

### PART C – Decision under Appeal

In a reconsideration decision dated 19 June 2013, the Ministry denied the Appellant disability assistance (DA) because they found him ineligible due to having assets in excess of the legislated limit and not currently eligible for the self-employment program (SEP) asset exemption as per the Employment and Assistance for Persons with Disabilities Regulation, Section 10.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 3,4, and 5.  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 1(1) – definition “asset”  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 10, 11, 70.1, 70.2  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule B, Section 4 and 5.

## PART E – Summary of Facts

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

- A Contract of Purchase and Sale of a residential strata property (second residence) between the Appellant and a seller dated April 17, 2013 for a purchase price of \$138,000.
- An Assessment Roll Report dated May 9, 2013 listing the Appellant as the single owner of a residential strata property (condominium) with a 2013 actual value of \$101,000.
- An undated letter from a self-employment program organization (SEPO) that states the Appellant has received services from them for the past number of years with a business of selling items on commission and buying and reselling small items at community markets. It also states the Appellant purchased the small condominium on June 1, 2012, however he "has largely stayed with his aging mother who requires a substantial degree of support." The letter confirms the Appellant has not used their services for the past year however it states the Appellant will be resuming the use of some of their services effective April 1, 2013 and that the purchase of his second residence as well as the renting of his initial one will be included in his revenues and expenses.
- A Personal Credit Agreement dated May 19, 2012 between the Appellant and a bank stating a mortgage amount of \$84,000 and a monthly payment amount of \$353.

In the Reasons for Request for Reconsideration the Appellant states that he is exempt because he deals with a SEPO and the purchase of a property was part of the plan outlined in his rehabilitation plan. He states that he will be providing a letter from a SEPO and that a similar thing happened in 2006 and it was resolved. In the Notice of Appeal the Appellant states a representative from the SEPO will be presenting his case.

In the Reconsideration Decision, the Ministry confirms the Appellant is a single disability assistance recipient with no dependants that resides in the condominium he purchased in June 2012. On May 2, 2013 the Appellant advised the Ministry that he was in the process of purchasing the second residence and the final sale date was May 30, 2013. On June 1, the Appellant moved into the second residence. The Ministry also confirmed that Appellant indicated he intended to make a \$13,000 down payment on the second residence from savings and a line of credit.

The Ministry concludes that the equity in the second residence is \$13,000 however it is exempt because it is now the Appellant's primary residence.

The Ministry determines the condominium is not exempt under a SEP because there is no business plan on file from the Appellant and no monthly reports submitted since August 2011. Furthermore the ministry has not approved a business plan that included plans to purchase property to be used in operating a small business or that the condominium and mortgage were required for the purposes set out in a business plan. The Ministry estimates that the Appellant's equity in the condominium is approximately \$20,000 based on the 2013 property value of \$101,000, a purchase price of \$105,000 and the existing \$84,000 mortgage.

The Ministry concludes, although the Appellant is eligible for an \$800 per month earnings exemption, he has assets in excess of the legislated limit from the equity in the condominium and is not currently eligible for the SEP asset exemption.

At the hearing the Appellant stated he is not a willing recipient of the Ministry and that he had been referred to a SEPO by the Ministry several years ago. He stated that issues he has had with the Ministry are not always reasonable and that he just wants to understand how this one can be fixed.

The Advocate stated that the Appellant was a direct client of her employer, the SEPO and that she had helped the Appellant with the monthly reporting to the Ministry while working under that referral and continued to stay connected and helping the Appellant after the referral. She has not been doing any reporting to the Ministry on behalf of the Appellant for approximately 2 years.

The Advocate explained that in June 2012 the Appellant bought the condominium to achieve some living independence. Recently he had bought a second residence because the first is quite small. She concluded that the Appellant had made this decision not knowing that it would impact his DA. The Appellant confirmed that he is living in the second residence and that the condominium is rented.

At the hearing the Ministry stated that because there were no forms on file withdrawing the Appellant from the SEP, the Ministry assumes the Appellant is still involved with the SEPO. The Ministry confirmed that the Appellant has not handed in any SEP reports for 2 years. The Ministry concluded that recipients of DA are only allowed a single place of residence as an exempt asset and the Appellant's equity in the condominium exceeds allowable the asset exemption level.

## PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's decision to deny the Appellant disability assistance (DA) because it found him ineligible due to having assets in excess of the legislated limit and not currently eligible for the self-employment program (SEP) asset exemption as per the EAPWDR, Section 10. The pertinent legislation in this case is as follows:

### **EAPWDR 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):

- (c) a family unit's place of residence;
- (x) for a recipient who is participating in a self-employment program funded or established by the minister under section 8 of the Act,
  - (i) up to a maximum of \$5 000 kept by the recipient in a separate account described in section 4 (2) (b) (ii) of Schedule B, and
  - (ii) up to a maximum of \$50 000, or a greater amount approved by the minister, consisting of
    - (A) the value of assets used by the recipient in operating a small business under the self-employment program, and
    - (B) a loan that is not greater than the amount contemplated by the recipient's business plan, accepted under section 70.1 of this regulation, and received and used for the purposes set out in the business plan;

(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;

**11 (1)** In this section: "**asset development account**" means a savings institution account that is

- (a) established exclusively for the purpose of enabling an applicant or a

*recipient to participate in an asset development account program,*

**"asset development account program"** means a saving program that is

- (a) designed to assist individuals to achieve savings for the purposes of future self-sufficiency or future enhanced self-sufficiency, and*
- (b) approved by the minister for the purposes of this regulation.*

**70.1 (1)** *The minister may require a recipient who is*

- (a) applying to participate in a self-employment program, or*
- (b) participating in a self-employment program*

*to provide, for the acceptance of the minister and within the time specified by the minister, a business plan for the small business the recipient is operating or proposes to operate under the self-employment program.*

**70.2** *If a recipient who is participating in a self-employment program is operating a small business under the program, the recipient must, in addition to any report required under section 29, provide a monthly report to the minister in the form and at the time specified by the minister, setting out, for the period covered by the report, as required by the form, the business activities, earnings, expenses, assets and liabilities of the small business the recipient is operating.*

The Appellant argues the purchase of a property was part of his rehabilitation plan, that he uses the SEPO for support and that he wants a solution to this situation.

The Ministry argues the condominium asset is not part of a business plan with a SEPO that has been approved by the Ministry and therefore is not eligible as an asset exemption under the Self – Employment Program identified in EAPWDR, Section 10(1)(x). The Ministry argues that the equity that the Appellant owns in the condominium (estimated at \$20,000) is more than the \$5,000 legislated eligible exemption identified in EAPWDR, Section 10(2).

The Appellant has ownership of two residences and confirms that he lives in the second residence and rents out the condominium. There is not a SEP on file with the Ministry that specifies the condominium as part of a small business or business plan. The Panel finds that the Ministry reasonably determined that the second residence is an eligible exempt asset as per the EAPWDR, Section 10(1)(c) as the Appellant's place of residence. The Panel finds the Ministry reasonably determined that the condominium is not an eligible exempt asset under EAPWDR, Section 10(1)(c) or 10(1)(x).

The Ministry has estimated the Appellant's equity in the condominium as \$20,000 based on an existing mortgage of \$84,000, an original purchase price of \$105,000 and a 2013 property value of \$101,000. The Panel finds there is not enough information to specify a \$20,000 equity however the Panel finds

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the Ministry reasonably determined that the Appellant's equity in the condominium does exceed the \$5000 limit specified in the EAPWDR, Section 10(2)(a).

The Panel finds the Ministry reasonably determined the Appellant is not eligible for DA as set out in the EAPWDR, Section 10(2) and confirms the decision.