

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of May 12, 2014 wherein the ministry denied disability assistance to the appellant because he owns real property valued at \$110,000 which is in excess of the asset limit allowed under Section 10 (2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and which does not fall within the allowable exemptions set out in EAPWDR Sections 10 (1), 11(1) and 12.1.

### PART D – Relevant Legislation

EAPWDR Sections 1(1), 10(1), 11(1), 12.1

## PART E – Summary of Facts

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

- The appellant's request for reconsideration dated May 6, 2014 which included his one page written submission stating that he had been unable to sell a parcel of land owned by him ("the property") or to obtain a loan against the value of the property, and was receiving no income from the property.
- State of Title Certificate dated June 18, 2013 listing the appellant as the registered owner of the property
- 2014 BC Property Assessment Notice assessing the value of the property as \$110,000.

The appellant is a single person with a PWD designation who acquired the property with money he inherited in April 2013. On April 8, 2014 he requested income assistance but was denied by the ministry because he possessed an asset valued in excess of the allowable asset limit of \$5,000. The appellant explained to the ministry worker that the property was now worth \$200,000 because he had made improvements by building the foundation for a house. The appellant told the ministry that his father was supporting him and that he had run out of funds to make additional improvements to the property.

In his Notice of Appeal dated June 3, 2014 the appellant stated that he was penniless and had listed the property with a real estate agent.

Prior to the hearing the appellant submitted as additional evidence a real estate listing information sheet dated May 6, 2014 listing the property for sale at a price of \$249,900.

At the hearing the appellant provided oral evidence that:

- He does not believe that the property is an "asset" within the meaning of EAPWDR Section 1 (1) because due to its failure to sell it cannot be converted into cash;
- He did not expect the cost of constructing a foundation to be so high;
- He has made every attempt to sell the property, but the offers to date are far below what is reasonable;
- He decided not to put the property into a land trust because it was up for sale;
- He did not immediately list the property for sale because he believed he already had a prospective buyer;
- On April 8, 2014 he provided the ministry with the business card and phone number of the prospective buyer and thought the ministry would contact the prospective buyer.

The ministry did not object to the new written and oral evidence. The panel determined that both the oral and written evidence were admissible under S. 22(4) of the EAA as it was in support of the records before the ministry at reconsideration because it described in greater detail the appellant's attempts to prepare the property for sale and his attempts to sell it.

At the hearing the appellant put forward his stepmother ("L") as a witness. L told the panel that she was uncomfortable providing oral evidence and asked if she could read a letter instead. The letter stated that she and her husband (the appellant's father) had used a banking line of credit to lend the appellant approximately \$173,000 to enable him to build a house on the property and to support him while he was ineligible for disability assistance. She confirmed that the cost of foundations had far

exceeded expectations, and that the appellant had suffered a breakdown in February 2014, which halted the project. She stated that the interest on the line of credit is \$500 per month which is causing her and her husband a lot of stress. L added that they had also paid the damage deposit and first month's rent for an apartment the appellant was sharing with his adult children. She and the appellant discussed transferring title to the property to L and the appellant's father, but the appellant was told by the ministry that he could be penalized if he transferred the ownership of the property at this time.

The ministry objected to L's evidence on the grounds that it was not relevant to the issue under appeal. The panel determined that L's evidence was admissible under S. 22(4) of the EAA as evidence in support of the records before the ministry at reconsideration because it corroborated the appellant's evidence that he had borrowed money from his father and step-mother in order to construct a foundation on the property and was supported financially by them.

The ministry relied on its reconsideration decision and clarified that the ministry denied the appellant's request for assistance because the appellant possessed an asset with a value that was higher than the total allowable value of \$5,000 and did not fall within the exemptions listed in EAPWDR Section 10(1). The ministry added that the appellant did not provide sufficient evidence to satisfy the ministry that he had taken all reasonable steps to sell the property. In particular, the appellant did not provide the ministry with evidence that the property had been listed for sale. If he had provided listing documentation in addition to the property assessment that he did provide the ministry could have made a temporary exemption of the property for up to 3 months under EAPWDR Section 12.1.

The panel makes the following findings of fact:

1. The appellant has a PWD designation;
2. The appellant is the sole owner of the property;
3. The 2014 assessed value of the property is \$110,000.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision wherein the ministry denied disability assistance to the appellant because he owns property valued at \$110,000 which is in excess of the asset limit allowed under Section 10 (2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and which does not fall within the allowable exemptions set out in EAPWDR Sections 10 (1), 11(1) and 12.1.

The relevant legislation is set out in the 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;
- (d) money received or to be received from a mortgage on, or an agreement for sale of, the family unit's previous place of residence if the money is
  - (i) applied to the amount owing on the family unit's current place of residence, or
  - (ii) used to pay rent for the family unit's current place of residence;
- (y) assets exempted under
  - (i) section 11 (2) [*asset development accounts*],
  - (ii) section 12 (2) [*assets held in trust for person with disabilities*], or
  - (iii) section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*];

(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;
- (b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$10 000.

(3) The minister may authorize one or more of the following:

- (b) that saleable acreage and buildings owned by an applicant or recipient are to be treated as though they were the place of residence of the applicant's or recipient's family unit for the period specified by the minister.

***Temporary exemption of assets for person with disabilities or person receiving special care***

- 12.1 (1) In this section, "person receiving special care" means a person who is receiving accommodation or care in a private hospital or special care facility, other than a drug or alcohol treatment centre.
- (2) During the exemption period described in subsection (3), an asset received by a person with disabilities or by a person receiving special care is exempt for the purposes of section 10 (2) [*asset limits*] if the minister is satisfied that the person intends to
- (a) establish a registered disability savings plan or trust, and
  - (b) contribute some or all of the asset to the registered disability savings plan or trust.
- (3) The exemption under subsection (2) starts on the date the person receives the asset and ends 3 months after that date unless
- (a) the exemption period is extended to a later date under subsection (4), or
  - (b) the exemption ceases to apply under subsection (5).
- (4) The minister may extend the exemption period to a specified date if the minister is satisfied that the person is making reasonable efforts to establish a registered disability savings plan or trust.

The ministry argues that the appellant was ineligible for assistance because he possessed an asset with a value that was higher than the total allowable value of \$5,000 that did not fall within the exemptions listed in EAPWDR Section 10(1). The ministry argues further that the appellant did not satisfy the ministry that he had taken all reasonable steps to sell the property because he did not provide the ministry with evidence that the property had been listed for sale.

The appellant argues that:

- the property is not an "asset" within the meaning of EAPWDR Section 1 (1) because due to its failure to sell it cannot be converted into cash;
- the property is now worth \$200,000 because he made improvements by building the foundation for a house;
- his father was supporting him and he had run out of funds to make additional improvements to the property;
- he did not expect the cost of constructing a foundation to be so high;
- he has made every attempt to sell the property, but the offers to date are far below the value of the property;
- he decided not to put the property into a land trust because it was up for sale;
- he did not immediately list the property for sale because he believed he already had a prospective buyer;
- on April 8, 2014 he provided the ministry with the business card and phone number of the prospective buyer, and thought that the ministry would contact the prospective buyer;
- on May 6, 2014 he listed the property for sale at a price of \$249,900.

The appellant also argued that the panel must be guided by the British Columbia case of *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461 which he submits is authority for the proposition that all of the appellant's circumstances, including L's evidence, must be considered by the panel. He added that in *Hudson* the court requires that the panel accept the evidence of the appellant if it finds that he has been truthful.

The panel finds that the appellant is the sole owner of the property with an assessed value of \$110,000. The panel also finds that the property is an asset within the meaning of EAPWDR Section 1 (1) because it constitutes equity in real property that can be converted into cash. Although the appellant has not yet been able to sell the property this does not alter the fact that it can be converted into cash in future.

The panel also finds that the ministry reasonably determined that the appellant is not eligible for disability assistance because his assets exceed \$5,000 as set out in EAPWDR Section 11 (2) and does not fall within the allowable exemptions listed in Section 10 (1).

The panel finds further that the ministry reasonably determined that appellant is not eligible for a temporary exemption of assets for a person with disabilities under EAPWDR Section 12.1 because at the time of reconsideration he failed to provide to the ministry sufficient documentation to satisfy the ministry that that he had made all reasonable efforts to sell the property, and in particular failed to provide the ministry with a listing agreement to confirm that the property was being offered for sale.

The panel has considered the *Hudson* case (supra) which the appellant submits requires the panel to accept the evidence of the appellant if it has been truthful. There is no factual dispute concerning the ownership of the property and the steps the appellant has taken to improve the property and to list it for sale. In *Hudson* the court found (among other things) that the panel had failed to provide sufficient reasons for placing more weight on a medical practitioner's evidence than on the evidence of the appellant. In this instance the panel is not preferring the ministry's evidence to that of the appellant.

In conclusion, the panel finds that the ministry reasonably determined that the appellant is not eligible for disability assistance because his assets exceed the allowable limit of \$5,000 set out in EAPWDR Section 11(2) and do not fall within the allowable exemptions listed in Section 10 (1). The ministry also reasonably determined that the appellant is not eligible for a temporary exemption of assets for a person with disabilities under Section 12.1 because prior to reconsideration he failed to provide documentation to satisfy the ministry that he had taken all reasonable steps to sell the property.

Accordingly this panel finds that the ministry's decision to deny disability assistance to the appellant because his assets exceed the allowable limit and because he failed to satisfy the ministry that he had had taken all reasonable steps to sell the property is reasonably supported by the evidence and confirms the decision.