

PART C – Decision under Appeal

The appellant appeals the ministry's reconsideration decision dated April 20, 2012, in which the ministry denied him disability assistance under section 13(3)(b) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), on the basis that he had failed to pursue an asset (a jointly owned second family home) that would enable him to be completely or partly independent of disability assistance, as required by section 13(1)(a) of the EAPWDA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 13
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 10, and 27.

PART E – Summary of Facts

The information before the ministry at reconsideration included:

- The appellant's request for reconsideration with attached one page written submission of the appellant dated March 30, 2012;
- Copy of a letter dated February 1, 2010 signed by the appellant's ex-spouse;
- Copy of a letter dated March 22, 2012 signed by the appellant's physician;
- Copy of BC Assessment Roll Report dated March 26, 2012 for the appellant's primary residence;
- Copy of BC Assessment Roll Report dated March 26, 2012 for the appellant's other house;
- Copy of the appellant's hydro bill for his primary residence; and
- Copy of the appellant's gas bill for his primary residence.

Prior to the hearing, the appellant provided the following additional documents:

- Document #1 - Copy of a letter from the appellant's ex-spouse dated May 7, 2012 (1 page);
- Document #2 - Copy of a questionnaire prepared by the appellant's advocate and completed by a lawyer, dated June 7, 2012 (1 page) (questionnaire 1);
- Document #3 - Copy of a questionnaire prepared by the appellant's advocate and completed by a second lawyer, dated June 7, 2012 (1 page) (questionnaire 2); and
- Submissions of appellant on appeal prepared by the appellant's advocate, with fax cover sheet, dated July 3, 2012 (4 pages total).

The ministry did not object to the admission of the appellant's additional documents #1 through #3, or of the appellant's submissions on appeal, which were argument only and did not contain any evidence. The panel admitted all the additional documents under section 22(4)(b) of the *Employment and Assistance Act* as written testimony in support of the information and records that were before the minister when the decision being appealed was made.

The appellant applied for disability assistance in March 2010, and was designated a person with disabilities. The appellant told the panel that he was receiving approximately \$500-700 per month disability assistance from March 2010 and that he has no other sources of income. The appellant lives in a house, which he owns, and which the ministry agrees is an exempt asset under section 10(1)(c) of the EAPWDR. The appellant is separated from his former spouse and owns an interest in a second house, which is co-owned and occupied by the appellant's ex-spouse and some of their children (the second house), but which the appellant's ex-spouse is not willing to sell. In her letters dated February 1, 2010 and May 7, 2012, the appellant's ex-spouse wrote, "I live at this address [of the second house] with my children and I am not willing to co-operate in the sale of this property."

The appellant told the panel that he suffers from seizures, a compression fracture, and is awaiting surgery for an aortic aneurysm, and this is also set out in the letter dated March 22, 2012 from the appellant's physician. The appellant said that, due to his medical conditions, he has been unable to pursue the sale of the second house. The appellant also told the panel that he has no financial resources to enable him to pursue the disposal of the second house through the courts. In the lawyer questionnaires, the lawyers indicated that it would cost the appellant \$7,500 (questionnaire 2) or \$10,000-\$30,000 (questionnaire 1) to retain their legal services to pursue division of a jointly owned family property. The appellant also told the panel that he does not have the ability to represent himself in a legal action. In the lawyer questionnaires, both lawyers agreed that the appellant's lack of legal expertise and his disability would be likely to prevent or significantly limit his ability to

represent himself in a court proceeding to pursue the sale of the second house owned with his ex-spouse, and both lawyers agreed that there were no other alternatives to the appellant to retain their services (such as pro bono or legal aid representation).

At the hearing, the ministry said that the appellant's second house is an asset in excess of the appellant's asset limit of \$3,000 under section 10(2) of the EAPWDR (sole recipient with no dependent children). The ministry said that the appellant was told in March 2010 when he applied for disability assistance that he was required to dispose of the second house. The ministry told the panel that, through policy, the ministry had exempted the appellant's second house as an asset for 2 years, March 2010 through March 2012, and this is also set out in the reconsideration decision.

The panel makes the following findings of fact:

- The appellant is a person with disabilities who has been receiving monthly disability assistance since March 2010;
- The appellant co-owns a second house which is occupied by his ex-spouse; and
- The appellant's ex-spouse refuses to cooperate in the sale or purchase of the second house.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant's disability assistance under section 13(3)(b) of the EAPWDA for failing to pursue an asset (the sale or "disposal" of the appellant's second house) as required by section 13(1)(a) of the EAPWDA, is reasonable.

Legislation

EAPWDA

Consequences of not accepting or disposing of property

13 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for disability assistance or hardship assistance or at any time while disability assistance or hardship assistance is being provided, an applicant or 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 disability assistance, hardship assistance or supplements;

...

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

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

EAPWDR

Definitions

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 not dependent children and has assets with a total value of more than \$3,000;

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

27(1) ...

(2) For a family unit that is declared ineligible under section 13(3)(b) of the Act for disability 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 13(3)(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 \$2,000 of the value of the forgone income, assets or other means of support.

The appellant's position is that, in his circumstances, the ministry's determination that the second house is an "asset", as asset is defined under section 1(1) of the EAPWDR, is unreasonable. The appellant points to the letters from his ex-spouse in which she confirmed that she is unwilling to cooperate in the purchase or sale of the second house. The appellant says that the second house is not an asset because it does not meet the definition of asset under section 1(1) of the EAPWDR, which defines an asset as equity in real property that can be converted to cash. The appellant says that because of the position of his ex-spouse, the second house cannot be converted to cash. The appellant says that the ministry was aware of the unwillingness of his ex-spouse to cooperate in the sale or purchase of the second house at the time the ministry determined that he was not pursuing the disposal of the asset.

The appellant also said that the ministry's determination that he would not have been "too ill to hire" a lawyer to proceed on his behalf is unreasonable. The appellant told the panel he had not received a list of advocates who could assist him with the legal process, as stated in the reconsideration decision. The appellant says that in his submissions on reconsideration, he told the ministry he had been trying to sell the second house, but his ex-spouse was not cooperating. The appellant told the panel that prior to the ministry's decision and the reconsideration, he had spoken to a couple of lawyers about the cost of pursuing the sale of the second house, but that he did not have letters or confirmation from these lawyers at the reconsideration, although he knew he could not afford to hire a lawyer. The appellant points to the lawyer questionnaires in which the lawyers indicated that it would cost the appellant from \$7,500 to \$30,000 to pursue the disposal of the second house through the courts, and in which the lawyers also state that there are no pro bono legal or other legal representative services available to the appellant to help him pursue the legal action required. The appellant says that it is unreasonable for the ministry to require him to retain a lawyer to pursue division of the second house given his limited resources and reliance on disability assistance as income.

The ministry says that the appellant failed to pursue the disposal of his asset, the second house, which is required under section 13(1) of the EAPWDA, and it is for this reason that the ministry denied him disability assistance. The ministry pointed to the time line set out in the reconsideration decision in which the ministry had repeatedly advised the appellant that he was required to dispose of the second house, as it was an asset exceeding his asset limit under section 10(2) of the EAPWDR. The ministry agreed that there was no reference or consideration in the reconsideration decision about whether the second house met the definition of asset under section 1 of the EAPWDR, given the refusal of the appellant's ex-spouse to cooperate with the sale of the second house.

The panel finds that the appellant owns an interest in a second house, the value of which exceeds \$3,000. As evidenced by the two letters from the appellant's ex-spouse, the panel finds that the appellant's ex-spouse will not cooperate with the appellant regarding the sale or purchase of the second house. The panel agrees with the appellant's submission that in its reconsideration decision, the ministry did not consider whether the appellant's interest in the second house meets the definition of asset because the ministry did not determine whether, in the appellant's circumstances, the appellant's interest in the second house "can be converted to cash" as is required to meet the definition of "asset" in section 1 of the EAPWDR.

The panel has considered the appellant's circumstances, that his ex-spouse refuses to cooperate with the purchase or sale (the disposal) of the second house, and the appellant cannot afford to retain a lawyer and does not have the ability to pursue legal action in the courts himself. The panel concludes that the ministry's decision to deny the appellant's disability assistance under section 13(3) of the EAPWDA on the basis that he was not pursuing an asset, the disposal of the second house, as required by section 13(1) of the EAPWDA, was not a reasonable application of the legislation in the appellant's circumstances. The panel therefore rescinds the ministry's decision.