

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration decision dated March 6, 2013 wherein the Ministry denied the appellant's request for disability assistance after determining that the appellant has assets in excess of the prescribed limits pursuant to section 10 of the Employment and Assistance for Persons With Disabilities (EAPWD) Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, Section 3
Employment and Assistance for Persons with Disabilities Regulation, Sections 1(1) "asset" and 10

PART E – Summary of Facts

The appellant's disability assistance was discontinued because the ministry determined that he owns assets in excess of the allowable limits. Specifically the ministry determined that the appellant owns real property ("Property A") that has a value in excess of the \$5,000 allowable limits.

The evidence before the ministry at reconsideration included various documents pertaining to other chattels owned by the appellant. For the purpose of this appeal, several of those documents are not relevant as the only decision under review is in respect to Property A. Of relevance, however, is a multiple listing contract for the sale of Property A and a real property assessment of Property A.

The multiple listing contract is dated February 14, 2013 and sets out a list price of \$149,900. The property assessment indicates that property A has an assessed value of \$120,500.

The appellant says that Property A is an exempt family asset because it is his family unit's "place of residence" as set out in section 10(1) of the legislation. The ministry's position is that Property A is not, in fact, the appellant's place of residence and therefore it is not an exempt asset making him ineligible for income assistance.

In his written submissions the appellant makes the following points:

- He acknowledges that his mailing address is different from his property address and explains that he has used the box number ("Property B") since September 16, 2005;
- His primary residence is at Property A;
- He attaches his driver's license with his submission indicating the post office box and Property B address are the ones he uses;
- He attaches a letter from a realtor who is listing Property A for sale and the letter indicates that, to the best of her knowledge, the appellant resides primarily at Property A. The realtor also suggests that the property should be listed at \$149,900 as a fair asking price;
- The appellant states that his daughter rents Property B with her boyfriend;
- He states that he does not pay rent or live at Property B;
- The appellant states that he will stay with his daughter from time to time; and
- He states that he has used his daughter's address at times but has not resided there as a resident

At the oral teleconference hearing, the appellant and his advocate gave the following additional evidence:

- The post office box office he uses is located approximately 26 km from his daughter's house (Property B) and approximately 160 km from Property A;
- The appellant uses a mailing address in a different community because it simplifies things as he is often at or near that community to visit his daughter and for various medical appointments related to his brain injury;
- He has used the Box office address since at least 2008;
- His realtor confirms that Property A is his place of residence;
- He cannot provide verification that Property A is his place of residence through hydro and/or gas bills because he has no power there. He runs (or at least he used to run) power to the

property through a generator but there has been lots of theft in the area and the generator has been stolen. As such he lives without any power at all and brings water in himself;

- He started living at Property A on a regular basis last summer and stayed with his daughter at Property B for only a few months this past winter.

The appellant's witness is his daughter and she gave the following evidence at the hearing:

- The appellant has lived with her for only a couple of months while he figures things out;
- She was at the hearing to provide him moral support;
- Prior to two months ago she would only see the appellant for a couple of days at a time. He would come in for his medical appointments but then he would go back to Property A;
- He ordinarily lives at Property A with a cabin but no power.

The panel has considered the new evidence submitted by the appellant in his written submissions and orally at the hearing, and has also considered the new evidence of the witness and finds that it is all admissible under section 22(4) of the Employment and Assistance Act as it is evidence in support of the appellant's original application, and evidence in support of the information and records that were before the ministry when the reconsideration decision was made.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry reasonably concluded that the appellant is not eligible for income assistance due to assets in excess of the prescribed limits pursuant to section 10 of the Employment and Assistance for Persons With Disabilities (EAPWD) Regulation.

The following sections of the Employment and Assistance for Persons with Disabilities Act apply to this decision:

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act

The following section of the Employment and Assistance for Persons with Disabilities Regulation applies to this decision:

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

Asset limits

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

(a) clothing and necessary household equipment;

(b) one motor vehicle generally used for day to day transportation needs;

(c) a family unit's place of residence

As noted above, the appellant contends that the Property A address is his place of residence. He says he ordinarily lives there in a cabin with no power. He says that the ministry unreasonably

concluded that he does not live at Property A, notwithstanding the evidence from him and his daughter that he does. He says that he currently has Property A for sale and says that it has been listed for sale intermittently for almost three years. He provides a letter from his realtor in which the realtor says that she believes that the appellant resides at Property A, and that he is currently trying to sell it for a list price of \$149,900 which is fair market value. He argues that the post office box he uses has been used by him since at least 2008, and that he uses that address or the one of Property B as one of convenience because he is always in that community for medical appointments and to visit his daughter.

The Ministry's position is that Property A is "assets in excess". Specifically, the Ministry says:

- The appellant has not supplied sufficient verification to confirm that he resides on Property A, and therefore the ministry cannot consider Property A to be his primary residence;
- The appellant reports that he has lived on a cabin on Property A since April 2012 however he did not submit any utility bills or documents to confirm that he resides on the property;
- The appellant does not use Property A address as his primary address;
- His address listed with the ministry is a post office box in another community;
- On a multiple listing contract for the sale of Property A the appellant reported his address to be a different address ("Property B");
- His driver's license address reports his address as the post office box and Property B address;
- Although the appellant states he lives at Property A he advised the ministry in July 2012 that he wanted to pick up his assistance cheque in a different community. The ministry has an office located near Property A and therefore questioned why the appellant would need to drive 2 ½ hours to a different ministry office;
- Although Property A is listed for sale, it is being listed at \$29,400 above the assessed value and therefore the ministry is not satisfied that the appellant is making all reasonable efforts to sell the asset;
- The appellant contends that he owes CIBC and Scotia Bank thousands of dollars yet there are no mortgages or liens against the property.

Despite the various submissions made by and on behalf of the appellant, and the new evidence on appeal, the panel finds that the appellant has not provided sufficient evidence to prove that Property A is his primary place of residence.

If Property A were the appellant's primary place of residence, it stands to reason that, at the very least, he could provide some type of substantiating evidence. The appellant says no such evidence exists. He says he has no power at all at his cabin and therefore cannot provide copies of gas or hydro bills confirming regular usage supporting his contention that Property A is his place of residence.

The appellant relies on the oral evidence of his daughter and the written letter of the realtor to confirm that he does live at Property A. The oral evidence of his daughter is not of itself enough to validate the appellant's claim and would carry more weight if it were backed up by further documentary evidence, or even photograph evidence which might portray the appellant as a regular habitant of Property A. The letter from the realtor is also not helpful as it simply states "to the best of my knowledge... [appellant] primarily resides at his property...". The realtor does not indicate whether

she has ever been to the property nor does she explain how she may have such knowledge. Further, the ministry's evidence is that eyewitnesses have observed the appellant's truck at his daughter's home on a regular basis even during the periods which the appellant claimed that he was living at his cabin. Neither the appellant nor his advocate refuted this statement.

With respect to his post office box, near Property B, the panel finds that the appellant has not adequately explained why he continues to use this box office. While he says he does so for reasons of convenience, according to the appellant the post office box is located 26 km from Property B and additionally is located in excess of 160 km away from Property A. Further, there is a ministry office 15 to 20 minutes from his residence at Property A yet the appellant even has his ministry mail routed to another community, over 160 km away.

In the absence of further evidence substantiating that the appellant resides at Property A, the panel finds that the Ministry reasonably concluded that the appellant has not established that Property A is his place of residence. As such, the panel further finds that the ministry's decision was reasonable as, based on the limited evidence, the appellant does not meet the legislated criteria due to assets in excess of the prescribed limits.

In summary, the panel therefore finds that the Ministry's decision was reasonably supported by the evidence and confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.