

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") October 2, 2012 reconsideration decision in which the Ministry determined, in accordance with section 14(1)(b) of the Employment and Assistance Act and section 31(4) of the Employment and Assistance Regulation, that the Appellant is not eligible for income assistance for 17 months beginning in June 2012 because the Appellant had more than \$35,000 in a bank account held in her name alone and she did not dispose of this property for adequate consideration.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) Section 14.

Employment and Assistance Regulation (EAR) Section 31.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Appellant's application for income assistance dated June 11, 2012 in which she disclosed income of \$450 a month from a disability pension, monthly expenses, a life insurance policy and a joint bank account with a balance of \$10.
2. Written statement from the Appellant's mother stating that she gave her daughter money to keep in the bank on her behalf because she has two sons who are greedy for her money. The mother stated that her daughter has the money hidden from her sons.
3. Statement from a trust company for an account held by the Appellant with zero balance indicated.
4. Copy of a May 29, 2009 check drawn on a credit union and payable to the Appellant in the amount of \$35,000. The copy did not show who made the check out to the Appellant.
5. Deposit account history from a bank for an account in the Appellant's name only, showing an account balances from August 31, 2010 to June 21, 2012. The balance as of June 21, 2012, including interest credited, was \$35,789.13 and the account was closed that day.
6. Copy of a handwritten note from the Appellant on one of the bank statements indicating that the \$35,000 she was holding in her account was for her mother since her two sons want it.
7. Three statutory declarations each dated October 1, 2012 from the Appellant to the Ministry in which the Appellant stated that:
 - On May 29, 2009, the Appellant's mother (now deceased) and her father transferred \$35,000 from the credit union to a bank.
 - She held that amount in trust in a separate bank account in her name until her mother and father needed the money.
 - Before that money was transferred to the Appellant, her mother would call her daily to say that her brother harassed her for the money.
 - The Appellant's mother told her that she felt that the only way she could hide the money from the Appellant's brothers was by placing the money in an account without her name or her father's name on the account.
 - It was understood that these monies belonged to her parents and she was holding them "in trust".
 - This was based on a verbal agreement and when requested she was required to return the money to her parents.
 - This money remained in her account for the last 3 years. She did not access the funds, withdraw from the funds or benefit from the funds, because the monies were held "in trust".
 - It was understood by all parties that she was the owner of the bank account, but not the owner of the money.
 - On June 21, 2012, the sum of \$35,789.13 was returned to another bank into an account owned by her father.
8. Appellant's request for reconsideration.

In her notice of appeal, dated October 10, 2012, the Appellant wrote that her husband left her, she cannot work due to a bipolar disorder, and she has a son with schizophrenia. She stated that her sister died from the same disease. The Appellant wrote that she takes 15 pills a day and she knows she is getting worse. She lives with an empty fridge and \$8,000 owing on credit cards. The Appellant listed her bills and stated that all she does is cry everyday because she cannot handle things.

For the appeal, the Appellant also provided a statement in which she wrote that her mother, who was

her best friend, passed away a month ago. The Appellant stated that she sees the problem concerning the money; her mother asked her to open an account and hold it until she needed it. The Appellant wrote that she loved her mother and would never touch her mother's hard earned money. She explained that the reason her mother was not named on the account was because she was in a wheelchair living in another community. So, the Appellant opened the account but the money was not hers. It belonged to her mother. The Appellant referred to the documents showing that no money was withdrawn from the account. The Appellant stated that she applied for disability assistance and receives \$450. She is not able to work because every time she takes a job she goes manic and must leave the job to see her psychiatrist. The Appellant stated that her psychiatrist explained the severity of her bipolar disorder and she will never be able to hold a job. She takes 12 different pills. The Appellant also described physical injuries she sustained. She stated that she is unable to drive because of her medication dosage. She depends on taxis using her credit cards.

The Appellant described her cultural background and the reason her mother wanted her to keep her money safe from her brother's harassing. She also described an incident when her brother talked about money belonging to him and yelled at her mother who was 92 years old. The Appellant stated her mother started shaking. She told her sister how scared she was for her mother's life. She further wrote that her husband of 28 years left her because of her bipolar problem. She stated that her children described her as having two personalities, kind and loving most of the time, and then swearing, cursing and scaring the children when she had manic attacks. The Appellant also indicated that without her husband she cannot handle any financial problems. Her brain disease is progressing and she saw what happened to her sister. The Appellant stated that the \$35,000 did not belong to her; it was her mother's and she returned it to her right away.

The Ministry provided no comments regarding the statements submitted by the Appellant for this appeal and it relied on its reconsideration decision.

With respect to the admissibility of the information in the Appellant's appeal statements, the Panel finds that the information regarding the source of the money in her bank account, the reasons she had the money, the relationship between her mother and her brothers, and who she returned the money to is information related to evidence the Ministry considered regarding the money in the Appellant's bank account. Therefore, the Panel admits that information as evidence that is in support of the evidence the Ministry had at reconsideration under section 22(4) of the EAA. The other information in the statements regarding the Appellant's health problems, her ex-husband and children, and her inability to work or drive, the Panel finds is not in support of the evidence before the Ministry at reconsideration and therefore does not admit those parts of the statements into evidence.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that, in accordance with section 14(1)(b) of the EAA and section 31(4) of the EAR, the Appellant is not eligible for income assistance for 17 months beginning in June 2012 because the Appellant had more than \$35,000 in a bank account held in her name alone and she did not dispose of this property for adequate consideration.

The following provisions of the EAA apply to the Appellant's circumstances in this appeal:

Consequences of not accepting or disposing of property

- 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;
- (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 following provisions of the EAR apply to the Appellant's circumstances in this appeal:

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

- 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 \$2 000 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 \$2 000 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 \$2 000 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 \$2 000 of the value of the forgone consideration.

The Ministry's position is that when the Appellant applied for income assistance she had over \$35,000 in a bank account held in her name alone. The Ministry cited section 14(1) of the EAA, which allows the Minister to impose a sanction of ineligibility if a person disposes of real or personal property for inadequate consideration. It also referred to section 31(4) of the EAR, which provides that the period of ineligibility is one calendar month for each \$2,000 disposed. The Ministry noted that it became aware of that account by checking bank information. Also, days after it asked the Appellant for confirmation about the account, she withdrew all of the funds.

The Ministry reviewed the information the Appellant provided about the funds belonging to her mother. It noted that the mother's note had no date and did not indicate how much money was given to the Appellant. The Ministry further noted that the Appellant stated that she gave the funds to her father but provided no evidence to support this. The Appellant also did not mention her father's involvement until she requested the reconsideration of the Ministry's initial decision. The Ministry found that the only information provided by the Appellant was her own signed statement that she was holding the funds for her parents and a copy of a check for \$35,000 written out to her in May 2009. The Ministry noted that there was no confirmation regarding who wrote that check or what the Appellant did with the funds she withdrew. Based on this information, the Ministry determined that the funds were held in the Appellant's name alone and were therefore her personal property. As there was a lack of evidence to establish otherwise, the Ministry determined that the funds were the Appellant's. Her statements about her mother's and father's involvement were not verified. Therefore, the Ministry's position is that the Appellant disposed of the funds for inadequate consideration and it found the Appellant ineligible for income assistance for 17 months, beginning in June 2012 in accordance with section 31(4) of the EAR.

The Appellant's position is that the \$35,000 in the bank account in her name was not her property. That money belonged to her mother. The Appellant submitted that her mother gave her the money to hold in trust so that her brothers could not get hold of it. The Appellant also stated that she never used the money and that she gave it to her father. She argued that she needs the income assistance because she cannot work because of her health conditions.

The Panel finds that the Ministry considered the information the Appellant provided regarding the ownership of the money in her bank account and based on the evidence it reasonably determined that the Appellant provided no confirmation about where the money came from, how long she was supposed to keep the money or what she did with the money when she withdrew all the funds. The

Appellant only provided her own statements, an undated brief note from her mother without details about the money and no confirmation from her father about anything regarding the funds. The Panel also notes that the Appellant provided different information about the source of the money, stating she was hiding the money for her mother but in the statutory declaration stating that she was holding it in trust for both parents. Therefore, the Panel finds that the Ministry reasonably determined that the more than \$35,000 in the Appellant's bank account in June 2012 was her personal property that she disposed of for inadequate consideration. Then in accordance with section 14(1)(b) of the EAA, it reasonably imposed a sanction of ineligibility. Based on the amount in that bank account and the month in which the Appellant applied for assistance, the Panel finds that the Ministry also reasonably determined that the Appellant was ineligible for income assistance for 17 months starting in June 2012 as provided for by section 31(4) of the EAR.

In conclusion, the Panel confirms the Ministry decision as being reasonably supported by the evidence and as a reasonable application of the applicable enactments in the Appellant's circumstances.