

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of February 21, 2014, which found the appellant not eligible for income assistance in February 2014 in accordance with the requirements of section 11(2)(b) and (2.1) of the Employment and Assistance Regulation (EAR). The ministry determined that the appellant's family unit owned assets with a total value of \$ 8,500.00, a value that exceeds the legislated limit.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) section 11.

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

A Gift of Vehicle document signed January 30, 2014 by the appellant as “donor”, gifting the Corvette to his mother as “recipient”.

A Gift of Vehicle document signed February 3, 2014 by the appellant as “donor”, gifting the GMC truck to his mother as “recipient”,.

At his request for reconsideration the appellant submitted a letter dated February 7, 2014 in which he stated that on September 7, 2013 he registered the GMC truck in his name. His mom had bought it for him hoping that he would be able to pay her back when he got his life back on track. On October 16, 2013 he traded his motorcycle for the Corvette. There was no money involved. After some time a Subaru was becoming unreliable so the appellant decided to put it up for sale. His mom said she would help him to get a different car in the meantime. She came with the appellant to purchase a Camaro for \$2300.00 including tax. Right after that the appellant sold the Subaru for \$ 2200 and gave the money back to his mom. So he gifted her the Corvette to repay her for all the help she’s given him over the past year. He also gifted her back the GMC truck as he was not going to be able to pay for it for a lot longer than first expected.

In his Notice of Appeal dated February 28, 2014, the appellant states that he agrees that there was no stamp on the gift letters. He says that he has now included other insurance documents that include a stamp and that these were done on the same days as the gifts. He states that he should have included them in the last package he sent to the ministry; that was his mistake.

With his Notice of Appeal the appellant included the following documents:

An ICBC document, stamped on January 30, 2014, naming the appellant’s mother as registered owner of the Corvette effective January 30, 2014, signed by his mother. On the document it says “Plate no. NONLIC”...“no principal operator declared”.

An ICBC document, stamped on February 03, 2014, naming the appellant’s mother as registered owner of the GMC truck effective February 3, signed by his mother. On the document it says “Plate no. NONLIC”...“no principal operator declared”.

Information from ministry files which is not disputed by the appellant:

The appellant did not declare any asset changes since his April 2013 application.

In his April 3, 2013 application the appellant declared 1 vehicle asset valued at \$4,500.00.

At an eligibility review on January 28, 2014, the appellant disclosed 4 vehicles:

A trailer valued at \$1,000.00;

a Corvette valued at \$4,500.00;

a GMC truck valued at \$3,000.00; and

a Camaro, valued at \$ 2,300.00 which the appellant has as his primary vehicle; pursuant to section 11(1)(i) it is therefore an exempt asset because its value does not exceed the \$10,000.00 asset limit.

At the hearing the appellant stated that he had received the January 2014 assistance check. He is a sole recipient of income assistance and his daughter is staying with her mother more than 50 % of the time.

The appellant stated further that after gifting the Corvette and the GMC truck to his mother these 2 vehicles remained at his place. His mother does not use them but is driving a Jeep which she has owned for approximately 2 years and a VW van. His mother has been living at her condo for approximately 6 months and parks her cars in 2 assigned parking spaces.

The ministry opposed the admission of the appellant's documents submitted on appeal because they were submitted after the January 28, 2014 review date. Pursuant to section 22(4) of the Employment and Assistance Act the panel admits the documents submitted on appeal and the appellant's oral testimony as providing additional information about the appellant's assets and thus being in support and directly related to the information and records that were before the ministry at the time of reconsideration.

The ministry relied on its reconsideration decision and added the following information:

The reconsideration officer committed a clerical error when he described the appellant as a single parent recipient with a legislated asset limit of \$4,000.00. The appellant is a sole recipient with an asset limit of \$2,000.00.

The panel finds the following facts:

The ministry determined that the appellant's family unit owned assets with a total value of \$ 8,500 and as a consequence decided that the appellant was not eligible for income assistance for February 2014.

The ministry argues that the appellant has not provided evidence to establish otherwise and the following non-exempt items are still in his possession:

- a trailer with a value of \$1,000,
- a Corvette, valued at \$4,500, and
- a GMC truck valued at \$3,000.

The panel admitted evidence at the hearing that confirmed the appellant did "gift" the Corvette to his mother on January 30, 2014 and also "gifted" the GMC truck to his mother on February 3, 2014.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably denied the appellant's request for February 2014 income assistance. The ministry determined that the appellant's family unit owned assets with a total value of \$ 8,500.00, a value that exceeds the legislated limit of \$ 2,000.00 under section 11(2)(a) of the EAR:

- A trailer with a value of \$1000.00;
- a Corvette, valued at \$4,500.00;
- a GMC truck – not running – with a value of \$ 3000.00;
- a Camaro as primary vehicle, valued at \$2,300.00, which meets the exemption criterion.

Sections 11(1)(b) and (2)(a) of the EAR apply to this appeal:

Asset limits

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

.....

(b) subject to subsection (2.3), one motor vehicle generally used for day to day transportation needs if

- (i) the equity in the motor vehicle does not exceed \$10 000,
- (ii) the motor vehicle has been significantly adapted to accommodate the disability of a recipient in the family unit,
- (iii) the motor vehicle is used to transport a disabled dependent child, or
- (iv) the motor vehicle is used to transport a disabled foster child, if the child is in the care of the applicant or recipient;
under section 77.2 of this regulation, and received and used for the purposes set out in the business plan;

(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;

The appellant argues that he is eligible for February 2014 income assistance because his assets are below the legislated limit of \$2,000.00; he has gifted the Corvette, valued at \$4,500.00 to his mother to repay her for the help she has given him over the past year, and he has also gifted the GMC truck, valued at \$3,000.00, back to his mother because he is not able to pay her back. Originally his mother had bought this vehicle for him in the hope that he would pay her back. Only the trailer, valued \$1,000.00 is still in his possession.

The ministry argues that according to a review of January 28, 2014 the appellant has assets in excess of the \$2,000.00 limit as set out in section 11(2)(a) of the EAR and is therefore not eligible for February 2014 income assistance. The ministry argues that the appellant has not provided evidence to establish otherwise and the following non-exempt items are still in his possession:

- a trailer with a value of \$1,000.00 that the appellant uses for work;
- a Corvette, valued at \$4,500.00;
- a GMC truck – not running – valued at \$3,000.00. The ministry finds that there is no proof that his mother had given him a loan to purchase this car.

In conclusion the ministry finds that the appellant's total non-exempt vehicle value demonstrates a total asset value of \$8,500.00 which is in excess of the legislated limit. At the hearing the ministry made the argument that the appellant gifted the Corvette and the truck to his mother after the fact.

Section 11(2)(a) states that a family unit is not eligible for income assistance if a sole applicant or sole recipient has no dependent children and has assets of more than \$2,000. Section 11 (1)(b) of the EAR states that one motor vehicle is exempt if the value does not exceed \$10,000.

At the time of the reconsideration decision, the ministry denied the appellant February assistance as his assets exceeded the legislated limit of \$2,000. While the Camaro was exempt as its value is less than \$10,000, the appellant owned a truck valued at \$3,000, a Corvette valued at 4,500 and a trailer valued at \$1,000. These non-exempt assets total \$8,500, which is in excess of the legislated limit of \$2,000. Although the appellant argued he gifted these 2 vehicles to his mother, reducing his assets to a total of \$1,000, which is under the amount allowed in the legislation, the ministry stated he had not provided evidence to establish the non-exempt items were not in his possession.

The panel admitted evidence at the hearing that confirmed that the appellant did "gift" the Corvette to his mother on January 30, 2014 and also "gifted" the GMC truck to his mother on February 3, 2014: two stamped ICBC documents named the mother as the registered owner of both vehicles. The ministry's argument that it is the asset value on and prior to the January 28, 2014 review that is at issue is inconsistent with the fact that the ministry admitted and interpreted evidence pertaining to the asset value after January 28, 2014. Further, the panel finds it to be unreasonable of the ministry to deny income assistance for the entire month of February in light of the fact that on February 3, 2014 the appellant's non-exempt asset value fell below the legislated limit. There is no evidence that the ministry made an assessment of overpayment that would justify taking away the appellant's February assistance. Whether the appellant disposed of the assets for inadequate consideration is not an issue that is before this panel.

The panel concluded that the appellant now owns one vehicle valued at \$2,300, which is exempt, and a trailer with a value of \$1,000 that the appellant uses for work. By "gifting" the Corvette and the GMC truck to his mother, the appellant reduced his non-exempt assets from the total asset value of \$8,500 to \$1,000.

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In light of the additional information, the panel finds that the ministry's reconsideration decision based on lack of evidence required to establish the non-exempt items were still in the appellant's possession is not reasonably supported by the evidence and rescinds the decision.