

APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry)'s Reconsideration decision dated October 28, 2013 wherein the Ministry denied the appellant's request for income assistance after determining that the appellant has assets in excess of the prescribed limits pursuant to Section 1 of the *Employment and Assistance Act* and sections 1(1) and 11 of the *Employment and Assistance Regulation*.

PART D – Relevant Legislation

Employment and Assistance Act, Section 1
Employment and Assistance Regulation, Sections 1(1) and 11(2)

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

1) The appellant's Request for Reconsideration (RFR), dated October 16, 2013 and signed by the appellant.

2) A letter from the appellant, noted as Section 3 of the RFR, dated October 15, 2013 in which the appellant states that she did not make the application for income assistance lightly and that there were mistakes in applying the legislation and policy in her case. She states that although the legal interest in the GICs belongs to her, they are for the benefit of her son for his future educational endeavours. The fund was set up with the appellant's ex-husband, while they were still married, with a goal to deposit \$1000 annually for their son's education. The appellant does not have a copy of the separation agreement but states that she managed the funds during the marriage and continued to do so since the divorce in 2009. The appellant indicates that the funds were put into a GIC, rather than an RESP because the annual banking charges would be too high. The appellant states that she feels that the GICs should not be considered assets because although she is the legal guardian of the funds, she is not the beneficial owner and plans to move them to an RESP as a lump sum when they come up for renewal. The appellant adds that she recently started a part-time job and she and her son are currently living with her parents and paying \$350 in rent each month, however; they have been asked to move out. The appellant reports that due to delays in this application, she has lost two opportunities to secure apartments through two housing societies.

3) Statement of GIC investment accounts from the financial institution for the period of January to March 2012, indicating that the first GIC account was issued in July 2009, maturing in July 2014 to a value of \$7109.65 and the second was issued August 2010, maturing in August 2014 to a value of \$1506.95.

2) Sections 1 and 2 of the RFR dated September 24, 2013 completed by a ministry worker, which outlines the reasons that the appellant's request for assistance was not granted. The ministry states that the appellant has approximately \$8000 in GICs, which are considered a cashable asset and in excess of the \$4000 in allowable assets specified for a one person family. The ministry states that although the asset is not locked in, the appellant refuses to cash out this investment and spend her son's college fund.

In her Notice of Appeal the appellant states that she disagrees with the ministry's decision because of "improper characterization of education funds as an 'asset' or 'easily cashable' by the applicant." The appellant adds that she is receiving too much pressure to spend her son's education funds. The appellant attached a letter in which she states that:

- She would like to sit on a committee to review and update this legislation;
- She is asking for income assistance that should be backdated to September 2013 and that she believes that single mother with minimal assets or income should qualify for Income Assistance;
- She has a part-time job but cannot make ends meet and has been asked to move from her parent's home and that she and her son require a two bedroom apartment and plan to move to subsidized rent as soon as possible;

- She has received \$50 in food vouchers but no interim benefits;
- She felt that the education funds would be a barrier to the income assistance process but could be worked out;
- She wonders if the legal doctrines of estoppel or laches could have applied in this circumstance;
- She feels that it is contradictory that the RFR acknowledges that the GICs belong to her son, but that they are not considered to be within the child education savings exemption;
- She feels that the legislation is outdated and that managers should have the power to override decisions and process them outside of the Reconsideration/Appeals process; and
- She feels that previous Employment and Assistance Tribunal (EAAT) decisions have identifiable problems, which she summarizes.

As part of the evidence provided after the date of the reconsideration decision, the appellant submitted a copy of an email she sent to the ministry, dated December 8, 2013. This document was received at the EAAT office after the specified due date for submissions to the written hearing process. The email contained information from the appellant, stating that she had been advised by the financial institution holding the GICs that there would be a discount in payable interest, of over \$700, if she were to move the GICs to an RESP at this time.

The panel received this new evidence submitted by the appellant and finds that it is 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.

The ministry did not object to the submission of the email of December 8, 2013. The ministry relied on the information within the reconsideration decision and otherwise submitted no new information.

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 1 of the *Employment and Assistance Act* and sections 1(1) and 11 of the *Employment and Assistance Regulation*.

In arriving at its reconsideration decision, the ministry relied upon the following legislation:

Employment and Assistance Act applied to this decision:

Section 1 Interpretation

1. (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"child" means an unmarried person under 19 years of age;

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child; (B.C. Reg. 131/2012)

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

"dependent youth" means a dependent child who has reached 16 years of age;

"family unit" means an applicant or a recipient and his or her dependants;

Employment and Assistance Regulation applied to this decision:

Section 1 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;

Section 11

(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.
- (B.C. Reg. 197/2012)

(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.C. Reg. 197/2012)
- (b) \$10 000, if the applicant or recipient has one or more dependants. (B.C. Reg. 197/2012)

(2.2) For the purposes of subsection (2.1), in addition to the assets described in subsection (2.1) (a) or (b), the family unit may own one motor vehicle generally used for day to day transportation needs.

(2.3) Subsection (1) (b) does not apply to a family unit to which subsection (2.2) applies. (B.C. Reg. 86/2008)

As noted above, the appellant's position is that the assets in question, the GICs, are for the beneficial interest of her son and are intended for his future education. She feels that even though the GICs are not locked, they are unavailable to her and she may face legal repercussions from her son's father if she were to access and spend them. The appellant wonders if the legal doctrines of estoppel or laches should apply in her current application. The appellant argues that the GICs belong to her son, and are clearly labeled for his education, and should therefore be considered within the child education savings exemption. She feels that she is being highly pressured to transfer the funds into an RESP in or to satisfy the ministry requirements for Income Assistance.

The Ministry's position is that while they acknowledge that the asset in question belongs to the appellant's son, section 1 of the EAR specifies that the definition of 'asset' includes money in a savings institution that stands to the credit of the applicant's dependant. As defined in section 1 of

the EAA, the appellant's son is a dependant in her family unit. Under section 11(2) of the EAR, an applicant for assistance with one dependant, as is the circumstance of the appellant, is not eligible for income assistance if the family unit has assets in excess of \$4000. GICs are considered an asset for the purpose of determining eligibility for assistance and are not exempt, unlike funds held in a registered education savings plan (RESP). Therefore, since the total value of assets for the appellant's family unit exceeds \$4000, the ministry finds that they are not eligible for assistance at this time.

The panel finds that the assets in question belong to the appellant's son, who qualifies as a dependant in the appellant's family unit. The current value of the GICs is in excess of \$4000, the allowable legislated limit for an applicant with one dependant. Although the appellant states that she does not wish to spend funds intended for her son's education, GICs are not a locked asset and can be converted into cash from the savings institution, unlike an RESP. RESPs are specifically exempted as an "asset" in section 11(1)(ff) of the EAR, however the GICs in this case are not registered and are not exempted under any provision of section 11(1).

Accordingly, the panel finds that the ministry reasonably determined that the assets of the appellant's family unit are in excess of the legislated limit. The panel feels that the appellant's concerns with regards to the legal doctrines of estoppel or laches do not apply in this case, as there is no evidence of inappropriate delay or process presented in this appeal. Additionally, the panel does not have the jurisdiction to form a committee to assess the current legislation or to recommend formation of such a committee, as was sought by the appellant.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the appellant income assistance, due to assets in excess of the legislated limit, under Section 11 (2) of the EAR, was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel thus confirms the ministry's decision.