

APPEAL #

PART C – Decision under Appeal

The appellant appeals the reconsideration decision of the Ministry of Social Development (Ministry) dated December 18, 2012, in which the Ministry denied his disability assistance under section 10(2) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), on the basis that he had cash assets in excess of \$5,000 as defined in section 1(1) of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 10, 12 and 12.1.

PART E – Summary of Facts

The information before the Ministry at reconsideration included the following:

- The appellant's request for reconsideration dated November 20, 2012, which included his one-page written submission;
- Copy of Ministry Trusts Policy from the Ministry website (10 pages);
- Copy of Ministry Trusts Procedure Policy from the Ministry website (6 pages);
- Copy of a letter from the appellant to the Ministry dated July 5, 2012, in which the appellant advised the Ministry that he had received an inheritance of \$71,350 in June 2012 and that he was "in the process of creating a Trust";
- Copy of a letter from the appellant to the Ministry dated September 12, 2012 in which the appellant advised the Ministry that he had found "someone to act as a Trustee for the Disability Trust I am setting up" but that the person was out of town until the end of the month and that he could not meet with this person, a lawyer, and the bank until the first week of October. In this letter, the appellant also requested that the Ministry's hold on his September 2012 disability assistance cheque be deferred until November "as I will be able to submit the Trust documents by that time";
- A copy of a computer print out from a financial institution dated October 24, 2012 (1 page) for a bank account indicating the primary name of the account as "Trust, [appellant]" and the "joint name" of the account displaying the appellant's name. The print out indicates that \$5.00 was transferred into the account on October 24, 2012 and the balance in the account is \$5.00.

As noted in the Ministry's reconsideration decision, the appellant is a designated person with disabilities ("PWD") who receives disability assistance. The appellant is a sole recipient with no dependents. As the appellant advised the Ministry in his letter dated July 5, 2012, in June 2012 he received an inheritance of \$71,350.00. The reconsideration decision indicates that the appellant advised the Ministry he was "holding \$65,000.00 [of his inheritance] for the trust."

As requested by the appellant in his letter to the Ministry dated September 12, 2012, the reconsideration decision indicates that the Ministry exempted the appellant's \$65,000.00 asset temporarily (for 3 months) to allow the appellant "time to set up a trust in order to access the trust exemption." The reconsideration decision indicates that the Ministry discontinued the appellant's disability assistance effective November 2012 "due to excess assets."

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 he has cash assets in excess of the \$5,000.00 limit was reasonably supported by the evidence.

Applicable Legislation

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;

....

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

....

- (l) a trust or inheritance;

Asset limits

10(1) The following assets are exempt for the purposes of subsection (2):

....

(y) assets exempted under

- (i) ...
- (ii) section 12(2) [assets held in trust for persons with disabilities], or
- (iii) section 12.1(2) [temporary exemption of assets for person with disabilities or person receiving special care];

(2) A family unit is not eligible for disability assistance if any of the following apply:

- (a) a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$5,000;

....

Assets held in trust for person with disabilities

12(1) In this section, "disability-related cost" means the cost of providing to a person with disabilities or a person receiving accommodation or care in a private hospital or a special care facility, other than a drug or alcohol treatment centre,

- (a) devices, or medical aids, related to improving the person's health or well-being,
- (b) caregiver services or other services related to the person's disability,
- (c) education or training,
- (d) any other item or service that promotes the person's independence, and
- (e) if a person with disabilities does not reside in a special care facility, a private hospital or an extended care unit in a hospital,
 - (i) renovations to the person's place of residency necessary to accommodate the needs resulting from the person's disability, and
 - (ii) necessary maintenance for that place of residence.

- (2) If a person referred to in subsection (1) complies with subsection (4), up to \$200,000, or a higher limit if authorized by the minister under subsection (3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts, calculated as follows:
- (a) the sum of the value of the capital of each trust on the later of April 26, 1996 or the date the trust was created, plus
 - (b) any capital subsequently contributed to a trust referred to in paragraph (a)
- is exempt for the purposes of section 10(2) [asset limits].
- (3) If the minister is satisfied that, because of special circumstances, the lifetime disability-related costs of a person referred to in subsection (2) will amount to more than \$200,000, the minister may authorize a higher limit for the person for the purposes of subsection (2).
- (4) A person referred to in subsection (2) who has a beneficial interest in one or more trusts must keep records of the following and make records available for inspection at the request of the minister:
- (a) for a trust created before April 26, 1996, the capital of the trust on that date;
 - (b) for a trust created on or after April 26, 1996, the capital of the trust on the date the trust was created;
 - (c) the amount of capital contributed in each subsequent year to a trust referred to in paragraph (a) or (b);
 - (d) all payments made after April 26, 1996 to or on behalf of the person from a trust in which that person has a beneficial interest.
- (5) For the purposes of this section, the real or personal property of a "patient", as defined in the *Patients Property Act*, who is a person with disabilities is to be treated as if the real or personal property were held in trust for the patient by the patient's committee.

The panel notes that as of October 2012, the following section was added to the EAPWDR, which sets out the Ministry's temporary exemption policy (which the Ministry had applied to the appellant).

Temporary exemption of assets for person with disabilities or person receiving special care

12.1(1) In this section, "person receiving special care" means a person who is receiving accommodation or care in a private hospital or special care facility, other than a drug or alcohol treatment centre.

- (2) During the exemption period described in subsection (3), an asset received by a person with disabilities or by a person receiving special care is exempt for the purposes of section 10(2) [asset limits] if the minister is satisfied that the person intends to
- (a) establish a registered disability savings plan or trust, and
 - (b) contribute some or all of the asset to the registered disability savings plan or trust.
- (3) The exemption under subsection (2) starts on the date the person receives the asset and ends 3 months after that date unless
- (a) the exemption period is extended to a later date under subsection (4), or
 - (b) the exemption ceases to apply under subsection (5).
- (4) The minister may extend the exemption period to a specified date if the minister is satisfied that the person is making reasonable efforts to establish a registered disability savings plan or trust.
- (5) The exemption under subsection (2) ceases to apply if
- (a) the person contributes all of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the asset on the date of the contribution;
 - (b) the person contributes a portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to that portion on the date of the contribution, or

- (c) the minister becomes aware of information that, in the minister's opinion, indicates that
- (i) the person does not intend to contribute any portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the asset on the date specified by the minister, or
 - (ii) the person has contributed some of the asset to a registered disability savings plan or trust but does not intend to contribute any remaining portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the remaining portion on the date specified by the minister.

(6) Amounts expended from an asset to which the exemption under subsection (2) applies are deemed to be money or value received from a trust within the meaning of paragraph (l) of the definition of "unearned income" in section 1(1).

This hearing was a written hearing. The appellant did not provide further written submissions, other than those attached to his notice of appeal, which reproduced his written submission on his request for reconsideration. In his notice of appeal, the appellant wrote that,

The Ministry did not allow me the opportunity to propose a Trust Agreement. It is clear that the Ministry is requesting that I place the vast majority of my entire inheritance into a Disability Trust without the terms of the Disability Trust Agreement being settled upon between myself and the Ministry. ... the Ministry expects me to place at least the vast majority of my inheritance into a Disability Trust without the terms of my proposed Disability Trust Agreement being reviewed by the Government of B.C.'s legal counsel.

The Ministry relied on the reconsideration decision. The reconsideration decision states that the asset limit for a sole PWD recipient is \$5,000.00, as set out in s. 10 of the EAPWDR. The Ministry also noted that s. 12(2) of the EAPWDR allows for an exemption of up to \$200,000.00 (or higher if authorized by the minister) if the funds are held in an approved trust to be used for disability-related costs. The reconsideration decision states that Ministry policy allows for up to 3 months to allow a PWD recipient to set up an approved trust in order to access the exemption of s. 12(2) of the EAPWDR (and the panel notes that this is now set out in s. 12.1 of the EAPWDR reproduced above). The reconsideration decision states that the legislation provides no discretion to exempt the appellant's \$65,000.00 inheritance "if it is not held in an approved trust." The reconsideration decision notes that the appellant received a 3-month exemption of the asset to allow time for him to set up a trust, but that he did not set up a trust and he has "not identified any factors beyond [his] control that prevented [him] from setting up the trust within the 3 months."

The panel notes that although the appellant indicated in his letters to the Ministry of July 5 and September 12, 2012 that he was in the process of setting up a "Disability Trust", the only evidence before the Ministry of a trust account for the appellant's inheritance is the October 24, 2012 computer print out identifying an account as "Trust, [appellant's name]." However, the panel notes that this computer print out only shows a balance of \$5.00 in this account as of October 24, 2012. The appellant provided no evidence to the Ministry or to this panel of the steps he has taken to set up a disability trust for the bulk of his inheritance (approximately \$70,000.00, of which \$5,000.00 is exempt). The appellant did not provide any evidence to the Ministry or to this panel, beyond the September 12, 2012 letter to the Ministry, that there are factors beyond his control which prevented him from setting up the trust during the 3-month extension period provided to him by the Ministry (August through October 2012).

Accordingly, the panel finds reasonable the Ministry's determination that the appellant is not eligible for disability assistance under s. 10(2) of the EAPWDR as he has a cash asset in excess of \$5,000.00 (the remaining \$65,000.00 of his inheritance) and further, that there is no evidence that the bulk of the appellant's inheritance is in a trust account in order for him to meet the exemption requirement set out in s. 12(2) of the EAPWDR. The panel therefore confirms the reconsideration decision of December 18, 2012.

The appellant also asserted in his submissions attached to the Notice of Appeal (which were worded exactly as his submissions on reconsideration) that the "Ministry's legislation, policies, procedures and practices have resulted in their violating my equality rights as stated in Section 15 of the Canadian Charter of Rights and Freedoms on the basis of my status as a disabled person." He states in his submissions that,

The Ministry's efforts to deny me my Constitutional and legal rights is a case of direct and systemic discrimination. The Government of B.C. does not request, in other instances, of a counter party to enter into an agreement without the terms of the agreement being clearly spelled out and agreed to. For example, the Government of B.C. does not ask any of its employees to sign labour agreements without the terms being expressly written out and agreed upon. No one in the Province of B.C. is expected to buy a house or car or any type of insurance without the terms being spelled out and agreed upon by the parties. The same goes for any type of leasing or rental agreements. But the Ministry expects me to place at least the vast majority of my inheritance into a Disability Trust without the terms of my proposed Disability Trust Agreement being reviewed by the Government of B.C.'s legal counsel. Talk about putting the cart before the horse.

Under section 19.1 of the *Employment and Assistance Act*, sections 1 through 6, 7(1), 7(2), 8, 9, 30, 44, 46.3, 55, 56, 58 and 61 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, apply to the Employment and Assistance Appeal Tribunal. Accordingly, as set out in section 44 of the *Administrative Tribunals Act*, this panel does not have jurisdiction to consider constitutional questions such as the appellant's assertion that the provisions of the EAPWDR violate his constitutional rights.