

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated 22 March 2012, which held that the appellant is not eligible for disability assistance pursuant to section 10(2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), because she owns a mobile home, in which she is not residing, the value of which exceeds her asset limit of \$3000.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 10

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. A memorandum from a real estate agent (realtor) to the ministry dated 07 July 2007 stating that the appellant visited the realtor's office requesting that she list the appellant's mobile home for sale. The realtor reports that she cannot do so as the appellant is unable to provide ownership documents and the home has no water or sewer.
2. A Multiple Listing Contract dated 28 November 2009 with another realtor, with a list price of \$30,000 for the mobile home.
3. A note from the realtor dated 19 January 2010 attaching listing details for the appellant's mobile home. It is listed at \$27,000. There has been one call, but no call back as of then.
4. A letter to the ministry from the appellant's current realtor dated 20 January 2012 attaching a list of mobile homes on the market, including the appellant's, which is listed at \$25,000 and 70 days on market, and 2 pages of print-outs of comparable active listings for sale and 4 pages of comparable sales. The realtor indicates that she is sending a listing amendment to the appellant to see if a price drop of \$500 - \$1000 will spark some interest.
5. A Listing Amendment Input Form signed by the appellant dated 23 February 2012 changing the listing price from \$24,000 to \$21,900.
6. A letter dated 19 March 2012 from the appellant's realtor to the appellant's advocate regarding the challenges of selling the mobile home (see below).
7. A note from the appellant's physician dated 15 March 2012 stating "Breast cancer. Ongoing follow-ups. Unable to work."
8. A letter dated 23 February 2012 to the appellant from the BC Ministry of Finance advising her that she has an outstanding rural property tax balance of \$435.79, and that if payment of this balance is not received within 15 days, collection action may be taken.
9. The 2012 Property Assessment Notice for the mobile home, showing an assessed value of the building of \$24,600.
10. The Appellant's Request for Reconsideration dated 27 February 2012. Section 2 completed by the ministry, contains 6 ½ pages of extracts from the ministry's file relating to the mobile home and the excess assets issue dating back to May 2000 (see below)
11. A Submission dated 15 March 2012 from the appellant's advocate drawing attention to the listing of the mobile home and the reduction in price to \$21,900, below assessed value. The balance of the Submission goes to argument.

In her letter to the appellant's advocate, the realtor states that she first listed the appellant's mobile on 11 November 2011. The home sits in the park on a highway approximately 40 min. from one city and one hour from another. There is one bus per day to and from the two cities and if a person wants to take a bus they can book a pickup or drop-off at the park location.

The realtor has done a market evaluation, but this has not been an easy task as only 10 listings under \$100k have sold in the area in the last 10 years, only two of which were mobile homes. One that sold last year went for \$39,000 but it was 20 years newer than the appellant's. In the nearer city, three comparables sold last year for between \$44k and \$65k, but she would reduce the appellant's by \$25k for its remoteness and age regardless of condition. A prospective buyer would put in an offer based on the cost of repair.

On the plus side the mobile home has a newer gas furnace and has not really been used since it was installed in the last five years, with the home being vacant for 9 to 10 years. This was verified by the

park's store owner/manager who said the appellant lived in it for 2 to 3 weeks once during the last 10 years. Other than that no one has lived there as far as she knows. The entrance area smells pleasant. She believes the hot water tank is newer. The mobile home itself is 924 ft.². It is a large mobile home with a wood stove and two good-sized bed-rooms. It does not feel choppy or small. There is a fridge, stove, washer, dryer and microwave. The electricity is in working order. The location is really lovely and quiet, backing on a creek and woods.

On the negative side are leaks in the roof, in the realtor's opinion in more than one place: in the entrance area, in the hallway above the window a/c unit, below the swamp cooler, and one spot further down the hall, as well as where the wood stove pipe goes through the roof. The water has been turned off as well. The property condition disclosure statement prepared by the appellant indicates the pipes are broken. The gas is not hooked up.

The realtor states that the mobile home is inhabitable (sic) at the moment. The water is turned off. The gas furnace is not connected and the home looks like someone lived in it for a time, and just left everything as it was, all strewn about. She wouldn't say it is dirty, just cluttered, cold and messy and the roof needs repair.

The realtor has listed the house on MLS. She has hesitated to advertise in the paper as many realtors agree the most listing sell from being viewed online and not in the paper. She is reluctant to spend the money for advertising in the paper when the timing is not right to sell. Once the weather warms up she will place the occasional ad in the weekly paper.

Despite the negatives of this mobile she believes that with some TLC this place can be brought back to life. She believes there is some value in it. She is reluctant to continue to drop the price until it warms up and there is still no evidence of anyone who is interested.

In it's Reconsideration Decision, the ministry summarized the background from the ministry file, as follows:

- 08 August 2008: the appellant's file was reopened. She is a single recipient, with PWD designation, and has an asset limit of \$3000.
- "In 2002 you [the appellant] applied for income assistance and as you had been recently separated from your spouse the ministry exempted a mobile home that you did not reside in, from being an available asset to you. You were making attempts to sell the mobile home.
- "You have been in receipt of medical services only (MSO) and disability since 2002. Since this time she has been an owner of a mobile home that you did not reside in. Feb 27/12 after many years of monitoring your efforts to sell the asset, the ministry has now denied you for being assets in excess."

The panel has reviewed in detail the extracts of the appellant's file set out in the Request for Reconsideration and, with the exception noted below, considers that the summary above adequately captures the long history of the appellant's interaction with the ministry on the mobile home/excess asset issue. Details in the file about questions as how she came to own the home in the first instance, her previous attempts at selling it, her difficulties in finding the paperwork, her changing her mind as to renting it out or moving in herself, problems with her landlord concerning the water-supply, etc., need not be detailed here. The panel notes, however, that the ministry's summary does not include the most recent developments. In particular in July 2008 the appellant's file was reopened. In March 2009 she moved back into the mobile home, only to move out again back into town into low income housing in July because of the water/sewage situation. In November 2009 she entered into a listing agreement for the mobile home. On 02 November 2011 the appellant was advised by the ministry that she needs to list her mobile home and submit verification that it is listed by 18 November as her

December assistance was being held for these documents. She listed the mobile home on 11 November with another realtor for \$25,000, and at the urging of the ministry, subsequently reduced the price, once by \$1000 and then, further to \$21,900. The latter reduction was made on 22 February, one day after a meeting with the ministry at which she was advised that she had until 29 February to submit documents confirming the listed price was lowered and a listing of homes in the area comparable to her home. On 27 February, the appellant attended the ministry office, and the worker contacted the realtor to confirm the reduced price. The realtor stated that an appraisal cannot be completed as they are not able to confirm if the furnace works, as it is not hooked up and there is no plumbing. The file entry states that the appellant does not have the funds to connect the furnace and the ministry cannot help with that. The excess assets/not eligible for disability assistance was made on the same day.

After the Reconsideration Decision but before the hearing, a Health Authority registered social worker (RSW) submitted the following on the appellant's behalf:

- A letter dated 12 April 2012 from a Health Authority physician, who writes:
"It is imperative that the appellant reside within close proximity to emergency and nonemergency health services. To reside within the vicinity of [the mobile home park] represents a barrier to adequate health care, posing imminent danger to her physical health and severely putting at risk her mental health; furthermore, denial of benefits will create undue hardship.
The appellant's history of cancer and subsequent treatments has compromised her ability to negotiate further stressors. Her allergy profile, which includes insect envenomation, is life threatening. I understand the presence of mold in the trailer to be a further stress on her already compromised immune systems.
It is my opinion that compelling the appellant to live in the trailer, either through action or omission, could be construed as an ethical compromise, and is contrary to the mission statements of reasonable and good faith institutions such as MSD and the health authority."
- A letter dated 11 April 2012 from the RSW. He states: "Since the recent denial of PWD benefits, I have witnessed a decline in [the appellant's] overall functioning, and her extensive history of poor physical and mental health is well documented, showing her vulnerability to unfortunate circumstances and susceptibility to undue hardship." The balance of his letter goes to argument.

The day before the hearing, on 17 April 2012, the appellant's advocate faxed a Submission to the Tribunal. The Submission set out a chronology of key dates drawn from the ministry files, going back to 2002 when the appellant was approved PWD designation. The last notation reads: "Currently appellant has accepted an offer of \$13,000 for the purchaser of her trailer (attached contract of purchase and sale)." The balance of the Submission goes to argument.

At the hearing, the appellant's advocate talked to her Submission, which focused on the definition of asset.

The appellant stated that she had "struggled and struggled" with selling her mobile home over the past ten years. She said that she had signed up with several real estate agents over the years to sell

it, but until just recently they had all given up because the unit was uninhabitable, with broken water and sewer pipes in particular. Between periods of activity with these agents, she always had a "For Sale" sign in the window. She explained she has had three diagnoses of breast cancer over the past years, and desperately needs the medical benefits. She stated that her doctors had strongly advised her against moving back into the mobile home, as it was too far away from medical services. She wanted to clear up a misrepresentation in the record: the mobile home was always hers, and never jointly owned with a former husband.

The ministry stood by its position at reconsideration.

With the exception noted below, the panel finds that the new information provided by the appellant, her physician, and her social worker is in support of the information and records that were before the ministry at the time of reconsideration. The information about the appellant's health situation and her attempts to sell her mobile home provide context to the extracts from the ministry files contained in the Request for Reconsideration. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

The panel finds the new information regarding the pending sale of the mobile home is not in support of the information and records before the ministry at reconsideration. The position of the ministry is that this information is not relevant to the ministry decision under appeal and the appellant's advocated stated she included this development for information purposes only. The panel therefore does not admit the sale information as evidence, pursuant to section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant is not eligible for disability assistance pursuant to section 10(2) of the EAPWDR, because she owns a mobile home the value of which exceeds her asset limit of \$3000. More specifically, the issue is whether the ministry's determination that the mobile home meets the definition of an asset is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is set out in the 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) a listing of 40 classes of items, including such items as clothing and necessary household equipment, one motor vehicle generally used for day to day transportation needs, a family unit's place of residence and assets exempted under section 11 (2) [*asset development accounts*] or 12 (2) [*assets held in trust for person with disabilities*].

(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.

The panel notes that no argument has been made, or evidence presented, that any of the exemptions listed in section 10 (1) apply to this appeal. The appellant does not reside in the mobile home.

In its reconsideration decision, the ministry began by noting that when the appellant first applied for assistance, she had stated that she had recently separated and was not living in the mobile home. The ministry therefore exempted the mobile home as it would be matrimonial property and the division of assets would need to take place with her ex-spouse. The ministry explained it was able to exempt the asset from being available to her under a section the policy regarding jointly owned assets: "When it is determined that an asset that is jointly owned cannot be disposed of because the other owner will not cooperate, the Supervisor may deem the asset not available. This decision is valid for six months and may be extended for a maximum of two years." The ministry however states that it does not appear that the appellant was not able to dispose of the asset because her ex-spouse would not cooperate and therefore the ministry should not have exempted the mobile home from

being an asset at that time.

The ministry goes on to state that a review of the appellant's file indicates that the ministry later exempted the mobile home under policy due to its location and the appellant stating that she must live in town rather than out-of-town due to health issues. The ministry states that this was an error, as this is not the ministry's policy to exempt an asset for these reasons. The ministry states that it appears that the ministry misinterpreted ministry policy regarding assets and in particular a section which reads: "Assets are only assets if they can be converted to cash. All assets have an intrinsic monetary value; therefore, the term convert refers to the "ability" to sell the asset. The decision as to whether the asset is convertible is the responsibility of the case manager to make based on information provided by the applicant or recipient."

The position of the ministry is that the appellant owns a mobile home; a mobile home is something that can be converted to cash. Houses, land and mobile homes are all commonly bought and sold so a mobile home can be converted to cash. The appellant therefore has the ability to sell the mobile home. The ministry's legal counsel has advised that "The fact of whether or not a sale can be accomplished immediately or will be delayed is not part of the definition of asset." On this basis, the ministry determined that the appellant had assets in excess, and therefore was not eligible for disability assistance.

The appellant's advocate argues that the ministry has not provided a reference to any case law or principles of statutory interpretation to support its assertion that the definition of asset does not contemplate consideration of whether a sale can be accomplished immediately or will be delayed. She submits that this assertion is a mere opinion.

The advocate refers to the ministry's policy that recognizes that while all things have an intrinsic monetary value, determining whether a particular thing is an asset for the ministry's purposes requires a further determination as to whether the person is able to sell the thing in question. In the advocate's view this policy statement clearly indicates the ministry caseworker has discretion to decide whether, based on the evidence provided by the applicant, the thing cannot be sold.

The advocate also submits that the ministry's policy on jointly owned assets is an interpretation of one aspect of the definition of asset. Referring to the reconsideration decision, she states the ministry's policy on jointly owned assets recognizes the ministry may deem jointly owned asset to be unavailable for a period of time when it is determined that the asset cannot be disposed of because the other owner will not cooperate. She points out that there is no section in the Act or Regulation that explicitly authorizes the ministry to exempt a jointly owned asset, or any other asset, for a period of time. However the ministry clearly recognizes that it has the ability to do so. She argues that where the evidence shows that a person is not able to sell a thing that they legally own, either because it is jointly owned or because there is no market for the thing at present, then the Ministry can and must exempt that thing as an asset for a period of time. She argues that quite simply if a thing cannot be sold in a reasonable timeframe, it is not currently an asset for the ministry's purposes.

The appellant cites several legal sources in relation to how to interpret the definition of asset in the Regulation: The advocate highlights Section 8 of the Interpretation Act [RSC 1986 c. 238] as requiring that every enactment be construed as being remedial and given such fair, large and liberal construction and interpretation that best ensures the attainment of its object. The advocate also points to case law as authority for the position that if there is any ambiguity in the interpretation of the

criteria, it is to be resolved in favor of the appellant [Abrahams v. Canada 1983 142 D.L.R. (3d) 1] and that the legislation be interpreted with a benevolent purpose in mind [Hudson v. EAAT 2009 BCSC 1461].

Drawing on these citations, the advocate states that the Reconsideration Decision fails to give any consideration to the remedial purpose of the legislation as mandated by section 8 of the Interpretation Act, namely to enable people in need to meet their basic needs for survival by buying food and other necessities. She argues that you can't eat a mobile home or other things that cannot be sold in a reasonable period of time, despite reasonable efforts to do so. Further she argues that the Reconsideration Decision also fails to explain the legal basis for its view that while the ministry is able to exempt a thing that cannot be sold for a period of time because it is jointly owned, it is unable to exempt the thing that cannot be sold for a period of time for other reasons. She submits that the appellant continued to provide the ministry with evidence that demonstrated she was making reasonable efforts to sell the mobile home and that, despite these efforts, the mobile home could not be sold, and thus the reconsideration decision was an unreasonable application of the legislation.

The evidence shows that the appellant's mobile home is in a state of some disrepair: the roof leaks, there may be mould, the plumbing has serious problems, and the operability of the gas furnace is uncertain. The age of the unit and its "messy" condition inside are also noted. The panel acknowledges that these factors make the unit difficult to sell, especially at or near the value set by BC Assessment, which does not reflect the interior condition of the building. Finding a willing buyer with whom the appellant can settle on a fair price poses a challenge. However, the panel finds that the ministry reasonably determined that, despite these shortcomings, the mobile home has some intrinsic value - there is no evidence to suggest it is economically beyond repair - and that the unit can sell for more than the appellant's asset limit of \$3000.

The panel finds that "difficult to sell" is not the same as "cannot sell" or "cannot convert into cash." The ministry policy cited by both the ministry and the appellant's advocate deals with circumstances where there is property that cannot be sold for legal or contractual reasons, such as jointly owned property where an ex-spouse refuses to cooperate or "locked-in" RRSPs or pensions. Contrary to the assertion of the appellant's advocate, this does not constitute some discretion given to ministry staff, but simply guidance that in applying the legislation the ministry will respect valid legal constraints that preclude the sale of property at any given point in time. The Regulation sets out clear legislated policy: A recipient or applicant who owns real or personal property that can be sold ("converted into cash") for more than the prescribed limit is not eligible for disability assistance, unless such property falls into one of the 40 classes of assets listed in section 10(1) of the EAPWDR. The panel finds no ambiguity in the legislation. The legislation lists some 40 classes of exemptions. Property that "cannot be readily sold" or "cannot be sold in a reasonable period of time" is not listed as an exemption.

The panel therefore finds that the ministry's determination that the appellant is not eligible for disability assistance pursuant to section 10(2) of the EAPWDR, because she owns a mobile home the value of which exceeds her asset limit of \$3000, is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant. The panel thus confirms the ministry's decision.