

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "Ministry") reconsideration decision of July 4, 2014 which found that the appellant was not eligible for income assistance because he owned two homes, one of which was exempt from consideration pursuant to s.11 (1) of the *Employment and Assistance Regulation* but the other of which was not exempt as it was valued at \$117,400.00 which exceeds the allowable asset limit of \$2,000.00 for sole applicants with no dependents as provided for in s.11 (2) of the *Regulation*.

PART D – Relevant Legislation

***Employment and Assistance Act* ("EAA"), s.1(1) and s.2;
Employment and Assistance Regulation ("EAR"), s.1, 11(1) and 11(2), s.13, s.13.1**

PART E – Summary of Facts

This was an appeal in writing pursuant to the appellant's request dated July 10, 2014 as set out in his notice of appeal with the same date.

The appellant has indicated that he disagrees with the Ministry's reconsideration decision as:

- a. His assets should be exempt under s.13.1 of the *EAA* due to being an involuntary patient receiving special care on extended leave certificates for disorder of the mind without having been given any date of recover.
- b. He has made an application for federal disability benefits and is awaiting a decision in that regard;

The appellant tendered as evidence a Medical Report on Examination of Involuntary Patient form pursuant to s.24 of the *Mental Health Act*. That certificate is completed by a physician at a designated facility who certified that on June 3, 2014 the appellant was admitted as an involuntary patient at the facility because the appellant suffered from chronic persecutory delusions with no insight into his illness and paranoid ideation. The appellant was subsequently approved for leave authorization on June 3, 2014. In a review panel determination dated June 9, 2014 it was determined that the appellant should continue to be detained in a designated facility pursuant to s.22 of the *Mental Health Act*.

In his appeal the appellant submitted a copy of a letter dated June 9, 2014 from Service Canada indicating that Service Canada needed additional information to continue processing the appellant's Canada Pension Plan disability benefits application.

The panel admitted the evidence in the notice of appeal as it was related to the appellant's assets and was therefore in support of the information and records that were before the Ministry at reconsideration pursuant to s.22(4)(b) of the *EAA*.

The appellant has no dependants. He owns two properties, one of which is not his residence and the value of the second property is \$117,400.

In the appellant's original request for reconsideration the appellant argued that:

- a. His "first house" was his principal residence and not "recordable" in determining eligibility;
- b. His "second house" should be exempt as well since the property was damaged and distressed by the Ministry's decision to reduce then disallow rent or shelter benefits to his tenants in 2009 and that the additional stress placed on the tenants cause the death of one and the vandalism of the home.;
- c. That he had a disability and poor socio-economic health; and
- d. That he "occupied" the second house and it does not generate income and the value of the house is not in proportion to its state.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision that the appellant was not eligible for income assistance was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the Ministry reasonable in determining that the appellant was not eligible for income assistance because he had assets which were not exempt or otherwise had a total value exceeding the limits specified for a sole applicant with no dependents being the sum of \$2,000.00.?

The relevant legislation is as follows:

EAA:

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;

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the Income assistance, hardship assistance or supplement under this Act.

EAR:

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;

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

- (c) a family unit's place of residence;

(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;

Assets held in trust for person receiving special care

13 (1) In this section, "disability-related cost" means the cost of providing any of the following to a person receiving accommodation or care in a private hospital or a special care facility, other than a drug or alcohol treatment centre:

(a) devices, or medical aids, related to improving the person's health or well-being;

(b) caregiver services or other services related to the person's disability;

(c) education or training;

(d) any other item or service that promotes the person's independence.

(2) For a person

(a) who is receiving accommodation or care in a private hospital or special care facility, other than a drug or alcohol treatment centre, or to whom section 11 (2.1) applies, and

(b) who complies with subsection (4),

up to \$200 000, or a higher limit if authorized by the minister under subsection (3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts, calculated as follows:

(c) the sum of the value of the capital of each trust on the later of April 26, 1996 or the date the trust was created, plus

(d) any capital subsequently contributed to a trust referred to in paragraph (c)

is exempt for the purposes of section 11 (2) and (2.1) *[asset limits]*.

(3) If the minister is satisfied that, because of special circumstances, the lifetime disability-related costs of a person referred to in subsection (2) will amount to more than \$200 000, the minister may authorize a higher limit for the person for the purposes of subsection (2).

(4) A person referred to in subsection (2) who has a beneficial interest in one or more trusts must keep records of the following and make the records available for inspection at the request of

the minister:

- (a) for a trust created before April 26, 1996, the capital of the trust on that date;
- (b) for a trust created on or after April 26, 1996, the capital of the trust on the date the trust was created;
- (c) the amount of capital contributed in each subsequent year to a trust referred to in paragraph (a) or (b);
- (d) all payments made after April 26, 1996 to or on behalf of the person from a trust in which that person has a beneficial interest.

(5) For the purposes of this section, the real or personal property of a "patient", as defined in the *Patients Property Act*, is to be treated as if the real or personal property were held in trust for the patient by the patient's committee.

[am. B.C. Regs. 86/2008, s. 2; 197/2012, Sch. 1, s. 11.]

Temporary exemption of assets for person applying for disability designation or receiving special care

13.1 (1) In this section:

"person applying for a disability designation" means a person to whom section 11 (2.1) applies;

"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 applying for a disability designation or by a person receiving special care is exempt for the purposes of section 11 (2) and (2.1) *[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.
- (5) The exemption under subsection (2) ceases to apply if
- (a) the person contributes all of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the asset on the date of the contribution,
 - (b) the person contributes a portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to that portion on the date of the contribution, or
 - (c) the minister becomes aware of information that, in the minister's opinion, indicates that
 - (i) the person does not intend to contribute any portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the asset on the date specified by the minister, or
 - (ii) the person has contributed some of the asset to a registered disability savings plan or trust but does not intend to contribute any remaining portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the remaining portion on the date specified by the minister.
- (6) The appellant has indicated that he disagrees with the ministry's reconsideration decision as his assets should be exempt under s.13.1 of the *EAA* due to being an involuntary patient receiving special care on extended leave certificates for disorder of the mind without having been given any date of recovery;

[en. B.C. Reg. 197/2012, Sch. 1, s. 12.]

In his notice of appeal the appellant provides certain additional facts. In particular he notes that he has made application for federal disability benefits and is awaiting a decision. He also attaches five pages of supporting documentation as described in Part E – Summary of Facts.

The appellant's position is that his first house is exempt and that his second house should be exempt as well since it was damaged and is in distressed condition. He also argues that he has a disability and is in poor socioeconomic health.

Finally, he argues that he occupies the second house and it does not generate income and the value of the house is not in proportion to its state.

The appellant argues in his notice of appeal that his assets should be exempted under s.13.1 of the *EAA* as he is an involuntary patient receiving special care on extended leave certificates for a disorder of the mind and has not been given a date of recovery. He points out as well that he has made an application for federal disability benefits and is awaiting a decision.

In the Ministry's written submission in respect to the appeal, the Ministry stated that s.13 of the *EAR* (assets held in trust for person receiving special care) does not apply in this case. The Ministry argued that although the appellant is an involuntary patient receiving care, the appellant's assets are not currently held in trust. The Ministry noted that there was no evidence that the appellant meets the definition of a "patient" as defined in the *Patients Property Act*, s.5, as the appellant does not have a certificate of incapability. The Ministry pointed out that to be defined as a patient under the *Patients Property Act* the person must be the subject of a certificate of incapability or have been declared incapable of managing himself or his affairs by a judge.

The Ministry noted that the appellant had not provided any information to support that the second home could not be converted to cash or that it was not valued at \$117,400.00 even though the appellant advised that the property had been damaged and the home had been vandalized.

The Ministry found that the second home must be included as an asset for the purpose of determining the appellant's eligibility for income assistance and the value of the asset exceeded the allowable limit of \$2,000.00 as provided for in s.11(2) of the *Regulation*.

The panel notes the evidence that the second house is valued at \$117,400.00 as noted in the assessment roll attached at page 48 of the record.

The panel notes that property is registered in the name of the appellant and that the land alone is valued at \$78,000.00 even if the improvement has little or no value as suggested by the appellant.

In the definitions section of the *EAR*, s.1(1) defines "asset" as meaning, among other things, equity in any real or personal property that can be converted to cash. There is no evidence that the equity in the second house is not the assessed value of the house. There is no evidence that the assessed value of the house is other than correct. There is no evidence that the equity in the second house cannot be converted to cash.

s. 11(1)(c) of the *EAR* provides that a family unit's place of residence is exempt. In this case the appellant has indicated that he resides principally in the first house. The appellant states that he "occupies" the second house but there is no evidence that it is his place of residence. Accordingly, the first house is determined to be the place of residence, making the second house not exempt.

s. 11(2)(a) of the *EAR* provides that a family unit is not eligible for income assistance if, among other things, a sole applicant has no dependent children and has assets with a total value of more than \$2,000.00. The evidence establishes that the value of the second house is greater than the total value allowable under s.11(2)(a) of the *EAR*.

In his notice of appeal the appellant refers to s.13.1 of the *EAA*. It is noted that s.13.1 of the *EAA* has no application (consequences of not meeting employment-related obligations) and it is assumed the appellant meant to refer to the *EAR*. Section 13.1 of the *EAR* applies in respect of a temporary exemption of assets sought for persons applying for disability designation or receiving special care. There is no evidence that the appellant is a person applying for his disability designation within the meaning of s.11(2.1) of the *EAR* or a person receiving special care within the meaning of s.13.1(1). Accordingly, s.13.1 does not apply. However, the Ministry has responded to the appellant's position as if he was relying upon s.13 of the *EAR* in support of his appeal. Although the appellant does not do so his appeal could not succeed in any event if he has in fact referenced the incorrect section and if the Ministry is correct in concluding the appellant meant s.13. That is because s.13 applies to assets held in trust and there is no evidence that the second house is an asset

currently held in trust.

The panel finds that the Ministry was reasonable in not exempting the second house on the basis of it having a value of more than \$2,000.00. The panel finds that the Ministry's reconsideration decision is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the Ministry's decision.