

Part C - Decision Under Appeal

The decision under appeal is the decision of the Ministry of Social Development and Poverty Reduction (the "**Ministry**") reconsideration decision, dated August 17, 2022 (the "**Reconsideration Decision**"), in which the Ministry found the Appellant not eligible for income assistance due to non-compliance with his Employment Plan ("**EP**") as required by section 9 of the *Employment and Assistance Act* (the "**Act**"). In particular, the Ministry found that the Appellant did not comply with section 9(1)(b) of the *Act* as he did not participate fully and to the best of his abilities in WorkBC's programming.

Part D - Relevant Legislation

Employment and Assistance Act (the "**Act**"), section 9

Part E – Summary of Facts**(a) The Reconsideration Decision**

The evidence before the Ministry at the Reconsideration Decision consisted of:

- On March 14, 2022, the Ministry issued a letter to the Appellant in which the Ministry asked the Appellant to sign an Employment Plan (“**EP**”). The Ministry advised that the EP was a legal document that had to be signed for the Appellant to remain eligible for income assistance payments (“**IA**”). As the EP contained a referral to WorkBC, the Appellant was required to connect with WorkBC within 21 days of the Ministry’s referral, and to participate in all workshops, appointments and referrals as arranged by WorkBC. If the Appellant was unable to participate in an activity as directed by WorkBC, the Appellant was required to provide a valid reason to the Ministry. Importantly, the Ministry advised that the Appellant may not be eligible for continued IA if he failed to meet the EP’s requirements. The Appellant was required to review, sign, date and return the EP to the Ministry by March 28, 2022.
- On April 5, 2022, WorkBC reported that the Appellant did not attend an appointment and they were unable to contact the Appellant by phone or email.
- On April 6, 2022, the Appellant reported to the Ministry that he was working on an application for a persons with disabilities (“**PWD**”) designation. The Ministry advised the Applicant that he must attend appointments as required by WorkBC and return WorkBC’s phone calls and emails. The Applicant was reminded that, unless he had medical conditions that prevented him from all work search activities, full participation in the EP was required.
- On April 8, 2022, the Ministry sent a letter to the Appellant and advised that the Appellant’s May 25, 2022 IA would be held until the Appellant

provided the Ministry with a completed EP and Medical Report – Employability form.

- On April 19, 2022, WorkBC reported that the Appellant was not job ready and that his file would be closed as he advised WorkBC that he was “... *dealing with brain cancer.*”
- On April 20, 2022, the Ministry put a hold on the Appellant’s June 2022 IA. Further, the Ministry sent the Appellant a blank Medical Report – Employability form to be completed by his doctor. The Ministry also indicated that any doctor’s fee associated with filling out the form would be billed directly to the Ministry.
- On May 20, 2022, the Ministry reviewed the Appellant’s PWD Application which did not confirm brain cancer or any restrictions on the Appellant’s ability to work. During a subsequent phone call with the Ministry, the Appellant reported that he was looking for work. The Appellant was advised to go to WorkBC that day and was reminded that a failure to follow through with the conditions of his EP would make him ineligible for IA.
- On May 24, 2022, the Appellant signed the EP. Pursuant to the EP, the Appellant was enrolled in the WorkBC Employment Services Program (the “**Program**”) from March 14, 2022 to March 13, 2024. During the term of the Program, the Appellant was required to report “*As required by WorkBC*”. The details of the EP were particularized as follows:

“You must meet with the WorkBC Contractor on or before 2022-Apr-04. You must take part in WorkBC program activities as agreed to with the WorkBC Contractor. You must complete all tasks given to you, including any actions set out in your WorkBC Action Plan. This is a plan developed by you and the WorkBC Contractor which sets out: the steps, services, and supports that you agree are needed for you to find work or become more employable as quickly as possible.”

You must call your WorkBC Contractor if you cannot take part in services or complete steps that you agreed to, or when you find work. If you move, within one week you must ask the WorkBC Contractor serving your new area to transfer your WorkBC case file. To find the WorkBC Contractor in your new area, call 1-877-952-6914. Your employment plan conditions will continue to apply. If you do not follow this employment plan, the ministry may stop your income assistance payments."

- On June 8, 2022, WorkBC reported that the Appellant did not participate in the Program. The Appellant informed WorkBC that he would submit a doctor's note confirming that he should not be working at that time, but this was not submitted.
- On June 24, 2022, the Ministry asked the Appellant what prevented him from participating in the Program. The Appellant stated that his doctor told him that he should not be working, but that the doctor would not provide a note unless he paid a fee. The Appellant reported that he also suffered from vertigo problems, panic attacks, anxiety, and was looking after his mother.
- On June 24, 2022, the Ministry denied the Applicant IA due to his non-compliance with the EP in accordance with section 9 of the *Employment and Assistance Act* (the "**Act**").
- On July 4, 2022, the Ministry denied the Appellant's PWD designation Application.
- On August 3, 2022, the Ministry received the Appellant's Request for Reconsideration wherein he, in part, wrote:

"... Brain cancer does not go away. I'm half deaf, I can barely read or see. My vertigo is to the point walking in a straight line or walking downstairs is just something that puts me into a panic. My knees

shake. I can't see... My Doctor said I shouldn't work for at least a year and all she did was give me Prozac and wants to give me more and more. Its turning me into a vegetable. I'm worse off than I was before... My panic about life and what will happens in the near future puts me to tears at any moment... I'm looking after my mother. I can't leave her alone for if she falls or gets stuck, she would die... On top of that, the only other person who could help me was my sister, and now she just had an intense stroke... Her boys need me, not to mention her dog. I'm being ripped apart..."

On August 17, 2022, the Ministry issued its Reconsideration Decision. The Ministry denied the Appellant's Request for Reconsideration as the Appellant had not demonstrated reasonable efforts to comply with the conditions of the EP. In denying the Appellant's Request for Reconsideration, the Ministry noted:

"... While reporting you have medical conditions that prevent you from looking for work, you did not provide confirmation from a medical practitioner confirming you are unable to participate in an Employment Plan as requested by both the ministry and Work BC... The ministry acknowledges that you must spend time caring for your family. However, this does not preclude your employment obligations under section 9 of the EA Act..."

(b) The Appeal

On August 25, 2022, the Appellant filed a Notice of Appeal (the "**Appeal**"). In his reasons for the Appeal, the Appellant wrote:

"I'm here after all the covid stuff, I was in New Brunswick for a long time, my father passed and my mother has parkinsons and is now alone. I've come back home now and am trying to get help with therapy and get some help. They put me on prozak. The Ministry said you've been denied your request for disability because they said, you know, you're not going to get it. I went down there and they said they

would put me on regular income assistance. I went up to another office and they said I have to be looking for work. I went to get help looking for work and they said I can't be looking for work while I'm on disability but I told them I am not on disability yet. They told me I was wasting my time. I told WorkBC not to email me and to only call my landline. I don't have a computer."

On September 16, 2022, the Appeal hearing was conducted by telephone. The Appellant requested an adjournment during the Appeal hearing as he required the assistance of an advocate. The Ministry did not object to the Appellant's adjournment request. The adjournment was granted to permit an adequate hearing to be held in compliance with the Appellant's right to a procedurally fair process.

On October 28, 2022, the hearing of the Appeal continued.

(c) Late Evidence

The Appellant submitted additional material to the Tribunal prior to the continued hearing, namely a note from his doctor dated October 17, 2022 (the "**Note**") wherein the Appellant's doctor wrote:

"It is hereby confirmed that this patient was assessed by the doctor at this clinic today, regarding a medical problem. He is unable to work at present until further assessed."

(d) Oral Submissions

The Appellant restated that he suffered from a variety of health ailments which prevented him from complying with the EP and participating in the Program. The Appellant stated that his ability to participate in the Program was also complicated by the fact that he did not have a cellular phone or email access; as a result, it was difficult for him and WorkBC to communicate. Relying on the

Note, the Appellant also restated that his doctor advised him that he should not be working at this time.

In response, the Ministry referred to and relied upon the Appeal Record. When asked about the implications arising from the Note, the Ministry responded that, if the Note were to be relied upon, it would only absolve the Appellant from participating in the Program, not his requirement to comply with the terms of the EP.

The Ministry had no objection to Note. The Panel determined that the Note was admissible as additional evidence pursuant to section 22(4) of the *Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. However, the Note provided little probative value given its lack of details respecting a medical diagnosis, the nature and severity of disabilities arising from the diagnosis, an approximate period of disability and/or a prognosis.

Part F – Reasons for Panel Decision

The decision under appeal is the decision of the Ministry's Reconsideration Decision in which the Ministry found the Appellant not eligible for IA due to non-compliance with the EP as required by section 9 of the *Act*. In particular, the Ministry found that the Appellant did not comply with section 9(1)(b) of the *Act* as he did not participate fully and to the best of his abilities in the Program.

(a) Appellant's Position

The Appellant argues that he ought to qualify for IA and be exempted from compliance with the EP given his medical limitations which prevent his participation in the Program. Put differently, the Appellant argues that he should be exempted from participation in the Program as provided for by section 9(4) of the *Act*.

(b) Ministry's Position

The Ministry maintains that the Appellant does not qualify for IA as he has not demonstrated reasonable efforts to comply with the conditions of the EP. Further, the Ministry maintains that the Appellant has not evidenced a "*medical reason*" that would exempt him from participating in the Program.

(c) Panel Decision

Section 9 of the *Act* outlines the stipulations of an EP as follows:

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.

...

- (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.

Section 9(1) of the *Act* sets out that to be eligible for IA, the recipient must, when required to, enter into an EP, and comply with the conditions of it. By signing the EP, the Appellant acknowledged awareness of the requirements of the EP and awareness of the consequences of not complying with the EP. A condition of the EP was to participate in the Program.

The evidence shows, and the Appellant does not dispute, that he did not participate in the Program as required. However, the Appellant's lack of compliance with the EP does not end the analysis as the *Act* accepts a failure to comply with the EP's requirements for medical reasons.

The Panel notes that, while the Appellant attempted to orally explain his medical reasons to the Ministry at the material time and to the Panel at the Appeal hearing, the evidence indicates that the Appellant did not provide the Ministry with a completed Medical Report – Employability form or sufficient medical information that would otherwise exempt him from participating in the Program. Insofar as the Note is concerned, the Panel notes that it lacks sufficient particulars thereby making it difficult to establish if the Appellant has a medical reason that would exempt him from undertaking reasonable efforts to participate in the Program, either in part or in whole. For example, it is unclear what the Appellant's medical reason is, nor can it be discerned what symptoms arise from his medical reason. In sum, it remains unclear if the Appellant has a verifiable medical reason as contemplated by section 9(4)(b) of the *Act*.

As a result of the foregoing, the Panel finds that the Ministry's decision to deny the Appellant IA due to his failure to comply with the conditions of the EP pursuant to section 9 of the *Act* was a reasonable application of the legislation in the circumstance. Since a condition of the EP was to participate in the Program, the evidence indicates that the Appellant failed to demonstrate reasonable efforts to participate in the Program and he did not provide evidence of a medical reason that prevented his participation.

(d) Conclusion

The Panel finds that the Ministry's decision which found that the Appellant ineligible for IA due to a failure to comply with the EP pursuant to section 9 of the *Act* was a reasonable application of the applicable legislation and a reasonable interpretation of the evidence. The Panel confirms the Ministry's decision; as a result, the Appellant is not successful in the Appeal.

While the Appellant is not successful in this Appeal, the doors to IA are not closed to him. Should the Appellant reapply for IA, he is encouraged to provide the Ministry with detailed medical information explaining any limitations that may prevent his participation in an employment-related program, should the terms of a future employ plan require his participation in an employment-related program. The Appellant should provide his doctor with a Medical Report – Employability form for completion. Regarding the Appellant's concern that he cannot afford the fee charged by his doctor to complete a Medical Report – Employability form, the Panel notes that, as previously indicated by the Ministry, the corresponding fee will be billed directly to the Ministry.

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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)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name
Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)
2022/October/28

Print Name
Simon Clews

Signature of Member

Date (Year/Month/Day)
2022/October/28

Print Name
Jennifer Armstrong

Signature of Member

Date (Year/Month/Day)
2022/October/28