

PART C – Decision under Appeal

The reconsideration decision dated 9 May 2012 determined that the appellant was not eligible for disability assistance because his assets exceeded the \$3,000 limit determined under section 10(2)(a) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1, 10(2)(a), 70.1 and 73.

PART E – Summary of Facts

A ministry observer was present at the hearing with the appellant's consent.

The evidence before the Ministry at reconsideration consisted of:

- The appellant is a person with disability status and a single recipient of disability assistance since 2006.
- On 9 February 2010, the appellant became the sole owner of an incorporated business (the company) for a purchase price of \$10,000.00.
- On 27 March 2012, the appellant was denied disability assistance.
- On 26 April 2012, the appellant filed a request for reconsideration and included a 4-page letter indicating he had indeed bought the company as an opportunity for him to create his own employment and allow him not to be on government assistance much longer. He states that his shares "have no value, the \$10,000 value that the lawyer assessed was the purchase price of the company and those monies were paid to lawyers and were borrowed from [his] parents." He states he did not get any salary for the first year, that he got well below \$500 / month during the second year that he was allowed to earn without affecting his disability payment. He states he did not report monthly earnings because they were "nominal" and that "every branch of government has record of [his] business activity". He says that his monthly disability allowance is deposited in his business account and that he pays his rent, groceries etc. out of this account.
- The following documents received at the Ministry's office on 9 March 2012:
 - An undated document titled "Statement of Remuneration Paid" or also known as a T4 issued by the company in the name of the appellant showing for 2011 an employment income of over \$3,000.00.
 - An 8-page document titled "T2 Corporation Income Tax Return" from the Canada Revenue Agency (CRA).
 - A 2-page CRA document titled "Business Consent Form" signed by the appellant on 27 June 2011.
 - An undated 3-page CRA document titled "Net Income (Loss) for Income Tax Purposes" showing a net loss for income tax purposes of over \$6,000.00 for the company.
 - An undated 7-page CRA document titled "Corporation Loss Continuity and Application" for the year 2011 showing a closing balance of non-capital losses to be carried forward to future years of over \$6,000.00 for the company.
 - An undated 1-page CRA document titled "Capital Cost Allowance (CCA) for the company for the year 2011.
 - An undated 2-page CRA document titled "Cumulative Eligible Capital Deduction" for the year 2011 showing a cumulative eligible capital closing balance of over \$5,000.00 for the company.
 - An undated 1-page CRA document titled "First-Time Filer after Incorporation, Amalgamation, or Winding-up of a Subsidiary into a Parent" for the year 2011 for the company.
 - An undated 1-page CRA document titled "Shareholder Information" for the year 2011 showing the appellant as being the sole shareholder of the company.
 - A 2-page document by the appellant dated 27 June 2011 titled "T2 Bar Code Return" for the tax year starting on 8 February 2010 to tax year-end on 31 December 2011 for the company.
 - An undated 1-page document titled "Balance Sheet Information" for the year 2011 showing

assets of over \$27,000.00 and liabilities of over \$42,000.00, with a total deficit of over \$15,000.00 for the company.

- An undated 1-page document titled "Opening Balance Sheet Information" for the year 2011.
- An undated 2-page document titled "Income Statement Information" for the year 2011 showing total revenues of approximately \$450,000.00 and expenses of just over \$500,000.00 for the company.
- An undated 3-page CRA document titled "Notes Checklist" for the year 2011 for the company.
- Documents received by the Ministry on 14 March 2012:
 - Bank statements (9 pages) from a first bank for the period of October 2011 to February 2012 in the name of the appellant.
 - Bank statements (17 pages) from a second bank for the period of October 2011 to February 2012 in the name of the appellant.
 - A 2-page document from the BC Ministry of Finance titled "Notice of Articles" for the company, indicating it was issued on 18 February 2010 and indicating an incorporation date of 8 February 2010. In this document it is indicated that the appellant owns 10,000,000 shares "with a Par Value of 0.01 Canadian Dollar(s) each" for a total of \$100,000.00
 - A 1-page document from the BC Ministry of Finance titled "Annual Report" filed on 22 June 2011 indicating the appellant as an officer of the company.
 - A 3-page document from the BC Ministry of Finance titled "Incorporation Application" that was filed on 8 February 2010 in respect of the company.

In his Notice of Appeal dated 17 May 2012, the appellant states: "The decision was based solely on the idea that my shares are worth more than \$3,000.00. The share value is only worth what the market will bear. The share value could very easily be worth -\$100,000.00 if you consider the debt load. The loan from my parents was to, and repaid by the company, not myself. I started from a negative position, and cannot afford to eat, or live without my disability payments, I would like the opportunity to prove this."

Further documentation was provided to the tribunal by the appellant on 29 May 2012 that consisted of:

- A 2-page document dated 1 March 2010 titled "Asset Purchase Agreement" between a third party and the company with hand-written notes stating that the company is its own entity and that "\$8,000.00 of the \$10,000 was for goodwill, the company itself has no further value. The \$10,000 was borrowed by the company, and re-paid by the company, under [the appellant's] direction only, NOT by [the appellant himself]."
- A Certificate of Incorporation dated 8 February 2010 by the BC Registrar of Companies for the company.
- A document titled Notice of Articles (1 page) also previously submitted.
- A 2-page letter dated 28 May 2012 by an accounting student who managed the financial statements of the company since 1 May 2011 indicating that it is going in the right direction to make profit but it is not the case yet. He states that at the time of the purchase, the appellant "had no real assets to speak of, and so he was relied upon to convince family members to loan the company the money. The company has subsequently paid back these loans, however at the cost

of not paying its payroll remittances and HST remittances" for over \$50,000.00. He indicates that the appellant was not paid any benefit or salary since June 2011 and that the appellant "is owed some sort of compensation once the company actually makes money". He states that when the appellant stopped receiving his monthly disability assistance, he had to "rely upon the company as source of income, mainly for food and rent.

- A 1-page document dated 28 May 2012 and titled "[The Company] Profit & Loss – February 2011 through January 2012" showing a total income of approximately \$550,000.00, a cost of goods sold of just under \$225,000.00 for a gross profit of just under \$350,000.00.
- A 1-page document dated 28 May 2012 and also titled "[The Company] Profit & Loss – February 2011 through January 2012" showing the total itemized expenses of the company as over \$400,000.00 for a "Net Income" (actually a loss) of just below -\$85,000.00. A significant expense is listed under "Payroll Expenses" of over \$180,000.00.

At the hearing the appellant testified that since the company was losing money, his shares had no value, that they were worthless and that he could not sell them at this time. The Ministry did not provide any new evidence.

The panel determined the additional documentary and oral evidence was admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was in support of the records before the Minister at reconsideration and particularly that it was confirming such evidence, providing more details.

PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision that the appellant was not eligible for disability assistance because his assets exceeded the \$3,000 limit determined under section 10(2)(a) of the EAPWDR was either a reasonable application of the legislation or reasonably supported by the evidence.

Section 1 of the EAPWDR defines asset as:

- (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;

"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,

- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

Section 10(2)(a) of the EAPWDR limits the value of assets a recipient can possess without being ineligible for assistance:

(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;...

The Ministry indicates that the appellant was not part of a self-employment program under section 70.1 of the EAPWDR that states:

70.1 (1) The minister may require a recipient who is

- (a) applying to participate in a self-employment program, or
 - (b) participating in a self-employment program to provide, for the acceptance of the minister and within the time specified by the minister, a business plan for the small business the recipient is operating or proposes to operate under the self-employment program.
- (2) If a recipient provides a business plan under subsection (1) that is not acceptable to the minister, the minister may return the business plan to the recipient with directions and the recipient may resubmit the business plan within the time specified by the minister for that purpose.
- (3) If
- (a) a recipient fails to provide a business plan in the time specified under subsection (1) or (2), as applicable, or
 - (b) a recipient provides a business plan that is not acceptable to the minister, the recipient is not or ceases to be eligible to participate in the self-employment program.

Further, section 73(1)(d) prevents any appeal of such a decision:

73(1) The following categories of supplements may not be appealed to the tribunal...

- (d) access to a program established or funded under the Act.

The Ministry argues that the appellant purchased a business for \$10,000.00 and that the company is worth at least what he paid for it, that being further confirmed by the document titled "Notice of Articles" that sets those shares' value at \$100,000.00. It further argues that it is immaterial whether the company generated profits for the appellant but that the company constitutes an asset worth over \$3,000.00. The Ministry indicates that the fact that the appellant could repay his parents at a rate of \$1,000.00 per month for the \$10,000.00 debt incurred for its purchase shows that the company generates at least \$1,000.00 profits per month. The evidence that the company paid for the appellant's meals over \$6,000 in 2011 and that it spent over \$7,000 in "meals and entertainment" is further evidence the company is making profits and is worth at least \$3,000.00. While the Ministry concedes there was no assessment of the value of the company, it argues that the fact the appellant paid \$10,000.00 for it is proof that the company is worth at least that amount and probably more and thus constitutes an asset for the appellant that is worth over \$3,000.00 and therefore he is not eligible for disability assistance.

The Ministry also argues that the appellant is not eligible for the Self Employment Program (SEP) as his company is incorporated. The Ministry correctly states that the decision not to allow access to that program to the appellant is not subject to appeal and therefore, the panel finds that it does not have any jurisdiction to deal with this issue.

The appellant argues that while he paid \$10,000.00 for the company's purchase, it was in the hope of eventually making money and that he knew for the first two years the company would have losses but hoped that it would get even by year 3 or 4 and would make profit for year 5 and subsequently. He hoped to be able to eventually be self-employed and in no need of assistance. He argues that he and the company are two different, separate, legal entities and that he personally doesn't have any asset. He takes the position that the loan he received from his parents for the purchase of the company was not a loan to him but to the company in order that the company may survive under new management and save jobs; the company did repay that loan directly to his parents, which contributed to increasing the company's losses for that year. He further argues that since he bought the company, it has had only losses, no profit, and that his shares are worth nothing at this point and he could not even sell them as there is no asset to be bought but only losses. Moreover, he says the company does not own anything – all the vehicles, offices, furniture etc. are rented and it has only 2 employees, as everyone else is a sub-contractor; in other words, the company has no material asset whatsoever. Thus, he takes the position he has no asset, other than the monthly disability assistance he gets from the Ministry. He finally states that he cannot survive without disability assistance and its denial would mean that he would have to shut down its operations and close the company.

The panel finds that in the absence of any evidence to the contrary, the starting point to determine the value of an asset would be correctly based on the price an individual is ready to pay for it. The definition of "asset" at s. 1 of the EAPWDR is helpful in determining how to assess the value of an asset: in terms of equity in any real or personal property, it would be its cash value (the regulation states "that can be converted to cash") and there are cash assets. In terms of "cash assets" it's the money that is available or could be available to the person. The Ministry correctly determined that "the topic of this reconsideration request is not whether or not your company has generated a profit to you, but rather whether it meets the definition of 'asset'. The asset attributed to you would be the value of the shares that you own as the sole proprietor." Yet, since the value of those shares were in dispute, the appellant who had the onus to demonstrate his assets were less than \$3,000.00 did not

provide the Ministry or the panel with any independent evaluation other than his testimony. Even his bookkeeper who wrote a letter in support of the appellant did not provide such an evaluation.

The panel finds that it is more likely than not that the company has a value as it was generating significant activity in terms of payroll expenses (over \$180,000.00) and contracts and has a potential to make money. The panel also finds there are indications that the company is actually worth something but is not in a position to determine what it is. There are capital assets, there are contracts, there is a company name, there is a value to goodwill etc. but the appellant failed to demonstrate that the value of those assets were less than \$3,000.00. Thus, the panel finds the appellant failed to satisfy the Ministry his assets were less than \$3,000.00 and consequently, the Ministry's determination declaring him ineligible for disability assistance was a reasonable application of the applicable legislation in the circumstances.

Therefore, the panel finds the Ministry's decision was a reasonable application of the legislation in the circumstances of the appellant and confirms the decision.