

APPEAL #

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development (Ministry) dated August 8, 2012, in which the Ministry denied her disability assistance under section 10(2)(a) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), on the basis that she has assets with a total value of more than \$3,000.00.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1(1) and 10.

PART E – Summary of Facts

The information before the Ministry at reconsideration included:

- The appellant's request for reconsideration dated July 20, 2012, on which she had written, "I do not believe I have a beneficial interest in the company. I have received no income";
- Copy of Ministry Bank Profile form signed by the appellant and completed by her bank dated May 8, 2012;
- Copies of the appellant's credit card statements dated April 9, 2012, March 9, 2012, February 9, 2012, January 9, 2012, and December 9, 2011;
- Copy of Officers and Directors Enquiry computer printout from the appellant's bank showing the appellant as the president, owning 51%, of a certain business (the Business) (one page);
- Copy of Total Accounts Enquiry computer printout from the appellant's bank showing accounts for the Business (2 pages);
- Computer printout for the appellant's bank account showing activity from September 20, 2011 through June 8, 2012 (13 pages);
- Computer printout showing the monthly income totals for the appellant's account from September 2011 through June 2012 (2 pages);
- Computer printout showing month end asset totals for appellant's bank account (1 page);
- Copy of Total Accounts Enquiry computer printout from the appellant's bank showing the appellant's accounts (2 pages);
- Copy of Deposit Account History for the appellant's bank account from September 8, 2011 through June 5, 2012 (8 pages);
- Copy of the Notice of Articles from the Ministry of Finance for the Business showing its registered and records office as the appellant's address (2 pages);
- Copy of the Annual Report form filed August 31, 2011 for the Business showing the appellant as the CEO, President and Secretary of the Business (1 page);
- Copy of the Annual Report form filed June 1, 2012 for the Business showing the appellant as the CEO, President and Secretary of the Business (2 pages);
- Copy of a letter from the appellant's bank to the Ministry dated July 4, 2012 confirming the appellant's bank and credit card accounts and the balances; and
- Copy of the appellant's personal assessment from her bank showing her banking information.

Prior to the hearing, the appellant provided an affidavit containing a 3-page written submission, affirmed by the appellant on August 30, 2012, with the following additional documents attached as exhibits to the affidavit:

- Exhibit A - copy of the minute book of the Business, which includes the certificate of incorporation of the Business dated May 31, 2012 (1 page), the incorporation agreement of the Business dated May 31, 2010 (1 page), the articles of the Business (37 pages), the central securities register for the Business (3 pages), the register of directors of the Business (1 page), copy of consent to act as director signed by the appellant's friend on May 31, 2010 (1 page), resignation as director of the Business signed by the incorporating lawyer (1 page), notice of articles of the Business dated May 31, 2010 (2 pages), incorporation application for the Business dated May 31, 2010 (3 pages), subscription for shares forms for shares in the Business signed by the appellant for 50 Class A common voting shares and 100 Class B common non-voting shares and by the appellant's friend for 49 Class A common voting shares and 100 Class C common non-voting shares (4 pages), minutes of a shareholders meeting of the Business dated May 31, 2010 and signed by the appellant (2 pages), directors' resolutions of the Business dated June 29, 2010 (2 pages), minutes of the directors meeting of the

Business dated May 31, 2010 signed by the appellant's friend (3 pages), directors' resolutions of the Business showing transfers of shares from the incorporating lawyer to the appellant and her friend dated May 31, 2010 (2 pages), copies of share certificates – the shares issued to the appellant were not signed by her (10 pages), receipt for filing the annual report of the Business dated June 1, 2012 (1 page), copy of printout of annual report reminder 2012 (1 page), receipt for filing the annual report of the Business dated August 31, 2011 (1 page);

- Exhibit B - copy of the Business Banking and Services Agreement dated June 10, 2010 between the Business and the appellant's bank, signed by the appellant (6 pages); and
- Exhibit C – copy of the profit & loss statement for the Business for the period October 2011 through June 2012 (1 page).

The Ministry did not object to the admission of the appellant's additional documents attached to her affidavit, or to the appellant's submissions in her affidavit. The panel admitted the affidavit (all the additional documents and submissions) under sections 22(4)(a) and (b) of the *Employment and Assistance Act* as both information and records that were before the minister when the decision being appealed was made and as written testimony in support of the information and records that were before the minister when the decision being appealed was made.

Prior to the hearing, the Ministry provided a 5-page written submission dated September 5, 2012. The appellant did not object to the admission of the Ministry's submission. The panel admitted the Ministry's submission under section 22(4)(b) of the *Employment 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 September 2011, and was designated a person with disabilities and began receiving disability assistance from the Ministry. On April 28, 2012, the Ministry started a review of the appellant's file and informed her of the review by letter dated May 2, 2012. In the letter, the Ministry advised the appellant that she was to attend a meeting on May 15, 2012 to discuss her file and she was to bring relevant financial information with her. The meeting was rescheduled and the appellant met with the Ministry on May 18, 2012, at which time she provided the Ministry with information regarding her personal bank account and credit card. Subsequent to this meeting, the Ministry contacted the appellant's bank requesting information about all bank accounts related to the appellant. On July 4, 2012, the Ministry received documents from the appellant's bank regarding the Business's bank account, which indicated that the appellant was "attached to the business account" and showed a balance in the Business's account of \$60,045.80. On July 5, 2012, the Ministry obtained information from the BC Registry Service showing the appellant's address as the mailing and delivery address for the Business, and the appellant as the CEO, President and Secretary of the Business. On July 12, 2012, the Ministry received confirmation from the appellant's bank that she is the 51% owner of the Business.

Based on the information from the appellant's bank regarding the balance in the Business's account, a balance of \$60,045.80, the Ministry determined that 51% of the balance is an asset of the appellant because of her 51% ownership of the Business. The Ministry advised the appellant on July 17, 2012, that, "due to an asset amount that is in excess of the allowable limits you have been denied disability assistance."

The appellant told the panel that she helped set up the Business as a favour for her friend, who is the

only director of the Business, and that her friend runs the Business and only started paying himself income from the Business in the past year. The appellant said that she has never received any income from the Business, stressing that if she were to withdraw money from the Business's account, she could get into legal trouble. The appellant told the panel that she has periodically signed cheques on the Business's behalf when her friend is not available (for example, to cover the rent of the store the Business uses). The appellant agreed that her address is the mailing and records address of the Business, but she told the panel that she did not pay for the filing of the Business's annual report (the credit card number on the receipt is the credit card number of the appellant's friend). The appellant told the panel she signed the Business's banking agreement with her bank and is acting as the guarantor for the loan to the Business because she had a better credit rating than her friend.

At the hearing, the Ministry said that the appellant has a 51% ownership in the Business and the Ministry considers the income of the Business to be an asset of the appellant. The Ministry said that as a single recipient on disability assistance, the appellant is entitled to hold assets with a maximum value of \$3,000.00. The Ministry said that the money attributable to the appellant in the Business account (51% of the balance of \$60,045.80 or approximately \$30,623.00) exceeds the appellant's allowable asset limit of \$3,000.00 and this is why the Ministry is denying her disability assistance.

The panel makes the following findings of fact:

- The appellant has been receiving monthly disability assistance since September 2011 and as a single recipient, receives \$906.42 per month; and
- The appellant signed the Business's banking agreement with her bank.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision to deny the appellant disability assistance under section 10(2)(a) of the EAPWDR, on the basis that she has an asset (51% ownership of the Business), the value of which exceeds the \$3,000 allowable limit, is reasonable.

The following sections of the EAPWDR apply to the consideration of the appellant's appeal: subs. 1(1), definition of "asset", and section 10, asset limits. Under subs. 1(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.

Section 10(1) sets out the assets that are exempt for the purposes of subsection 10(2), however, the appellant did not assert that any of the listed exemptions applied to her situation. Subsection 10(2) sets out the maximum allowable asset value for single recipients (in subs. 2(a)) and for recipients with dependants (subs. 2(b)). Subsection 2(a) applies to the appellant (a sole applicant/recipient) and states:

- (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 appellant's position as expressed by her representative is that the Business is a corporation (as demonstrated through the documents contained in the Business's minute book attached as Exhibit A to the appellant's affidavit) and is separate from the appellant. Accordingly, the income of the Business should not be considered an asset of the appellant. The appellant stressed that the Business is operated by her friend and she only helped set it up as a favour to her friend - she said she did not really understand the incorporation documents she signed in May 2010, noting that the share certificates issued in her name contained in the Business's minute book were not signed by her. The appellant said she has never received any income from the Business, pointing to the Business's bank account statements and her own bank account statements which do not show any transfers from the Business's account to her account. She says that the definition of "asset" in section 1(1)(c) of the EAPWDR should not apply to her, as she has never received money or cash from the Business.

The Ministry says that the appellant has a 51% ownership in the Business. The Ministry says that although she may not have received income directly from the Business to date, given that the appellant owns 51% of the money in the Business's bank account, this is a "cash asset" under subsection 1(1)(c) of the EAPWDR. The Ministry says that the value of 51% of the balance in the Business's account exceeds \$3,000.00. The Ministry does not look past the bare facts that the appellant is listed as a 51% owner of the Business and signed the Business Account agreement with the bank in determining that the appellant has access to the Business's income and that this can be considered an "asset" of the appellant.

The panel finds that the Ministry's determination that the appellant owns 51% of the Business is reasonable in the circumstances, given the evidence that the appellant signed the Business's banking

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agreement and the document from the bank showing she is a 51% owner in the Business. Given the definition of "asset" set out in section 1(1)(c) of the EAPWDR, "cash assets", the panel finds that by virtue of her 51% ownership in the Business, the balance of the Business account meets the definition of "asset" under the EAPWDR. Accordingly, the panel finds that the Ministry's determination that the appellant is not entitled to disability assistance under section 10(2)(a) of the EAPWDR because she has an asset – the balance of the Business account which is an "cash asset" under section 1(1)(c) of the EAPWDR – the value of which exceeds the allowable limit of \$3,000.00 is reasonable based on the evidence and is a reasonable application of the legislation in the appellant's circumstances. The panel therefore confirms the reconsideration decision.