

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of June 25th, 2012 wherein the ministry determined the appellant is not eligible for income assistance because her assets exceed the legislated limit of \$1,500 stated under section 11(2)(a)(i) Employment and Assistance Regulation (EAR). The appellant owns a vehicle, debt free, with an appraised value in excess of \$5,000 and since her equity in that vehicle exceeds the legislated exempt limit of \$5,000 [section 11(1)(b)(i) EAR], the equity is not exempt in calculating her assets.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 1, Definitions – “asset”, 11 and 31(2)(a)
Employment and Assistance Act (EAA), section 14

PART E – Summary of Facts

The facts before the ministry at the time of reconsideration:

- Request for reconsideration dated June 7th, 2012.
- Letter to ministry from the appellant's advocate dated June 14th, 2012 with attached EAR legislation.
- 10-day Notice to End Tenancy for unpaid Rent or Utilities issued to the appellant on June 13th, 2012.
- Appraisal completed on appellant's vehicle on February 16th, 2012 indicating the vehicle has a market value of \$6,500. Note on appraisal dated May 31st, 2012 signed by appellant - "I still own this car." Other note (author unknown) states, "She will bring in Reg (registration) tomorrow".
- Transfer of vehicle ownership from dealership to appellant date stamped May 14th, 2010.

The appellant is a single, employable person who is applying for income assistance. The only asset(s) the appellant has, which was confirmed through ICBC, is a motor vehicle with an appraised value of \$6,500. The appellant has no funds for food, utilities, rent or automobile expenses and received an eviction notice from her landlord on June 13th, 2012.

At the hearing the appellant's advocate presented the following documents as new evidence for the panel's consideration:

- Submission prepared by the advocate provides an overview of the appellant's circumstances and introduces the appellant's arguments (emails below) in support of their case. The document does not contain new evidence and is received as argument only.

Two - Email printouts: (are for vehicles of same make, model and mileage as the appellant's vehicle)

- - a) Canadian black book.com provides dealer Trade-in Value ranging from \$3,083 to \$4,260 to Consumer Retail Value of \$6,553.
 - b) Motortrend.com provides a Trade-in Value ranging from \$3,442 to \$5,197 depending upon condition.

The ministry did not object to the documents being received by the panel.

The panel accepts the two email printouts as new evidence because the value of the appellant's vehicle is a key issue in this appeal and therefore are admitted under section 22(4) EAA as these documents are in support of the information or record that was before the ministry at the time of reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of June 25th, 2012 wherein the ministry determined the appellant is not eligible for income assistance because her assets exceed the legislated limit of \$1,500 stated under section 11(2)(a)(i) Employment and Assistance Regulation (EAR). The appellant owns a vehicle, debt free, with an appraised value in excess of \$5,000 and since her equity in that vehicle exceeds the legislated exempt limit of \$5,000 [section 11(1)(b)(i) EAR], the equity is not exempt in calculating her assets.

Legislation considered:

Employment and Assistance Regulation

Section 1 – Definition

"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;

Section 11 - Asset limits

(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 \$5000,
 - (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;

(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 \$1500, 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;
- (b) a sole recipient has no dependent children and has assets with a total value of more than \$1500;
- (c) an applicant has one or more dependents and the family unit has
 - (i) assets with a total value of more than \$2500, 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 \$250;
- (d) a recipient has one or more dependents and the family unit has assets with a total value of more than \$2500;

Section 27 - Time limits for income assistance

1) The eligibility of a family unit for income assistance in any calendar month is subject to the following limitations:

- (a) when income assistance has been provided to or for a family unit that includes only 1 person for a total of 24 of the previous 60 calendar months, the family unit is not eligible for income assistance;
- (b) when income assistance has been provided to or for a family unit that includes 2 persons, neither of whom is a dependent child,

- (i) on account of each recipient for a total of 24 of the previous 60 calendar months, the family unit is not eligible for income assistance, and
 - (ii) on account of one recipient for a total of 24 of the previous 60 calendar months and on account of the other recipient for less than 24 of the previous 60 calendar months, the income assistance provided to or for the family unit for a calendar month must be reduced by \$300;
 - (c) when income assistance has been provided to or for a family unit that includes at least 2 persons, at least one of whom is a dependent child, on account of at least one recipient for a total of 24 of the previous 60 calendar months, the income assistance provided to or for the family unit for a calendar month must be reduced by \$100 for each recipient in the family unit to or for whom income assistance has been provided for a total of 24 of the previous 60 calendar months.
- (1.1) Despite subsection (1) (a) and (b), subsection (1) (c) applies to a family unit described in subsection (1) (a) or (b) if a recipient in the family unit is providing care for a child who resides with the family unit and is
- (a) Repealed (B.C. Reg. 48/2010)
 - (b) a foster child of the recipient, or
 - (c) the subject of an agreement referred to in section 8 or 93 (1) (g) (ii) of the Child, Family and Community Service Act to which a recipient in the family unit is a party. (B.C. Reg. 160/2004)
- (1.2) For the purposes of calculating whether the limits under subsection (1) have been met, any period during which subsection (2) applies to the family unit must not be included either as a month for which income assistance has been provided or for the purpose of calculating the previous 60 calendar months.
- (2) Subsections (1) and (1.1) do not apply to the following categories of family units: (B.C. Reg. 160/2004)
- (a) family units in which all recipients
 - (i) have reached 65 years of age,
 - (ii) have persistent multiple barriers to employment, or
 - (iii) are receiving accommodation and care in a special care facility or a private hospital, other than an alcohol or drug treatment centre, or who are admitted to a hospital because they require extended care; (B.C. Reg 116/2003)
 - (b) Repealed, (B.C. Reg. 48/2010)
 - (c) family units that include at least one recipient in respect of whom income assistance has been provided to or for the family unit for 24 months, not including months excluded under subsection (3), of the previous 60 calendar months as long as
 - (i) each recipient in the family unit who is subject to an employment plan complies with the employment plan, and
 - (ii) the conditions for ineligibility or reduction under section 13 of the Act are not met in relation to a recipient in the family unit. (B.C. Reg. 160/2004)
- (2.1) If a family unit is subject to a reduction or becomes ineligible under subsection (1), the portion of the reduction or ineligibility that is attributable to the circumstances of one of the recipients ends when that recipient reaches 65 years of age, (B.C. Reg 116/2003)
- (3) For the purpose of calculating whether income assistance has been provided to or for a recipient for a total of 24 out of the previous 60 calendar months the following calendar months must not be included as a month for which income assistance has been provided, but must be included for the purpose of calculating the previous 60 months, in relation to a recipient: (B.C. Reg. 160/2004)
- (a) each calendar month during which the recipient qualifies as a recipient in a category described in section 29 (4) (b) to (g) and (i) to (k). (B.C. Reg. 374/2003), (B.C. Reg. 160/2004)
 - (a.1) each calendar month during which the recipient, regardless of the status of other recipients in the family unit, is a person described in section 29 (4) (h) (ii) to (iii), (v) and (vi); (B.C. Reg. 160/2004)
 - (b) each calendar month during which the recipient participates in the following portions of a training for jobs program approved by the minister:
 - (i) acceptance into the program,

- (ii) training,
 - (iii) job placement; (B.C. Reg 116/2003), (B.C. Reg. 160/2004)
 - (c) each calendar month during which the income assistance provided to the family unit was reduced on account of the recipient under subsection (1) (b) (ii) or (c); (B.C. Reg. 160/2004)
 - (d) each calendar month during which the recipient was pregnant; (B.C. Reg. 160/2004)
 - (e) each calendar month during which the recipient was under 19 years of age. (B.C. Reg 116/2003), (B.C. Reg. 160/2004)
 - (f) each calendar month during which the recipient has
 - (i) a drug or alcohol problem,
 - (ii) a mental health condition, or
 - (iii) a temporary medical condition that, in the minister's opinion, interferes with the recipient's ability to search for, accept or continue in employment. (B.C. Reg. 160/2004)
 - (g) each calendar month during which a sole recipient
 - (i) has a dependent child, or
 - (ii) Repealed (B.C. Reg. 48/2010)
 - (iii) has in his or her care a foster child, and the child has a physical or mental condition that, in the minister's opinion, precludes the sole recipient from working, on average, more than 30 hours each week. (B.C. Reg. 87/2005)
- (4) For the purposes of subsection (1), a person in the family unit who is not a person described in section 7 (2) [citizenship requirements] must not be included in the family unit.

Effect of failing to pursue or accept income or assets or of disposing of assets

Section 31

- (1) For the purposes of section 14 (3) (a) [consequences of not accepting or disposing of property] of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is
- (a) if the income, assets or other means of support are still available, until the failure is remedied, and
 - (b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2000 of the value of the forgone income, assets or other means of support.
- (2) For a family unit that is declared ineligible under section 14 (3) (b) of the Act for income assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the period of ineligibility is,
- (a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and
 - (b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2000 of the value of the forgone income, assets or other means of support.
- (3) For the purposes of section 14 (3) (a) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate,
- (a) the amount of the reduction is \$100 for each calendar month for each applicant or recipient in the family unit, and
 - (b) the period of the reduction is one calendar month for each \$2000 of the value of the forgone consideration.
- (4) For the purposes of section 14 (3) (b) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate, the period of the ineligibility is one calendar month for each \$2000 of the value of the forgone consideration.
- (5) For the purposes of section 14 (2) (a) of the Act, the period of ineligibility is 2 calendar months for each \$2000 of the value of the real or personal property that was disposed of to reduce assets.

EMPLOYMENT AND ASSISTANCE ACT (EAA)**Consequences of not accepting or disposing of property**

Section 14

(1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

- (a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;
- (b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.

(2) A family unit is not eligible for income assistance for the prescribed period if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

- (a) disposed of real or personal property to reduce assets;
- (b) [Not in Force.]

(3) In the circumstances described in subsection (1), the minister may

- (a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
- (b) declare the family unit of the person ineligible for income assistance or hardship assistance for the prescribed period.

The ministry argued that the appellant owns a vehicle with an appraised value of \$6,500 and under section 11(2)(a)(i) EAR an applicant for income assistance cannot have assets that exceed \$1,500. Section 1 EAR defines an "asset" as equity in any real or personal property that can be converted to cash. The ministry argued that section 11(1)(b)(i) EAR states that if the equity in a motor vehicle exceeds \$5,000 the vehicle is not exempt from calculating the appellant's assets and therefore since the appellant has assets in excess of the legislated limit of \$1,500, she is not eligible for income assistance. The ministry argued the re-sale value on a vehicle is only one of the checks routinely made by the ministry. The ministry stated that section 27 EAR referred to in the appellant's request for reconsideration does not apply to the appellant's circumstances as the section refers to time limits for recipients of income assistance and the appellant is not receiving income assistance.

The appellant argued that her vehicle is her only asset. The appellant acknowledges that she does not owe any debt on the vehicle and argued that she has no ability to pay rent, purchase food, buy gasoline for the vehicle or purchase any other items to sustain herself. The appellant also argued that she is trying to sell her vehicle to get some cash so she can provide some necessities but in the interim the ministry should provide her with assistance.

The advocate argued the ministry did not consider the legislation under section 27 EAR and that the ministry should have provided the appellant income assistance while the appellant was trying to sell her vehicle. The panel directed the appellant to the legislation in EAA and then the advocate realized the section referred to in the Request for Reconsideration (section 27) was under the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and should have been under EAR [section 31]. The advocate argued that the ministry should have considered section 31(2) EAR, which is the same wording as section 27 EAPWDR, and addresses the disposition of assets. The appellant then argued that section 31 EAR references section 14 EAA which speaks about pursuing the disposition of assets and it is under this section that the advocate argued the ministry should have provided income assistance to the appellant because she is pursuing to dispose of her asset(s) – the vehicle. The advocate argued the appellant has no money to live, to pay rent, to

put insurance on the vehicle or to buy gasoline for the vehicle to assist in finding employment and has now been evicted from her residence. The advocate argued the appellant is trying to sell her vehicle but to date has been unsuccessful. The advocate argued that the ministry didn't do due diligence in determining a value for the appellant's vehicle and just accepted a "car salesman's" appraised value on the vehicle. The advocate argued the ministry failed to provide proper instruction to the appellant by having the appellant provide more than one appraisal. The advocate further argued that in October 2012 the exemption for vehicle values will be raised to \$10,000. The advocate argued through the internet she determined the trade-in value of the vehicle as indicated by motortrend.com is between \$3,647 and \$4,260 and on Canadian Black Book the trade-in value is between \$3,442 and \$5,197 and not the \$6,500 value given by the "car salesman". The advocate argued the appellant has placed a 'for sale' sign in one of the vehicle's windows but has not advertised the vehicle for sale on through the internet as the appellant is not familiar with that process.

The reconsideration decision is based on section 11(2)(a)(i) EAR which states that a family unit is not eligible for income assistance if the sole applicant has assets with a total value of more than \$1,500 and under section 11(1)(b)(ii) if the equity in a motor vehicle exceeds \$5,000 the equity (asset) is not exempted. The appellant's sole asset is a motor vehicle which was appraised by a motor vehicle car dealership (where she purchased the vehicle) to have a "market" value of \$6,500. The documents (appraisals) obtained by the advocate from the internet indicate the "trade-in" value of the appellant's vehicle ranges in value from \$3,442 to \$4,260. The "consumer re-sale" value of the vehicle provided by motortrend.com on the same document is \$6,553.

The panel finds the value of the appellant's vehicle to exceed \$5,000 as appraised value of the vehicle provided (\$6500.00) provided by the automotive dealer is supported by the documentation provided by the advocate. The panel finds an "asset" would be valued at the retail or market value rather than the wholesale or trade-in value as suggested by the advocate. The panel finds the ministry's decision to include the appellant's vehicle in calculating her assets was reasonable.

In reference to the appellant's argument under section 27 EAR in the reconsideration, the ministry stated "that piece of legislation is not relevant to your denial of assistance as you (the appellant) were not denied assistance for failing to pursue income or an asset; you were denied assistance because you (the appellant) have an asset in excess of the legislated limit."

The panel finds the ministry's decision that section 27 EAR does not apply to the denial of income assistance to the appellant was reasonable.

In reference to the advocate's argument under sections 31 EAR and 14 EAA, it was not until the advocate was at the hearing that she realized she had referenced the wrong section (section 27 EAR) in the appellant's request for reconsideration. The advocate, based on these grounds, requested the panel consider her argument as to whether the ministry's decision was reasonable. The panel accepted the advocate's rationale and agreed to consider her argument. The advocate admitted she had referred the ministry to the wrong section (section 27 EAR) which resulted in the ministry making a determination about section 27 EAR that had no bearing on the appellant's appeal. The advocate argued that she had attached the correct wording of legislation – Effect of failing to pursue or accept income assets or of disposing of assets – to the submission that she wanted the ministry to consider but the legislation was copied from EAPWDR legislation and not EAR. The same legislation contained in section 27 EAPWDR is contained in section 31 EAR. The panel accepts the appellant's argument that she should have quoted section 31 in her argument.

The advocate argued that if the ministry accepted the appraised value on the appellant's vehicle and was prepared to deny the appellant's application for income assistance based on that value then the ministry should have considered the legislation under section 14(1) EAA which would provide a time frame for the appellant to dispose of her vehicle while being provided with income assistance. The advocate argued the

ministry did not consider this option although the appellant was trying to dispose of her assets (sell her vehicle). The advocate argued the legislation in section 14(1) EAR would allow the ministry to provide assistance to the appellant while she is disposing of her vehicle; that the ministry has provided no information that the appellant "has failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, ..." and then, the advocate argued if the appellant did not follow the ministry's instructions (dispose of the asset) then the appellant could be declared ineligible for income assistance under section 14(3) EAA.

The ministry again argued the denial of income assistance was not based on disposing of assets but was based on the fact that the appellant has assets in excess of the legislated limit, section 11(2)(a)(ii) EAR.

The panel finds that the evidence supports the ministry's position that the appellant has assets in excess of the legislated limit of \$1,500 that could be disposed of to enable the appellant to be completely or partly independent of income assistance. The advocate argued that the appellant is pursuing this income attempting to sell (dispose) the vehicle by placing a 'for sale' sign in a window of the vehicle. The panel finds the ministry's reconsideration decision was not based on this rationale but based on the legislation in section 11(2)(a)(ii) EAR.

In response to the advocate's argument, the panel finds there is not sufficient evidence to support the appellant's argument that she is pursuing income by disposing of her asset (the vehicle); that placing a 'for sale' sign in a vehicle's window is not sufficient action. If the appellant sold her vehicle that would simply be converting one asset (vehicle) to another asset (cash asset). The panel finds the evidence before the panel does not support that the ministry should have considered applying the provisions of section 14 EAA to the appellant's application. The panel concludes that the provisions of section 14 EAA do not apply to the appellant's circumstances and the panel finds that the ministry's decision not to consider section 14 EAA was reasonable.

The panel finds the ministry's decision to determine the appellant was not eligible for income assistance because she has assets in excess of \$1,500 (owns a vehicle with an appraised value in excess of \$5,000 which is not exempted by the legislation) was reasonable.

Therefore, the Panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the Employment and Assistance Act.