

--

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of March 18, 2019 (the “Reconsideration Decision”), which denied the Appellant income assistance after January 30, 2019 on the basis that the Appellant was non-compliant with the employment plan given to her, pursuant to section 9(1) the *Employment and Assistance Act* (“EAA”).

PART D – RELEVANT LEGISLATION

EAA, section 9

[Redacted]

PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of regular income assistance who is the parent of one child.

The information before the Ministry at the time of the Reconsideration Decision, included the following:

- The Appellant’s employment plan, signed March 15, 2018 (the “Employment Plan”), which required the Appellant to participate in a number of employment related activities, including:
 - Participating in program activities as agreed with the Ministry’s contractor (the “Contractor”); and
 - Completing all tasks set out in an action plan, prepared with the Contractor;

and which included the warning “if you do not follow this employment plan, the ministry may stop your income assistance payments.”

- The Appellant’s action plan, which was signed March 4, 2019 (the “Action Plan”) and required the Appellant to complete a number of activities, including:
 - Attending at workshops;
 - Completing assessments; and
 - Short term certificate training;
- The Appellant’s certificate of completion in respect of “Microsoft Essentials”
- The Appellant’s Request for Reconsideration (“RFR”), dated March 4, 2019 in which the Appellant stated that:
 - She apologized for missing past meetings with the Contractor;
 - She was still looking for work but was having difficulty in the absence of Canadian work experience;
 - Until she was able to secure employment, she continued to require Ministry assistance

In her Notice of Appeal, the Appellant stated that she was still searching for a job, was a single mother, and required assistance until she found a job.

The Appellant did not attend at the hearing by teleconference and, after confirming that the Appellant had been notified of the date and time of the hearing, the appeal proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

At the hearing the representative for the Ministry referred to the Reconsideration Decision and referenced numerous instances of non-compliance with the terms of the Employment Plan on the part of the Appellant, including:

-
- Failing to attend a March 7, 2018 meeting with the Contractor to sign the Employment Plan;
 - Failing to attend scheduled workshops, as required by the Contractor on March 12, 2018 and March 13, 2018;
 - Failing to attend an appointment, which had already been rescheduled twice previously, with the Contractor on April 27, 2018; and
 - Failing to attend appointments with the Contractor on December 13, 2018, December 18, 2018, January 22, 2019, and January 24, 2019.

The Ministry Representative confirmed that the Appellant had been reminded of her obligations to comply with the terms of the Employment Plan on:

- March 14, 2018, when the Appellant explained that she had missed March 12, 2018 and March 13, 2018 workshops due to illness;
 - May 31, 2018, when the Appellant attended at a Ministry office to request her income assistance and was advised that her benefits were on hold in order for the Ministry to discuss compliance issues after the Appellant had missed an appointment with the Contractor and the Contractor had been unable to reach the Appellant on May 17, 2018; and
 - September 27, 2018, when the Appellant provided proof of her permanent residency status, after having been unable to contact the Appellant on September 13, 2018 and having place a hold on her income assistance for October, 2018.
-

[]

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's determination that the Appellant was ineligible for income assistance after March 18, 2019, as a result of having failed to comply with her Employment Plan, was reasonably supported by the evidence before the Ministry or was a reasonable application of section 9(1) of the EAA in the Appellant's circumstances.

Legislative Framework

Section 9 of the EAA sets out that that, in order to be eligible for income assistance, an applicant must comply with an employment plan if required to enter into one:

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 Decision

The relevant statutory provision is clear. When required to enter into an employment plan, failure to comply with the employment plan makes an applicant ineligible for income assistance. Despite the Ministry's having exercised discretion in not applying section 9 of the EAA strictly in the Appellant's circumstances upon the first instances of non-compliance by the Appellant, it is nevertheless within the statutory authority of the Ministry to discontinue income assistance where an applicant fails to comply with his or her employment plan.

In these circumstances, there is considerable evidence of non-compliance. The Appellant does not deny that she had failed to fully comply with the conditions of her Employment Plan, as set out by the Ministry. While her failure to attend at workshops on March 12, 2018 and March 13, 2018 was explained as having been due to illness, she offers no explanation for her subsequent failures to comply with the terms of the Employment Plan. Both her RFR and Notice of Appeal are silent in that regard and, having not participated in the hearing of the appeal, the panel has no explanation before it for the incidents of the Appellant's non-compliance with the Employment Plan after March 14, 2018. The evidence is that the Appellant had at least three discussions with the Ministry about the requirement that she comply with the terms of the Employment Plan. Those discussions took place on March 14, 20, on May 31, 2018, and on September 27, 2018. These were in addition to the reference on the Employment Plan itself which confirmed that failure to comply with the Employment Plan may result in a termination of income assistance.

In view of the evidence before the Ministry at the time of the Reconsideration Decision as to the Appellant's non-compliance with her Employment Plan, which the Appellant did not deny and the fact that section 9 of the EAA makes clear that compliance with an employment plan is a condition for receiving disability assistance, the panel finds that the Reconsideration Decision was reasonably supported by the evidence before the Ministry. The Appellant is not successful in this appeal.

--

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 Adam Shee	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/05/01

PRINT NAME Adam Rollins	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/05/01

PRINT NAME David Roberts	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/04/30