

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 3, 2012 which found that the appellant is not eligible for disability assistance as a result of having assets valued at more than the allowable limit of a total value of more than \$3,000, pursuant to Section 10(2) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

The ministry also found that the circumstances respecting the saleable acreage owned by the appellant did not establish that it should be treated as though it was the place of residence of the appellant, pursuant to Section 10(3)(b) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1 and 10

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Vehicle Registration stamped April 26, 2012 for a 2002 Utility Trailer (Boat) in the name of the appellant;
- 2) Application for income/disability assistance dated June 6, 2012;
- 3) Letter dated June 11, 2012 from a senior citizens' housing society 'To Whom It May Concern' stating in part that the appellant is living separate from his wife as she has rented a separate suite due to irreconcilable differences;
- 4) Shelter Information form dated June 11, 2012 stating in part that the appellant is paying \$320 per month in rent including utilities;
- 5) Bank Profile dated June 11, 2012, showing a personal chequing account with a value of \$998.58 and a Tax Free Savings Account (TFSA) with a value of \$26.82
- 6) Assessment Roll Report printed June 14, 2012 indicating in part a cash sale of a single property on December 15, 1975 for \$500,000;
- 7) Land Titles Title Search print out dated June 14, 2012 showing rural real property registered in the name of the appellant and 2012 Rural Property Tax Notice for the same property addressed to the appellant at his current address and setting out a value for land of \$30,200;
- 8) Manufactured Home Registry print out dated June 14, 2012 indicating a 1978 Manufactured Home registered in the appellant's name;
- 9) Personal Property Registry Search print out dated June 14, 2012 indicating a lien for unpaid wages filed January 27, 2003 against all the personal property of the appellant;
- 10) Print out of ICBC search dated June 14, 2012 showing active plate registrations in the appellant's name for a 1994 pick-up, a 2002 Boat Trailer and a 1991 van;
- 11) Letter dated June 16, 2012 from a physician 'To Whom It May Concern' stating in part that since mid-2009 when the appellant became a patient, nothing has changed with his medical status and concluding that he should continue his Persons With Disabilities (PWD) status;
- 12) Multiple Listing Contract dated July 13, 2012 for the rural real property owned by the appellant in the sum of \$38,000; and,
- 13) Request for Reconsideration- Reasons, prepared by an advocate on behalf of the appellant.

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

At the hearing, the appellant provided additional documents as follows:

- 1) Submission to the Tribunal by an advocate on behalf of the appellant;
- 2) Copy of a Tribunal Decision;
- 3) Print out of the ministry's Quick Reference Guide;
- 4) Amendment dated August 1, 2012 to the MLS listing to change the list price from \$38,000 to \$34,999;
- 5) Letter dated August 29, 2012 to the appellant from a real estate agent which states in part that the sales for vacant lots are slow this year, and the cost of septic, wells, etc. are very costly; she sold a lakefront lot on a lake for \$47,000 so prices are down a bit and "...the market conditions here a (sic) depressed now, although if future expectations come in to being the market could change";
- 6) Estimate dated September 7, 2012 for the boat trailer which states that the year is 1975-80, the book value is \$800 and deficiencies are that it is made of ordinary steel not galvanized steel, needs fenders, brake master cylinder, all rubber rollers need replacing for cost of repairs estimated at \$300 and value as is \$100, signed by a boat salesman "good for scrap"; and,
- 7) Estimate dated September 7, 2012 for the 1994 pick- up truck which states that the book value is \$1,500, that the deficiencies are pilot bearing clutch pressure plate, brakes, windshield washer, 265,000 km., cost of repairs is \$1,000, value as is \$1,000 signed by a mechanic.

The panel reviewed the documents and admitted the MLS Amendment, letter and estimates pursuant to Section 22(4) of the Employment and Assistance Act, as being in support of the information regarding the

value of assets that was before the ministry on its reconsideration. The panel accepted the submission on behalf of the appellant, the print out of the ministry's Quick Reference Guide, and the Tribunal Decision as argument.

At the hearing, the advocate stated that the appellant has PWD designation and he applied for disability assistance in June 2012 but his application was denied because it was decided that he has assets in excess of the limit of \$3,000. The appellant acknowledges that he owns two vehicles and a boat trailer. The van is used for his day-to-day transportation needs and the pick-up truck is not road worthy and the boat trailer is rusted. The combined value of the truck and trailer is less than the limit. The appellant acknowledges that he is the owner of a property at a lake with a 2012 assessed value of \$30,200. The property has been and is currently up for sale. The appellant's ability to sell this property is impeded by circumstances beyond his control, including that the property has been up for sale for a number years and is currently listed for \$34,999 and yet no offers have been received. The real estate market conditions are depressed in this area and there is a lien and two covenants registered against the property. In the Request for Reconsideration, the advocate states on behalf of the appellant that although the appellant owns some property at a lake, he advised the ministry that it was up for sale. The appellant has listed his property through MLS and has provided a copy of the MLS contract.

The appellant stated that he uses his van to go to doctor appointments and daily transportation and he has had the boat trailer for about 20 years, from prior to his injury, that the book value is \$800 but the actual value is nil because it is made of steel but he could get \$100 for scrap. The appellant stated that he has a boat but it is being used as a storage shed. The appellant stated that he stores the pick-up truck at the apartment building, that it is insured but does not get used because he cannot afford to have it fixed and cannot fix it himself because of his injury. The appellant stated that the clutch is gone, it is leaking oil and the transmission is gone and the book value is \$1,500 but the estimate is for \$1,000 based on its condition. The appellant stated that the estimate for the boat trailer was completed and signed by a boat salesman at an outlet for boats and trailers and the estimate for the pick-up was completed by a mechanic at a automobile repair shop. The appellant stated that when he got married his wife had assets in excess of the limit and so he was no longer in receipt of disability assistance, but that he and his wife have since separated. The appellant stated that he is currently in receipt of CPP disability benefits in the amount of \$771 but he has no medical coverage.

The appellant stated that when he applied for disability assistance in June 2012, he advised the ministry that the acreage property was up for sale and that he had no inquiries, that he had been trying to sell it since 1994 except for about a year when it would not have had a 'for sale' sign on it. The appellant stated that he purchased the property in 1992 for \$6,000 and that he considered it part of his retirement "nest egg" and he planned to sell it strategically, based on market values and tax considerations. The appellant stated that he wanted to get \$30,000 for the property but might have been willing to negotiate but no one has called. The appellant stated that the ministry "must have known" about his ownership of this property before when he was in receipt of disability assistance, that he is pretty sure he disclosed that he owned this property, and no one said that he had to list the property for sale at that time. The appellant stated that it is a rugged property next to a mountain, there are many rocks that would have to be cleared prior to any development, that it is not on the lake, and there is little chance of finding water and it is expensive to dig a well or to put in a drain field. The appellant stated that the market was hot when the property was valued at \$30,000 and now the market has "tanked". The appellant stated that he listed the property through MLS in July for \$38,000 and he recently reduced the price to \$34,999, but so far no one has even called on it. The appellant stated that he has reduced the price within one month of listing it and that this shows his intention to sell it. The appellant stated that he is not sure what the covenants on title to the property are, that he is not aware of any litigation against him and he suspects that they are easements or rights-of-way as he is aware that a water line runs across the property. The appellant stated that the lien for unpaid wages has been cleared up since he settled the matter by way of a fine and paid the wages owing and the lien should be removed from title but he suspects it may require some more paper work on his part.

APPEAL #

The evidence of the ministry is that the appellant has been designated as a PWD and he has no dependants. The ministry states that the appellant currently rents his residence in the city and owns a rural property with an assessed value of \$30,200. The appellant listed this property for sale on July 13, 2012 for \$38,000. A title search document indicates two covenants against the property registered in 1991 and 1992. There is a separate search document showing a lien for unpaid wages against all the personal property of the appellant, registered in 2003, and no further information regarding this lien is provided. There are three active vehicle plates for a car, a pick-up truck and a boat trailer, however the appellant advised at his intake appointment with the ministry that he has two vehicles, that one is roadworthy and worth under \$2,500 and the other has no value and is scrap, while the trailer was not mentioned.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which found that the appellant is not eligible for disability assistance as a result of having assets valued at more than the allowable limit of a total value of more than \$3,000, pursuant to Section 10(2) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), and that the circumstances respecting the saleable acreage owned by the appellant did not establish that it should be treated as though it was the place of residence of the appellant, pursuant to Section 10(3)(b) of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 10 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) provides that:

Asset limits

10 (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;
- (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 no dependent children and has assets with a total value of more than \$3 000;
- (b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$5 000.

(3) The minister may authorize one or more of the following:

- (a) that the total cash surrender value of an uncashed life insurance policy of an applicant or recipient is not to be included as an asset of the family unit for the purposes of subsection (2) for the period specified by the minister;
- (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.

Section 1 of the EAPWDR provides that:

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;

The ministry's position is that the appellant is a sole applicant with no dependent children and he owns assets, including vehicles and a rural acreage property, that are in excess of the applicable limit of \$3,000. The ministry points out that there is information that the appellant owns vehicles in addition to one allowable motor vehicle for the appellant's day-to-day transportation needs and that there is no documentation provided to

confirm the value of the additional vehicles. The ministry argues that the rural property is not the appellant's residence and it is valued at \$30,200. The ministry argues that there is no information regarding the liens or other charges against the property to establish the full equity in the property is not available to the appellant. The ministry argues that the exemption set out in Section 10(3)(b) of the EAPWDR has been considered and found not applicable in the appellant's circumstances because the acreage property is an asset that can be converted to cash. The ministry also argues that the acreage is not near or adjoining the appellant's place of residence and there are no other circumstances of the appellant's situation that warrant the application of the exemption.

The appellant does not dispute that he is a single applicant with no dependents, that the applicable asset limit is \$3,000 and that he owns two vehicles, a boat trailer, and a rural acreage property. The appellant argues, through his advocate, that one vehicle is used for day-to-day transportation needs and is exempted pursuant to section 10(1)(b) of the EAPWDR. The appellant argues that the other vehicle, a pick-up truck, is not roadworthy, that the boat trailer is rusted and the combined value is less than the legislated asset limit. The appellant acknowledges that the rural acreage property has an assessed value for 2012 of \$30,200 but argues that the property has been and is currently up for sale. The appellant points out that the ministry policy indicates that saleable acreage and buildings not occupied by the applicant should not be included in the list of assets if the sale is impeded due to circumstances beyond the applicant's control, such as joint ownership. The appellant argues that there are a number of impediments to the appellant's sale of his property, namely: 1) the property has been up for sale for a number of years and is currently listed through MLS and yet no offers have been received, 2) the real estate market conditions in this area are depressed, and 3) there is a lien and two covenants registered against the property. The appellant points out that there is nothing in the ministry policy that requires the acreage property to be near or adjoining the appellant's place of residence in order to be exempted. The appellant argues that the ministry failed to acknowledge the significant challenges the appellant faces in selling his property in the foreseeable future.

The panel finds that it is not disputed that the asset limit applicable to the appellant's circumstances is \$3,000, pursuant to Section 10(2)(a) of the EAPWDR, and that the appellant currently owns two vehicles, a boat trailer and a rural acreage property. The ministry produced an ICBC search dated June 14, 2012 showing active plate registrations in the appellant's name for a 1994 pick-up, a 2002 Utility (Boat) Trailer, and a 1991 passenger van and the appellant stated that the van is used for his day-to-day transportation needs, and provided signed statements estimating that the pick-up is worth \$1,000 as is and the boat trailer is worth \$100 as is. Given that the ministry did not attend the hearing and did not produce any evidence to the contrary regarding the value or use of the vehicles, the panel finds that the 1991 van is used by the appellant for his day-to-day transportation needs and is exempt under Section 10(1)(b) of the EAPWDR and that the combined value of the additional vehicles, being a 1994 pick-up truck and a 2002 Boat Trailer, is \$1,100.

Although the appellant acknowledges that he is the sole owner of the rural acreage property, that it is not used as his residence, and that the 2012 assessed value is \$30,200, he argues that the ministry should have used its discretion to apply the exemption provided in Section 10(3)(b) of the EAPWDR to treat the saleable acreage and buildings as though they are his place of residence for a period of time since there are a number of impediments to the sale of this property. The appellant argues that the property has been for sale since 1994 and it is currently listed through MLS and yet no offers have been received, however the appellant also admits that the property is in a remote area, that he has only ever put a 'for sale' sign on the property in an effort to sell it, that he considered it part of his retirement "nest egg" and he planned to sell it strategically, based on market values and tax considerations. The panel finds that the appellant only began to market the property for sale when he entered into an MLS listing on July 13, 2012. Although the 2012 assessed value of the property is \$30,200 and the appellant stated that values since then have "tanked", the appellant chose to list the property for sale for \$38,000 and has subsequently reduced it to \$34,999 (\$4,799 above the 2012 assessed value), and the panel finds that the list price for the property is within the appellant's control and is a factor that impacts the sale-ability of property. The appellant also argues that real estate market conditions in the area where the property is situate are depressed, as set out in a letter from a real estate agent to this effect,

however the panel finds that this may present a challenge to sale of the property or require further adjustments to the list price, but that it does not establish an impediment to the appellant's sale of his property, at the appropriate price. With respect to the lien for unpaid wages registered against the appellant's personal property and the two covenants registered against title to the rural acreage property, the appellant admitted that the lien has been resolved and he is not aware of any litigation that would affect title to this property and the panel finds that these registrations do not pose an impediment to the appellant's sale of his property.

Although the appellant points out that there is nothing in the ministry policy that requires that the acreage be near or adjoining the appellant's place of residence in order to be exempted, the panel finds that Section 10(3)(b) of the EAPWDR confers a discretion on the ministry and that the proximity of an acreage to the place of residence may be an additional factor that the ministry considers in exercising its discretion in an applicant's favour. The panel finds that the ministry reasonably determined that the appellant's rural acreage property is an asset which is capable of being converted to cash, that there are no specific impediments to the sale of the property and, therefore, the ministry reasonably refused to exercise its discretion to exempt the rural acreage property from the list of the appellant's assets, pursuant to Section 10(3)(b) of the EAPWDR.

The panel finds that as the ministry reasonably did not grant an exemption to the appellant's rural acreage property, the ministry reasonably concluded that the full assessed value of \$30, 200 is considered the appellant's asset and that the appellant is not eligible for disability assistance, pursuant to Section 10(2)(a) of the EAPWDR, as having assets with a total value of more than \$3,000.

The Panel finds that the ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.