

APPEAL NUMBER:

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated September 17, 2019 in which the ministry found that the appellant was not eligible for income assistance (“IA”) because of a failure to comply with the conditions of the Employment Plan (“EP”) as required by section 9 of the *Employment and Assistance Act* (“EAA”).

PART D – RELEVANT LEGISLATION

Employment and Assistance Act - EAA - sections 9 and 13

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. The reconsideration decision which states:

- On August 20, 2019, the ministry informed the appellant that due to non-compliance with the EP the appellant was no longer eligible for IA.
- On August 30, 2019, the ministry received the appellant's Request for Reconsideration ("RFR"), and granted an extension to allow the appellant time to provide additional information.
- On August 16, 2019 [*sic* - September 16], the appellant submitted additional information and on September 17, 2019 the ministry completed its review of the reconsideration.
- On January 24, 2019, the appellant signed the current EP agreeing to do a *supervised independent work search*.
- On March 11, 2019, the ministry noted on the file that the appellant had not submitted a job search. The appellant's next IA cheque was held pending submission of a job search and a compliance discussion with the ministry.
- On March 28, 2019, the ministry and the appellant discussed the employment obligations. The ministry advised that the first monthly job search was due on February 5, 2019 and the appellant had not submitted any job search since signing the EP. The appellant stated that they are working and declaring income. The ministry advised that a new job search record was to be submitted by May 5, 2019 with the following expectations:
 - The ministry expects 25 hours of employment-related activities in a week (approximately 5 job contacts per day).
 - The job search must be clear, detailed, and documented on the ministry job search form.
 - The job search is due between the 1st and the 5th of each month for the previous month's job search.
 - The job search cannot be limited to one specific category, wage or community.
 - Email confirmation of all jobs applied for must be submitted with the job search list.
 - The client understands the consequences of doing an unsatisfactory job search or not submitting one.
- On June 17, 2019, the appellant had not submitted a job search as required. The ministry held the appellant's IA cheque and sent a letter advising of the failure to submit the required job search lists as per the EP (5 contacts are required each day as well as proof of the jobs applied for). The appellant was asked to contact the ministry to discuss the file.
- On June 25, 2019, the appellant spoke with the ministry and the ministry noted there was no job search to submit. The appellant indicated: the appellant works for one employer and calls that employer; if the employer does not have available work, the appellant does not work or look for other employment. The ministry reaffirmed that the appellant was "clearly advised" of the job search expectations on March 28, 2019, and the appellant must begin looking for work on the days the appellant is not working and provide confirmation of the job search with email confirmation and/or business cards. The ministry advised that the job search should also include the days and hours worked and the ministry suggested that the appellant attend "day labour employment programs" on the non-working days. The ministry again discussed compliance in detail and advised the appellant that this would be the last compliance talk and that the appellant is "well aware of what is required to remain eligible for income assistance."
- On July 29, 2019, the ministry noted that the appellant was required to submit a job search for the June 25 - 30th period by July 5, 2019 and failed to do so. The ministry sent the appellant a letter advising of a hold on his September IA cheque because the ministry wants to talk to the appellant about failing to follow through on the conditions in the EP. The ministry reminded the appellant of the requirement to submit a job search monthly.

- On August 30, 2019, the ministry received the appellant's request for appeal benefits and the appellant noted that they would submit documents before September 17, 2019. On September 18, 2019 [sic - September 16], the appellant submitted a letter stating among other things, that they are currently working as a trades apprentice and declares monthly income to the ministry.
- The appellant is a sole recipient of IA with no dependents and the IA file was opened in February 2018.
- The appellant declares monthly earnings ranging from \$140 - \$380 per month.
- The appellant had a previous EP with the Employment Program of BC.
- Since signing the current EP in January 2019, the appellant has reported the following earnings: \$350 received in January, \$340 in February, \$375 in March, \$350 in April, \$325 in May, \$325 in June, \$375 in July, and \$380 in August.
- The appellant does not include pay stubs or a record of hours with the monthly reports and indicates that all earnings are received as cash. The ministry notes that the appellant's earning exemption is \$400 per month.
- In *Section 2 - Decision to be reconsidered*, the ministry provides the following additional information:
 - On June 25, 2019, the ministry advised that the appellant can go to Work BC for job search assistance and otherwise has to apply for jobs posted on-line.
 - On August 19, 2019 in the compliance discussion with the ministry, the appellant stated that the job searches were not submitted because the appellant "did not know where to submit them."

2. The appellant's 2-page RFR submission dated September 16, 2019. The appellant provided the following information about the current working arrangements: the appellant works as a trades apprentice for a small firm and declares the monthly income to the ministry. The apprenticeship is ongoing; the appellant is paid on an hourly basis, and is available for work 7 days per week. The appellant states that although they are currently living below the poverty level they foresee a future career in the trade with a reasonable income that affords an acceptable standard of living. The appellant states that they continue to network with trades associations in order to secure future opportunities. The appellant reports that the appellant's present employer ("mentor") would like to slow down and hopes that the appellant will be able to continue to serve the needs of their future clients.

3. An RFR signed by the appellant on August 30, 2019 requesting appeal benefits and an extension of time for submitting documents.

4. An EP signed by the appellant on January 24, 2019 in which the appellant agrees to participate in a *supervised independent work search* "fully and to the best of his ability." The program dates are January 23, 2019 to January 23, 2020. The EP contains the following details and requirements:

- The appellant must create and keep an up-to-date resume;
- apply for work with all possible employers; and
- seek out and use all available resources to find work including looking for posted job openings, seeking out job openings that are not posted, and applying for jobs that may be open in the future. Resources for the work search may include the local Work BC centre, internet searches, public library resources, newspaper ads, contacts through community agencies, family and friends, and cold-calling potential employers.
- The appellant must record all of the work searches on the ministry *Work Search Activities Record* form and submit the form for each month by the 5th of the month starting with February 5, 2019.
- The ministry expects the appellant to spend at least 25 hours each week on work search activities as described on the work search form.
- The ministry may stop the appellant's IA payments due to not following the EP.

- The appellant acknowledges that it is a condition of IA eligibility to sign the EP and comply with its conditions, including any condition to participate in an employment-related program. In signing the EP, the appellant understands that ministry contractors have the ability to report to the ministry on the appellant's activities. The appellant further understands the possible requirement to provide verification of compliance with the conditions of the EP including proof of an active work search and/ or records of attendance and participation in a specific program.
- The appellant acknowledges and understands that the assistance issued by the ministry will be discontinued if the appellant does not comply with the conditions of the EP and that participation in an EP is not open to appeal.

5. A letter from the ministry dated June 17, 2019 advising the appellant that the next IA cheque (for cheque issue date June 26, 2019) will be held at the office until the requested information is received. The ministry advises that the appellant has failed to submit the required job search lists as per the EP and that 5 contacts are required each day for a minimum of 265 contacts per day [*sic* - month]. The appellant must provide proof of the jobs applied for, via email confirmations. The appellant is asked to call the ministry to discuss the appellant's file. The ministry states that a decision on the appellant's eligibility for IA will be determined once all documentation is reviewed.

6. A letter from the ministry dated July 29, 2019 advising the appellant that the next IA cheque (for cheque issue date August 21, 2019) will be held at the office until the requested information is received. The ministry advises that clients who are expected to work must comply with the terms of their EP to remain eligible for IA and the appellant has not followed through with the EP. The EP requires the appellant to submit a job search record each month that includes verification of all the jobs applied for (via email verifications, business cards, etc.). The appellant is asked to call the ministry to discuss the job search. The ministry states that a decision on the appellant's eligibility for IA will be determined once all documentation is reviewed.

Additional information

Subsequent to the reconsideration decision, the appellant and the ministry provided additional information requiring an admissibility determination under section 22(4) of the EAA.

Appellant

On September 26, 2019, the Tribunal received a *Notice of Appeal* in which the appellant states that they are working as a trades apprentice and indicates that the appellant and their mentor ("we") are looking for future jobs on a daily basis. The appellant states that the jobs can vary "from 1 hour to over weeks."

Ministry

At the hearing, the ministry provided a copy of a blank *Work Search Activities Record*, explaining that it is the job search form the appellant is required to complete on a monthly basis. The form sets out examples of work search activities including preparing a resume and cover letters which are then sent to potential employers, calling potential and specific employers, participating in fact finding interviews with employer contacts, responding to newspaper and internet job ads, cold calling potential employers, networking with family, social, or community contacts, submitting job applications, participating in job interviews, and attending employment workshops. The form instructs the client to fill in the following columns and gives examples of what to write in each of the boxes: *date of activity*, *type of activity*, *location of activity*, *contact name and phone number*, and *results of your activity*.

Admissibility determination

The panel finds that the information in the *Notice of Appeal* and the *Work Search Activities* form are in support of the information and records that were before the minister at the reconsideration. The appellant reiterates working as a trades apprentice and provides additional detail on the duration of specific jobs and the search for future contracts through the mentor. The work search form is a requirement of the EP and the instructions and boxes on the form set out the level of detail required for the job search. Neither party raised any objections to each other's new information/document. The panel admits the *Notice of Appeal* and the blank *Work Search Activities Record* under section 22(4) of the EAA as evidence in support of the information and records that were before the minister when the decision being appealed was made.

Oral testimony

At the hearing, the appellant provided argument on appeal and explained that the mentor would like the appellant to take over the business and that could take 1 to 2 years. The appellant indicates that the work is piecemeal with sporadic hours; each job is a new contract, and the firm is always looking for new work via advertising, phone calls, and providing quotations. The appellant confirmed working at the firm for 3 years whenever possible and he declaring all income to the ministry on the monthly reports. The appellant made a career change and used to work in a non-trades occupation. The appellant confirmed taking all of the employment courses the ministry requires including resume writing.

In response to questions from the panel, the appellant explained that the statement "always looking for work" means receiving all the phone calls from the public or neighbours, etc. about work that needs to be done and running all potential jobs through the mentor. The appellant meets with all of the existing clients as well as new ones and follows up on phone calls and word of mouth contact. The appellant explained attending industry functions and giving quotations for work which may or may not materialize into an actual job. The appellant indicated showing up at trade functions with the mentor to introduce themselves and stated that they work as a team in following up on demands and searching for new contracts.

When asked about attending any employment programs since signing the EP, the appellant reported that the ministry knows about the appellant attending resume workshops in the past and that the appellant also talked to some restaurants about employment possibilities (but has never worked at any). The appellant confirmed not doing any courses since signing the most recent EP because there are "no current courses that are beneficial to [the] search for alternate employment."

In response to further questions, the appellant reported a wage of \$24 per hour for 10 - 20 hours of work per month; days of work fluctuate and hours are variable as well. The appellant explained that there is no payment for incidentals such as travel time and soliciting clients and the job search is a "continual process" because jobs can come up very quickly such as assisting a next door neighbour by providing a quote, or investigating a problem before a quote can be given.

The appellant confirmed that there was no formal apprenticeship arrangement with the mentor because the mentor "might not want to get involved in that...It's a lot of record-keeping." The appellant explained that *you normally have to go to school and do an exam to become a tradesperson [in this industry] but if you are working in an informal apprenticeship you can get grandfathered in and challenge the test... You do not have to show that you apprenticed and you do not have to be licensed yourself to work under another person's license.* The appellant stated that if he needs a license because the mentor decides not to renew, it is a future consideration, not applicable to the appellant's current situation.

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The appellant added that no one explained how to fill out the ministry job search form, it was unknown where to submit the forms, “and these forms can also take hours to fill out.” The appellant stated wanting to “drive home the fact” of “looking for work all the time”, not just in this industry but also gardening jobs or whatever jobs the appellant can get.

Admissibility of oral evidence

The ministry raised no objections to the appellant’s testimony and the panel finds that it provides additional background information and details about the current apprenticeship which was before the minister at the reconsideration. The panel admits the testimony under section 22(4) of the EAA as evidence in support of the information and records that were before the minister when the decision being appealed was made.

The ministry summarized its argument at the hearing and did not submit any new evidence in its oral submissions.

ATTACH EXTRA PAGES IF NECESSARY

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry reasonably concluded that the appellant was not eligible for IA because of failing to comply with the conditions of the EP as required by section 9 of the EAA, and did not stop EP activity for medical reasons as an exception under subsection 9(4)(b).

The ministry based the reconsideration decision on the following 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.

(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*].

Consequences of failing to meet employment-related obligations

13 (1) Subject to the conditions of an employment plan, the family unit of an applicant or a recipient is subject to the consequence described in subsection (2) for a family unit matching the applicant's or recipient's family unit if

- (b) at any time while a recipient in the family unit is receiving income assistance or hardship assistance, the

recipient fails to demonstrate reasonable efforts to search for employment.
plan, and

(b) comply with the conditions in the employment plan.

(2) For the purposes of subsection (1),

(b) if a family unit does not include dependent children, the family unit is not eligible for income assistance for the prescribed period.

Analysis

Arguments

Appellant

The appellant's position is that the part-time work as a trades apprentice is paving the way to a fulfilling, enjoyable career as well as an acceptable standard of living. The appellant maintains looking for work every day through this current employer and the appellant understood IA was to assist in moving forward.

The appellant "does not want to flip burgers" and has a disagreement with the ministry over that. The appellant argues that the ministry is not recognizing learning a new career, with the opportunity to eventually take over from the mentor for whom the appellant has already been working for 3 years. The appellant acknowledges not filling out the ministry job search forms as required by the EP but argues that the job search is a "continual process" as the appellant and the mentor are always looking for new jobs. The appellant indicated recording the days worked with hand-written notes on a personal calendar.

The appellant submits that established business practices prevent working for a competitor in this industry on days off and the appellant cannot work at this current job if "flipping pizzas" as the ministry seems to expect. The appellant acknowledges not attending Work BC or any other programs since signing the most recent EP but argues taking all of the required courses in the past and there are no current programs to benefit the search for new contracts through the present employer.

Ministry

In the reconsideration decision the ministry argues that it is reasonable to expect the appellant to complete a supervised independent work search and comply with the conditions of the EP because the appellant has been employed at the apprenticeship for at least 19 months and it has not yet resulted in a reduction of IA as the appellant indicates earning an average of \$350 per month [below the \$400 earnings exemption]. The ministry notes that the appellant has provided no details about engaging in networking activities as required by his EP or submitted a monthly work search form that records all of the employment-related activities including the dates and times worked. The ministry submits it was therefore not possible to conclude that the appellant is spending at least 25 hours each week on work-related activities.

The ministry argues that the appellant has time available to actively search for other employment and to complete the monthly work search forms given that the appellant is currently working sporadically and earning only \$350 per month on average. The ministry argues that after multiple discussions over the last 9 months, the appellant is well aware of the expectations. The ministry submits that the appellant is ineligible for IA because of being continually non-compliant with the EP and not stopping the EP activity for medical reasons.

At the hearing, the ministry emphasized that the issue is the appellant's lack of documentation of work search activities and the absence of any record, pay stubs or receipts for cash wages to confirm how many hours per month were worked. The ministry argued that there has to be documentation of work search activities so that the ministry can evaluate whether clients are actively seeking employment as required by the legislation. The ministry clarified that it does not necessarily expect clients to "flip burgers" as there are "all kinds of options available" including seeking work through multiple employers ("not just one"), and pursuing other types of work on the appellant's days off that are more closely affiliated with the appellant's trade, maintenance jobs for example.

Legislative requirements

To be eligible for IA, section 9(1) of the EAA requires employable recipients to enter into an EP and comply with its conditions. Section 9(4) requires the recipient to participate in a "specific employment-related program" where participation in the program is a condition of the EP. In the appellant's case the specific program indicated in the EP is the *supervised independent work search*.

Section 9(4) also sets out two separate circumstances that constitute failing to meet the condition of participating in a specific program:

- Subsection 9(4)(a) requires "reasonable efforts to participate in the program" and therefore, the onus is on the client to demonstrate reasonable efforts to participate where participation in the program is a condition of the EP. The client is ineligible for IA if the ministry is not satisfied that reasonable efforts have been made. What constitutes "reasonable efforts" is set out in the appellant's EP which requires use of "all available resources" to find work "with all possible employers", records of work search activities on the ministry work search form, submitting the form by the 5th day of each month, and spending at least 25 hours per week on work search activities as described on the form.
- Under subsection 9(4)(b), the recipient has not met the condition of participation if the recipient "ceases, except for medical reasons, to participate in the program."

The panel notes that the ministry has no discretion under the legislation to continue to provide IA where the appellant does not comply with the conditions of the EP. This is because the specific work search activities set out in the EP including the requirement to submit the monthly job search forms, are subsumed as a legal requirement under subsection 9(1)(b) of the EAA.

EP terms and conditions

It is clear on the evidence that the appellant signed the EP on January 24, 2019 agreeing to participate "fully and to the best of my ability" in a *supervised independent work search* as a condition of the plan. At the time of signing the EP, the appellant acknowledged understanding the participation requirements and the consequences of non-compliance. In discussions with the ministry in March, June, and August 2019, the appellant was reminded of the EP requirements and consequences of non-compliance. In addition, the ministry sent letters in June and July 2019 reiterating the appellant's obligations.

The appellant submits searching for work every day, but the evidence is that despite all of the ministry's reminders the appellant chooses not to fill out the job search forms and submit them monthly to the ministry as required by the EP. Additionally, since signing the EP in January 2019, the appellant has not attended Work BC or any day programs on days off as suggested by the ministry.

Although the appellant showed the panel the calendar with hand-written notations indicating the dates worked, the appellant never provided a copy of it to the ministry or any other documentation for that matter, confirming job-related activities. In the letter the appellant provided for the reconsideration, the appellant indicates networking with trade associations, but the ministry was not satisfied that one sentence in a letter comes anywhere close to the level of detail (*name of contact, date, result of the activity*) required on the job search form.

The appellant argues not knowing where to submit the form but the record indicates the appellant had several compliance discussions with the ministry, and the panel notes the appellant had sufficient opportunity to ask the ministry for any clarification. The appellant argues that the forms are also too time-consuming to fill out but as noted by the ministry, the appellant's reported earnings indicate only working part-time. The appellant has provided no record of the job search activities done on days off or any documentation to confirm accepting other types of work such as "gardening jobs or whatever jobs I can get."

The evidence indicates that the ministry was unable to confirm the appellant was spending 25 hours per week on job search activities or doing any of the activities specified in the EP. There is also no evidence to indicate the appellant did not comply with the EP for medical reasons.

Panel's decision

Based on the evidence in its entirety, the panel finds that the ministry reasonably determined that the appellant has not complied with the conditions of his EP as required under section 9 of the EAA and that the appellant failed to demonstrate reasonable efforts to participate in a specific employment-related program (the *supervised independent work search*) pursuant to subsection 9(4)(a) of the EAA. The evidence indicates that since signing the EP in January 2019, the appellant did not provide any detailed record of work search activities or submit the monthly job search forms as required by the EP. In particular, the appellant did not provide a record of the networking activities, or phone calls to existing and potential customers, or contact with any alternate employers.

The panel further finds that the ministry reasonably determined that the appellant did not cease to participate in the work search for medical reasons as set out in subsection 9(4)(b) of the EAA because there is no evidence of a medical condition in the record. The reasons the appellant gave for non-compliance with the EP are of a non-medical nature (*already working, searching for jobs every day, did not know where to submit the form, etc.*).

Conclusion

Due to the absence of detailed documentation on work search activities as required by the EP, the panel finds that the ministry's reconsideration decision that found the appellant ineligible for income assistance for non-compliance with the EP was reasonably supported by the evidence. The panel further finds that the ministry's decision is a reasonable application of the legislation in which compliance with the EP is mandatory. The panel confirms the reconsideration decision and the appellant is not successful on 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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-10-18

PRINT NAME

Shirley Heafey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-10-18

PRINT NAME

Julie Iuvancigh

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-10-18