

PART C – Decision under Appeal

The decision under appeal is the ministry's revised reconsideration decision dated February 23, 2012 which held that the appellant was not eligible for income assistance due to having assets valued in excess of the allowable limit for a single person of \$1500 pursuant to section 11 of the Employment and Assistance Regulation and is liable to repay assistance that she was not eligible to receive pursuant to section 18, of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 27.

Employment and Assistance Regulation (EAR), sections 1 and 11.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration included:

(a) an overpayment chart; (b) four (4) notices of hearings for February 24, 2009 to review the appellant's 2009 property assessments; (c) four (4) assessment roll reports dated September 14, 2010; (d) a letter dated September 22, 2010 from a sales representative from a real estate company; (e) a letter dated October 27, 2010 from a second sales representative from a different real estate company; (f) the appellant's Request For Reconsideration dated October 28, 2010; (g) a Reconsideration Decision dated November 8, 2011 and (h) a Notice of Appeal dated April 20, 2011 with a note from the appellant.

The overpayment chart identified monthly overpayments beginning April 2009 until September 2010 totaling \$5696.53. The reason noted for the overpayments was administrative error.

The four notices of hearings for February 24, 2009 were scheduled to review the appellant's 2009 property assessments as a result of a request by the appellant to decrease the actual value of the land.

The four assessment roll reports dated September 14, 2010 included the following valuations:

1. Lot A; 2010 Total Actual Value \$32,100.
 2. Lot B; 2010 Total Actual Value \$69,800.
 3. Lot 2; 2010 Total Actual Value \$45,800.
 4. Lot 3; 2010 Total Actual Value \$45,300.
-
1. Lot A; 2009 Total Actual Value \$32,000.
 2. Lot B; 2009 Total Actual Value \$32,000.
 3. Lot 2; 2009 Total Actual Value \$45,500.
 4. Lot 3; 2009 Total Actual Value \$45,000.

A letter dated September 22, 2010 from a sales representative from a real estate company confirmed that the appellant's property had been listed with him for 203 days and no offers were received. The sales representative indicates that the main reason that an offer has not been put forward is because for most of the year a huge portion of the land is flooded due to highways channeling water through a culvert onto the appellant's property.

A letter dated October 27, 2010 from a second sales representative from a different real estate company states that the appellant's properties were listed with him from 2007 until 2009 during which time there was not much activity. The sales representative indicates that a big portion of the property is not accessible because the creek is dividing the land and there is no access to the other portion. It also stated is that two properties are usually flooded due to a culvert on the corner property and it would be a big job to make this property useable and ready for sale. He adds that there are many properties for sale on the market and only a few sales.

In the Request For Reconsideration, the appellant writes that she would have never accepted welfare should she have known that she would have to pay it back because of her property being under separate titles. She states that she had bought the land in 1994, which was already subdivided, for a

low price with no intentions to make money. She has earned her living by painting until the economy caused her to go for help. She also indicates that she had a house fire that has set her back and has had to rebuild her life to continue painting. The appellant states that she has left the welfare system however, cannot afford to pay back the \$5696.53.

The ministry's reconsideration decision dated November 8, 2011 held that the appellant was not eligible for income assistance because she had assets that may be converted to cash. The assets being saleable land was valued at more than the maximum allowable limit of \$1500 for a single person and therefore the appellant was not eligible for income assistance pursuant to section 11 of the EAR.

In her Notice of Appeal dated April 20, the appellant states that her property is not an asset because it cannot be converted to cash. She adds that the property is remote, flooded year round, has no access, no power and that the real estate agent won't list it anymore. A separate note dated April 15, 2011 which was included with the Notice of Appeal indicates that the appellant knew she was not eligible for income assistance so did not think it necessary to appeal the decision however, months later she received a bill demanding \$5696.53 to be paid in 30 days. She feels that she does not owe this money and would like to proceed with an Appeal Tribunal in order to dispute this debt.

In her Notice of Appeal dated March 5, 2012, the appellant states that she has no saleable assets and therefore doesn't owe any money as overpayment.

The appellant's advocate's submission dated April 13, 2012 includes a rough map of the properties relevant to the appeal, MLS listings from the two above noted real estate companies and a copy of an e-mail message from an engineering officer of the Province who agrees with the appellant that the northern parcels of her land are extremely wet and appear to have limited value for development.

The advocate submits that Lots A, 2 and 3 should not fall under the definition of "asset" because they cannot be converted into cash despite the appellant's attempts and that even if Lots A, 2 and 3 qualify as assets because they are saleable, they should have been exempt under section 11(3)(b) of the EAR. Therefore the appellant's advocate argues that the reconsideration decision was an unreasonable interpretation of the legislation under the circumstances of the appellant and requests that the revised reconsideration decision be rescinded.

On May 8, 2012 in response to the appellant's advocate's submission, the ministry writes that they have reviewed and re-evaluated this matter and conclude that "in all the circumstances of the case the Minister's revised reconsideration decision made February 23, 2012 was not a reasonable interpretation of the Employment and Assistance Regulation. The ministry concedes that it could and should have exercised discretion to apply section 11(3)(b) of the Employment and Assistance Regulation to all" of the appellant's land for the specified period April 2009 to September 2010. "As saleable acreage, the land would then be treated as though it was her residence and would be exempt for the purpose of section 11(2) of the Employment and Assistance Regulation." The ministry requests that the Employment and Assistance Appeal Tribunal rescind the Minister's revised reconsideration decision made February 23, 2012.

The panel accepts the submission from the appellant's advocate dated April 13, 2012 as well as the response to this submission from the ministry dated May 8, 2012 as being related to the evidence that was before the ministry at the time of reconsideration and admits it as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Finding of Facts

- The appellant had been in receipt of income assistance as a single employable person from March 2009 until September 2010.
- On September 20, 2012, the appellant was advised that she was not eligible for further assistance due to having assets valued in excess of the allowable limit which is \$1500 for a single person.
- On October 18, 2010, the ministry sent a letter to advise the appellant that she had received income assistance that she was not eligible to receive and that she is required to repay the overpayment.
- The amount of the overpayment as determined by the ministry is \$5696.53.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's revised reconsideration decision dated February 23, 2012 which held that the appellant was not eligible for income assistance due to having assets valued in excess of the allowable limit for a single person of \$1500 pursuant to section 11 of the Employment and Assistance Regulation and is liable to repay assistance that she was not eligible to receive pursuant to section 18, of the Employment and Assistance Act.

Relevant Legislation**Regulation****1. "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 limit

11 (1) The following assets are exempt for the purposes of subsection (2):

- (a) clothing and necessary household equipment;
- (b) one motor vehicle generally used for day to day transportation needs if
 - (i) the equity in the motor vehicle does not exceed \$5 000,
 - (ii) the motor vehicle has been significantly adapted to accommodate the disability of a recipient in the family unit,
 - (iii) the motor vehicle is used to transport a disabled dependent child, or
 - (iv) the motor vehicle is used to transport a disabled foster child, if the child is in the care of the applicant or recipient;
- (c) a family unit's place of residence;
- (d) money received or to be received from a mortgage on, or an agreement for sale of, the family unit's previous place of residence if the money is
 - (i) applied to the amount owing on the family unit's current place of residence, or
 - (ii) used to pay rent for the family unit's current place of residence;

- (2) A family unit is not eligible for income assistance if any of the following apply:
- (a) a sole applicant has no dependent children and has
 - (i) assets with a total value of more than \$1 500, or
 - (ii) cash assets in an amount that is equal to or greater than the sum of the amount the applicant would otherwise be eligible for under section 28 [*amount of income assistance*] and \$150;
- (3) The minister may authorize one or more of the following:
- (b) that saleable acreage and buildings owned by an applicant 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.

Act

Overpayments

27 (1) If income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 17 (3) [*reconsideration and appeal rights*].

The appellant's position is that she has no saleable assets and therefore doesn't owe any money as overpayment. She argues that Lots A, 2 and 3 should not fall under the definition of "asset" because they cannot be converted into cash despite the appellant's attempts and that even if Lots A, 2 and 3 qualify as assets because they are saleable, they should have been exempt under section 11(3)(b) of the EAR.

The ministry's position is that they have reviewed and re-evaluated this matter and conclude that "in all the circumstances of the case the Minister's revised reconsideration decision made February 23, 2012 was not a reasonable interpretation of the Employment and Assistance Regulation. The ministry concedes that it could and should have exercised discretion to apply section 11(3)(b) of the Employment and Assistance Regulation to all" of the appellant's land for the specified period April 2009 to September 2010. "As saleable acreage, the land would then be treated as though it was her residence and would be exempt for the purpose of section 11(2) of the Employment and Assistance

Regulation.”

The panel notes that although the appellant had listed her property for sale continuously from 2007 until April 2011 and requested an official review to decrease both land and improvements actual values; she was not successful in receiving any offers to purchase any one of the 4 parcels of land. The panel finds that the ministry was fully cognizant of the appellant's circumstances and efforts when she was found ineligible for income assistance due to having assets in valued excess of the allowable limit of \$1500 for a single person yet the ministry chose to define the land as saleable because there were no liens or encumbrances attached and allow only one parcel of land to be exempted as her residence for the purpose of section 11(2) of the EAR. The panel also finds that the ministry could have exercised discretion pursuant to section 11(3)(b) of the EAR for the specified period of April 2009 to September 2010 which would have allowed all the appellant's saleable acreage to be considered as her place of residence and consequently be exempted from the calculation of the total value of the appellant's assets.

Therefore, the panel finds that the ministry did not reasonably determine that the appellant was not eligible for income assistance between April 2009 and September 2010 due to her assets being in excess of the allowable limit pursuant to section 11(2)(a) of the EAR. Additionally, the panel finds that the ministry did not reasonably determine that the appellant received an overpayment of income assistance and that she must repay the overpaid amount of \$5696.53 pursuant to section 27(1) of the EAA.

Thus, the panel finds that the ministry's revised reconsideration decision was not supported by the evidence and rescinds the decision.