

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision, April 8, 2019, which determined that the Appellant was not eligible for continued income assistance pursuant to section 9 of the *Employment and Assistance Act*. The reason given was that the Appellant had failed to comply with his Employment Plan, by not attending appointments or workshops as required by his Employment Plan.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act, section 9

PART E – SUMMARY OF FACTS**Information Before the Ministry at Reconsideration****A The Decision To Be Reconsidered**

In the Original Decision denying income assistance to the Appellant (incompletely dated "March 2019" and stamped "Received" by Service BC on March 28, 2019), the ministry advised

- that the Appellant's Employment Plan (EP) was completed on July 11, 2018
- what that EP consists of; specifically that there is a referral to the Contractor for the Employment Program of BC (EPBC) in the Appellant's area, that the ministry sends an applicant a copy of the EP and of section 9 of the *Employment and Assistance Act*, and in this case required that the signed EP be returned by August 17, 2018. It further advised that a hold on September benefits was placed to ensure the return of the signed EP
- that on August 17, 2018, the ministry hold on the September benefits was extended from September to October due to fires in the province
- that the Appellant's EP was submitted to the ministry September 27, 2018,
- that on October 1, 2018 the Appellant's Action Plan from EPBC was submitted and the next day EPBC reported that the Appellant had been accepted into case management
- that on December 7, 2018 EPBC reported that the Appellant had not been attending scheduled appointments or workshops despite numerous attempts to contact the Appellant by mail in October and November 2018; the ministry explained that EPBC only had a mailing address for the Appellant and no other way of contacting him
- that on December 7, 2018, EPBC reported that the last scheduled appointment the Appellant attended was October 1, 2018, and that he booked but failed to attend appointments on 4 more occasions in October and November 2018. On that same date EPBC mailed a letter to the Appellant dated December 7, 2018 advising him his case was set for closure
- that on December 13, 2018 the ministry placed a hold on the Appellant's January 2019 benefits so that it could to discuss compliance with the Appellant and obtain confirmation of his attendance at EPBC
- that on December 20, 2018, the Appellant attended the ministry office to submit his Action Plan, at which time the ministry reviewed the Appellant's obligation to attend and participate fully in the EPBC program. The Appellant was advised that if he failed to comply, without mitigating circumstances, he would be denied income assistance. It was further explained to the Appellant that if he was unable to attend or was going to be late for required appointments in the EPBC program, it was his obligation to contact EPBC to advise them he would be unable to attend or would be late and to provide confirmation of the circumstances. The ministry stated that the Appellant understood
- that on March 7, 2019 EPBC reported to the ministry that the Appellant failed to attend a scheduled appointment on March 1, 2019, that his last contact with EPBC was February 15, 2019, and that since July 2014, the appellant has failed to attend 42% of his scheduled appointments
- that on that same date the ministry contacted the Appellant, who advised he had missed the appointment with EPBC because he had been called to an interview with the previous employer. The Appellant was asked if he recalled his discussion of December 20, 2018 where it was explained to him that it was important to attend and to contact EPBC if he was unable to attend, and confirmed that the appellant said he understood. The ministry reports that since then he has not contacted EPBC nor made an effort to reconnect. At that time the ministry advised the appellant that due to non-compliance with the EP he was ineligible for income assistance and offered him the right of reconsideration.

B. The Appellant's Written Reasons in His Request for Reconsideration

On March 28, 2019, the Appellant wrote that some of his reasons for requesting Reconsideration are that

- he has been going through personal and traumatic "stuff" recently
- has started the required visits with the worker on March 22, 2019
- will continue visits with the worker
- that he has an appointment scheduled for April 5, 2019
- that he will be very persistent in attending his meetings
- that he will continue with his job search
- his younger sibling died recently, and
- he hopes that his reasons will be enough

C. Letter dated the July 11, 2018

A letter dated July 11, 2018 from the ministry to the Appellant confirmed his eligibility for income assistance, advised him that the existing EP has expired, provided 2 copies of his new EP, asked him to sign, date and return one copy by August 17, 2018, and further advised that September assistance would be held pending return of the new EP. The letter further emphasized the expectations of the ministry and contact information for the EP Contractor in the Appellant's local area.

D. An Employment Plan dated September 27, 2018

The EP required to the Appellant to meet with the local area EPBC Contractor before July 31, 2018, and required him to take part in the EPBC program activities as agreed to with that Contractor, explained what Case Management meant, and said that it would continue until the Appellant found work or became more employable. That EP also provided that the Appellant must complete all tasks, including any actions set out in his Action Plan, which was something developed by him and the Contractor setting out the steps, services and supports that he agreed were necessary to find work or become more employable as quickly as possible.

Evidence Submitted on Appeal

In their submissions, neither the Appellant nor the ministry provided any further evidence on appeal.

PART F – REASONS FOR PANEL DECISION**Issue on Appeal**

The decision under appeal is whether the Ministry of Social Development and Poverty Reduction's ("ministry") Reconsideration Decision, April 8, 2019 was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. The Reconsideration Decision determined that the Appellant was not eligible for continued income assistance pursuant to section 9 of the *Employment and Assistance Act*, because the Appellant had failed to comply with his Employment Plan dated September 27, 2018; specifically because the Appellant did not attend appointments or workshops as required by his Employment Plan.

Relevant Legislation

Employment and Assistance Act, section 9(1), (2), (3) & (4)

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).....

(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).....

(6).....

(7).....

The Reconsideration Decision Under Appeal**Facts**

In the Reconsideration Decision dated April 8, 2019, the Reconsideration Officer related certain facts in support of the denial, as follows:

- the Appellant's new EP was signed September 27, 2018 referring him to the Contractor in his local area
- that new EP required the Appellant to attend the program on July 31, 2018 and to continue to participate in EPBC programming regularly and as directed by the Contractor
- the Appellant was to contact the Contractor if he was unable to attend a session or when he started or ended employment
- that if the Appellant failed to comply with the conditions of the EP he would be ineligible for assistance
- that by signing the EP, the appellant acknowledged the conditions and the consequences of non-compliance

The Reconsideration Officer stated that EPBC reported the Appellant's non-compliance to the ministry on December 7, 2018; specifically that the Appellant had last attended at required appointment on October 1, 2018 and that there were numerous unsuccessful attempts to reach the Appellant by mail; that the appellant missed booked 4 appointments in October and November 2018. As a result, EPBC advised the ministry that a case closure letter was to be sent to the Appellant.

The Reconsideration Officer stated that on December 13, 2018 the ministry "*placed a hold on your next cheque to discuss your lack of participation with EPBC*". By this, the panel understands the Reconsideration Officer to have meant that the Appellant's cheque was held as a method of compelling him to discuss the situation with EPBC.

The Reconsideration Officer reports the next thing that happened was on December 20, 2018 when the Appellant submitted a copy of the Action Plan to the Ministry for review, and then called and spoke to a Ministry worker, who advised the Appellant that compliance with the EPBC is a condition of eligibility for assistance and that he must participate and attend as required. He was told that if he was unable to attend for any reason he had a responsibility to contact EPBC to reschedule and that if he did not comply with his EP in the future he may be found ineligible for income assistance. The Reconsideration Officer advised that the Appellant understood and he then received his January assistance cheque.

It was next reported to the Ministry, on March 7, 2019, that the Appellant had last attended EPBC on February 15, 2019, had missed a March 1, 2019 appointment, and that EPBC said that since the Appellant's first contact in July 2014, the Appellant had missed 42% of his appointments. Upon being contacted by the Ministry, the Appellant said that he missed the March 1, 2019 appointment because his old employer called him for an interview, and said that the Appellant did recall the discussion of December 20, 2019 and the Appellant's responsibility to contact EPBC if he was unable to attend. The Reconsideration Officer said that the Appellant acknowledged that he had made no efforts to contact EPBC after missing the March 1 appointment and at that point he was denied income assistance.

The Reconsideration Officer reported that the Appellant attended the Ministry office with a copy of Action Plan on March 22, 2019, and stated he wanted it added to his file. On March 28, 2019 EPBC reported that despite having brought in the new Action Plan, the Appellant had no further contact with EPBC despite EPBC calling and emailing him on March 18 & 19, 2019 with no response.

Reasons For the Reconsideration Decision

The Reconsideration Decision was based on Section 9(1) *EAA*, reiterating the conditions that the Appellant was to participate in the programing regularly and as directed by the Contractor, that he would work with the Contractor to address issues that impacted the Appellant's employability and complete all tasks as signed and contact EPBC if he was unable to attend the appointment.

The Reconsideration Decision pointed out that the EP was a legal agreement with the Ministry and then stated that according to its information the Appellant had missed 42% of his appointments, including several since signing the EP in September, 2018, and without calling in advance to reschedule the appointments despite knowing he was to do so.

The Reconsideration Officer was aware that the Appellant was going through "*personal and traumatic stuff recently*". The Reconsideration Officer acknowledged that the Appellant had been attending NIEFS and seeing the worker there, and that he was to continue doing so and as well as continuing with his job search.

The Reconsideration Officer then wrote that the Reconsideration was denied because the Appellant had missed multiple booked appointments, missed workshops, failed to contact EPBC in advance to advice when he would be unable to attend appointments or to reschedule, and had failed to respond to EPBC's repeated efforts to make contact with him.

The Reconsideration Officer wrote that the conditions of the EP were reasonable and the Appellant was given numerous opportunities to comply but because he had missed multiple appointments, not followed through with the programing, the Appellant was not in compliance with the conditions of his EP and was

therefore ineligible for income assistance.

Parties' Positions at Appeal

Appellant's Position at Appeal

The Appellant said that he was not very good with finding words, but was simply trying to get back on track. He said that when he was not complying with the EP, he had very little support and his sibling had recently died. He says he now has more support and does not believe he will be missing his appointments. He did not dispute, but confirmed as the ministry stated, that he had missed all but 3 of approximately 12 scheduled appointments required of him pursuant to his EP. He said that those appointments were to occur about every 2 weeks. He said that he had not sought any medical attention at the time he was having difficulty attending his scheduled appointments and had not been diagnosed with a condition such as depression.

Ministry Position at Appeal

The ministry relied upon the reconsideration decision, emphasizing the evidence supporting the ministry's decision as reasonable on the facts. The ministry representative cited that the Appellant had known from the outset that his EP required him to participate in the EP as directed, and work with the Contractor, completing all tasks and appointments that he was supposed to. The ministry pointed out that the EP was a legal requirement and referred to section 9 (1) of the *Employment and Assistance Act*. The ministry repeated the history of the appellant's non-attendance, and when asked about why the Reconsideration Decision referred to the Appellant's past history of compliance back to July 2014, when the EP being dealt with was the one dated September 27, 2018 and was the one upon which denial of benefits by reason of non-compliance was based, the ministry speculated that it was for "background". The ministry reiterated that a hold on the Appellant's next cheque was placed so that it could discuss the Appellant's lack of participation, and on December 20, 2018 an action plan was submitted to the ministry for review. The ministry repeated that the Appellant called the ministry and spoke to a worker, at which time the Appellant was reminded that he must comply with the EP as a condition of eligibility and must comply with the conditions required by EPBC. When the Appellant told the ministry that he understood, he did receive his January 2019 income assistance.

As was set out in the Reconsideration Officer's reasons for the April 8, 2019 Reconsideration Decision, the ministry representative pointed out considerations that arose after the original denial of income assistance. Those were

- that on March 7, 2019 EPBC reported that the Appellant had last attended EPBC on February 15, 2019 and missed his March 1, 2019 appointment and that his benefits were denied effective March 7, 2019
- that the Appellant had attended the ministry on March 22, 2019 with a copy of an Action Plan, and that on March 28, 2019 EPBC reported that the Appellant had no further contact with EPBC despite it calling and emailing him on March 18 and 19, 2019.

In the hearing, the ministry was questioned as to why the Reconsideration Decision referred to facts that had occurred between the date of denial of benefits, namely March 7, 2019 (when EPBC reported that the Appellant had last attended on February 15, 2019 and had missed his March 1, 2019 appointment) and March 28, 2019.

Panel Findings

The legislation requires that an income assistance recipient must, if the Minister requires it, enter into an EP and comply with the conditions of that Plan. The Minister may specify the conditions of the EP and if an income assistance recipient fails to demonstrate reasonable efforts to participate or ceases to

participate, then the recipient is deemed to have not met the requirements of the Plan. The only excuse allowed for ceasing to participate is if there is a medical reason for that cessation.

The panel finds it was inappropriate and unreasonable that the Reconsideration Officer included the Appellant's history of compliance with earlier Employment plans, dating back to 2014, when the Employment Plan upon which the denial of the income assistance was based only came into existence on September 27, 2018. The panel views the Reconsideration Officer's inclusion of that past history as an inappropriate attempt to justify the present denial of income assistance benefits for the Appellant's failures to comply with the present Employment Plan.

In making its decision on this Appeal, the panel does not take into account comments set out in the Reconsideration Decision or by the ministry at the Appeal, about compliance prior to the date of the present EP, September 27, 2018.

any of the facts stated in the Reconsideration Decision to have occurred prior to September 27, 2018 (the date of the present Employment Plan).

The panel also finds that it was inappropriate and unreasonable for the ministry to terminate the Appellant's income assistance benefits effective March 7, 2019, and to then refer to the Appellant's attendance with a new Action Plan and to rely on EPBC's reporting that the Appellant had no further contact with it despite EPBC's attempts to call and email the appellant. The panel also finds it difficult to understand why EPBC would call and email the Appellant on March 18 and 19 2019 when it was well aware that the only way to communicate with the Appellant was by postal mail.

In making its decision on this Appeal, the panel does not take into account any of the facts stated, in the Reconsideration Decision, to have occurred after March 7, 2019.

The panel observes that the ministry did not provide the Tribunal with any attendance or non-attendance records of the Appellant at his EPBC-mandated appointments, either before September 27, 2018, or after, and that the only evidence of the Appellant's non-attendance was second or third hand hearsay.

However, the Appellant's honesty in reporting that he did in fact miss three quarters of the approximately 12 appointments required of him by the EP between September 27, 2018 and March 7, 2019 and this confirms for the panel that the minister's submissions that the Appellant was non-compliant are true. The panel observes that if the Appellant had not confirmed his non-attendance, then in the absence of the attendance records, the panel would have had to determine whether to rely upon the hearsay, and if so what weight, if any, to give it. It is entitled to do so but will not speculate what the effect may have been in this matter, but it is important to point out that in no way is it assured that such hearsay would be accepted. Given the circumstances and that a referral back for reconsideration again on evidence that was admitted it is clear that doing so would be an empty exercise with no value to either party and would delay the Appellant from making any permitted re-application.

The panel finds that it is reasonable for the ministry to have concluded on the evidence that the Appellant failed to comply with his Employment Plan dated September 27, 2018, by missing three quarters of approximately 12 required appointments, and that he failed to demonstrate reasonable efforts to participate in the Employment Program or had ceased to participate in that program without medical reason.

The panel finds that denial of income assistance to the Appellant after March 7, 2019 was reasonably supported by the evidence and was a reasonable application of the applicable enactment, namely the *Employment and Assistance Act* in the circumstances of the appellant, and confirms the Reconsideration

Decision.

Conclusion

The panel confirms the Reconsideration Decision. The Appellant's Appeal is denied.

APPEAL NUMBER

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

DONALD (DAN) McLEOD

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/05/06

PRINT NAME

KENT ASHBY

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/06

PRINT NAME

MELISSA McLEAN

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/06