

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development ("the ministry") dated 09 May 2013 that determined that the appellant was not eligible for income assistance because the value of his holdings of a publicly traded stock exceeds \$4000, the appellant's allowable asset limit set out in section 11(2)(b) of the Employment and Assistance Regulation

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 1, 11, 12 and 31

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. From the ministry's file: the appellant is a single recipient of income assistance with dependent children.
2. From the ministry's file, as reported in the Request for Reconsideration:
 - During the course of a compliance review, an investigative officer requested information related to the value of the appellant's stock holding in Corp A. On 22 March, 2013, the appellant provided the investigative officer with contact information for the stock trading firm that administers the stock for him and requested that the investigative officer inquire directly with the firm.
 - On 26 March 2013, the firm faxed a letter to which confirmed that the appellant had N shares in Corp A with the current value of \$4404.80.
 - On the same day, the investigative officer phoned the stock trading firm. The firm confirmed that the appellant could sell the stock that day and the client would be charged a flat fee and a per share fee, for a total fee of \$24. This meant that the appellant had \$4380.80 immediately available to him.
 - The investigative officer advised the appellant that day, 26 March 2013, that he was denied assistance as he had assets in excess of eligible exemptions as per section 11(2) of the EAR.
3. A letter dated 26 March 2013 from the stock trading firm stating that on 14 March 2012 (*sic*), the appellant had a total of N common shares in Corp A. Based on the Toronto Stock Exchange closing price of P on 25 March 2013, the shares had a total value of \$4404.80 CDN.
4. A letter dated 12 April 2013 from the appellant requesting extra time to complete his Request for Reconsideration.
5. A Request for Reconsideration submission from the appellant dated 30 April 2013.

In the latter two documents, the appellant describes in detail his experience in applying for income assistance and in a subsequent compliance review and provides argument as to why he should not be denied assistance. The panel notes the following evidence of the appellant as relevant to this appeal:

- In reviewing his financial situation with his Employment and Assistance Worker (EAW) during the initial application process, the appellant presented a T5 slip from Corp A. The appellant states that at the time he did not realize that it represented earnings from a stock holding. The EAW spoke personally with the Corp A office and received all the figures and information needed regarding the stock's particulars. The EAW recorded the information and ascertained that its value was within allowable asset limits and not to worry about it as long as he had no other assets. The appellant notes that no physical copy of the stock holding was requested by the EAW.
- The appellant states that he was told by his EAW to "leave the stock in place" as it passed asset levels, "and that if the funds were removed, that they would be counted as income and deducted from any future assistance cheques."

- The appellant also states that the EAW told him the funds from this stock should be set aside as part of his "Back to Work Action Plan." He has been working on that basis with Work BC and his career counselor in formulating such an action plan.
- After becoming eligible for income assistance in February 2013, the ministry initiated a compliance review to address other issues flagged during the initial application process. According to the appellant, he had provided the information necessary to resolve these issues to the ministry's satisfaction. It was only near the end of this process that the investigative officer wanted to check on the value of his Corp A shares and found that they "had a stock hike the day the investigative officer requested its particulars," with the value of the shares exceeding the asset limit.

In his Notice of Appeal, dated 22 May 2013, the appellant writes:

"Many areas of the Regulations are being used to deny me the benefits based on what has been placed in my file. I have requested my file FOIPA for review to face the tribunal. Sec 31(1)(a) states that I should be penalized, not denied benefits and Sec 12(1)(11) (*sic*) refers to the Asset Development Accounts Program the asset was purposed for. There is more!"

After reconsideration, and before the hearing, the appellant sent a submission to the Tribunal. The submission contains no new information and went to argument (see Part F, Reasons for Panel Decision, below where his arguments are summarized).

At the hearing, in his presentation and in answer to questions, the appellant reviewed the material covered in the two documents summarized above and provided more detail about his circumstances and his experience during his income assistance application process and subsequent compliance review. The appellant stated that he had obtained a copy of his ministry file, expressing concern that it contained many errors and omissions. (The panel advised the appellant that it did not have access to the file, only to the Appeal Record.)

The appellant explained he did not know before he applied for income assistance that he owned shares in Corp A, only that he received a cheque of about \$50 every quarter that he took to be a residual benefit from a lapsed life insurance policy. He stated that he required the funds from his Corp A stock holding for further training to obtain the necessary certificates to secure employment consistent with his experience and skills (e.g. Level 3 First Aid). He stated that he has not tracked the price of the stock – he does not have an Internet connection and has no interest in "playing the stock game." The balance of his presentation went to argument (see Part F below).

The ministry stood by its position at reconsideration. In answer to a question, the ministry representative stated that giving advice on the use of an asset was not something an EAW would do, and there was no record in the ministry's file that such advice had been given. The ministry representative also stated that he was not in a position to say whether any asset development account program actually was up and running, only that the appellant had not made any contribution to such an account.

The panel finds the additional information provided by the appellant and the ministry at the hearing is in support of information that was before the ministry on reconsideration, providing further background to the appellant's application. The panel therefore admits this new information as

evidence pursuant to section 22(4) of the *EAA*.

The panel notes that neither party presented any information as to the stock price history of Corp A. Such information might have cast light on whether the value of the appellant's stock holdings on 25 March 2013 was a result of a temporary spike in the stock price, and whether the value of the stock holding when it was reviewed in January 2013 was indeed less than \$4000.

Based on the letter from the stock trading firm, the panel finds as fact that the value of the appellant's stock holding on 25 March 2013 was \$4404.80, less a flat fee and per share selling charges of \$24, leaving \$4380.00 readily available to him.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for income assistance because the value of his holdings of a publicly traded stock exceeds \$4000, the appellant's allowable asset limit set out in section 11(2)(b) of the EAR, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The applicable legislation is from the EAR as follows:

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;

Asset limits

11 (1) The following assets are exempt for the purposes of subsections (2) and (2.1):

[a list of exempt asset classes, none of which is claimed by the appellant or apply to this appeal]

(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.

(2.1) Despite subsection (2), a family unit that includes an applicant or a recipient who has applied for and has not been denied, or who the minister is satisfied has a genuine intention to apply for, designation as a person with disabilities under section 2 of the *Employment and Assistance for Persons with Disabilities Act* may receive income assistance, subject to all other eligibility criteria, if the family unit has

assets with a total value of no more than

- (a) \$5 000, if the applicant or recipient has no dependants, or
- (b) \$10 000, if the applicant or recipient has one or more dependants.

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

- 31 (1)** For the purposes of section 14 (3) (a) [*consequences of not accepting or disposing of property*] of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is
- (a) if the income, assets or other means of support are still available, until the failure is remedied, and
 - (b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.
- (2) For a family unit that is declared ineligible under section 14 (3) (b) of the Act for income assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the period of ineligibility is,
- (a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and
 - (b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.
- (3) For the purposes of section 14 (3) (a) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate,
- (a) the amount of the reduction is \$100 for each calendar month for each applicant or recipient in the family unit, and
 - (b) the period of the reduction is one calendar month for each \$2 000 of the value of the forgone consideration.
- (4) For the purposes of section 14 (3) (b) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate, the period of the ineligibility is one calendar month for each \$2 000 of the value of the forgone consideration.
- (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 position of the appellant

In his submission, the appellant does not dispute that his holding of Corp A shares bring him over his \$4000 asset limit by the amount of \$384. However he argues that, as a client who received eligibility status in February, certain other legislation applies to this overage. In particular, he cites section 31 of the EAR and asks why he is being given the harshest penalty by being denied eligibility instead of a reduction of \$100 per month as prescribed in section 31(1).

Further, the appellant cites the ministry's *Your Welfare Rights* booklet, which states: "When you receive extra money, the ministry considers it income, and counts in the month that you receive it."

There are three types of income: – exempt income.....; – earned income.....; – unearned income: the ministry usually takes each dollar of this money off your welfare payment.” “Some examples of unearned income are: – interest from stocks, bonds, annuities, shares, and accounts.” “For every dollar of unearned income you get in a month, the ministry will usually reduce your check by one dollar.” The appellant submits that he was granted eligibility and allowed to have \$4000 in assets but was denied benefits because of a \$380 overage that he was not given the opportunity to declare because it was unknown that is increased in value. Moreover he is a single parent with children allowed to earn income without deductions to the regular assistance amount of up to \$300. He submits that he was denied benefits for an \$80 overage.

At the hearing, the appellant stated that he felt that his assets overage was being used as a tool to deny him eligibility because of suspicions over other issues, impugning his honesty and integrity. He submitted that denial of eligibility is an improper use of authority.

The position of the ministry

The position of the ministry, as set out in the Reconsideration Decision, is that the appellant's holding of stock in Corp A does not meet any of the asset exemption criteria listed in section 11(1) of the EAR and under section 11(2) the allowable asset limit for recipient with one or more dependants is \$4000. The appellant has not indicated an intention to apply for Persons with Disabilities (PWD) designation and therefore does not meet the asset exemption set out in section 11(2.1). The ministry therefore found that the appellant's stock of Corp A is an asset for the purpose of determining its eligibility for income assistance, and as the value of the asset is \$4380.80, this exceeds the allowable limit specified in the legislation and therefore the appellant is not eligible for income assistance.

At the hearing, the ministry noted that the appellant's income exemption is \$200, and this applies only to earned income, not unearned income or assets. The ministry also noted that section 31 of the EAR applies to assets or income that must be “pursued,” citing the examples of EI for CPP, not to a stock holding that is available on demand.

Panel decision

The panel has found as fact, not disputed by the appellant, that he owns an asset, in the form of shares of Corp A, that were valued at \$4404.80 on 25 March 2013. The panel considers section 11(2)(b) of the EAR a clear reflection of government policy that applicants and recipients of income assistance are expected to use their assets for the purposes of personal independence if the value of the assets exceeds the specified exemption levels. The panel notes that there is no ministerial discretion in the application of this legislative provision: as the ministry representative stated at the hearing, it is immaterial whether the “overage” is \$5, \$50, \$500 or \$1500. Further, the panel notes that there is no provision in the legislation for the “overage” to simply be deducted from monthly benefits. Such deductions only arise in the case of unearned income and earned income in excess of the prescribed exemption limit, and only when the recipient is otherwise eligible. The panel finds that the ministry reasonably determined that his shares did not fall under one of the classes of exempt assets listed in section 11(1) and that the exemption available under section 11(2.1) does not apply as the appellant has not indicated any intention of applying for PWD designation.

As to the appellant's submission that the consequences set out in section 31 of the EAR should

apply, the panel finds that these provisions relate not to excess assets but to income or asset opportunities available to an applicant/recipient and which the person has failed to "pursue." Examples would be CPP or money owed to the applicant/recipient by someone else. A stock holding in the person's name, all or part of which can be sold on the basis of a telephone call, e-mail or fax, and the proceeds deposited in the person's bank account within 24 or 48 hours, cannot be considered to be in the category of assets described in section 31.

Regarding the appellant's argument that he did not know that the value of the shares had increased in value, the panel considers it to be the responsibility of the recipient with an asset, the market value of which might increase, such as a publicly traded stock, to track the share price before the value of the holding exceeds the asset limit. The panel notes that this can be easily accomplished, either on the Internet (using a library facility if no personal Internet connection is available), or even by phoning his stock trading firm.

Based on the foregoing, the panel finds that the ministry decision that the appellant was not eligible for income assistance because the value of his holding of Corp A stock exceeded the prescribed asset limit was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.