

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated February 10, 2012 which determined that the Appellant was ineligible for disability benefits because she had assets in excess of the maximum allowable asset limit as provided in section 10(2)(a) of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"). The Ministry determined that in addition to her primary residence, the Appellant was the registered owner of a second property, the value of which exceeded the maximum allowable asset value of \$3,000.00.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision consisted of copies of the following:

1. The Appellant's Request for Reconsideration dated January 9, 2012,
2. An undated letter prepared by the Appellant's son and forwarded to the Ministry by the Appellant's advocate on February 9, 2012,
3. A Consent for Release of Information form signed by the Appellant and dated January 4, 2012,
4. Written submissions (undated) prepared by the Appellant's advocate,
5. A statutory declaration signed by the Appellant and dated January 26, 2012 relating to property #1 ("Declaration #1"),
6. A statutory declaration signed by the Appellant and dated January 26, 2012 relating to property #2 ("Declaration #2"),
7. A Reconsideration Decision dated September 26, 2011 relating to the Appellant's eligibility for disability assistance on the basis that she was not residing in a dependency relationship,
8. An article entitled "Joint Tenancies – Avoiding Some of the Pitfalls" prepared by Fasken Martineau and dated April 2007,
9. A Land Title Act Form A Freehold Transfer document filed in the New Westminster Land Title Office dated December 18, 2008 indicating the transfer of property #1 to the Appellant and her ex-husband by their son,
10. A Title Search document for property #1 indicating the Appellant and her ex-husband as registered owners in fee simple as joint tenants,
11. A Land Title Act Form B Mortgage document dated August 29, 2011 and indicating the Appellant and her ex-husband as borrowers and as residing at property #1,
12. An Assessment Roll Report dated November 3, 2011 indicating the Appellant and her ex-husband as owners of property #1,
13. A Title Search document for property #2 indicating the Appellant, her ex-husband and her ex-husband's father as registered owners in fee simple as joint tenants,
14. A Land Title Act Form B Mortgage document dated July 28, 2009 and indicating Appellant, her ex-husband and her ex-husband's father as borrowers and as residing at property #2,
15. A Land Title Act Form A Freehold Transfer document filed in the New Westminster Land Title Office dated July 28, 2009 indicating the transfer of property #2 to the Appellant, her ex-husband and her ex-husband's father by another party, and
16. An Assessment Roll Report dated November 3, 2011 indicating the Appellant, her ex-husband and her ex-husband's father as owners of property #2.

No new evidence was submitted by the Appellant or the Ministry. The Ministry relied on the Reconsideration Decision.

The Appellant is a single person with no dependents and receives disability assistance. On December 18, 2008, property #1 was transferred to the Appellant and her ex-husband by their son. The Appellant and her ex-husband are the registered owners of property #1 and this is the Appellant's primary residence. Property #1 has a current assessed value of \$457,000.00. On August 10, 2009, the Appellant and her ex-husband secured a mortgage of \$550,000.00 for property #1.

On July 28, 2008, the Appellant purchased property #2 with her ex-husband and his father for \$555,000.00. The current assessed value of property #2 is \$601,000.00. On August 1, 2009, the Appellant, her ex-husband and her ex-husband's father secured a mortgage of \$443,500.00 for property #2.

The Appellant's Advocate provided submissions on her behalf with her Request for Reconsideration. In her submissions she argues that the Appellant's son is the owner of property #1 and that he transferred ownership

to the Appellant and her ex-husband to deal with the costs of the home while he is away and unable to do so. She argues that the Appellant's son will resume ownership of the home and that the transfer to her and her ex-husband was not a purchase but rather property #1 was placed in trust through love and affection for the value of \$1.00. The Appellant further argues that property #2 is in trust for her daughter and that the Appellant was asked to be added for the purpose of mortgage approval. She states that the Appellant is feeling sick and that she will move in with her daughter and pay rent to her which should not be the subject of overpayment.

In the Appellant's Notice of Appeal, she writes that additional will be faxed by Advocacy Group and her medical prescriptions are about \$500-600 per month. No further information was provided to the Panel prior to the hearing.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision which determined that the Appellant was ineligible for disability benefits because she had assets in excess of the maximum allowable asset limit as provided in section 10(2)(a) of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"). The Ministry determined that in addition to her primary residence, the Appellant was the registered owner of a second property, the value of which exceeded the maximum allowable asset value of \$3,000.00.

The relevant provisions of the EAPWDR are as follows:

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):

- (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 assets with a total value of more than \$3 000;
- (b) an applicant or recipient has one or more dependents and the family unit has assets with a total value of more than \$5 000.

The Appellant's position is that property #1 is owned by her son and not by her and her ex-husband. She argues that property #1 was transferred to her and her ex-husband in order that they could sign documents on their son's behalf while he was away but that property #1 is owned by their son, they pay rent to him and it will be transferred back to him on demand. The Appellant argues further that property #2 is in trust for her daughter and that she was added to the title for the purpose of securing a mortgage against it. The Appellant says that she has no financial or beneficial interest in property #2.

The Ministry argues that the Appellant's name is on the title of both property #1 and #2, her name is on the mortgages for both properties and that she is a registered owner of both properties. The Ministry argues that as property #1 is the Appellant's place of residence, its value is exempt from the calculation of the Appellant's assets but that her ownership of property #2 results in her having assets that exceed the maximum asset level of \$3,000.00 as provided by section 10(2)(a) of the EAPWDR.

Under section 10(1)(c) of the EAPWDR, a family unit's place of residence is exempt for the purposes of determining total asset value under subsection 2. Under section 10(2) of the EAPWDR, a family unit is not eligible for disability assistance if they have assets that are valued at more than \$3,000.00. In the present case, the Appellant confirms in Declaration #1 that property #1 is her place of residence. The Panel notes

that the November 3, 2011 Title Search for property #1 and the November 3, 2011 Assessment Roll Report for property #1 list the Appellant as a registered owner of property #1. While the Appellant's son maintains that he is the true owner of property #1, the determining factor for ownership is the title document and in this case, regardless of the reason for his transfer of property #1 to his parents, title to property #1 is in the name of the Appellant and her ex-husband. The Panel therefore finds that the Ministry's decision that the Appellant is a registered owner of property #1 is reasonable.

With respect to property #2, the Panel notes that the November 3, 2011 Title Search and the November 3, 2011 Assessment Roll Report list the Appellant as a registered owner of property #2. While the Appellant argues in Declaration #2 that property #2 is being held in trust for her daughter, there is no documentary evidence to support that arrangement. The Panel finds that the Ministry reasonably determined that the Appellant is a registered owner of property #2.

Property #2 was purchased in July 2009 for \$555,000.00. On August 1, 2009, a \$443,000.00 mortgage was taken out against property #2 resulting in equity remaining in property #2 totaling \$111,500.00. As the Appellant is one of three registered owners of property #2, the Panel finds that her share in the equity of property #2 is \$37,166.66 and as that figure exceeds the maximum asset value in section 10(2) of the EAPWDR, the Panel finds that the Ministry reasonably determined that the Appellant is not eligible for income assistance.

The Panel finds that the Ministry's Reconsideration Decision was reasonably supported by the evidence and confirms the decision.