

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated May 10, 2013 which found that the appellant is not eligible for income assistance as a result of having assets valued at more than the \$2,000 allowable limit, pursuant to Section 11(2) of the Employment and Assistance Regulation (EAR).

**PART D – Relevant Legislation**

Employment and Assistance Regulation (EAR), Sections 1 and 11

## PART E – Summary of Facts

The hearing had been previously adjourned to allow time for the appellant to obtain additional documentation from her bank. The appellant consented to the attendance of a ministry observer at the hearing.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Transaction History Listing covering the period of April 1, 2012 through February 28, 2013 for a bank account in another country, showing a closing balance of the equivalent of \$4,459.84 in Canadian dollars;
- 2) Undated page from the Exchange Control Manual of the bank in another country which sets out the type of payment, including gifts and the delegated limit stated to be "up to \$500 per applicant per annum" and for emigration allowance which requires the bank's approval and is restricted to \$500,000 per family per annum and requiring a valid passport, permanent resident visa, original tax clearance certificate, and a one-way airline ticket; and,
- 3) Request for Reconsideration- Reasons.

Prior to the hearing, the appellant provided a print-out of an email dated May 22, 2013 from the appellant to a representative of the bank in another country stating that she is visiting Canada and will be staying for a few more months. The appellant wrote that she needs to access her account and had been told that the representative would be able to send her forms to fill out to request a transfer of her funds and she requests that the representative send the forms.

At the hearing, the appellant provided further documents, namely:

- 1) Undated page from the Exchange Control Manual of the bank in another country;
- 2) Print out of an email dated May 22, 2013 from the appellant to a representative of the bank;
- 3) Letter dated June 11, 2013 from a local transition house stating that the appellant has been living in one of the residences for newly arrived refugee claimants since January 2013. She has not been paying rent as she has no access to her funds in her country of origin. The transition house is attempting to contact the bank in another country but they have been slow to reply to the request for documentation of their policies;
- 4) Letter dated June 17, 2013 from the appellant to a representative of the bank in another country stating that an indemnity form was emailed to her and she has enclosed a copy. The appellant wrote that she would like them to mail her an ATM card so she can access her funds from Canada and provides her address. The appellant wrote that she knows that withdrawals and deposits on the account has been her husband's activity, not her own. The appellant requests a letter from the bank stating that her husband has access to the account and not her.
- 5) Deed of Indemnity dated June 12, 2013 signed by the appellant and a notary public;
- 6) Copy of Registered International mail receipt with notes indicating the letter was sent to the bank in another country on June 19, 2013 and item was still in transit on July 11, 2013;
- 7) Copy of an email dated August 1, 2013 from a representative of the bank to the appellant acknowledging receipt of her letter and stating in part that the bank is yet to launch its Visa debit card which can be used in Canada to access funds in the other country. The bank states that the appellant's husband can be issued a card since he is in the other country. The bank states that it will not issue a letter regarding transactions on the account since the appellant has confirmed in her request that she is aware of the activities being carried out on the account by her husband. Since the account is a joint account the option she has available is for her husband to transfer the funds through telegraphic transfer from the account to her account in Canada; and,
- 8) Letter dated August 6, 2013 from the transition house 'To Whom It May Concern.'

The ministry did not object to the admissibility of any of the documents. The panel admitted all of the documents pursuant to Section 22(4) of the Employment and Assistance Act as either being before the ministry on reconsideration or relating to interactions between the appellant and her advocate with the bank in another country and being in support of information and records that were before the ministry on reconsideration.

In her Request for Reconsideration, the appellant wrote that she has documentation from her bank in another country regarding the policy restrictions on the amount of funds that can be transferred overseas. The limit is \$500. She does not have access to the 'emigration allowance' because she has "not yet emigrated to Canada." She is a refugee claimant. Her bank account is now a joint account that her husband can access but she cannot access it. She has no debit card or any way to access the money. She has used the \$500 gift allowance. She currently has no funds available to her.

In her Notice of Appeal, the appellant wrote that she is waiting for information from her bank in another country and she requests an extension of time. She wrote that she attempted to contact the bank by telephone on May 21 and 22, 2013 and she sent an email dated May 22, 2013. The appellant wrote that she has been told that unless she has status in Canada, her funds cannot be transferred out of the country. She is applying to have her funds transferred and then, if her request is denied, she will be able to provide documentation about her inability to access funds in her account. She has no other way to access her funds in Canada (i.e. no ATM card).

At the hearing, the appellant's advocate stated that there is no dispute that the appellant has money in an account in another country. The appellant is a refugee claimant and if she cannot return to her country of origin and the bank will not work with her to allow her to access the funds from Canada, then her funds are not accessible to her. The advocate stated that more documents have been provided to show that the appellant cannot access her funds. The process for getting these responses has taken months and the advocate has been frustrated by the bank, which is almost "stone-walling," likely as a result of the political climate in the country. The advocate stated that the policy provided by the bank shows that there is a limit of \$500 on money transferred as a gift from someone in the appellant's country of origin. The advocate stated that for the emigration allowance, certain documents are required which the appellant does not have because all of her documents were seized by Citizenship and Immigration (CIC) Canada when she claimed refugee status and she does not yet have status in Canada. Until a decision is made and all appeals exhausted, she will not have status in Canada. The advocate stated that the bank wanted the appellant to sign an Indemnity form to release the bank's liability for anything it does. The advocate stated that since there is a possibility that the appellant may have to return to her country of origin, she does not want to let the bank know that she has claimed refugee status. She is afraid to tell them that she is a refugee. The advocate stated that because the bank does not understand the appellant's situation, they may think that the \$500 limit for gifts would be enough for a holiday in Canada.

The advocate stated that on August 5, 2013 the appellant and he placed a call to the representative of the bank in the other country to clarify the email dated August 1, 2013. The advocate stated that the representative confirmed that the appellant has a joint account with her husband and it is the husband's activity that was visible on the statement for the period April 1, 2012 through February 28, 2013. The representative confirmed that the appellant's husband has been writing cheques on the account. The representative clarified that the Visa debit cards are not yet available and, therefore, the appellant cannot directly access her funds in Canada. The representative clarified her suggestion that the appellant's husband can receive an "Easy Card." This card does not assist him in transferring funds to Canada and does not give him a benefit on the account that he does not already possess with having access through cheques. The representative clarified her suggestion that the appellant's husband can transfer funds through "telegraphic transfer." He would have to write a cheque on the account and instruct the bank to wire money directly to a financial institution in Canada. The representative confirmed that the bank is bound by the rules of the Exchange Control Manual and a client can only issue a maximum of \$500 per annum in a gift.

The appellant stated that the representatives at the bank in her country of origin do not want to answer any questions. The appellant stated that she believes that the bank representatives do not want to do anything seen to be contrary to the bank's policy since they may lose their jobs. The appellant stated that her husband is trying to help her but he does not have strong English skills and the representatives at the bank do not speak his first language. Her husband asked for a Visa card and the bank said no.

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The ministry relied on its reconsideration decision.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which found that the appellant is not eligible for income assistance as a result of having assets valued at more than the \$2,000 allowable limit, pursuant to Section 11(2) of the Employment and Assistance Regulation (EAR), is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 11(2) of the Employment and Assistance Regulation (EAR) provides that:

### Asset limits

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

- (a) subject to paragraph (c), a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$2 000;
- (b) subject to paragraph (c), an applicant or a recipient has one or more dependants and the family unit has assets with a total value of more than \$4 000;
- (c) an applicant or a recipient receives accommodation and care in a private hospital or a special care facility, other than an alcohol or drug treatment centre, or is admitted to a hospital for extended care, and
  - (i) has no dependants and has assets with a total value of more than \$5 000, or
  - (ii) has one or more dependants and the family unit has assets with a total value of more than \$10,000.

Section 1 of the EAR 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.

"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;

The ministry's position is that the appellant is a sole applicant with no dependent children and, therefore, the applicable asset limit under Section 11(2)(a) of the EAR is \$2,000. The ministry argued that the appellant has a bank account in her country of origin with a balance as of February 28, 2013 which converts to approximately \$4,500 Canadian. The ministry acknowledges that the appellant states she has no access to the funds and the activity on the account (i.e. the deposits and debits) is from her husband. The ministry points out that there is no documentary evidence from the bank to establish that the appellant has no access to the funds. The ministry points out that the appellant's approximate \$4,500 in her bank account stands to her credit with a savings institution or third party and, therefore, meets the definition of being her "cash asset." The ministry argued that the appellant's cash asset is considered an asset beyond the allowable limit of \$2,000

and the appellant is, therefore, not eligible for income assistance.

The appellant's position is that although she has a bank account in her country of origin with a balance over \$2,000 Canadian, she does not have the ability to access these funds. The advocate pointed to the many attempts in May through July 2013 to obtain further information from the bank in the appellant's country of origin and argued that it is not like dealing with a bank in Canada, that it has been very difficult to get their cooperation, likely as a result of the political climate in the country. The advocate argued that he is of the opinion, based on his efforts with assisting the appellant, that she is not able to access her funds since she also has to be careful, as a refugee claimant, with what information she reveals to the bank. The advocate argued that although the August 1, 2013 email from a representative of the bank appears to suggest options for accessing funds in the account, the advocate subsequently had a conversation with the bank representative which qualified the advice given. The advocate argued that the Visa debit cards are not yet available, that the appellant's husband can receive an "Easy Card" but this does not assist him with transferring funds to Canada, and a transfer through "telegraphic transfer" is subject to the limit of \$500 per annum which applies to gifts.

The panel finds that it is not disputed that the appellant applied for income assistance as a sole applicant with no dependent children and that the applicable asset limit is \$2,000, pursuant to Section 11(2)(a) of the EAR. The panel also finds that it is not disputed that the appellant has a bank account in her country of origin with a balance that converts to more than \$2,000 in Canadian funds. However, the appellant argues that she does not have access to more than \$500 of these funds as the representative from the bank confirmed with her advocate that the options outlined in the August 1, 2013 email do not allow for a transfer of funds of more than \$500 to the appellant in Canada. The definition of "cash asset" in Section 1 of the EAR is "...money standing to the credit of the person or the dependant with a savings institution, or a third party that must pay it to the person or the dependant on demand." The panel finds that the ministry reasonably determined that the balance in the appellant's bank account in another country is money standing to her credit with a savings institution that must pay it to the appellant on demand. It is not disputed that the appellant is an account holder of these funds in another country and the presumption is that the financial institution must pay the money standing to the credit of the account holder on demand. The panel finds that the ministry reasonably required written evidence from the bank that this presumption does not apply in the appellant's circumstances. The appellant wrote in her Request for Reconsideration that she has "...used up the \$500 gift allowance" and the panel finds that the bank has, therefore, paid moneys from the account to the appellant on her demand, although the appellant did not explain the method she had found to secure access to her account for this amount.

While the bank's Exchange Control Manual sets out that for a "gift" to someone in another country the delegated limit is "up to \$500 per applicant per annum," the panel finds that there was no written confirmation from the bank that when an account holder's funds are transferred from her own bank account to another bank account held by her that this is considered a "gift" to the account holder and that, therefore, the bank's restriction applies. The appellant requested in her June 17, 2013 letter that the bank mail her an ATM card and the bank representative confirmed in her August 1, 2013 email that the appellant's husband can be issued an "Easy Card." While the advocate argued that the appellant's husband cannot 'transfer' funds to Canada with the card, there was no explanation offered for why her husband, who is cooperating with the appellant and attempting to help her, cannot obtain a card as suggested by the bank, and mail it to the appellant for use in Canada.

The panel finds that the ministry reasonably determined that the approximate amount of \$4,500 Canadian funds in the bank account in the appellant's country of origin falls within the definition of a "cash asset", which is included in the definition of an "asset" in Section 1 of the EAR. The panel finds that the ministry reasonably determined that the appellant is not eligible for income assistance, pursuant to Section 11(2)(a) of the EAR, as a result of having assets with a total value of more than \$2,000.

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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.