery disease, and stroke. The appellant will be

travelling with her CPAP machine.

- 2) A two-page typewritten submission entitled "Additional Key Points" which is primarily comprised of argument respecting her disagreement with the ministry's decision but which also includes the following information:
 - o The appellant asked for the help of an interpreter but her request was ignored.
 - o Cancer, high blood pressure and sleep apnea are health issues included in her file.
 - o The appellant is striving to come off income assistance and has started her own business so in a way she does not have to speak a lot, which bypasses her language barriers and helps her stand on her feet.

At reconsideration, the ministry reviewed the appellant's file, locating:

- 3) A 2014 Medical Report – Employability, in which the appellant is diagnosed with cervical cancer and depression, with an expected duration of 3-6 months, and reported as having fatigue and being unable to work during treatment.
- 4) A 2012 physician's note stating that the appellant has hypertension and depression requiring treatment with medications to ensure "cont. health."

Information and documentation provided on appeal and admissibility

The appellant's Notice of Appeal (NOA), dated March 22, 2019, in which the appellant indicated that she disagreed with the ministry's decision.

The appellant's oral submissions at the hearing were provided through an interpreter. The appellant stated that from the outset she asked for interpreter but wasn't given one. Instead, she was quickly signed up for a course, despite explaining that her English not is good enough. In meantime she started own cleaning company. Subsequently, she received an email regarding training and was asked to sign some papers, but she had no idea what she was signing. Afterwards, she went in with her daughter, who speaks English, and at that time it was made very clear that the worker didn't care about her but was just doing what she was told to do. Her next step was to speak with local supervisor, with her daughter speaking on her behalf. Afterwards there was no email or phone call; later she received a letter advising her cheque was being held and instructing her to contact the ministry. She contacted the ministry, with her daughter present, and again stated she needed an interpreter, but her request was again denied. Through her daughter, the appellant expressed her desire to get help with her business in order to write applications to get contracts but was told they were unable to help with that. Next, in response to phone calls and emails asking to see bank records in order to see what was going on with her business she took in all of the documentation she had, again asking for an interpreter but being denied. Her cheque was again placed on hold "and they were very forceful." She again requested an interpreter and to speak with a supervisor with an interpreter in attendance. The supervisor called back and said she wouldn't provide an interpreter. The appellant's daughter happened to be present and she explained the appellant's health conditions to the supervisor. The supervisor decided that the appellant could speak English, stated there would be no cheque for the appellant and slammed the phone. The appellant didn't receive a cheque so she took her daughter with her and went to the ministry; the ministry refused to talk with the appellant's daughter and was arrogant. Finally, the ministry gave her a cheque. Next month she asked for interpreter again and was denied. She then attended a

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ministry office with her other daughter and was told ministry wouldn't speak with that daughter either. Her next contact with the ministry was by phone, at which time the ministry said it didn't want to talk to the appellant's daughters, the appellant was told that no interpreter would be provided and the ministry worker shouted "no cheque, no cheque." She would love to work and come off welfare. She spent four years dealing with cancer, was evicted due to problem with her ministry cheques, and is trying to go ahead but some obstacle comes up. She is unable to sustain herself without the assistance and cannot work as much as would like due to depression and high blood pressure.

In response to questions, the appellant stated that the ministry was very forceful and asked her to sign the EP but that she had no idea what she was signing and had asked for an interpreter. She does not have an interpreter for her own business as she relies on her daughter to communicate with clients. When asked if the appellant believed that her medical conditions prevent her from participating with EPBC, the appellant responded that it is not illness preventing participation, it's the language, adding that there was no direction from EPBC for language classes.

At the hearing, the ministry reviewed the reconsideration decision. In response to questions, the ministry explained that the 24 follow-up appointments that EPBC reported were attended by the appellant may not have been attended in person each time, as the appointments may also be conducted by telephone or email. In her opinion, 24 is probably the average number of appointments over the course of that time [July through December 2018]. The ministry also stated that it has telephone access to interpreters, but that a request would need to be made in advance to allow for a ministry client, ministry supervisor and an interpreter to be available at the same time.

In accordance with section 22(4) of the *Employment and Assistance Act* (EAA), the panel may admit as evidence only (a) information and records that were before the minister when the decision being appealed was made, and (b) oral or written testimony that is in support of the information and records available at the time of reconsideration. The panel considered the oral testimony of both parties to be either reiteration of previous information or as providing additional explanation of past information. Accordingly, it was admitted as information in support of the information at reconsideration.

The arguments of both parties are set out in Part F of this decision.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant income assistance because she had not complied with her EP as required by section 2 of the EAA was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. That is, was the ministry reasonable when determining that the appellant did not comply with her EP because she did not demonstrate reasonable efforts to participate in her employment-related program and did not cease to participate due to medical reasons?

Relevant Legislation

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.....

(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.

Panel Decision

Section 9(1) of the EAA allows the minister to require an applicant for or recipient of income assistance to enter into an EP and to comply with the conditions in the EP in order to be eligible for income assistance. Subsection (4) states that if an EP includes a condition requiring participation 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.

In the appellant's case, she was required to enter into an EP on May 4, 2018. The EP included the condition of participating in the EPBC employment-related program.

The ministry's position is that the appellant did not meet the requirement of subsection (4)(a) as she did not demonstrate reasonable efforts to participate in the EPBC program despite being advised numerous times that she was required to submit work search records. Rather, the appellant refused to look for work because she had her own business and was looking for new clients. The ministry states that the appellant's file notes indicate that the ministry offered an interpreter, which the appellant declined. The ministry also notes that there is no evidence on file of the appellant having requested an interpreter when dealing with EPBC or that the appellant was unable to fully communicate with EPBC staff.

The ministry also argues that the information does not establish that the appellant ceased to participate in the EPBC program for medical reasons. The ministry notes the appellant's statement that she has cancer, high blood pressure and sleep apnea and considers the additional medical information. The ministry argues that the information from the respiratory therapist indicates that the appellant is being treated and therefore her sleep apnea is not a reason for non-compliance. The ministry notes that the 2014 Medical Report - Employability states the expected duration of being unable to work was 6 to 9 months and that no updated information has been provided, nor has the appellant indicated that she is still undergoing treatment for cancer. Finally, the ministry notes that the 2012 physician's note does not indicate that the appellant cannot work as a result of hypertension and depression.

The appellant does not dispute that she entered into an EP but argues that due to a language barrier she did not know what she was signing. Additionally, the appellant argues that the ministry's denial of her repeated requests for an interpreter is a violation of section 14 of the *Canadian Charter of Rights and Freedoms* and that the ministry supervisor acted arbitrarily when deciding that the appellant understands and speaks English and is healthy. The appellant also argues that she is striving to become financially independent but that it is difficult for her to find a job that complies with her language barrier and health issues, which is why she started her own business. Misunderstandings, the language barrier and having multiple case workers has made this process very hard and caused a great setback.

Section 19.1 of the EAA imports section 44 of the *Administrative Tribunals Act* which states that the tribunal does not have jurisdiction over constitutional questions. Accordingly, the tribunal is without the authority to address the appellant's constitutional arguments. However, the panel can consider the appellant's evidence respecting the need for an interpreter as it relates to the application of section 9 of the EAA.

The evidence of the appellant is that from the outset she requested an interpreter and that the ministry denied her initial and all subsequent requests for an interpreter; as a result, the appellant argues that she did not understand what she was signing. In direct contradiction, the ministry's evidence is that at no time did the appellant request an interpreter, either during her interactions with the ministry or with EPBC, and that the appellant was aware of her EP obligations, but chose not to comply with the requirement to look for work. While the panel recognizes that English is not the appellant's first language, for the following reasons the panel finds that the evidence establishes that on a balance of probabilities that the appellant had sufficient understanding to be aware of her EP obligations.

- Detailed ministry records identify contact between multiple ministry personnel and the appellant in the absence of her children. The appellant has also acknowledged interaction with ministry personnel in the absence of her children. Of note are the conversations of June 8, 2018, January 9, 2019, February 21, 2019, and February 22, 2019. On each occasion the appellant is reported as having understood the ministry. Of particular note is the fact that following the June 8, 2018 conversation with the ministry, at which time the appellant stated that she would contact EPBC the following Monday [June 11, 2018], the

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appellant did make contact as evidenced by EPBC's reporting that the appellant had met with her EPBC case manager on June 13, 2018. The panel finds this to be evidence that the appellant understood the ministry.

- The panel finds that the record of contact between the appellant and both the ministry and EPBC demonstrates that the appellant understood that she needed to look for work as part of her EP requirements. In particular, the need to look for work was addressed in the above-noted June 8, 2019 conversation with the ministry, the February 8, 2019 conversation with the EPBC supervisor (during which the appellant explained that she cannot do more than she already is with her business), and the conversations with the ministry on February 21 and 22, 2019. That the appellant consistently provides a reason for not looking for additional work – she has her own business – is evidence of her understanding of the expectation that she look for other work.
- The record indicates that on February 27, 2019 the ministry willingly communicated with the appellant's daughter, in contrast with the appellant's assertion that it refused to do so.
- Ministry records of multiple staff [dealing with different ministry personnel is a complaint of the appellant] are consistent with the information provided by EPBC.
- The appellant understood the need to attend the regular appointments with EPBC as evidenced by EPBC reporting that the appellant attended 24 appointments, which is approximately once a week, from July 2018 through December 2018. There is no evidence that these appointments, in whatever form of communication they took, involved the appellant's children.

Accordingly, the panel concludes that the ministry was reasonable when determining that the appellant was aware of and understood her EP obligations.

The panel also finds that the ministry was reasonable in concluding that the appellant did not make reasonable efforts to comply with the conditions of her EP. While a copy of the appellant's Action Plan with EPBC would have been helpful to the panel, it is clear on the evidence that, in addition to attending appointments with EPBC, the appellant was also required to search for work. There is no evidence of the appellant having searched for work and at no time does the appellant deny that she made the reported statements to EPBC and the ministry that she was not looking for work. There is also insufficient evidence to establish that medical reasons prevented the appellant from searching for work. The available medical information establishes that the appellant's sleep apnea is treated by a CPAP machine, that she underwent treatment for cancer in 2014 at which time she would be unable to work for 6 to 9 months, and that the appellant has been treated for hypertension and depression. The ministry has reasonably viewed this information as not establishing that medical reasons prevented the appellant from participating in her employment program. At the hearing the appellant stated that medical reasons did not prevent her participation and the panel also notes that the appellant's medical health does not prevent her from attending appointments with EPBC or from working part time in a physically demanding job.

For the above reasons, the panel finds that the ministry's decision that the appellant failed to demonstrate reasonable efforts to participate in her employment program and did not cease to participate for medical reasons was reasonably supported by the evidence, as was the ministry's decision that the appellant was not eligible for income assistance because she did not comply with her EP as required by section 9(1) of the EAA. The ministry's decision is confirmed and the appellant is not successful on appeal.

PART G – ORDER	
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	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<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"/>	

PART H – SIGNATURES	
PRINT NAME Jane Nielsen	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/04/11

PRINT NAME Donald (Dan) McLeod	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/04/11
PRINT NAME Donald Storch	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/04/11