

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated February 6, 2013 which found that the appellant is not eligible for income assistance as a result of having assets valued at more than the allowable limit of a total value of more than \$5,000, pursuant to Section 10(2) of the Employment and Assistance for Persons With Disabilities Regulation (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 included:

- 1) Transfer Certificate of Title dated September 23, 2011 for a parcel of land in the appellant's country of origin, showing ownership by a third party;
- 2) Receipt dated July in the appellant's name for an amount paid as the partial/ down payment for the purchase from a third party of a lot with an area of 500 square meters;
- 3) Deed of Conditional Sale dated July 9, 2012 for purchase by the appellant of the lot in the appellant's country of origin;
- 4) Employment and Assistance for Persons With Disabilities Review/ Application form dated October 24, 2012, in the appellant's name;
- 5) Print-out dated November 28, 2012 of a daily currency converter for an amount in the currency of the appellant's country of origin converted to \$6,092.50 Canadian dollars;
- 6) Letter dated January 3, 2013 from the ministry to the appellant stating in part that the ministry requires documentation to determine his eligibility for assistance, including a demonstration in writing of the efforts he is making to sell his retirement property/home in his country of origin;
- 7) Letter dated January 21, 2013 from the appellant to the ministry stating in part that the piece of land he bought is only worth \$6,000 Canadian as the seller badly needed cash. The land was turned into a garbage dump site by the people living in this poor community and the previous owner had been frustrated in controlling the property. The appellant has built a "Nepa hut" (a small house built of bamboo and coconut) and this house serves as his retirement home since he is living all by himself with no other family members left. He has no other relatives in Canada or in his country of origin. He has three complicated health issues of AMD [age-related macular degeneration], hepatitis B, and internal injuries from an accident, and there is no medicine or operation which can help. He is using herbal medicines derived from plants and mushrooms to avoid going totally blind and these plants are only found in his country of origin. His pain from his internal injuries is triggered during cold seasons and he needs to be in a hot climate;
- 8) Letter dated January 22, 2013 from the ministry to the appellant stating in part that the ministry has completed a review of the appellant's file and determined that he is no longer eligible for assistance because he has assets in excess of the limit as a result of his ownership of property in his country of origin;
- 9) Letter dated January 25, 2013 from the appellant to the ministry stating in part that he has no other family to lean on, he is all by himself and has developed confusion, depression and anxiety. The appellant stated that if his disability stops he will "get crazy." He enclosed a prescription from his "psychiatry doctor" dated December 3, 2012 which he cannot fill due to lack of funds. There is no cure or operation for his AMD in Canada and he is searching for an alternate approach while he is still able to see;
- 10) Bank Profile dated January 25, 2013 showing a balance of \$1.41 in a personal chequing account and balance inquiries showing \$1.24 in one account and \$3.91 in the other;
- 11) Various receipts issued by companies located in the appellant's country of origin for construction items;
- 12) Various receipts covering the period July 23, 2012 through August 9, 2012 for labour costs for improving the property in the appellant's country of origin;
- 13) Undated list of costs relating to the appellant's property in his country of origin, including \$6,092.50 for the purchase of the land and \$1,980 for construction of a grass hut and purchase of a motor boat; and,
- 14) Request for Reconsideration dated January 25, 2013.

In his Notice of Appeal, the appellant stated that he cannot understand how \$6,000 worth of property makes him disqualified for disability benefits. The appellant stated that this, therefore, makes him not a disabled person. With his Request for Reconsideration, the appellant attached various receipts and stated that when they are added up, it is approximately worth buying a bicycle in Canada.

At the hearing, the appellant stated that he has a permanent disability because he is going blind. He purchased some property but this does not make him an able person. He is still disabled and he paid his taxes for many years and needs the benefits. He has received funds from an ICBC award from a previous accident, as compensation for his pain and suffering. The lawyer told him he did not have to declare this

amount as income because it was already taxed. With some of this money, he purchased land in his country of origin for agricultural purposes, so that he can grow the herbal remedies that will help his medical conditions. The appellant stated that he has a number of prescriptions and has been to the hospital many times in Canada but there is not much that can be done to help him here. The appellant stated that he travelled to his country of origin not knowing there was a restriction in terms of receiving assistance. The property he purchased is in an impoverished area. There is no running water or electrical service, people were dumping garbage on the property, and it was said to be inhabited by a "white lady", or ghost. The receipts for labour were written out by the appellant because the people who live in the area are poor and illiterate and he wanted to provide them with employment and also improve his property. The appellant stated that he returned to Canada in October 2012 and rented an apartment. Since he has not been receiving disability assistance, he applied for a loan to cover part of his shelter costs. The appellant stated that he does not want to sell this property because he is hopeful that the plants and mushrooms he grows there will help improve his medical conditions.

The ministry relied on its reconsideration decision. At the hearing the ministry clarified that the ministry is the payer of last resort and the expectation generally is that all resources are exhausted before assistance is paid. The appellant will, therefore, be considered ineligible for disability assistance until he remedies the fact that he owns an asset in excess of the limit of \$5,000 Canadian dollars.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision which found that the appellant is not eligible for income assistance as a result of having assets valued at more than the allowable limit of a total value of more than \$5,000, pursuant to Section 10(2) of the Employment and Assistance for Persons With Disabilities Regulation (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): ...

(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 sole recipient has no dependent children and has assets with a total value of more than \$5 000; . . .

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 recipient of disability assistance with no dependants and, therefore, the applicable asset limit under Section 10(2)(a) of the EAPWDR is \$5,000. The ministry points out that the appellant does not dispute that he purchased property in his country of origin for a value that converts to approximately \$6,092 Canadian. The ministry argues that the appellant's ownership of the land is equity in real property that can be converted to cash and, therefore, falls within the definition of "asset" in Section 1 of the EAPDR. The ministry argues that the appellant does not reside primarily in the subject property and, therefore, it cannot be exempted as the appellant's place of residence under Section 10(1)(c) of the EAPWDR. The ministry points out that the appellant's equity in real property is considered an asset beyond the allowable limit of \$5,000 and the appellant is, therefore, not eligible for assistance.

The appellant's position is that although he owns property that he purchased for approximately \$6,092 Canadian, he is still a PWD and in need of assistance. The appellant argues that the ownership of assets does not make him an able-bodied person. The appellant argues that he has medical conditions for which there is no treatment or cure in Canada and he purchased this property for agricultural purposes, with the hope of growing plants and mushrooms that will help improve his medical conditions. The appellant argues that he does not want to sell this property as he is hopeful that it may provide a remedy for his AMD and prevent complete blindness.

The panel finds that it is not disputed that the appellant is a sole recipient of disability assistance, with no dependents, and that the applicable asset limit is \$5,000, pursuant to Section 10(2)(a) of the EAPWDR. The panel also finds that it is not disputed that the appellant purchased real property in his country of origin in July 2012 and title to the property is in the appellant's name alone, as set out in the Deed of Conditional Sale dated

July 9, 2012. The definition of "asset" in Section 1 of the EAPWDR includes 'equity' in real property, or the current market value of the property less any outstanding debts. The appellant did not dispute that he purchased the property for approximately \$6,092 Canadian and there was no evidence of any mortgages or debts registered against the property, and the panel finds that the current market value of the subject property is approximately \$6,092 Canadian. The panel finds that the appellant admits he does not primarily reside in the property and the ministry reasonably concluded that it is not an exempt asset as the family unit's place of residence pursuant to Section 10(1)(c) of the EAPWDR. Therefore, the panel finds that the purchase price for the property, or approximately \$6,092 Canadian, is considered the appellant's asset and the ministry reasonably determined 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 \$5,000.

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.