

PART C – Decision under Appeal

The Decision under appeal is the Ministry's Reconsideration Decision dated March 15, 2012, which denied the Appellant's request for income assistance because the appellant is the owner of a vacant lot in which the appellant's equity exceeds her asset limit pursuant to section 11(2) of the Employment and Assistance Regulations (EAR). The ministry noted in their reconsideration decision that as the appellant has applied for Person With Disabilities (PWD) status, they have applied a higher rate of asset limit of \$3,000 as per the Employment and Assistance for Persons With Disabilities Regulations (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance Regulations (EAR) sections 1, 11(1), 11(2) and 11(3).

PART E – Summary of Facts

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

- Assessment Roll report dated January 5, 2012, for the appellant's primary residence, valued at \$100,100.
- Assessment Roll report dated January 5, 2012, for the appellant's next door vacant lot, valued at \$46,100.
- Title Search Print dated January 5, 2012 from the Land Title office for the appellant's primary residence.
- Title Search Print dated January 5, 2012 from the Land Title office for the appellant's next door vacant lot.
- Notice of property taxes dated July 4, 2011 for the appellant's primary residence, indicating a total tax of \$1,028.75.
- Notice of property taxes dated July 4, 2011 for the appellant's next door vacant lot, indicating a total tax of \$566.54.
- Application for Income Assistance dated December 5, 2011.
- CIBC mortgage document dated February 8, 2012 indicating a balance owing of \$17,624.81.
- Royal LePage realty listing documents showing the vacant lot listed for sale on January 9, 2012, at an asking price of \$49,900.
- Letter from physician dated January 20, 2012 indicating that the appellant is unable to maintain employment due to medical reasons.
- Initial Request for Reconsideration dated January 16, 2012, date stamped by the Ministry on February 2, 2012, including a five page analysis prepared by the relevant Women's Resource Centre. In that submission, the appellant states that when the vacant lot is sold, the balance of the mortgage, \$17,600, must be paid.
- A Land Title Act Form B dated December 21, 2005, which shows a mortgage with a principle balance of \$35,175.00 at that date, which also states that the mortgaged land covered by this mortgage is both the lot with house which is the appellant's principle residence, and the vacant adjacent lot.

In the reconsideration decision, the ministry indicated it must be determined if the appellant has equity in the vacant lot property. In order to do this, the ministry made a calculation that was based upon the mortgage being applied across both the residence property of the appellant and the adjacent vacant lot. In this manner, the ministry stated that as the combined assessed values of the two properties is \$146,200, and the adjacent lot assessed value is \$46,100, the vacant lot accounts for 32% of the mortgage, or \$5,557.48. The ministry took the position that if this amount were paid on the mortgage from the proceeds of a sale of the vacant lot, the appellant would have equity in the vacant lot of \$40,542.52.

In this assessment by the ministry they made no indication that they had information from the bank holding the mortgage that the proceeds from the sale of the lot would be apportioned in this manner.

The advocate, on behalf of the appellant, submitted a two page document at the hearing dated April 30, 2012. The document contained background information on the appellant and her living circumstances. It also referenced the outstanding mortgage tied to the two properties. It discussed the listing of the property and provided some recent history of the sale of vacant lots in the appellant's

city. The submission contained a dictionary definition of the word "asset". The panel determined that the information contained in this document was in support of information available to the Ministry at the time of reconsideration, and was therefore admissible pursuant to section 22 (4) of the EAA.

Before the ministry at the time of reconsideration there was also information that the appellant owed her son \$20,000 as a loan against the property. At the hearing the ministry asked if there was an existing lien or written note against the property for this loan. The advocate and appellant stated that there was not, but that it was a known loan. In the reconsideration decision, the ministry provided no analysis or comment upon this loan.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reasonably concluded that the appellant is not eligible for assistance as a result of having assets valued at more than the allowable limit.

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 disability assistance if any of the following apply:

(a) a sole applicant or recipient has no dependent children and has

(i) assets with a total value of more than \$1,500

Section 11 (2.1) of the Employment and Assistance Act (EAR) provides that:

11 (2.1) Despite section (2) a family unit that includes and applicant or a recipient who has applied for and has not been denied, or who the minister is satisfied has a genuine intention to apply for, designation as a person with disabilities under section 2 of the Employment and Assistance for Persons with Disabilities Act may receive income assistance, subject to all other eligibility criteria, if the family unit has assets with a total value of no more than

(a) \$3,000, if the applicant or recipient has no dependants, or

(b) \$5,000, if the applicant or recipient has one or more dependants.

Section 11(3) (b) of the EAR provides that:

11(3) (b) that saleable acreage and buildings owned by an appellant 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.

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 appellant's position with respect to the reconsideration decision dated March 15, 2012, is as follows:

-The appellant's son and daughter in law live with her, but out of necessity rather than choice, and he pays all of the appellant's living expenses.

- The appellant has an outstanding mortgage of approximately \$17,600, and this mortgage is tied to both lots owned by the appellant.
- The appellant listed the property for sale in January, 2012, with an asking price of \$49,900, which is \$3,800 higher than the assessed value. It was stated that on March 5, 2012, the asking price was reduced to \$46,100, the same as the assessed value. There have been no showings of this property to date.
- The advocate stated several dictionary definitions of the word "asset", which differ from the ministry definition in the EAR.

The advocate also noted that the appellant has a debt to another son in the amount of \$20,000 as a loan against the property from several years ago. The advocate, on behalf of the appellant, did not produce any documentation such as a loan document or a sworn statement provided by the son that this debt exists, not that it was to be paid back from proceeds from the sale of this property.

The advocate also noted, and it is written in several places in the reconsideration decision, that the mortgage of approximately \$17,600 is held across both properties. The advocate noted that the full amount of the mortgage would have to be paid if the vacant land sold, but neither the advocate nor the appellant provided any written documentation from the mortgage holding company to support this statement.

The panel noted that the calculation of equity on the part of the appellant in this property rests upon whether or not the appellant can document their position with respect to these outstanding debts against the vacant lot. It was noted by the panel that neither the appellant, nor the ministry, provided any supporting documentation for their positions and how they calculated the appellant's equity in the vacant property. As the appealing party in this instance, the onus rested with the appellant or her advocate on her behalf, to provide such supporting documentation.

The ministry's position at the hearing was based upon the reasons at the time of reconsideration that the appellant, who has applied for PWD status, has equity in a non-exempt property in excess of the \$3,000 allowed. The ministry also took the position that exemptions under section 11(3) respecting acreage property is not applicable as the appellant's property is under one acre.

The ministry stated:

- The appellant is a single person with no dependents who applied for assistance on December 5, 2011.
- The appellant's asset limit, as a single person who has applied for persons with disabilities designation, is \$3,000.
- On December 17, 2011 the ministry determined that the appellant owned two properties.
- On January 5, 2012 the ministry advised the appellant that she would need to sell the second property as she is not eligible for income assistance due to having assets in excess of the limits allowed in the Regulations.
- January 16, 2012, a request for reconsideration was prepared.

The analysis of the ministry in the Reconsideration Decision dated March 15, 2012 contained the following information:

- The principle residence of the appellant, assessed for 2012 at \$100,100 is an exempt asset as the

appellant is currently residing in this residence.

-The appellant owns the adjacent vacant property assessed in 2012 at \$46,100.

-That the appellant has a mortgage that has been applied against both properties in the amount of \$17,624.81.

-That the appellant is not eligible for income assistance as her equity in the vacant lot exceeds her allowable limit of \$3,000.

With respect to the loan to the other son in the amount of \$20,000 as a loan against the property, at the hearing the ministry asked if there was an existing lien or written note against the property for this loan. The advocate and appellant stated that there was not, but that it was a known loan. The ministry's position at the hearing on this was that the ministry recognized that this loan would need to be repaid out of proceeds from the sale of this property. It should be noted that in the reconsideration decision dated March 15, 2012 the submission from the appellant (prepared by the advocate, and dated February 2, 2012) contained the information that the appellant owed her son this \$20,000, but in their analysis the ministry made no mention of this loan, nor the impact of it upon the calculation of the potential level of asset that the appellant might realize from the sale of the vacant lot.

With respect to the disposition of the mortgage if the vacant land sold, at the hearing the ministry indicated agreement that it was understood that the full mortgage amount in the range of \$17,600 would have to be repaid from the proceeds of the sale of the vacant lot. The appellant had not provided documentation to support this claim at the time of reconsideration.

The issue of the disposition of the proceeds from the sale of the vacant lot has a significant bearing on the determination of whether or not the appellant has equity in this lot that can be converted to cash on behalf of the appellant.

On page 30 of the appeal record, there is a list of recent vacant lot sales in the appellant's community. No vacant lots have sold in the appellant's neighborhood in the past year. All the sales of vacant lots, of which there have been only five in the last year, have been in more prominent neighborhoods. The sale price of vacant lots that have taken place have been in the range of 83% to 94% of the asking price. If the same percentages were applied, as a guideline, to the appellant's property, it would result in the following figures. Asking price \$46,100. If it sold at 83%, this would be a selling price of \$38,263, less a real estate commission of 7%, or \$2,678 would result in a net to the appellant of \$35,585. If it sold for 94% of the asking price, this would be a selling price of \$43,334, less a real estate commission at 7%, or \$3,033 would result in a net to the appellant of \$40,302. Even if the property were to sell at the asking price of \$46,100, which is a very unlikely event, the real estate commission would be \$3,227, which would result in a net to the appellant of \$42,873.

In any of the above scenarios, the appellant will have to pay, in addition to the 7% real estate commission, 12% HST on the commission, legal fees to transfer the property, and mortgage dispensing fees to the bank. These amounts will add up to the \$1,000 to \$2,000 range.

At the hearing the ministry recognized that the appellant owes \$20,000 to her son against this property and the existence of this loan was contained in the information at the time of reconsideration. In the reconsideration decision, the ministry did no analysis of this loan, and at the hearing, the appellant provided no supporting documentation related to it.

At the hearing, the ministry also recognized that the appellant owes a mortgage in the range of \$17,600 against this property. The appellant, as a single person, who has applied for PWD status, is allowed an asset limit of \$3,000. These three figures, the mortgage, the loan to her son, and the allowable asset limit, taken together indicate a total in the range of \$40,600. It is possible that the potential sale of the vacant lot property will not result in any financial gain to the appellant, other than a figure that will be less than her allowable asset limit of \$3,000.

That having been stated, however, the panel must make a decision based upon the facts before them, related to the reconsideration decision, and the information before the ministry at the time of making their decision.

The panel finds that the appellant is the owner of the vacant lot adjacent to her primary residence, and that without supporting documentation from the appellant related to both the disposition of the mortgage and the loan to her son, the ministry's position is reasonable.

Section 1 (1) (a) of the EAR defines an asset as equity in any real or personal property that can be converted to cash. If the appellant had provided documentation on the disposition of the mortgage and the loan to her son upon the sale of this property, her equity in this property that would result from its sale may be less than the \$3,000 allowed as a single person as set out in section 11 (2.1) of the EAR. Without such documentation, the panel must rely upon the evidence that was before the ministry at the time of reconsideration and presented at the hearing that the appellant has equity in this property above the allowable limit of \$3,000.

The panel also found that the ministry was reasonable in its determination that the vacant lot was not an acre of land, and was therefore not exempt from being considered an asset, pursuant to Section 11 (3) (b) of the EAR.

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.