

PART C – Decision under Appeal

The decision being appealed is the Ministry's December 30, 2011 reconsideration decision in which the Ministry determined that the Appellant was ineligible for disability assistance effective November 30, 2011 because the Appellant owns assets exceeding the asset limit of \$3,000 for his family unit as set out in EAPWDR sections 1, 10(1)(c) and 10(2)(a). The Ministry also determined that the Appellant did not qualify for hardship assistance under section 46 of EAR because he did not meet the applicable criteria.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 5.

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) sections 1, 10, 11 and 12.

Employment and Assistance Regulation (EAR) section 46.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from the Ministry's files as follows:

- The Appellant was receiving income assistance since June 2008 and disability assistance since December 2008 as a single person.
- At the time of his original application for assistance the Appellant co-owned 2 houses with his ex-spouse; he lived in one (House #1) and his ex-spouse lived in the other (House #2).
- Ministry files of various contacts with the Appellant regarding his assets and financial situation starting about June 2008 through November 2011, including letters from him about mortgage payments, mortgage renewals, contacts with his ex-wife, attempts to find employment, an earlier reconsideration request and estimates by the Appellant of his equity in each house.
- Information from the Appellant in 2008 that the value of the house his ex-wife lived in was under \$400,000 with a mortgage of about \$107,000 for an equity of about \$293,000 of which the Appellant's share was about \$146,500.
- The Ministry considered House #1 as the Appellant's primary place of residence and therefore an exempt asset under the EAPWDR.
- On about July 2, 2008 the Ministry granted the Appellant an exemption for the assets in House #2 so that the Appellant could settle the assets issue; however, the Appellant was advised that the maximum time for such an exemption would be 2 years which would end in June 2010.
- The Ministry failed to note the expiry of that 2 year exemption period until the spring of 2011 and it continued to provide disability benefits through to the spring of 2011.
- In March 2011 the Ministry determined that the Appellant was still a co-owner of both houses and on March 9, 2011 the Appellant was denied disability assistance for April 2011.
- In June 2011 the Ministry gave the Appellant another extension to settle the excess assets and in a letter advised the Appellant that he would have "up to 6 months" to resolve his asset issues and that the exemption "extension period ends on November 30, 2011". This letter was initialed by the Appellant on June 10, 2011. The letter also stated that if there was no change in his asset holdings by November 30, 2011 he would no longer be eligible for assistance and his file would be closed effective that date.
- In mid-November 2011 the Appellant requested disability assistance for December 2011; however, the Ministry determined that the Appellant still owned two properties with equity over the allowable asset limits in House #2. Therefore the Appellant was denied further assistance.
- Copies of mortgage renewal estimates for House #1 and provincial assessments indicating that the assessed value for tax purposes of the House #2 was \$377,000 for 2011.

2. Appellant's December 9, 2011 request for reconsideration together with several written submissions. In those submissions the Appellant argued that December 2, 2011 was the first day he discussed the December disability benefit with a Ministry representative. He also reviewed contacts with the Ministry including phone calls with different Ministry staff to review the denial of his disability benefits and to try to discuss his due diligence and progress with a local Ministry manager. The Appellant submitted that he should have been issued disability benefits for December 2011 because that should have been the 6th and final installment of the 6 month extension in the June 2011 letter. He argued that disability benefits for December would have been issued on November 23, 2011 and that the deadline for resolving his asset issues was November 30, 2011 not November 23, 2011. The Appellant also submitted that there was nothing in the Ministry's June 2011 letter stating that his file

would automatically close on November 30, 2011, and the June 2011 letter was not binding and closing his file was not mandatory. He also submitted that since he received the June 10, 2011 letter he had been issued 5 disability benefit cheques; that is, for July, August, September, October and November 2011. The Appellant argued that the June disability benefit should not count in the 6 month calculation because that benefit was part of a different appeal period and also the month of June should not be included in the 6 month calculation. The Appellant also wrote that the status of his assets on November 30, 2011 is irrelevant, he does not have the equity in House #2 that the Ministry alleges, and he has not been provided with a procedure, method or any other way to prove this.

For this appeal the Appellant submitted a letter dated January 27, 2012 together with a submission dated December 23, 2011 which the Appellant asserted he had submitted to the Ministry for his reconsideration request. In that January 27, 2012 letter, the Appellant submitted that his December 23, 2011 submission was not included in the Ministry's reconsideration decision package sent to him and it was also not in the record for this appeal. Therefore he felt that the Ministry had not considered the new information or new arguments in his December 23, 2011 submission.

The Panel notes that in the record for this appeal there is a letter to the Appellant dated January 13, 2012 from the Ministry staff who wrote the December 30, 2011 reconsideration decision. In that letter the Ministry staff wrote about receiving the Appellant's January 10, 2012 phone call about 24 pages of missing information and about trying unsuccessfully to reach the Appellant by phone on January 13, 2012 to determine if those 24 pages were missing from the decision package sent to him on January 3, 2012. She also wrote that 54 pages of a document that the Appellant submitted on December 2 were also not included in the decision package. She indicated that she had reviewed that material, that she remembered reading it at the time the decision was made, and that the information in that submission was considered in making the final decision on December 30, 2011, but the decision regarding the Appellant's eligibility for assistance did not change. In the January 13, 2012 letter the reconsideration officer also advised the Appellant that the Ministry was sending him the 54 pages as well as the decision package of 123 pages. She further reassured the Appellant that all submitted documents were reviewed and considered when the Ministry made its decision.

At the hearing the Appellant argued that his December 23, 2011 submission to the Ministry was not considered by the reconsideration officer, and was not in the reconsideration decision package or in the appeal record. The Ministry, at the hearing, submitted that those submissions were part of the reconsideration record and were considered by the Ministry in its decision of December 30, 2011.

The Panel finds that based on the submissions of the Appellant and the Ministry and the Ministry's January 13, 2012 letter that the Appellant's December 23, 2011 24 page submission was submitted to the Ministry for its reconsideration decision and is part of the reconsideration record. Therefore the Panel will consider the information and the arguments in that document to be part of the reconsideration record rather than new evidence or new arguments for this appeal; however, because the Appellant argued that the Ministry did not consider this information or his arguments the Panel will set out those submissions for the purposes of this appeal.

In that December 23, 2011 written submission the Appellant provided information about the two houses, his contacts with his ex-wife, his contacts with the Ministry and he made various arguments about the application of the regulations to his situation. The Appellant submitted a copy of a

certificate of a judgement against him from the provincial court for \$5,321.73 registered against the title of House #2 in April 2011. The Appellant also provided his calculations of the equity in both House #1 and House #2. For House #2 he used the 2011 assessed value of \$377,000 and a mortgage balance of \$142,611. The Appellant also calculated his half equity in House #1 to be \$50,425.50. The Appellant also provided arguments about definitions of marital property, about settling marital assets and referred to his various earlier submissions to the Ministry.

The Appellant also reviewed the property purchased by his ex-wife and him, various loans they'd had and who paid for what living expenses, vehicles and other items. The Appellant then submitted what he argues is his current equity in House #2. He subtracted what he submitted were down payment and renovation costs for a net equity of \$111,389, and his half equity of \$55,694.50. The Appellant argued that constructive trust laws reduce his equity assets even further. The Appellant cited what he calculated as his equity portion in House #2 and his equity in House #1, and then subtracted the latter from the former for a balance of \$5,269. The Appellant's position is that if he paid his ex-spouse her portion of the House #1 equity and that was deducted from his portion of the House #2 equity he would only be left with \$5,269. He also argued that he cannot convert this equity into an asset unless he sells House #1. The Appellant further submitted that his ex-spouse lent him \$4,500 to be deducted from what was owed to him on House #2 and then if the registered lien is applied he argues that his equity is reduced even further.

In the December 23, 2011 submission the Appellant also reviewed his financial situation including hydro bills, his attempts to find employment and his attempts to renew or refinance his mortgage on House #1 without his ex-wife's name on title. He argued that Ministry had the discretion to not impose consequences if an asset is not converted to cash, that the Ministry took drastic action and did not consider his explanations. The Appellant also referred to information from publications about income assistance and penalty provisions as well as what he considered to be other legislated solutions for providing an exemption in his case, and specifically the following EAPWDR sections:

- Section 10(1)(d), he submits, applies because according to the bank's records as of March 25, 2011 there is an outstanding mortgage balance of \$51,348.66 on House #1 and proceeds of up to \$51,348.66 from the sale of House #2 would be exempt as being money received or to be received from a mortgage to be applied to the amount owing on his current residence.
- Section 10(1)(x) assets are exempt for recipients who are participating in a self-employment program because he wrote that he had looked into participating in such a program.
- Section 10(1)(y) assets are exempt if held under section 11(2) an asset development account or under section 12(2) in trust for persons with disabilities up to a maximum of \$100,000.
- Section 10(1)(jj) funds held in a registered disability savings plan up to a maximum of \$200,000.

In that December 23, 2011 submission, the Appellant also argued that the Ministry should find "legitimate assets" for him in House #2 and should be proactive in providing him with a course of action. He wrote that he had explained everything to the Ministry, that he was unaware of the two year exemption and that the Ministry's file has many incorrect material facts causing it to make less than the best decision. However, he also wrote that when he read the notes he could plainly see why the Ministry made the decision it made. Because he did not hear from the Ministry for months after June 2011 he thought that nothing needed to be done about having his name on 2 property titles.

At the hearing the Appellant stated that he agreed with the Ministry's regulations about owning 2 properties, but he had been trying to resolve that problem. He wanted guidance from the Ministry about what to do. He said when he originally applied for assistance he gave the Ministry the \$400,000 value for House #2 and the estimate of \$107,000 for the outstanding mortgage. The Appellant also confirmed that he had no documentation regarding the division of assets between his ex-wife and himself or the costs for House #2 to prove his claims for his portion of the equity, that he is not participating in a self-employment program, that he does not have a specific asset development account or a trust for him as a person with disabilities or a registered disability savings plan. He also said that when he qualified for PWD benefits he thought it was okay to have 2 houses and only became aware of the problem in March 2011 when he went to the Ministry for help sorting out a hydro bill. He said he was then advised about the ongoing problem of owning 2 properties and the expiration of the 2 year exemption period. He also said it wasn't until June 2011 that he understood that he would get a 6 month extension and then on November 18, 2011 he tried to talk to someone at the Ministry to sort out what he needed to do, to get guidance on what they required. The Appellant also went over his attempts to contact the Ministry, his contacts with his ex-wife, his contacts with his banker to qualify for a mortgage as the sole owner of House #1, his inability to sort out his situation and how stressful the whole process was. He also submitted copies of 2 statements dated March 2011 from a bank showing what refinancing for House #1 would cost. The Panel notes that this information is already in the record of the Ministry's reconsideration decision.

The Panel finds that the Appellant's oral testimony relating to his ownership interest in the two properties, to his financial situation and his contacts with the Ministry all relate to the information that was before the Ministry at the time of its reconsideration decision. The Panel therefore admits that testimony as evidence in support of evidence that was before the Ministry pursuant to section 22(4) of the Employment and Assistance Act. As for the Appellant's submissions regarding constructive trust and the other exemptions to the definition of asset in the EAPWDR which may apply to him, the Panel finds are in the form of oral argument and accepts them as such.

At the hearing the Ministry submitted that the Appellant's situation was not a question of fault or blame, or of the Appellant trying to ignore the legislative requirements. However, the Ministry explained that it had to follow the regulations and it had no ability to give the Appellant any further exemptions. The last 6 month period was the last exemption it could provided and even that extension was given under special circumstances.

Based on the evidence, the Panel makes the following findings of fact:

1. The Appellant is the registered co-owner of two houses: House #1 his principal residence; and, House #2 his ex-wife's residence.
2. The value of House #2 is between \$377,000 and \$400,000.
3. The outstanding balance of the mortgage on House #2 is between \$107,000 and \$142,611.
4. The Appellant's equity in House #2 is between \$53,500 and \$71,306.
5. The Appellant is not participating in a self-employment program.
6. The Appellant does not have a separate asset development account, a trust held for him as a person with disabilities or registered disability savings plan.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that: the Appellant was ineligible for disability assistance and for income assistance effective November 30, 2011 because the Appellant owns assets exceeding the asset limit of \$3,000 for his family unit as set out in EAPWDR sections 1, 10(1)(c) and 10(2)(a); and, that he was also ineligible for hardship assistance under section 46 of the EAR because he did not meet the applicable criteria.

The following legislation apply to this appeal:

EAPWDA

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.

EAPWDR

Definitions

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); (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.

Asset Development Accounts

11(1) In this section, "asset development account" means a savings institution account that is

(a) established exclusively for the purpose of enabling an applicant or a recipient to participate in an asset development account.

Assets held in trust for person with disabilities

12 (2) If a person referred to in subsection (1) complies with subsection (4), up to \$100,000, or a higher limit if authorized by the minister under subsection (3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts... is exempt for the purposes of section 10(2) [*asset limits*].

EAR

Family units that have excess assets

46 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the assets of the family unit exceed the applicable limit under section 11 (2) [*asset limits*] if (a) the minister considers that undue hardship will otherwise occur, (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance, (c) the applicant satisfies the minister that (i) the assets that caused the family unit to be ineligible are not immediately available to meet the family unit's basic needs, and (ii) every effort has been made and continues to be made to sell the assets, and (d) the family unit (i) includes one or more dependent children, or (ii) includes only persons who have reached 65 years of age or persons who have persistent multiple barriers to employment.

The Ministry's position is that it acknowledges that the Appellant has tried to sort out his property ownerships, nevertheless it has to follow the regulations. First the EAPWDR allows the Appellant as a PWD to have \$3,000 in cash and his place of residence, House #1, is also an exempt asset. However, the Ministry pointed out that the EAPWDR also defines asset to include equity in real property that may be converted to cash. The Ministry determined that the Appellant's equity interest in House #2 is not an exempt asset under the EAPWDR and that for the purposes of the EAR and EAPWDR it is an asset that can be converted to cash. Based on the information it had the Ministry further determined that the value of the Appellant's equity interest in House #2 when converted to cash would be more than the allowable exemption of \$3,000 and therefore he is not eligible for disability assistance. The Ministry also noted that the Appellant had been given exemptions, first for 2 years and then for 6 months to change his asset holdings. However, because there was no change by November 30, 2011 and because he still had assets in excess of the regulatory limits the Ministry determined that the Appellant was no longer eligible for assistance. The Ministry also noted that under section 46 of the EAR hardship assistance may be provided if a family unit is not eligible for income assistance because it has assets valued at more than the exemption amount. However, the Ministry also determined that the Appellant would not qualify because that hardship assistance applies if the family unit includes one or more dependent children or the family unit includes only persons who have reached 65 years of age or have Persons with Persistent and Multiple Barriers status, none of which applies to the Appellant.

The Appellant's position is that he has no issue with the rules about asset limits and about property ownership, and he admitted that he is still on the title of House #2 as an owner. However, the Appellant submitted that he qualified for a number of exemptions under the EAPWDR and specifically that his equity interest in House #2 should be exempt under the provisions for an asset development account, a trust for persons for disabilities, a registered savings plan for persons with disabilities or under the provision for individuals enrolled in a self-employment program. The Appellant also

admitted he did not have any of these types of accounts nor was he enrolled in any authorized self-employment program. The Panel finds, based on this confirmation from the Appellant and because there is no evidence that any of these accounts or plans exists or that the Appellant is in a self-employment program that these exemptions do not apply in the Appellant's circumstances.

The Appellant argued that the exemption in EAPWDR section 10(1)(d) applied because he might receive assets from House #2 to apply to the mortgage in House #1. The Panel finds that there is no evidence of a mortgage or an agreement for sale from an Appellant's previous place of residence to be applied to his current residence, House #1, and therefore this exemption does not apply to the Appellant's situation.

The Appellant also argued that under constructive trust laws how he and his ex-wife divided their assets and how he has calculated his equity in House #2 would result in his equity interest in House #2 falling below the cash exemption limits. The Panel finds that there is no evidence about the costs of purchasing House #2, other loans, asset division agreements or arrangements with his ex-wife or to confirm his estimates of his equity in House #2. Therefore the Panel finds that there is no evidence to support his argument that his equity in House #2 would be less than the exemption limits. The Panel also finds, based on its findings of fact, that there is evidence that the Appellant's equity in House #2 is between \$53,500 and \$71,306. Therefore the Panel finds that it was reasonable for the Ministry to determine that the Appellant's portion of the equity in House #2 is more than the regulatory exemption limits.

The Appellant further submitted that he did not know that he could only own one house until the spring of 2011 and that the 6 month extension he got in June 2011 meant that he had until the end of December 2011 to work out his equity problem. The Appellant also argued that he should have received a disability benefit cheque for December 2011 because by his calculations he should have received 6 more cheques after June 10, 2011 and he only received 5. The Panel finds that the letter from the Ministry that the Appellant initialed as received on June 10, 2011, states that the Ministry provided the Appellant an extension of benefits "up to 6 months", not 6 months exactly. That letter also stated that the extension period would end November 30, 2011 and during that period the Appellant was required to pursue his assets. Also if there was no change in the Appellant's asset holdings by November 30, 2011 the Appellant would no longer be eligible for income assistance. The Panel finds that this letter clearly stated that the Appellant had to pursue his assets during the extension period which would end on November 30, 2011 and also clearly stated what the consequences would be. The Panel further finds that the letter does not state that the Appellant would receive 6 more months of benefits or 6 more cheques, only that benefits would extend for "up to 6 months." The Panel also finds that by the Appellant's own admission he did not pursue his assets from June 2011 to the end of November 2011 and therefore the Ministry reasonably determined that, because the Appellant still had equity assets convertible to cash in House #2 over the regulatory limits in the section 10(2)(a) of the EAPWDR, he was no longer eligible for assistance.

With respect to the hardship provisions for family units with excess assets, the Panel finds that there is no evidence that the Appellant has one or more dependent children, or that he has reached 65 years of age or is a person with persistent multiple barriers to employment as required by section 46 of the EAR. Therefore the Panel finds that the Ministry reasonably determined that the Appellant did not meet the requirements for hardship assistance under section 46 of the EAR.

APPEAL #

Based on the whole of the evidence, the Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. The Panel therefore confirms the Ministry's decision.