

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 6, 2012 which found that the appellant is not eligible for income assistance as a result of having assets valued at more than the allowable limit of a total value of more than \$2,500, pursuant to Section 11(2) of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Sections 1 and 11

PART E – Summary of Facts

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

- 1) Discharge Certificate for the appellant dated December 3, 1993 from a hospital outside of Canada with a diagnosis of coronary artery disease (CAD) and hypertension;
- 2) Letter dated May 30, 1995 from a school to the appellant stating in part that his appointment as a teacher will start January 1, 1995 on specified terms;
- 3) Letter dated May 19, 2005 from the principal of a school 'To Whom It May Concern' stating in part that the appellant has served as a teacher since January 1, 1995;
- 4) Copy of pages from a pension book;
- 5) Translation of a notice dated September 28, 2011 which states in part that a house is for immediate sale;
- 6) Refugee Protection Claimant documentation for the appellant and another person dated December 14, 2011;
- 7) Property Evaluation Certificate dated January 14, 2012 regarding a property in the appellant's country of origin, with a current market value of 2.5 million Rupees;
- 8) Undated Translation of Land Registration Papers which states in part that property in another country has been transferred into the appellant's name ; and,
- 9) Request for Reconsideration- Reasons.

In his Notice of Appeal, the appellant states that the house in question is not providing basic necessities of life and the daughter-in-law with whom they are living for the last 4 months is no longer bearing them. The appellant states that he cannot earn an income since he does not have a work permit.

At the hearing, the appellant stated that he and his wife fled from their country of origin in November 2011 and are refugee claimants in Canada, still awaiting a decision on their claim. The appellant state that he has been under mental torture the last 3 or 4 months going through the process of applying for income assistance and being denied, and his blood pressure remains high. The appellant stated that he has been taking several medications because he also has problems sleeping. The appellant stated that he is prepared to work as a teacher but he does not have a work permit. The appellant stated he and his wife have been living with their son's family, that it has become stressful for all of them, and he has been forced to borrow money from family and feels ashamed. The appellant stated that he has a house in his country of origin which is in his name, but he believes his response to this has not been considered in detail. The appellant stated that he is a retired military officer and a teacher and he believes in abiding by the law, and he provided the documents showing the title to the property to the ministry. The appellant stated that the translation of the property title document shows that the house is built on leased land, so he does not own the land but is simply a leaseholder, and he paid 150,000 Rupees for the lease. The appellant explained that the whole town is built on leased land with a lease of 99 years starting from 1947. The appellant stated that no bank would extend a loan or mortgage on leased land. The appellant explained that if a buyer for the house came forward, an application would have to be made to the leasing authority for permission, which will only be granted to Ahmadi Muslims, of which there are few, and it would take 6 months in paper work to complete.

The appellant stated that although the ministry refers to him as the sole owner of the house, he is not because his grown children who live abroad have provided most of the funds to build the house and it was a joint venture with them. The appellant pointed to the documents establishing his income through a pension and from his teacher's salary and stated that he could not afford to build a million Rupees house on his own. The appellant stated that now that he and his wife have left their country of origin, their children are demanding their money that was contributed to building the house. In response to a question, the appellant confirmed that title to the house is in his name only and that his children provided approximately 1.2 million Rupees towards building the house but this was not put in writing and is a verbal agreement between them. The appellant stated that the law should be applied to benefit a human being and, in this case, the house is not providing any benefit to him or his wife in the way of shelter or food. The appellant stated that although they have been given medical coverage, they have not received free bus passes as senior citizens. The appellant stated that they have been trying to sell the house for two years and no one has been interested, and the appellant

pointed to the translation of an advertisement dated September 28, 2011 which was placed in a local paper in an effort to sell the property. In response to a question, the appellant stated that he originally asked 5.5 million Rupees for the house, and has been bringing the price down consistently and that the last asking price was 2.5 million Rupees. The appellant stated that there is political unrest in the town and it is economically depressed so there is no demand for houses which are remaining vacant since there is no one even to rent the houses and that these are the "ground realities." The appellant stated that the Property Evaluation was completed by a private real estate agent and not a government official and that the stated value is meaningless if there is no one willing to buy the property.

In his Request for Reconsideration, the appellant adds that because his children contributed to the building of the house, morally he cannot claim himself to be the sole owner and it is rather a 'family home' and it is just in his name for the purposes of documentation. The appellant adds that they have also approached members of their community to help them find a suitable buyer for their house.

The evidence of the ministry is that the appellant's file opened on January 10, 2012 and the appellant is an applicant for income assistance, with one dependent spouse. The appellant is currently residing with his son and his family whom the appellant came to visit from his country of origin and he has refugee claimant status. The appellant currently receives a pension from the army in the amount of 11,000 Rupees (\$122.00 Canadian dollars), and the appellant also worked as a teacher. The exchange rate is approximately 1 Canadian dollar for 90 Rupees. The appellant advised the ministry that he has a house in his country of origin and there are relatives residing in it. The appellant submitted documentation which indicates that the appellant is the owner of the house. The appellant has not provided any documentation to verify that there is a debt (mortgage) registered against the property. The estimated value of the property is \$28,000 (Canadian dollars).

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which found that the appellant is not eligible for income assistance as a result of having assets valued at more than the allowable limit of a total value of more than \$2,500, pursuant to Section 11(2) of the Employment and Assistance Regulation (EAR), is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 11 of the Employment and Assistance Regulation (EAR) provides that:

Asset limits

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

(c) a family unit's place of residence;

...

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

...

(c) an applicant has one or more dependants and the family unit has

(i) assets with a total value of more than \$2 500...

Section 1 of the EAR provides that:

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.

The ministry's position is that the appellant is an applicant with one dependant and, therefore, the applicable asset limit under Section 11(2)(c) of the EAR is \$2,500. The ministry argues that the appellant's name is on title to property in his country of origin and it is valued at approximately \$28,000 Canadian dollars. The ministry points out that there is no documentary evidence to establish that the appellant's children have any entitlement to the property although the appellant has stated that they contributed financially to the building of the house. The ministry argues that the appellant does not reside in the property and, therefore, it cannot be exempted as the appellant's place of residence. The ministry argues that although the appellant states that the property is difficult to sell due to the circumstances in the area where the property is situated, the property still has value and the appellant has equity in the property that exceeds the asset limit of \$2,500. The ministry points out that the appellant's equity in real property is considered an asset beyond the allowable limit of \$2,500 and the appellant is, therefore, not eligible for assistance.

The appellant's position is that although title to the property in his country of origin is in his name, this is only for the purpose of documentation as his children contributed financially to the building of the house and, morally, he is obligated to repay the amount they contributed and it is a 'family home.' The appellant points out that the property is in his name and not in his wife's name yet she is also being denied income assistance. The appellant also argues that the house is built on leased land, that a potential buyer must be approved by the leasing authority, and that this limits the market of potential buyers for the house. The appellant argues that the political unrest in this area which led him and his wife to leave to Canada makes it very difficult to either sell or rent a property in this area. The appellant argues that he has been trying for 2 years to sell the property, including advertising in a local paper, reducing the price, and requesting those in his community to help find a buyer, and no one has come forward to date. The appellant argues that this house is not a

beneficial asset for him, as it is not providing shelter or an income, and is an unavailable asset to them at present. The appellant argues that his case be considered on humanitarian grounds that he and his wife are aged, ailing and helpless and are in need of financial assistance.

The panel finds that it is not disputed that the appellant applied for income assistance as an applicant with one dependant and that the applicable asset limit is \$2,500, pursuant to Section 11(2)(c) of the EAR. The panel also finds that it is not disputed that the appellant provided documentation showing that title to a house and the lease of land in the appellant's country of origin are in the appellant's name alone. However, the appellant argues that he has a moral obligation to re-pay his adult children the amount they contributed to building of the house, that they are demanding their money, and therefore, the title to the property is properly considered a family house and not in his sole name. The panel finds that the ministry reasonably considered the house in the appellant's country of origin as an asset owned solely by the appellant as it is registered in the appellant's name alone, as evidenced by the translation of the title documents and the appellant's admission. The definition of "asset" in Section 1 of the EAR includes 'equity' in real property, or the current market value of the property less any outstanding debts, and the appellant also argues that there is an outstanding debt to his children which he admits is a verbal, moral agreement that has not been documented in writing. The panel finds that the ministry reasonably determined that the appropriate value of the property in the appellant's name is the current market value as the ministry reasonably requires evidence of a loan agreement relating to real property to be in writing and the appellant admits that he has no documentary verification of the loan from his children. The panel finds that the current market value of the property in the appellant's name is approximately \$28,000 in Canadian dollars as this is the amount set out in the Property Evaluation Certificate dated January 14, 2012 of 2.5 million Rupees at an exchange rate of 1 Canadian dollars to 90 Rupees, and is also the amount to which the appellant stated he had reduced the price in his efforts to sell the property. The panel notes that even if the amount that the appellant states he must repay to his children (1.2 million Rupees) was documented in a written loan agreement and deducted from the market value of 2.5 million Rupees, the remaining value of the equity, or 1.3 million Rupees, would still exceed the maximum allowable of \$2,500 Canadian dollars.

The definition of "asset" in Section 1 of the EAR includes equity in real property that can be converted to cash, and the appellant argues that the subject property cannot be converted to cash as he has been trying to sell the property for two years, including advertising, reducing the price, and requesting help from his community, and no buyer has come forward to date due to the political unrest in this area and the onerous requirements of the leasing authority. The panel finds that the Section requires that the equity is capable of being converted into cash, not that it can be converted easily or quickly, and the fact that the property has been advertised for sale indicates that there is value that is capable of being converted to cash, although it may require further reductions in price to effect a sale. The panel finds that the ministry reasonably determined that the property in the appellant's name is equity in real property that can be converted to cash and falls within the definition of an asset in Section 1 of the EAR. The panel finds that the appellant admits he does not reside in the property and the ministry reasonably concluded that it is not an exempt asset as the family unit's place of residence pursuant to Section 11(1) of the EAR. Therefore, the panel finds that the full appraised value of 2.5 million Rupees, or approximately \$28,000 Canadian dollars, is considered the appellant's asset and the ministry reasonably determined that the appellant is not eligible for income assistance, pursuant to Section 11(2)(c) of the EAR, as having assets with a total value of more than \$2,500.

The Panel finds that the ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.