

**PART C – Decision under Appeal**

The decision under appeal is the ministry's reconsideration decision of January 4, 2012 which held that the appellant and his spouse were not eligible for income assistance as set out in sections 1 and 10 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), because the appellant's family unit had non-exempt assets valued at more than the \$5,000.00 limit.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1 and 10

## PART E – Summary of Facts

Information and records before the ministry at the time of reconsideration include the appellant's Request for Reconsideration dated December 14, 2011.

In section 3 of the appellant's Request for Reconsideration form he states the following:

- Savings will soon be well under the \$5000.00 and will remain at the lower level for some time to come. Investments are ours.
- Why would you disqualify us for a small plot of land in another country, in the third world? This lot was given to my spouse by her father and she will pass it on to one of her relatives when she dies. It is not to be sold and proof of this will be provided when she returns from her trip in early February.

In the appellant's Notice of Appeal he states that his spouse has taken most of her savings with her to another country. The property which she told you about is not for sale, and is not to be sold, and is in a third world country. It is a family thing for her. The appellant states, "I wish to keep my home".

The ministry's evidence is that the appellant had an RRSP valued at \$2883.00 and that his spouse had cash savings of \$3224.00 and owns property in another country valued at \$10,000.00 to \$15,000.00.

### At the Hearing

The appellant stated that his spouse withdrew most of her savings reported to be \$3224.00 at the time of reconsideration, from her bank account and took it with her when she flew to another country December 25, 2011. There was no additional evidence presented by the appellant at the hearing regarding the disposition of these funds however the appellant stated that his spouse is currently living on this money. A panel member asked if the appellant's spouse had used any of this money to purchase her airline ticket and the appellant's response was no. He stated that he had purchased the ticket for his spouse several months earlier.

The appellant then presented arguments as to why he believes his spouse's property should not be considered an asset and expressed concern about maintaining his Persons with Disabilities (PWD) status.

At the hearing the ministry stood by the information provided in the Appeal Record adding that when the appellant's spouse returns from in another country they can provide the ministry with what ever new evidence they choose, and make a new application for income support based on what ever their financial circumstances are at that time. The ministry also reassured the appellant that he still maintained his PWD status and that this was not in question.

The panel accepted the appellant's oral testimony as new evidence under section 22(4) of the Employment and Assistance Act as it was found to be in support of the information and records before the ministry at reconsideration.

Based on the information provided the panel made the following findings of fact:

- The appellant has PWD status.
- At the time of reconsideration the appellant and his spouse had combined assets of more than

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\$5000.00.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant and his spouse were not eligible for income assistance because they had assets valued at more than the limit of \$5000.00 as set out in section 10 of the EAPWDR. Specifically the ministry determined that the appellant had an RRSP valued at \$2883.00 and that his spouse had cash savings of \$3224.00 and owned property in another country valued at \$10,000.00 to \$15,000.00. In arriving at this decision the ministry relied upon the following regulatory provisions:

1 (1) In this regulation:

"asset" means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

### Asset limits

10 (1) The following assets are exempt for the purposes of subsection (2):

- (a) clothing and necessary household equipment;
- (b) one motor vehicle generally used for day to day transportation needs;
- (c) a family unit's place of residence;
- (d) money received or to be received from a mortgage on, or an agreement for sale of, the family unit's previous place of residence if the money is
  - (i) applied to the amount owing on the family unit's current place of residence, or
  - (ii) used to pay rent for the family unit's current place of residence;
- (e) a child tax benefit under the *Income Tax Act* (Canada);
- (f) a goods and services tax credit under the *Income Tax Act* (Canada);
- (g) a tax credit under section 8 [refundable sales tax credit], 8.1 [low income climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the *Income Tax Act* (British Columbia);
- (h) an uncashed life insurance policy with a cash surrender value of \$1 500 or less;
- (i) business tools;
- (j) seed required by a farmer for the next crop-year;
- (k) basic breeding-stock held by a farmer at the date of the applicant's submission of the application for disability assistance (part 2) form, and female stock held for stock replacement;
- (l) essential equipment and supplies for farming and commercial fishing;
- (m) fishing craft and fishing gear owned and used by a commercial fisher;
- (n) prepaid funeral costs;
- (o) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (p) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;

- (q) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus;
- (r) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (s) money that is
  - (i) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
  - (ii) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (t) money paid under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (u) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;
- (v) money paid to a person in settlement of a claim of abuse at an Indian residential school, except money paid as income replacement in the settlement;
- (w) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (x) for a recipient who is participating in a self-employment program funded or established by the minister under section 8 of the Act,
  - (i) up to a maximum of \$5 000 kept by the recipient in a separate account described in section 4 (2) (b) (ii) of Schedule B, and
  - (ii) up to a maximum of \$50 000, or a greater amount approved by the minister, consisting of
    - (A) the value of assets used by the recipient in operating a small business under the self-employment program, and
    - (B) a loan that is not greater than the amount contemplated by the recipient's business plan, accepted under section 70.1 of this regulation, and received and used for the purposes set out in the business plan;
- (y) assets exempted under section 11 (2) [*asset development accounts*] or 12 (2) [*assets held in trust for person with disabilities*];
- (z) payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;
- (aa) payments granted by the government of British Columbia under section 8 of the *Child, Family and Community Service Act* [*agreement with child's kin and others*];
- (bb) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (cc) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program;
- (dd) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child to a person other than a parent of that child;
- (ee) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
  - (i) Autism Funding: Under Age 6 Program, or

(ii) Autism Funding: Ages 6 – 18 Program;

(ff) funds held in a registered education savings plan;

(gg) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

(hh) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(ii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

(jj) funds held in a registered disability savings plan;

(kk) a working income tax benefit provided under the *Income Tax Act* (Canada);

(ll) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(mm) the climate action dividend under section 13.02 of the *Income Tax Act*;

(nn) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age.

(oo) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry.

(1.1) Despite subsection (1), assets described in subsection (1) (x) (ii) (A) are not exempt under subsection (1) (i), (j), (k), (l) or (m).

(2) A family unit is not eligible for disability assistance if any of the following apply:

(a) a sole applicant or recipient has no dependent children and has assets with a total value of more than \$3 000;

(b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$5 000.

(3) The minister may authorize one or more of the following:

(a) that the total cash surrender value of an uncashed life insurance policy of an applicant or recipient is not to be included as an asset of the family unit for the purposes of subsection (2) for the period specified by the minister;

(b) that saleable acreage and buildings owned by an applicant or recipient are to be treated as though they were the place of residence of the applicant's or recipient's family unit for the period specified by the minister.

The appellant's position is that by the time his spouse returns from in another country in February the bulk of her savings of \$3224.00 will have been spent. He also argued that when she returns she will be bringing a legal document with her which he believes should satisfy the ministry that her land should not be treated as an asset.

The appellant argued that his spouse's property in another country was willed to her by her father and must be passed on by her to a relative after she dies. He said this is a cultural norm and that the ministry should be prepared to take his word for this, and not consider it an asset.

The ministry's position was that the appellant and his spouse were not eligible for income assistance because at the time of reconsideration they had assets valued at more than \$5000.00.

The ministry argued that because the appellant had an RRSP valued at \$2883.00 and that his spouse had cash savings of \$3224.00 and owns property in another country valued at \$10,000.00 to \$15,000.00, their net assets were well above the allowable limit of \$5000.00 as set out in section 10(2) of EAPWDR. The ministry further argued that section 10(1) provides the types of assets that may be exempted from the calculation of the total value of assets. Cash assets, or property in which an applicant does not reside in, are not included as types of assets that may be exempted from the calculation.

The ministry explained that when the appellant's spouse returns from in another country they can provide the ministry with what ever new evidence they choose and make a new application for income support based on their current circumstances. However, based on the information provided to the ministry at reconsideration they argued that the appellant does not meet the income assistance eligibility requirements.

The panel finds that there is no dispute that the appellant has PWD status and that at the time of reconsideration the appellant had an RRSP valued at \$2883.00 and that his spouse had cash savings of \$3224.00 and owned property in another country valued at \$10,000.00 to \$15,000.00. What is in dispute is whether or not the appellant's property located in another country should be considered an asset.

Under section 1(1) of EAPWDR cash and property are defined as assets. Based on the evidence at the time of reconsideration the appellant and his spouse had \$6107.00 in cash (RRSP's and savings) plus property in another country valued at \$10,000.00 to \$15,000.00. This brings the total value of the appellant and his spouse's assets to a minimum of \$16,107.00. While the appellant indicates the property cannot be sold, and must be passed on to some other family member when his spouse dies the panel finds no documented evidence to support this position. The panel finds the ministry has reasonably determined that the appellant's spouse's property is an asset as defined in section 1(1) of EAPWDR.

Under section 10(2) of EAPWDR a family unit is not eligible for income assistance if they have assets of more than \$5,000.00. Based on the evidence noted above, the panel finds the ministry's decision that the appellant and his spouse are not eligible for income assistance because they have more than \$5,000.00 in assets is a reasonable application of the legislation as set out in section 10(2) of EAPWDR.

Section 10(1) of EAPWDR provides the types of assets that may be exempted from the calculation of total value of assets. Cash assets or property in which an applicant does not reside in, are not included as types of assets that may be exempted from the calculation. For this reason the panel finds the ministry reasonably determined that at the time of reconsideration the appellant and his spouse had assets in excess of \$5,000.00 which can not be exempted from the assets calculation as set out in section 10(1) of EAPWDR.

Based on all of the evidence presented the panel finds that the ministry's reconsideration decision which held that the appellant and his spouse were not eligible for income assistance because they had assets valued at more than \$5000.00 is reasonably supported by the evidence and confirms the ministry's decision.