

**PART C – Decision under Appeal**

This is an appeal of the Ministry of Social Development's ('the ministry') reconsideration decision dated April 2, 2013, in which the ministry denied assistance to the appellant for a period of 136 months, ending in July 2024. The ministry decision was based on the disposal of funds in the amount of \$137,618.00 contained in the appellant's bank account 3 weeks prior to applying for income assistance.

The ministry relied on section 14 of the EAA and section 31 of the *Employment and Assistance Regulation* (EAR).

**PART D – Relevant Legislation**

EAA section 14  
EAR section 31

**PART E – Summary of Facts**

The following evidence was before the ministry at the time of its reconsideration:

- A note dated January 17, 2013, signed by Ms Z, stating:

Receipt

I received \$134,553 CAD from [the appellant] as repayment of a loan.

- A ministry "Bank Profile" relating to the appellant's accounts at a credit union showing balances of zero in both her chequing and savings accounts.
- An account record from the appellant's credit union covering the period from December 15, 2012 to January 17, 2013, showing a transfer of \$132,553 to an account belonging to Ms Z.
- An account record belonging to Mr A and Ms Z printed on January 16, 2013, showing a transfer in of \$132,553 from the appellant's account.
- A ministry Shelter Information form, showing that the appellant pays \$400 per month of a total rent of \$1400.
- A ministry Medical Report – Employability indicating that the appellant has breast cancer as a primary medical condition, which is expected to last 52 weeks. Her expected return to work date is September 2013.
- A ministry "Bank Profile" and associated records relating to the appellant's account at a chartered bank, indicating a balance of \$2000, held in a GIC.
- Bank records from the chartered bank covering the period of December 2008 to July 2009. On the page, the appellant has written:
  - "12/19/2008 My brother wired me \$49,975 from [a foreign country]."
  - "12/27/2008 My brother wired me \$14,470 from [a foreign country]."
  - "Jan 2006 My brother asked me to bring \$70,000 cash from [a foreign country]."
- In her request for reconsideration, the appellant reported the following:
  - In 2004 she was sponsored by her daughter to come to Canada. Since then, her daughter claims she can no longer support her financially. Her daughter is moving to another city and is selling her home.
  - She was diagnosed with breast cancer in 2012, which has taken a financial toll on her.
  - In 2006 her brother entrusted her with money to bring to Canada for the purpose of finding investment opportunities on his behalf.
  - In 2008 he transferred additional sums to fund real estate investments, however the amount was insufficient so the appellant saved it in a bank account.
- A letter from the ministry to the appellant's interpreter stating that the appellant is ineligible for income assistance due to the appellant living with her daughter, who is her sponsor. The sponsorship ends on December 24, 2021. Secondly, the documentation surrounding the

disposition of \$134,553 three weeks prior to her application was not sufficient to prove it had been transferred to her from her brother for the purpose of buying an investment property.

- A list of questions from the ministry and replies, via an interpreter, from the appellant regarding the moneys received and paid out by the appellant prior to her application for assistance. Of relevance to the instant case, the appellant stated that:
  - With respect to the letter stating that \$134,553 was received as a loan repayment (January 17, 2013 from Ms Z), the appellant stated the money was from her brother to purchase a house in British Columbia on his behalf; it was not a loan.
  - Regarding the \$110,000 in investments claimed by the appellant in December 2012, the appellant stated that it was transferred from her bank account to her credit union account because of the high interest charged by the bank.
  - Cheques in the amount of \$72,000 and \$58,000 were made out to Ms Z on January 15, 2013, in order to repay the appellant's brother in a foreign country.
  - On January 16, 2013, \$130,000 was 'redeemed' back from Ms Z.
  - On January 16, 2013, \$2,553 was received from her credit union account.
  - On January 16, 2013, \$132,553 was transferred to Ms Z.
  - On January 16, 2013, she received \$1000 from her own savings and \$2032.93 from her brother.
  - On January 17, 2013, the appellant withdrew \$2600 to another bank account and used \$465.10 for food and medication.

*Information received subsequent to reconsideration and prior to the hearing*

In her submission to the Tribunal, the appellant stated that she is no longer in contact with her daughter, who is selling the apartment she lives in and moving in with her boyfriend. In January 2013 she paid \$134,553 to Ms Z (for return to her brother), \$2600 to her bank account and the remainder was for living expenses. She attached a copy of her brother's bank statement which she states shows a deposit of 850,000 [foreign currency] (the panel notes that the copy is difficult to read). Also attached is the real estate listing for her daughter's apartment and a photo following her breast cancer surgery.

- A letter written in a foreign language by the appellant's brother dated March 8, 2013 and translated into English, stating:

When my sister was going to Canada in 2006, I asked her to help me look for investment opportunities. At that time, I thought the investment returns in Canada would better (sic) than that in [foreign country]. I wired a total of \$130,000 Canadian dollars to my sister respectively during the period of 2006-2008. I asked my sister to buy and invest in a property. However, my sister said the money was not enough to buy a property and it could only be put into the bank.

On January 18, 2013, my sister returned all of the money to me through a friend.

Under section 22(4)(b) of the Employment and Assistance Act, the Panel admitted the additional evidence as it is in support of information and records which were before the Ministry when the decision being appealed was made. The records deal with the appellant's financial situation as it relates to her application for income assistance.

**PART F – Reasons for Panel Decision**

The issue to be decided is whether the ministry's decision to deny assistance to the appellant for a period of 136 months, ending in July 2024, based on disposal of funds in the amount of \$137,618.00 contained in her bank account 3 weeks prior to applying for income assistance, was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Section 14 of the EAA discusses the consequences on eligibility for assistance when an applicant or has disposed of property to reduce assets. The ministry relied on 14(2)(a):

**Consequences of not accepting or disposing of property**

**14 (2)** A family unit is not eligible for income assistance for the prescribed period if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

(a) disposed of real or personal property to reduce assets;

In relation to section 14(2)(a), section 31 of the EAR states:

**Effect of failing to pursue or accept income or assets or of disposing of assets**

**31 (1) (5)** For the purposes of section 14 (2) (a) of the Act, the period of ineligibility is 2 calendar months for each \$2 000 of the value of the real or personal property that was disposed of to reduce assets.

The appellant argued that the money in her bank account did not belong to her but was sent over in installments by her brother to invest in real estate. As the sum was insufficient for the purpose, she left it in her bank account. The appellant pointed to letters from Ms Z and her brother to support her position, as well as various bank account statements.

In its decision, the ministry argued that the evidence to support the appellant's position was insufficient. It pointed to the lack of an agreement between her brother and the appellant or evidence that the money came from and was returned to her brother.

In addition to copies of the bank records of the appellant and Ms Z, the ministry had before it the letter from Ms Z, stating:

Receipt

I received \$134,553 CAD from [the appellant] as repayment of a loan.

Subsequent to the reconsideration, the appellant provided a letter from her brother, accompanied by a translation, stating:

When my sister was going to Canada in 2006, I asked her to help me look for investment opportunities. At that time, I thought the investment returns in Canada would better (sic) than that in [foreign country]. I wired a total of \$130,000 Canadian dollars to my sister respectively during the period of 2006-2008. I asked my sister to buy and invest in a property. However, my sister said the money was not enough to buy a property and it could only be put into the bank.

On January 18, 2013, my sister returned all of the money to me through a friend.

Additionally, the appellant provided a copy of a foreign bank account showing a deposit of 850,000. The appellant explained that this sum was in the foreign currency, and that the account belonged to her brother.

Despite this additional evidence, the panel does not find it sufficient to disturb the ministry's findings. The ministry reasonably asked for evidence of an agreement between her brother and the appellant, as well as evidence that the money came from and was returned to her brother. While the evidence shows that the appellant transferred money out of her bank account and money was deposited into her brother's account in a foreign country (the panel accepts her evidence as to the identity of the account holder), the unsworn statement after the fact by her brother is not sufficient evidence of a pre-existing agreement between her and her brother with respect to real estate investment. Nor does the fact that the money stayed in the appellant's bank account for five years, or the fact that it was not a joint account with her brother, give credibility to the appellant's version of events.

Section 14 of the EAA sets out the ineligibility of an applicant who disposes of property within two years of his or her application for assistance. Section 31 prescribes two calendar months of ineligibility for every \$2000 in assets disposed of to reduce assets. Based on an amount of \$137,618, the ministry calculated a period of 136 months of ineligibility, which was reasonable.

In conclusion, the panel finds that the ministry's determination of a 136 month ineligibility period due to the disposal of assets within two years of her application for assistance was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The panel confirms the ministry's decision.