

**PART C – Decision under Appeal**

The decision under appeal is the reconsideration decision dated 5 March 2013 in which the Ministry determined that the appellant was not eligible for disability assistance because her assets exceeded the \$5,000 allowable limit determined under section 10(2)(a) of the Employment and Assistance for Persons with Disabilities Regulation.

**PART D – Relevant Legislation**

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

## PART E – Summary of Facts

The appellant was not in attendance at the hearing and after confirming that she had been notified, the hearing proceeded under s. 86(b) of the Employment and Assistance Regulation (EAR).

The evidence before the Ministry at reconsideration included:

- The appellant has persons with disabilities (PWD) status and has been a single recipient of disability assistance since January 2013.
- On 13 February 2013, the Ministry discovered that the appellant was the owner of a residence on First Nation land.
- A one-page Fax Cover Sheet dated 13 February 2013 from First Nation Administration stating that their "Indian Registry" worker advises the appellant inherited a home situated on Band land in 2004 that "may be worth \$75,000.00 as it is an older home".
- An 8-page residential tenancy agreement dated 16 October 2012, signed by the appellant, indicating she is renting this house to a third party for \$300.00 per month.
- On 19 February 2013, the Ministry advised the appellant that she was not eligible for income assistance as she possessed assets in excess of \$5,000.00 and that she failed to pursue income as her property is on Band land and she may be eligible for support from the First Nation.
- On 20 February 2013, the appellant requested a reconsideration of this decision as she only makes \$300.00 per month from the rent of her house, she is concerned about paying the rent of her actual residence, she has no other place to go, she needs to get her personal belongings and she suffers from mental and physical health issues and a learning disability.

In her Notice of Appeal dated 20 March 2013, the appellant indicates that she has no home in the city where she actually lives until she can pay her rent and that her medical condition is deteriorating.

At the hearing the Ministry stated that the appellant's property was on Band land but they believed it was not on reserve and that there was no indication on file whether the property was a saleable acreage or not, nor whether the question was asked to the appellant.

The panel determined the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was in support of the records before the Minister at reconsideration.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision that the appellant was not eligible for disability assistance because her assets exceeded the \$5,000 limit determined under section 10(2)(a) of the EAPWDR was either a reasonable application of the legislation or reasonably supported by the evidence.

Section 1 of the EAPWDR defines asset as:

- (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;

Section 10(1)(c) of the EAPWDR states that a family unit's place of residence is exempt for the purpose of subsection 2.

Section 10(2)(a) of the EAPWDR limits the value of assets a recipient can possess without being ineligible for assistance:

(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;...

In its reconsideration decision, the Ministry also refers to subsection 3:

10(3) The minister may authorize one or more of the following:...

- (b) that saleable acreage and buildings owned by an applicant or recipient are to be treated as though they were the place of residence of the applicant's or recipient's family unit for the period specified by the minister.

On the basis of the First Nation Administration fax, the Ministry argues that since the appellant owns property of a value of approximately \$75,000.00 that she rents for \$300.00 per month to a third party and because she does not live in that residence, she has assets in excess of the maximum \$5,000.00 allowed by s. 10(2) of the EAPWDR and therefore is not eligible for disability assistance. The Ministry further argues that she does not benefit from any of the exceptions under s. 10(1) of the EAPWDR and that because there is no evidence whether the appellant's property is a saleable acreage, it cannot exercise any discretion under s. 10(3) of the EAPWDR, authorizing it to be treated as though it was her place of residence.

The appellant argues that she has a medical condition that is very difficult for her and that her income is only the \$300.00 per month she receives from renting her house that she inherited from her father. She is worried about her rent and not having any other place where she could live.

The panel notes that the Ministry was satisfied with a fax from an individual from the First Nation Administration that stated an approximate value to the home without any further information as to the status of that property and whether it was on reserve land or not. The appellant did not provide any further information in respect of that property other than she rents it for \$300.00 per month and that is her only income. In the absence of any other evidence, the panel finds that it was reasonable for the Ministry to determine the appellant owns property that has a value exceeding \$5,000.00, which is not her place of residence. Given the absence of information about that property and whether it is a

"saleable acreage", the panel finds that it was reasonable for the Ministry not to apply an exemption under s. 10(3) of the EAPWDR. Therefore, the panel finds that the Ministry was reasonable to conclude that the appellant was not eligible for Disability Assistance in accordance with s. 10(2) of the EAPWDR.

Therefore, the panel finds the Ministry's decision was reasonably supported by the evidence and confirms the decision.