

APPEAL NUMBER
2020-00025

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated January 14, 2020, which held that the appellant is not eligible for income assistance (IA) due to a failure to demonstrate reasonable efforts to comply with the conditions of the Employment Plan (EP) pursuant to Section 9 of the Employment and Assistance Act (EAA). In particular, the ministry found that the appellant did not demonstrate active participation in the EP because the appellant did not meet with the WorkBC worker.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act - section 9

PART E – SUMMARY OF FACTS

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at the time of reconsideration consisted of:

- EP signed and dated May 28, 2019. The conditions of the EP were that the appellant participate in the Employment Program of British Columbia (EPBC), attend the first appointment with the EPBC contractor, which is the WorkBC worker (the contractor) on or before June 11, 2019, participate regularly as directed, work with the contractor to address any issues that may impact employability, complete all tasks assigned including any activities that may be set out in an action plan; notify the contractor if unable to attend a session or when employment starts or ends; declare all income and report any changes; and that failure to comply with these conditions will deem the appellant ineligible for assistance.
- Letter from the ministry dated August 29, 2019 which indicated that the appellant's September 2019 IA cheque would be held at the office until: the appellant ensures compliance with the EP. The letter explicitly stated that "a decision on eligibility will be determined once all documentation is reviewed".
- Work Search Activities Record dated August 5, 2019.
- Letter from the ministry dated September 27, 2019 which indicated that the appellant's October 2019 IA cheque would be held at the office until the appellant contacts the contractor. The letter explicitly stated that "a decision on eligibility will be determined once all documentation is reviewed".
- Work Search Activities Record dated October 18, 2019.
- An appointment card indicating that the appellant had an appointment with the contractor on October 25, 2019 at 10:30am.
- Work Search Activities Record dated Thursday November 14.
- Letter from the ministry dated November 25, 2019 which indicated that the appellant's December 2019 IA cheque would be held at the office until the appellant contacted the contractor. The letter explicitly stated that "a decision on eligibility will be determined once all documentation is reviewed".
- Request for Reconsideration (RFR) which stated that the appellant recently found out that the appellant's grandfather is on his death bed and the appellant has no car to visit. The appellant needs the IA so the bills do not fall behind. The appellant stated that money to help the parents get by, to help pay the bills and the appellant's half of the food.

Evidence on Appeal

Notice of Appeal (NOA), which is signed and dated January 20, 2020, and the appellant stated that there is disagreement with the ministry's decision because the work-searches were complete and an appointment was made with the worker. The NOA also stated that that the appellant needs money because he has health issue.

The panel finds that the information in the NOA is the appellant's argument and admissible.

Evidence Prior to the Hearing

Prior to the hearing the appellant submitted the following:

- Patient Itinerary for an appointment on July 22, 2014 at a hospital for an ECG.
- Letter signed and dated October 28, 2014 from a doctor which stated that the appellant has been seen for past episodes of cardiac palpitations.

Evidence at the Hearing

At the hearing, the ministry relied on its reconsideration decision. The ministry stated that there are acceptable reasons for non-compliance, such as a medical reason, but the appellant did not demonstrate as such. The ministry also added that the appellant understood the terms and conditions of the EP, including the consequences for non-compliance, when the EP was signed on May 28, 2019.

Admissibility of Additional Information

The ministry did not object to the admissibility of any information regarding the appellant's health but did state that the information is not relevant to the issue at hand.

A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

The panel considered the information regarding the appellant's reference to health issues in the NOA, cardiac palpitations and appointment at a hospital for an ECG, and found that this information is relevant to or necessary for a full and fair disclosure of all matters related to the decision under appeal. However, the appellant did not explain how his health issues were a factor in non-compliance with the EP. Furthermore, the information regarding the appellant's health issues are several years old and no new or updated information was provided. Therefore, the panel did not place weight on reference to the appellant's health issues, cardiac palpitations or appointment at a hospital for an ECG in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue before the panel is the reasonableness of the ministry's reconsideration decision, which held that the appellant is not eligible for assistance due to noncompliance with the EP pursuant to Section 9 of the EAA.

Section 9 of the EAA outline the stipulations of an EP and states that:

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.

(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*].

The Appellant's Position

The appellant argued that an appointment was made with the contractor for October 25, 2019 but was missed because the appellant forgot and that work-searches were completed.

The Ministry's Position

The ministry argued that the appellant was "required to participate fully in the program, complete all assigned tasks and to advise the contractor if not able to participate in the program for any reason" and the appellant did not fulfill this obligation. The ministry argued that the appellant did not meet with the contractor until 5 months after signing the EP and did not provided a justification for the missed appointments except the October 25, 2019 appointment which the appellant indicated was missed because it was forgotten. The appellant did not demonstrate a reasonable effort to comply with the conditions of the Employment Plan which contravenes section 9 of the EAA.

The Panel's Decision

Section 9(1) of the EAA sets out that to be eligible for assistance, the recipient must, when required to, enter into an EP, and comply with the conditions of the plan. The panel notes that by signing the EP the appellant acknowledges awareness of the requirements of the EP and awareness of the consequences of not complying with the EP. A condition of the appellant's EP was to make contact with and meet the contractor, and to notify the contractor if there was an inability to attend a session. Per the EP agreement the appellant was to meet with the contractor on or before June 11, 2019. The evidence shows, and the appellant did not dispute, that an appointment with the contractor was made for October 25, 2019, which is several months later. In addition, when an appointment was set up for October 25, 2019, the appellant forgot to attend and did not contact the contractor to reschedule the appointment thus demonstrating a failure to comply with the EP requirements.

The legislation accepts a failure to comply with the EP requirements for medical reasons. In the NOA the appellant argued that assistance is needed because of health issues. The panel understood this to mean that the appellant requires IA because of the of health issues. However the evidence indicates that, at the time the appellant signed the EP, there was no mention of health issues or that health issues may prevent the appellant from complying with the requirements of the EP. The panel also notes that the information submitted regarding the appellant's health issues is dated from 2014 and no new or updated information has been provided. Therefore, it is difficult to establish that the conditions from 2014 still have an impact on the appellant today. Furthermore the appellant did not explain why the health issues prevented him from contacting the contractor until October 2019 but did not prevent the ability to complete work-searches. The appellant has already stated that the October 25, 2019 was missed because it was forgotten and not because of a health issue. Though the legislation accepts a failure to comply with the EP due to medical reasons, the panel finds that the appellant has not established that medical reasons prevented a meeting with the contractor. At the hearing the ministry stated that it was satisfied with the appellant's work-searches. However, the failure to meet with the contractor is a breach of the conditions of the EP.

The panel finds that the ministry's decision to deny the appellant income assistance due to the failure to comply with the conditions of the EP pursuant to section 9(1) of the EAA was a reasonable application of the legislation in the circumstance of the appellant. Since a condition of the EP was to participate in an employment program (EPBC) under section 9(4) EAA, the appellant failed to demonstrate reasonable efforts to participate by not meet the contractor for months and he did not demonstrate that there were medical reasons that prevented participation.

Conclusion

The panel finds that the ministry decision which found that the appellant is ineligible for IA due to failure to comply with the EP pursuant to section 9 of the EAA was a reasonable application of the applicable legislation and a reasonable interpretation of the evidence. The panel confirms the ministry's decision and the appellant is not successful in the appeal.

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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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Mel Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Jean Lorenz

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)