

### PART C – Decision under Appeal

The decision under appeal is the decision of the Ministry of Social Development (ministry) at reconsideration on May 9, 2012.

At that time the ministry found that the appellant was ineligible for disability assistance for February 2012 due to assets held by her in excess of the allowable limit of \$3,000 during the month of December 2011.

The ministry's decision was based on the *Employment and Assistance For Persons with Disabilities Regulation (EAPWDR)* Section 10 (2) (a) which states that 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. The appellant's chequing account at her financial institution for December 2011 showed that she held funds in excess of \$3,000 throughout that month.

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act (EAPWDA)* Section 3 and Section 11 (1) and (2).

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* Sections 1 and 10 (2) (a).

## PART E – Summary of Facts

Documents before the ministry at reconsideration included the following:

- Statement of Accounts from the appellant's financial institution for a Premium Savings account in the name of the appellant, for the months of June, July, August, September, October, November and December 2011;
- Statement of Accounts from the appellant's financial institution for a Package Chequing Account in the name of the appellant for the months of July, August, September, October, November, December 2011 and January 2012;
- Canada Revenue Agency's Notices of Assessment for the appellant dated July 12, 2010 and May 5, 2011;
- A letter from the Personal Account Manager at the appellant's financial institution, dated January 13, 2012 telling of an account in the appellant's name held at the financial institution from which the appellant cannot access funds;
- A Bank Customer Profile on the appellant by her financial institution;
- Information on the appellant from the Motor Vehicle Branch dated December 8, 2011;
- Letters to the appellant from the ministry requesting information for the purpose of determining or auditing her eligibility for assistance dated December 8, 2011, December 14, 2011, and January 17, 2012,
- The appellant's Request for Reconsideration signed by her on March 23, 2012, together with a Summary of the appellant's bank accounts at her financial institution up to March 21, 2012.

The hearing of appeal was conducted by teleconference.

At the hearing the appellant stated that she had consulted an advocate and that having heard from the advocate she realized that she had been ignorant of the legislated requirement which had placed her in the situation in which she found herself. She said that she was surprised that the ministry had included in their assessment the disability payment which she had received from the government and which was in her chequing account in December, 2011. She also explained that the amount in her chequing account in December, 2011 was higher than it should have been because she had not paid her utility bills in October, November or December 2011 because of health problems: She had broken a hip in September and underwent surgery at the beginning of October. The surgery led to complications which had distracted her from making the monthly utility payments. The appellant said that the total of the un-paid utility bills was \$434.60.

The representative from the ministry explained that the legislation did not allow the ministry to disregard the government disability payment in the appellant's chequing account. She also explained that the appellant had the responsibility to advise the ministry of any change in her situation, something she did not do at the time of her surgery and its aftermath.

Based on the evidence before it the panel makes the following findings of fact:

1. The appellant is in receipt of disability assistance.
2. The appellant's chequing account at the start of December 2011 was \$3,062.50 and remained in excess of \$3,000 throughout the month with \$3,875.82 in the account on December 31, 2011.
3. No payments for utilities are noted from the appellant's chequing account for the months of October, November or December 2011.

## PART F – Reasons for Panel Decision

The decision to be made at appeal is whether the ministry's decision at reconsideration was a reasonable application of the applicable legislation in the circumstances of the appellant. At reconsideration the ministry found that the appellant was ineligible for disability assistance for February 2012 due to assets held by her in excess of the allowable limit of \$3,000 during the month of December 2011.

The ministry's decision was based on the *Employment and Assistance For Persons with Disabilities Regulation (EAPWDR)* Section 10 (2) (a) which states that 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. The appellant's chequing account at her financial institution for December 2011 showed that she held funds in excess of \$3,000 throughout that month.

The relevant legislation is found in the *EAPWDR*. Section 1 of the *EAPWDR* states that one of the meanings of "asset" is "cash assets". It states that "*cash assets in relation to a person, means (a) money in the possession of the person or the person's dependant, (b) money standing to the credit of the person or the dependant with (i) a savings institution, or (ii) a third party that must pay it to the person or the dependant on demand.*"

Section 10 of the *EAPWDR* states at (2) that, "*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.*"

Section 29 of the *EAPWDR* deals with Monthly reporting requirement and states that, "*For the purposes of section 11 (1) (a) [reporting obligations] of the EAPWDA, (a) a report must be submitted by the 5<sup>th</sup> day of the calendar month following the calendar month in which there is a change that is listed on paragraph (b), and (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation: (i) change in the family unit's assets.*"

Also relevant to the ministry's decision was Section 3 of the *EAPWDA* which states, "*For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act and the regulations, and (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act or the regulations.*"

At reconsideration the ministry looked at the information provided by the appellant's financial institution regarding the appellant's chequing account for the period December 1 to 31, 2011 which showed that throughout the month the funds there were in excess of \$3,000. The ministry pointed out that they were not basing their decision on the appellant's Savings account for which they also had information from her financial institution.

It is clear to the panel that the ministry's finding regarding funds held by the appellant in her chequing account throughout December 2011 was reasonably based on the evidence before it. Such funds

having been at least \$3,062.50 and at most \$4,114.08. It is also clear to the panel that the funds in the appellant's chequing account were cash assets as described in the legislation.

The ministry at reconsideration then pointed out that changes in the appellant's assets had to be reported by the 5<sup>th</sup> day of the calendar month following the calendar month in which there is a change. In the appellant's situation, the assets in her bank account would therefore be reported by January 5<sup>th</sup>, 2012 to determine the appellant's eligibility for February 2012. Therefore, argued the ministry at reconsideration, the assets held by the appellant in her chequing account in December 2011 are factored into her eligibility for February 2012 disability assistance. The panel finds the ministry's logic regarding the impact the appellant's cash assets in December 2011 would have on her February 2012 disability assistance to be a reasonable application of the applicable enactment in the circumstances of the appellant, namely the *EAPWDR*.

At reconsideration the ministry acknowledged the information provided by the appellant when she sought reconsideration, namely that her ill health had caused her to fail to pay bills over several months, thus altering her spending pattern. However, as she had held assets above the allowable limit, the ministry found that the criteria for eligibility as set out in the *EAPWDA* Section 3 and the *EAPWDR* Section 10 (2) have not been met and therefore she was ineligible for February 2012 disability assistance.

At the hearing it was pointed out that even had the appellant made her utility payments of \$434.60 the amount in her chequing account throughout December would still have been in excess of \$3,000. Regarding the information provided by the ministry's representative to the appellant that the legislation did not allow for the government's disability payment to be excluded from the calculation of the appellant's assets, the panel has read through the legislation and finds that the ministry does not have this discretion.

Having considered all the evidence and arguments put forward at appeal, the panel finds that the ministry's decision at reconsideration that the appellant was not eligible for February 2012 disability assistance as she had assets above the allowable limit set out in the *EAPWDR* Section 10 (2) (a) for the month of December, 2011, was a reasonable application of the applicable enactment in the circumstances of the appellant. Accordingly, the panel confirms the ministry's decision.