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Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision dated April 11, 2025. After an accident in September 2024, the Appellant's employability plan ended. Along with asking to be returned to the Self Employment Program, the Appellant requested to continue to be allowed to deduct his business related expenses from his earned income. The ministry found that under Section 9, subsection 3 of the *Employment and Assistance for Persons with Disabilities Act*, the ministry was able to cancel the Appellant's employability plan.

In addition, under Section 70.1, subsection (3) (b) of the Employment and Assistance for Persons with Disabilities Regulation, the ministry also found that it had the authority to determine that the Appellant was no longer eligible to participate in the Self Employment Program and to decide that the Appellant's business plan is no longer acceptable. Although the Appellant was able to re-enrol, the ministry concluded that the Appellant was not currently eligible for the Self Employment Program because he was waitlisted and his application would be reviewed once a spot became available.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (the "Act"), Sections 3, 5, 8, 9;

Employment and Assistance for Persons with Disabilities Regulation (the "Regulation"), Section 70, subsection 3(b); and

Employment and Assistance Act, Section 22, subsection 4.

The full wording of this legislation is set out in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts

The hearing was originally scheduled to occur May 16, 2025. The Appellant's request for an adjournment was granted and consistent with Section 4.4 (d) of the Tribunal's Practice and Procedures, the hearing was rescheduled.

The hearing took place by teleconference on May 29, 2025.

Information at Ministry Reconsideration:

The information before the ministry at the time of the April 11, 2025 Reconsideration Decision included:

- August 1, 2023 Voluntary Participation Plan (form HR2916) signed by the Appellant on November 2, 2023;
- November 2, 2023 Self-Employment Program and Questionnaire and Acceptance of Terms (form HR3285);
- September 5, 2024 Monthly Report where Appellant states, "I was in an accident. I am not able to work anymore";
- September 9, 2024 email from Self Employment Program worker noting, in part:

The HR2988S form is not required as [the Appellant] has indicated that he is no longer self-employed, and no longer working due to an accident that occurred. If he decides to pursue self-employment again in the future, he may request another referral to SEP.

Also, please pass along my thanks to [the Appellant] for his participation in the Self Employment Program, and I wish him a speedy recovery.
- March 25, 2025 Request for Reconsideration completed by the Appellant with "Reason for Request for Reconsideration" stating, in part:
 - He never authorized the ministry to discontinue his participation in the Self Employment Program and he informed the ministry he was unable to work;
 - He was involved in a serious accident that was not his fault, and he could not work for a month after the accident;
 - The ministry had no right to discontinue his participation in the Self Employment Program without his express written consent;
 - As a self employed worker, he is entitled to deduct business expenses from his gross income;
 - The difference between his gross income and net income is more than \$1000 at times and the ministry owes him these monies;
 - The ministry is forcing him to report his gross income without deductions each month rather than net income which is having an adverse effect on his annualized earning exemption;
 - He was enrolled in the Self Employment Program many years ago; and

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- His rights have been violated by the ministry when they kicked him out of the Self Employment Program.

New Evidence After Ministry Reconsideration

April 25, 2025—Notice of Appeal

➤ Reasons for Appeal: "The ministry unjustly terminated my self employment program..."

➤ Documents:

- Undated ministry letter noting, in part:
We need the following information to confirm your eligibility for assistance and to make sure you receive all the assistance for which you are eligible:
 - Other Please sign and return the attached revised April HR0081, reflecting self employment gross earning for February 2025, without business expenses deducted.

We need to get this information before **May 6, 2025** to ensure your assistance is not delayed.

- Undated, unsigned Monthly Report with income amounts indicated, in part:

| | Applicant | Spouse |
|-----------------------|-----------|-----------|
| Net Employment Income | \$1925.29 | \$2981.29 |
| OAS/GIS | \$1196.19 | \$0 |
| Canada Pension Plan | \$178.74 | \$0 |

Prior to the Hearing

Prior to the hearing the Appellant submitted multiple pages of evidence (40) to support his appeal. Although not reproduced in full, the panel has fully reviewed all documents and summarizes as follows:

➤ Documents:

- Blank Monthly Report with "Net Employment Income" item circled in black;
- Simplified Monthly Self-Employment Report—"List of Permitted Business Deductions and Notes for Clients;"
- Undated letter noting, in part:
Full earning exemption: \$32, 400

Base amount (multiplied by the # of qualifying months in the calendar year):
\$2,700 (per month)

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In short: Each month they are not eligible for assistance due to EI [Employment Insurance] in excess of PWD [Persons with Disabilities] rates, their AEE [Annualized Earnings Exemption] gets pro-rated automatically \$2,700. Please let the client know it's important for client to keep completing their monthly reports. If the client ends their EI [Employment Insurance], and no longer can work, they may be able to be reassessed for PWD [Persons with Disabilities] assistance but any earnings over the AEE [Annualized Earnings Exemption] will be deducted from their assistance until the AEE [Annualized Earnings Exemption] resets in the New Year (i.e. MAR benefit month, chq issued at the end of February).

If they forget to complete their monthly reports the most important one is the one due by February 5th, declaring all of January income, which resets the AEE [Annualized Earnings Exemption].

- Undated letter, noting in part:

Right now, just with employment income, their AEE [Annualized Earnings Exemption] has been reduced from \$32, 400 to \$21, 742.

With the EI [Employment Insurance], WCB [Workers Compensation Board], OAS/GIS [Old Age Security/Guaranteed Income Supplement] the couple is now over the PWD [Persons with Disabilities] (couple) rates, and they will not receive a cheque for May...these earning (sic) now exceed PWD [Persons with Disabilities] rates, making them ineligible for the PWD [Persons with Disabilities] payment AND the system will automatically prorate an AEE [Annualized Earnings Exemption] deduction for each month remaining in the year or until the end of their EI/WCB [Employment Insurance/Workers Compensation Board] claims to prevent double dipping (ie. Once their EI/WCB [Employment Insurance/Workers Compensation Board] claims are complete, the AEE [Annualized Earnings Exemption] amount will be based on the prorated amount—instead of staying at the full \$32, 400—or in their case, the current \$21, 742)...

The important thing is to have them make sure to continue to report the EI/WCB/OAS/GIS [Employment Insurance/Workers Compensation Board/Old Age Security/Guaranteed Income Supplement] every month, so that when the claims end and the yearly reset takes place, it will help to prevent cheque production from being turned off and make the process of returning to PWD [Persons with Disabilities] payments much easier...

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- January 2024 – March 2025 Simplified Monthly Self-Reports-12 pages- showing, among other things, gross income, deductions, net income;
- May 13, 2025 handwritten letter signed by the Appellant-18 pages-stating, in part:
 - The ministry's response is full of glaring and unsubstantiated errors, contradictions, and double-talk;
 - He did not, and does not, work for [an online ride hailing platform];
 - He had a vehicle accident in August 2024 for which he was off work for one month recovering;
 - The accident was completely not at all his fault;
 - The ministry never followed up with him after his accident about his well-being or how he was progressing in his recovery;
 - He has been banned from communicating with the ministry and must go through a third party;
 - He is disabled, a senior citizen, and under the ministry's Annualized Earnings Exemption which is \$32,400 for him;
 - He has been participating in the Self Employment Program for his DoorDash and Skip the Dishes business for at least the past five years;
 - He signed a questionnaire, acceptance of terms, and voluntary participation plan in 2023/11/02;
 - On his September 2024 monthly report, he clearly states that he was unable to work due to an accident and responded yes, he was looking for work;
 - On September 23, 2024, the ministry kicked him out of the Self Employment Program;
 - He was never informed that his Self Employment Program was closed, and it was closed without his expressed written consent or signature;
 - As he had done for many years prior, he continued to submit October, November, and December monthly Simplified Monthly Self Reports which clearly indicate his gross income, allowable business deductions or expenses, and net income;
 - His business expenses are at least \$1100/month;
 - Upon his return to work, he repeatedly contacted the third party administrator about his Self Employment Program;
 - The third party administrator told him that the Self Employment Program was on hold to January 2025 for all clients as it was going to change;
 - He was left in limbo waiting to hear about the changes to the Self Employment Program;
 - Throughout, he continued to submit his net income including allowable deductions, and the ministry keeps sending him contradictory statements and requests regarding his net versus gross income;

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- The Minister has a poor and skewed understanding of the type and nature of his employment, which is a fast growing gig economy of independent contractors whose employment has been officially recognized by the Canada Revenue Agency, WorkSafe BC, Employment Insurance, and the Insurance Corporation of BC;
- He is currently receiving WorkSafe BC benefits due to a recent workplace injury;
- The difference between his gross and net income can be \$1100/month, a considerable monetary difference that will have a devastating and adverse affect on his Annualized Earnings Exemption and throwing him into financial ruin and collapse;
- The Employment and Assistance for Persons with Disabilities Act, Subsection 4 states that "A decision of the Minister under Subsection (3) amending, suspending, or cancelling an employability plan is final and conclusive and is not open to review by a court on any ground or to appeal to the Tribunal under Section 16 (3) [Reconsideration and Appeal Rights]";
- The ministry violated this legislation when it directed him to appeal;
- To date, there have been no changes to the ministry's Self Employment Program;
- The ministry was wrong and is trying to come up with unjustifiable excuses for their wrongdoings;
- He was kicked out of the Self Employment Program because he was in a car accident and injured;
- As an injured worker he should be treated with compassion and care, and law, legislation or policy take a very strong position in his favour;
- In February 2025 he was injured again at work and has been receiving WorkSafe BC benefits as provided by law;
- He requests to be reinstated into the Self Employability Program and that his net income be used for determining his Annualized Earnings Exemption for the year; and;
- May 21, 2025, various documents-10 pages-including in part:
 - WorkSafe BC claims related:
 - September 4, 2024 claim;
 - February 19, 2025 claim;
 - March 5, 2025 claim; and
 - September 3, 2024 Medical Note.

At the Hearing

Appellant:

At the hearing, the Appellant said that he had been enrolled in the Self Employment Program for many years—"about five years"—and had been submitting his monthly reports the same way for all that time. As a self-employed worker and independent contractor, he is entitled to deduct his many business expenses. He also noted that the Canada Revenue Agency recognizes him as an independent contractor and the delivery work he does as self employment income subject to appropriate deductions. He said that the fact that the ministry is questioning the work when the federal government recognizes it, is ridiculous.

The Appellant said that for the last 10 years, all communication he has with the ministry must be through his third party administrator. Although he does not recall specifically when he received notice of being removed from the Self Employment Program, he said that between September 2024 and January 2025 there was a lot of "back and forth" between the third party administrator and the ministry about his Self Employment Program. In reply to a question from the panel, the Appellant agreed that it was approximately Fall 2024 that he knew was out of the Self Employment Program. The Appellant said he was waiting and on hold to be returned to the Self Employment Program because the third party administrator told him the program was on hold and there would be changes in January 2025. The Appellant said that throughout, he insisted he wanted to stay in the Self Employment Program regardless of the ministry's pending program changes. In any event, the Appellant noted that to date the ministry had not made any program changes—it was "just an excuse" to keep him out of the program.

Ministry:

At the hearing, the ministry relied on its reasons stated in its Reconsideration Decision. The ministry also advised that the Self Employment Program was not on hold and clarified that at the same time, an internal ministry review was ongoing. In response to questions from the panel, the ministry stated that the reason for the end of the Appellant's Self Employment Program was due to the Appellant's self report that he was not able to work "anymore;" that anymore was definitive. As well, the ministry agreed that the previous Self Employment Program rules still apply and had the Appellant not reported he was not able to work anymore, he would still be in the program.

In response to a question from the panel about the legislation directing there be a waitlist for the Self Employment Program, the ministry said there was no legislation, it is ministry policy and procedure. In addition, the ministry said that the Self Employment Program itself is largely captured by ministry policy and procedure. Finally, the ministry responded to a panel question about the legislation limiting appeal rights, saying that it was “debateable” whether the Appellant’s issue was subject to appeal; there is argument to be made that it was not appealable.

Admissibility of New Evidence—if Applicable

Section 22(4) of the *Employment and Assistance Act* says that a panel can consider evidence that is not part of the record when the ministry made its Reconsideration Decision.

The Appellant did not object to the admissibility of the ministry’s additional oral evidence.

The ministry did not object to the admissibility of the Appellant’s additional written and oral evidence.

The Appellant’s evidence provides further clarification about his understanding of the Self Employment Program, his long history with the ministry and with the Self Employment Program, the critical personal and financial impact of the ministry ending his participation in the Self Employment Program, and the history and reporting of his car accident and the associated outcomes for him and his family.

The ministry’s evidence provides clarification about the Self Employment Program, how and why it arrived at the decision it did and gave further explanation about the relevant legislation and ministry policy and procedure that apply in the Appellant’s case.

The panel finds that the additional evidence provided is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the panel finds that the additional evidence is admissible under the *Employment and Assistance Act* section 22(4).

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to cancel the Appellant's employability plan was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. In addition, was the ministry's decision that the Appellant was not entitled to participate in the self employment program reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the Appellant.

Position of the Appellant

The Appellant says that the ministry had no justification to kick him out of the Self Employment Program. After his car accident he was unable to work and he needed to be off work for a month. The ministry's action to cancel his participation in the Self Employment Program was hasty and incorrect. Through no fault of his own—which was confirmed by the Insurance Corporation of BC that he was entirely not at fault for the accident—he was injured while at work and as a result, has unfairly suffered the consequences. The only reason he was kicked out of the Self Employment Program was because he was in a car accident and because he was an injured worker.

The Appellant also says that after the accident, he was suffering from shock and his thinking was incoherent, and that is why he said he was not able to work anymore. At the time, he could not work—he was injured and needed time to recover. The Appellant said he did not intend that ending work was final, and in fact, he indicated “yes”, he was continuing to look for work which demonstrated he would be returning to his self employed work after he recovered. The Appellant said that the ministry did nothing to follow up with him and they never properly notified him that his Self Employment Program had ended. Before the Appellant had even fully recovered from his injuries he was kicked out of the program and only upon his return to work, and only after many contacts with his third party administrator, was he told that this plan was on hold. According to the Appellant, from September 2024 there was, “a lot of back and forth with the third party administrator and the ministry”.

The Appellant said that the ministry was wrong to end his Self Employment Program because the Appellant had been part of the program for many years, he completed the required Voluntary Participation Plan and Self Employment Program documents and he submitted his monthly reports as he was required to do. The Appellant notes that the Voluntary Participation Plan required for the Self Employment Program was not due to end until 2027 and in fact, these timelines are often extended. The Appellant says that he

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met all the requirements for participation in the Self Employment Program so the ministry should not have removed him from the program.

The Appellant says that the ministry's actions have caused him and his family severe financial and emotional stress. The Appellant says that removing him from the Self Employment Program means that he is required to report gross earnings without all his business expenses deducted, he loses a lot of money and the result is that he is barely making minimum wage. He is not able to support himself and his family making only minimum wage. The difference between his gross monthly income and his net monthly income can be around \$1100, which is substantial, and the Appellant faces financial ruin so he wants to be immediately reinstated in the Self Employment Program and his net income, not gross income, be used in calculating his Annualized Earnings Exemption.

Position of the Ministry

The ministry said that the Appellant's description of his responsibilities with, and the connection between the Voluntary Participation Plan and the Self Employment Program are accurate. In addition, each reflects an agreement between the Appellant and the ministry. However, the ministry says that the Appellant's understanding of the form HR0081 calculations by the ministry for gross and net income, and what deductions are available to arrive at the Appellant's net income amount, is not accurate.

The ministry said that when it received the Appellant's September 5, 2024 self report where the Appellant indicated "Yes" to any employment changes and that he was in an accident and not able to work "anymore", the ministry considered anymore as definitive. From that, the ministry ended the Appellant's participation in the Self Employment Program, which was communicated by Email to the Appellant's third party administrator on September 23, 2024. The ministry says that under Section 9 (3) of the *Employment and Assistance for Persons with Disabilities Act*, the ministry can cancel participation in the Self Employment Program at any time.

The ministry says that the Self Employment Program itself is largely set out in ministry policy and procedure. However, according to the ministry, the legislation establishes that the ministry may have employment programs where program recipients may enter into employability plans. The terms of the Self Employment Program require a Voluntary Participation Plan which includes the agreement to provide a business plan, which means the same as an employability plan. The ministry says that given under Section 9, subsection 4 of the *Employment and Assistance for Persons with Disabilities Act* the

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cancellation of an employability plan is not appealable, then by extension, the end of a Self Employment Program is also not appealable.

Finally, the ministry also said that Section 70.1(3)(b) of the Employment and Assistance for Persons with Disabilities Regulation applies in the Appellant's case. The ministry said that because the Appellant was not able to work, his business plan was no longer acceptable and thus, the Appellant was not eligible to participate in the Self Employment Program.

Analysis

The Appellant is appealing the ministry's April 11, 2025 Reconsideration Decision which found he was not eligible to participate in the Self Employment Program. The Appellant said that the ministry was wrong; it was not able to cancel his employability plan nor his participation in the Self Employment Program without notifying him and without his express agreement. The ministry said that under Section 9(3) of the *Act*, the ministry was able to cancel the Appellant's employability plan. In addition, the ministry decided that under Section 70.1(3)(b) of the Regulation, upon determining that the Appellant's business plan was no longer acceptable, the Appellant ceased to be eligible to participate in the Self Employment Program. As well, the Appellant disagreed with the ministry's decision that because he was on a waitlist, he was prevented from reenrolling in the Self Employment Program.

Finally, the Appellant submitted that the ministry was not entitled to cancel his employability plan and participation in the Self Employment Program because the ministry did so only because he was in an accident and treating an injured worker that way was a violation of his rights. The panel recognizes the Appellant's submissions regarding his view that the panel must consider, among others, his Constitutional rights and Human Rights, and his assertion that those principles should be applied by the panel when making their determination. The panel notes that under s.19.1 of the *Employment Assistance Act* and s. 46.3 of the *Administrative Tribunals Act*, the panel does not have the authority to consider alleged Constitutional questions nor authority to apply the *Human Rights Code*.

Whether the ministry's decision to cancel the Appellant's employability plan is subject to appeal?

Section 9 (4) of the *Act* states that, "A decision of the Minister under Subsection (3) amending, suspending, or cancelling an employability plan is final and conclusive and is not open to review by a court on any ground or to appeal to the Tribunal under Section 16 (3) [Reconsideration and Appeal Rights]". Neither the ministry nor the Appellant made

submissions at the hearing regarding the Appellant's grounds for appeal. In any event, consistent with the principles of administrative fairness and natural justice, the panel proceeded to hear submissions of the Appellant and of the ministry on the substance of the issue before determining jurisdiction.

Although questioned by the panel at the hearing, the ministry did not provide clear argument that the decision to cancel the Appellant's employability plan was not appealable. The ministry simply indicated that there was, "argument to be made", "it was debateable", and "by extension, cancelation of the Self Employment Program also was not appealable". Similarly, at the hearing the Appellant did not offer any argument about his right to appeal; however, in his written submission, the Appellant said that the ministry had violated the legislation when it directed him to appeal.

The panel finds that Section 9 (4) of the *Act* is clear and definitive. A decision of the ministry to cancel an employability plan is not open to appeal to the Tribunal; the panel does not have jurisdiction to hear the Appellant's appeal.

Although the panel has no jurisdiction, given the submissions from the parties and effort provided on appeal, in the event the panel is incorrect about lacking jurisdiction, the panel provides the reasoning it would have made if it had jurisdiction.

Whether the ministry can cancel the Appellant's employability plan?

The Cambridge online dictionary defines "employability" as, "the skills and abilities that allow you to be employed" (<https://dictionary.cambridge.org/dictionary/english/employability>). As well, "employability plan" is defined under Section 1 of the *Act* as, "a plan, in such form as the minister determines, that is entered into by the minister and a recipient or dependent youth under section 9". According to the Appellant and the ministry, the employability plan includes the Self Employment Program and requires that the Appellant complete the Voluntary Participation Plan agreement. The Voluntary Participation Plan, signed on November 2, 2023 by the Appellant, states the Appellant will, "...agree to participate and abide by the conditions of the self employment program". One of the conditions of the self employment program is that the Appellant signs the Self-Employment Program Questionnaire and Acceptance of Terms. On November 2, 2023, the Appellant signed this agreement which included the declaration that, "I furthermore agree to abide by the terms and conditions of the Self-Employment Program, as set out in the... *Employment and Assistance for Persons with Disabilities Act* and regulations...".

The Appellant stated that he has interacted with the ministry—through a third party administrator—for approximately 10 years and he had been enrolled in the Self Employment Program for many years, “about five”. Indeed, the Appellant explained, orally and in writing, not only the program and its elements but also the relevant legislation that was to be considered. Given this history and his evident knowledge, it’s reasonable that the Appellant was aware that legislation: sets out the terms and conditions of the Self Employment Program; necessarily applied to his situation; must be considered; and has an impact on his Self Employment Program participation. By signing his agreement to participate and abide by the conditions of the Self Employment Program, which additionally includes a declaration that he will abide by the *Act*, the Appellant agreed his obligations extend to specifically abiding by Section 9 (3) of the *Act*. This section states, “The minister may at any time amend, suspend or cancel an employability plan.” As the Appellant agreed to the obligations under the *Act* and section 9 states that the ministry may cancel an employability plan at any time, the panel finds that the ministry was reasonable when it decided it could cancel the Appellant’s employability plan.

Similarly, the ministry said it was also entitled to cancel the Appellant’s employability plan and Self Employment Program participation under Section 70.1(3)(b) of the Regulation. Section 70.1 (3)(b) says, “If a recipient provides a business plan not acceptable to the minister, the recipient is not or ceases to be eligible to participate in the self-employment program”. The ministry said that because the Appellant had indicated that he was not able to work anymore, naturally by extension, his business plan was also not acceptable anymore. Thus, according to the ministry, consistent with Section 70.1(3)(b) of the Regulation, because the ministry determined that the Appellant had submitted a business plan that was not acceptable to the ministry, “the recipient is not or ceases to be eligible to participate in the self-employment program”.

The Appellant did not dispute that he had a car accident which resulted in a change to his employability plan; indeed, the Appellant identified he operated a business as a self employed delivery driver providing goods (ie. food, liquor, etc.) to customers. As such, his business plan necessarily involved work as a self employed delivery driver. Furthermore, on his September 5, 2024 Monthly Report he responded, “yes” to the question “Any employment changes?” and explained, “I was in an accident. I am not able to work anymore”. Given the Appellant’s statements of not being able to work anymore and that he did stop working as a self employed delivery driver, the panel finds that it was reasonable for the ministry to conclude that his business plan did change significantly to the extent that it was not only no longer in effect, the business plan was also no longer acceptable to the ministry. The panel further finds that given the ministry’s assessment that the business plan was not acceptable and the ministry was reasonable when it

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determined that the Appellant became ineligible to participate in the self employment program, which is consistent with Section 70.1(3)(b) of the Regulation.

Whether the ministry must provide notice to the Appellant of the cancellation of his employability plan?

The Appellant said that because he signed an agreement to participate in an employability plan including the Self Employment Program, the ministry was required to notify him to cancel that employability plan. Conversely, the ministry said that consent was not required, and in any event, it had provided notice confirming the end of the Appellant's participation in the program to his third party administrator on September 23, 2024. Further, the ministry advised that the Self Employment Program is largely established through ministry policy and procedure; the program is not clearly set out in the Employment and Assistance legislation.

Although the Appellant asserted that he had not received notice of the cancellation of his employability plan and that he, "could not recall" receiving the September 23, 2024 Email confirming its end, the Appellant's evidence does not support this view. Prior to the hearing, the Appellant submitted documents including a written statement that noted he was required to communicate with the ministry through a third party administrator for, "at least the past decade." At the hearing, the Appellant's oral evidence was that from September 2024 there was, "a lot of back and forth with the third party administrator and the ministry". At the hearing, the Appellant also responded, "yes," in response to the statement that it was, "approximately Fall 2024" that he was, "kicked out of the Self Employment Program."

Participation in the Self Employment Program requires that the participant develop a business plan and submit a monthly self-employment report. As a Self Employment Program recipient, the participant can claim deductions from their gross income; recipients rely on the deductions to reduce their net income and to determine their Annualized Earnings Exemption. The financial impact of no longer being able to claim the deductions can be significant and financially destabilizing. Receiving some notification that an employability plan is cancelled and there is a change to that ability to claim deductions ideally can lessen the negative consequences to a recipient. It is reasonable that notice *should* necessarily occur following a determination made under Section 9 (3) of the Act.

However, the *Act* and Regulation do not provide express direction or language about a notice requirement or a process for notifying recipients regarding its right, at any time, to, "amend, suspend or cancel an employability plan" under Section 9 (3) of the *Act*. In any

event, given the September 23, 2024 ministry Email sent to the Appellant's third party administrator and the Appellant's evidence about his long standing ministry and third party administrator relationships, the process of communication, the extent of communication that occurred from the Fall of 2024, and the Appellant's acknowledgement that from Fall 2024 he was, "kicked out of the Self Employment Program", the panel finds the Appellant received notice that his employability plan including participation in the Self Employment Program was cancelled.

Whether the ministry must receive the Appellant's written consent to cancel an employability plan?

The Appellant said that because he signed an agreement to participate in an employability plan including the Self Employment Program, the ministry was then required to receive his written consent to cancel that employability plan. The ministry agreed that the employability plan including the Self Employment Program is an "agreement between the Appellant and the ministry," which is confirmed in the Voluntary Participation Plan and the Self-Employment Program Questionnaire and Acceptance of Terms signed by the Appellant. However, the ministry said that the legislation does not require the ministry to obtain written consent to cancel an employability plan. According to the ministry, Section 9 (3) of the Act, at any time gives the ministry the right to, "amend, suspend or cancel an employability plan".

When assessing the reasonableness of the ministry's decision, the panel must follow the legislation. There is no express legislation that requires the ministry to obtain written consent to conclude an employability plan; the applicable language in Section 9 (3) of the Act simply states that, "The minister may at any time amend, suspend or cancel an employability plan". In the absence of legislation requiring written consent, the panel and the ministry must rely on the simple and applicable statement in Section 9 (3) of the Act which permits the ministry to suspend or cancel an employability plan at any time with no mention of the need for anyone's consent, written or otherwise. Accordingly, the panel finds that the ministry was reasonable when it decided it did not require written consent to cancel the Appellant's employability plan.

Whether the ministry was entitled to prevent the Appellant's immediate reenrollment in the Self Employment Program due to a waitlist?

The Appellant asked that he, "be reinstated back in the SEP [Self Employment Program] without further delay." The ministry advised that the Appellant was, "not eligible for the SEP [Self Employment Program] program because [he is] waitlisted, and [his] request will

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be reviewed once a space becomes available in order of those who applied for enrolment into SEP [Self Employment Program] before [him].” In addition, the ministry stated that the Self Employment Program was largely governed by ministry policy and procedure.

Section 8 of the *Act* provides the legislation establishing the Self Employment Program. It simply states that, “the minister may establish or fund employment-related programs and other programs for applicants, recipients or dependent youths who have difficulty finding or maintaining employment.” Section 9, (1) and (2) of the *Act* sets out that a recipient can request an assessment for an employability plan and *if* the ministry completes the assessment, the recipient can request that the minister enter into an employability plan with the recipient.

Having determined that it had the right to cancel the Appellant’s employability plan, the ministry effectively treated the Appellant’s request to return to his existing employability plan and return to his previous Self Employment Program as a new request to join the program. According to the Merriam-Webster online dictionary, “if” means, among others, “in the event that”, “on the condition that”, and “whether” (<https://www.merriam-webster.com/dictionary/if>). As such, consistent with Section 9 (2) of the *Act*, the ministry retained discretion to enter into an employability plan. Specifically, in the event that and on the condition that, and whether, “the ministry completes the assessment” the recipient and the ministry can enter into an employability plan. The panel finds that given that the ministry had *not* completed the requested needs assessment, Section 9 (2) of the *Act* provides that the ministry can *not* enter into an employability plan with the Appellant. As such, the panel finds that the ministry was reasonable when it prevented the Appellant’s immediate reenrollment into the Self Employment Program. With respect to the issue of the waitlist, the panel must follow the legislation and in the absence of language in the legislation about a waitlist, the panel finds that it has no authority to decide whether the ministry was reasonable to waitlist the Appellant.

Summary

Under Section 9(4) of the *Act*, the panel has no jurisdiction to hear this appeal. However, while the panel has no jurisdiction, given the submissions from the parties and effort made on appeal, in the event the panel is incorrect about lacking jurisdiction, the panel provides the reasoning it would have made if it had jurisdiction.

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The panel appreciates the thoughtful and considerate presentations made by both the Appellant and the ministry when explaining their respective positions. The Appellant's evident knowledge and experience with the ministry employability plan including participation in the Self Employment Program, ably assisted and informed the panel. Similarly, the ministry's experience and insight as to the 'internal workings' of ministry programs and related policy and procedure, was equally informative.

For the reasons stated above including in particular that Section 9 (3) of the *Act* states, "The minister may at any time amend, suspend or cancel an employability plan", the panel finds that the ministry's decision was reasonable when it ended the Appellant's employability plan and participation in the Self Employment Program. The panel confirms that the ministry's decision was a reasonable application of the legislation in the circumstances of the Appellant. The Appellant is not successful with his appeal.

Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a)each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b)the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

Part 2 — Assistance

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Employment-related programs and other programs

8 The minister may establish or fund employment-related programs and other programs for applicants, recipients or dependent youths who have difficulty finding or maintaining employment.

Client needs assessment and employability plan

9 (1) A recipient or a dependent youth may request that the minister complete a client needs assessment for the recipient or dependent youth.

(2) If the minister completes a client needs assessment at the request of a recipient or dependent youth under subsection (1), the recipient or dependent youth may request that the minister enter into an employability plan with the recipient or dependent youth.

(3) The minister may at any time amend, suspend or cancel an employability plan.

(4) A decision of the minister under subsection (3) amending, suspending or cancelling an employability plan is final and conclusive and is not open to review by a court on any ground or to appeal to the tribunal under section 16 (3) [*reconsideration and appeal rights*].

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Division 5 — Supplements — Eligibility for Employment-related Programs

Business plan

70.1 (3)If

- (a) a recipient fails to provide a business plan in the time specified under subsection (1) or (2), as applicable, or
- (b) a recipient provides a business plan that is not acceptable to the minister, the recipient is not or ceases to be eligible to participate in the self-employment program.

EMPLOYMENT AND ASSISTANCE ACT**Panels of the tribunal to conduct appeals****22 ...**

- (4) 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.

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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

Carmen Pickering

Signature of Chair

Date (Year/Month/Day)

2025/06/11

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2025/06/06

Print Name

Robert Kelly

Signature of Member

Date (Year

2025/06/03