

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated February 18, 2013, finding the Appellant ineligible for income assistance as she has assets in excess of the amounts set out in section 11 of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

The relevant legislation is the EAR sections 1 and 11 and the Employment and Assistance for Persons with a Disability Regulation (EAPWDR) sections 1 and 10.

PART E – Summary of Facts

The Appellant has a number of serious medical issues, some of which are the direct or indirect result of an automobile accident that occurred in June 2008. These include Hepatitis C, liver cirrhosis, type-2 diabetes, a duodenal ulcer and 2 recorded issues of hepatic encephalopathy (periods of mental confusion). She has not worked since the accident.

The Appellant owns a number of assets, including a house in which she lives, a vehicle, a property valued at approximately \$50,000 (the Property) and an investment valued at about \$120,000 which provides her with a quarterly income of about \$1800 (the Investment).

In January 2013, the Appellant approached a community organization to assist her in making an application for income assistance. According to the submissions of her representative at the hearing, who was also the person who assisted her in making an application, she intended to apply for persons with a disability (PWD) status. The Ministry, however, treated her application as for income assistance. It is not clear from the documentary or oral evidence whether this was an error on the part of the applicant or the Ministry.

The Ministry reviewed the Appellant's application and denied it on the basis that she owns assets in excess of the legislated amounts. Specifically, the Ministry found that the Property and the Investment were assets in excess of the legislated amounts. At the hearing the Ministry submitted that it could by policy, and had in this case, make an exception for the Property by deeming it not saleable and so an "unavailable asset". Therefore, the Ministry's denial was based solely on the Investment.

PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the Ministry's reconsideration decision dated February 18, 2013, finding the Appellant is not eligible for income assistance, as she owns assets in excess of the legislated amount.

The relevant legislation is the EAR sections 1 and 11:

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;

"**cash assets**" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party
 that must pay it to the person or the dependant on demand,
- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

Asset limits

11

...

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

- (a) a sole applicant has no dependent children and has
 - (i) assets with a total value of more than \$1 500, or
 - (ii) cash assets in an amount that is equal to or greater than the sum of the amount the applicant would otherwise be eligible for under section 28 [*amount of income assistance*] and \$150;
- (b) a sole recipient has no dependent children and has assets with a total value of more than \$1 500;

(2.1) Despite subsection (2), a family unit that includes an applicant or a recipient who has applied for and has not been denied, or who the minister is satisfied has a genuine intention to apply for, designation as a person with disabilities under section 2 of the *Employment and Assistance for Persons with Disabilities Act* may receive income assistance, subject to all other eligibility criteria, if the family unit has assets with a total value of no more than

- (a) \$3 000, if the applicant or recipient has no dependants, . . .

And the EAPWDR sections 1 and 10:

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;

"cash assets" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party
 that must pay it to the person or the dependant on demand,
- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

Asset limits

10

...

- (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 \$5000 . . .

There was some confusion as to whether the Appellant applied for income assistance or PWD. This was not resolved at the hearing, but the panel finds it is not relevant to this decision. The difference between the two designations in the context of assets in excess is a slightly different asset limits: for income assistance it is \$2000 (EAR s. 11(2)), for a pending application for PWD it is \$3000 (EAR s. 2.1), and for PWD it is \$5000 (EAPWDR s. 10(2)). As the Appellant's investment is valued at \$120,000, if it is in excess, it is an excess of all three limits.

There was no issue that the Investment qualifies as an asset under both the EAR and EAPWDR, nor that the Investment is in excess of all the legislated limits.

At the hearing the Appellant's representative submitted that it was unreasonable of the Ministry to expect the Appellant to deplete her retirement savings before she could become eligible for income assistance or PWD.

The Ministry submitted that it is bound by the limits set out in the legislation.

While the panel understands the Appellant's concern with depleting her retirement income, it finds that the Ministry has no discretion to make an exception for the Investment. As the Investment is an asset and is valued in excess of the legislated limits, the Ministry had no choice but to deny the Appellant income assistance.

Accordingly, the Panel finds that the Ministry's determination that the Appellant is not eligible to receive income assistance was a reasonable application of the applicable legislation.

Accordingly, the Panel confirms the Ministry's decision.