

PART C – Decision under Appeal

Under appeal is the ministry's November 20, 2013 reconsideration decision finding the appellant ineligible for assistance for five months, for disposing of an asset to reduce his asset level, pursuant to section 14 of the Employment and Assistance Act and section 31 of the Employment and Assistance Regulation.

PART D – Relevant Legislation

Employment and Assistance Act (EAA) section 14  
Employment and Assistance Regulation (EAR)  
section 31

## PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation. The appellant was represented by his advocate, as authorized by the appellant on a Release of Information form signed December 13, 2013.

The evidence before the ministry at reconsideration was

- the appellant is a single male on income assistance
- a copy of a May 29, 2012 bill of sale documenting the purchase by the appellant a trailer for \$14,300, with a copy of a May 31, 2012 bank draft for \$14,300 payable to the vendor
- February 12, 2013 *Application for Income Assistance (Part 2)* in which the appellant declared the trailer's value at \$10,000
- in March 2013 the ministry told the appellant that if he did not live in or sell the trailer, he would be ineligible for assistance for having assets in excess of the legislated limit
- the ministry gave a temporary exemption to allow time for the sale of the trailer
- copy of the appellant's on-line advertisement offering the trailer for sale at \$13,800
- the appellant said he lowered the price to \$10,000 as told to by the ministry, but was still unable to sell it
- copy of the *Gift of a Vehicle* form dated August 1, 2013 documenting the donation of the trailer by the appellant to a charity
- the ministry advised the appellant that by giving the trailer away, he would be considered to have intentionally disposed of assets to be eligible for income assistance, causing him to become ineligible for benefits for one calendar month for each \$2000 of the value of the asset
- an undated letter from the appellant seeking reconsideration of the ministry's decision, explaining his attempts to sell the trailer, that he gave the trailer away because he could no longer afford to pay the storage costs, that he had no money, was desperate, in fear of being homeless, the stress aggravated his mental health issues, and suggesting a formal appraisal or explanation of the ministry's valuation of the trailer

Upon appeal the appellant provided

- copies of bank statements for July, August, and part of September 2013
- emails from his landlord dated August 7, 12, and 21 concerning room rental and overdue rent
- email from a storage company dated August 7, confirming receipt of a message
- a December 2, 2013 physician's report stating the appellant has significant medical problems for which the office completed a request for permanent disability status, and that the appellant's medical condition is severely exacerbated by stress, including financial and housing issues, with risk of hospitalization

At the hearing, the appellant's advocate explained that the appellant has mental health issues, was not always making rational decisions, and went into "survival mode" and panicked when he was unable to sell the trailer at \$10,000 as told by the ministry. The appellant donated the trailer in part because of his need to get a refund on his prepaid storage fees to use that refund to pay his rent. The advocate was of the opinion the trailer was worth about \$8,000, based on on-line comparisons done by the appellant, but he was unable to produce any documentation to support that opinion. He did not have a copy of an on-line appraisal that remembered seeing, nor a donation receipt from the charity that might indicate a value for the trailer.

The witness, a friend of the appellant, described how he had helped the appellant move to a town where the appellant lived in the trailer for about six months, but there was a problem with the location so he moved to an RV campsite in another area, where he was too isolated. The decision was made for the appellant to move closer to the city, causing him to become unable to continue to live in his trailer. The witness helped the appellant advertise the trailer for sale on-line, but in the witness' opinion it was overpriced. The trailer was for sale at \$10,000 for some months. There were only two showings and no offers. The witness made an inquiry of a knowledgeable contact, who gave a verbal opinion that the trailer was worth about \$8000. The appellant had prepaid the storage fees, and when they were coming due again, the appellant became stressed and overwhelmed, and donated the trailer to a charity, seeing the trailer as an impediment to getting regular assistance from the ministry. The appellant found a place to live in a nearby town, and paid \$350 rent. However, the next day the landlady presented him with a contract for a much higher amount which the appellant would not sign; the landlady refused to refund his \$350. The appellant ended up in a shelter for a short time. He was then found a room, and although the landlord has been very patient about the rent, the appellant is soon likely to be evicted. The witness said the appellant spends a lot of time fighting "the system" rather than on more helpful pursuits.

The ministry advised the applicable legislation does not allow for consideration of mental health issues. The ministry says it has been given no documentation for a value of less than \$10,000 for the trailer, and no one disputes it was disposed for under its value,. It is the ministry's position that the appellant should have tried to sell the trailer for less than \$10,000.

#### The panel finds

1. that in spite of the verbal opinions offered, the only documented evidence of the value of the trailer are the May 29, 2012 bill of sale, illustrating a value of \$14,300 at that time, and the February 12, 2013 *Application for Income Assistance (Part 2)* in which the appellant declared the trailer's value at \$10,000.
2. by donating it to a charity, the appellant disposed of his trailer for less than its value.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's decision finding the appellant ineligible for assistance for five months, for disposing of an asset for inadequate consideration. **Relevant Legislation**

EMPLOYMENT AND ASSISTANCE ACT

*Consequences of not accepting or disposing of property*

14 (1) *The minister may take action under subsection (3) 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) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;*
- (b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.*

(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;*
- (b) [Not in force.]*

(3) *In the circumstances described in subsection (1), the minister may*

- (a) reduce the amount of income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or*
- (b) declare the family unit of the person ineligible for income assistance or hardship assistance for the prescribed period.*

EMPLOYMENT AND ASSISTANCE REGULATION

**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*

[REDACTED]

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.

### **Appellant's Position**

The appellant argues he did try to sell his trailer, and lowered the price to \$10,000 as directed by the ministry. These efforts were unsuccessful, his financial circumstances were desperate, he was under great stress and his decision to donate the trailer was made in panic mode due to mental health issues. He argues his mental health issues should be taken into consideration when viewing the circumstances of the donation, and he questions the \$10,000 value determined by the ministry.

### **Minister's Position**

The ministry argues the appellant disposed of the trailer to reduce his asset level, contrary to the *Employment and Assistance Act*, and that the legislation makes no provision for consideration of mental health problems. The ministry says that it is undisputed the trailer was disposed of for less than its value, that the appellant should have tried to sell the trailer for less than \$10,000. The ministry has been provided with nothing documenting a value of less than the \$10,000 value given by the appellant on his application for income assistance.

### **Panel's Decision**

Section 14(2)(a) of the *Employment and Assistance Act* states if an income assistance recipient disposes of property to reduce assets, the minister may declare the recipient ineligible for for income assistance for a period of time. (The panel notes in the reconsideration decision the ministry incorrectly referred to section 14(2)(b), but accepts that as a typographical error.) Having tried unsuccessfully to sell his trailer for some time, under the stress of financial pressures and in panic due to mental health problems, the appellant decided to dispose of the trailer by donating it to a charity. The panel finds the ministry's determination that the appellant disposed of an asset to reduce his asset level was reasonably supported by the evidence.

Section 31(4) of the *Employment and Assistance Regulation* says the period of ineligibility is one calendar month for each \$2,000 of the value of the asset. Based on the appellant's February 2013 application for income assistance in which he declared \$10,000 as the value of his trailer, the ministry determined the applicant ineligible for income assistance for five months. Although the appellant argues the ministry has overvalued the trailer at \$10,000 and suggests \$8,000 is more realistic, the panel found no documented evidence of the value of the trailer, aside from the May 2012 purchase price of \$14,300 and the \$10,000 declaration in the appellant's February 2013 application for income assistance. The onus to establish the value of the asset is on the appellant.

The appellant argues that because of his mental health problems, he should be given consideration.



There is no provision in the applicable legislation allowing consideration for health issues.

The panel finds the ministry's determination that the appellant is ineligible for assistance for a five month period was reasonably supported by the evidence.