

PART C – Decision under Appeal

The Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 22 August 2014 determined that the appellant was not eligible for income assistance because his assets exceeded the \$2,000 allowable limit determined under section 11(2)(a) of the Employment and Assistance Regulation.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), sections 1 and 11.

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant is an employable applicant for income assistance with no dependent.
- On 22 July 2014, the appellant indicated to a ministry worker that he owned a 2001 pickup truck, a 2006 cattle trailer and a large van where his furniture and belongings were “stowed” (sic).
- On 6 August 2014, the ministry contacted the appellant after having reviewed ICBC information that showed the appellant had 4 vehicles registered:
 - 2001 pickup truck, estimated value: \$1625.00
 - 2006 cattle trailer, value estimated by the ministry at \$10,000.00
 - 1990 pickup truck
 - 1996 horse trailer estimated at \$8,000.00 during a previous interview in 2008.

During that interview, the appellant indicated he had sold his 1990 pickup truck for \$150.00 but still had the other vehicles and 4 horses in a friend's pasture.

- A 3-page Application for Income Assistance, Part 1, dated 7 August 2014, signed by the appellant indicating he was applying for income assistance.
- A 4-page Application for Income Assistance, Part 2, also dated 7 August 2014 and signed by the appellant indicating that in terms of “common expenses” he had the following “vehicles”:
 - 2001 pickup truck, value \$1,500.00
 - 2006 cattle trailer, value \$10,000.00
 - 1996 horse trailer, value \$8,000.00
 - 4 horses, value \$4,000.00
- A 13-page “Decision Report” (printout) analysis of the appellant's assets determining his total assets at \$18,000.00 and that no exemptions applied.
- In his Request for Reconsideration dated 12 August 2014, the appellant indicated that his 1996 horse trailer was bought in 2007 and today's value was \$2,000.00 and is used to store his personal belongings at his former location. He stated he owned only 1 vehicle, the 2001 pickup truck and that he was living in the cattle trailer and that it was used to haul his horses to his place of work when the opportunity occurred. He stated that the discussion of offer on his cattle trailer was a trade for a trailer that someone claimed he paid \$8,000.00 for, not a cash offer and that the cost to bring that trailer to his new location would be around \$1,000.00. He also indicated he was injured when working with his horses and that there was a discussion about whether he could find accommodations for rent if he received income assistance. He also indicated there was no discussion of getting help with employment assistance and that his cattle trailer should be exempt from assets as it is needed for his work and temporary housing. He concluded by stating “When I find work I won't need assistance + will have my tools of my trade.”

In his Notice of Appeal dated 16 September 2014, the appellant indicated that in his attempts to sell his 1996 horse trailer, he only received 1 offer of \$900.00 and that the store where he bought it wouldn't even buy it for \$1,500.00. Further, he states the trailer is in his former community and that it would cost at least \$500.00 to bring it to his new community. He also stated that his truck needs a clutch as it broke down and, finally, he was never advised of any self-employment program.

At the hearing, the appellant testified that his horses worked a lot in the past years and since they were older horses, they were used to that type of work but their value was uncertain given their age between 12 and 20 years old. He testified that he sold the horse trailer to a friend for \$1,400.00 and

that it was now on his friend's property – he sold it to pay a clutch replacement on his pickup truck. He provided the following 2 documents, explaining he wanted to provide concrete evidence as opposed to speculation in terms of the horse trailer's value:

- A copy of an Owner's Certificate of Insurance and Vehicle Licence for a horse trailer dated 17 April 2012 with expiry date 16 July 2012 and with a copy of a business card on it and on the Certificate a handwritten mention: "Sold to [name and address] to pay for clutch repair on my truck" with the appellant's signature.
- A copy of an ICBC document titled "Transfer Tax Form", undated by ICBC, pertaining to a horse trailer same serial number as the previous document and including only the "Seller information and vehicle declaration" filled by the appellant and mentioning the date of sale as 18 September 2014 and selling price as \$1,400.00. The other parts (Purchaser information and Autoplan Agent) were not completed.

The appellant also testified that his horses had been working during this spring, about 4 times and about 12 times last year. As a wrangler he had to be a member of the Teamsters Union.

The ministry testified that their information about the horses' value came from the appellant himself and that they had not considered whether those assets (horses and horse trailer) could be considered as business tools – this issue would have to be reviewed by her superiors in the policy section of the ministry. The ministry did not object to the admissibility of the new evidence provided by the appellant.

The panel determined the additional oral and documentary evidence was admissible under s. 22(4) of the EAA as it was in support of the records before the minister at reconsideration, in particular that the appellant indicated the documents were provided to confirm the actual value of the horse trailer but the panel gives no weight to that documentation as it is only filled by the appellant and does not provide any concrete evidence of a transfer to a third party.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for income assistance because his assets exceeded the \$2,000 allowable limit determined under section 11(2)(a) of the EAR was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation in this matter is s. 1(1) of the EAR with respect to 'assets':

- 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;

S. 11(2) of the EAR determines asset limits for the appellant as:

(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;...

However, s. 11(1) of the EAR provides for a number of exempted assets and the following dispositions are relevant to this appeal:

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 used for day to day transportation needs if
 - (i) the equity in the motor vehicle does not exceed \$10 000, ...

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

- (i) business tools;...

- (k) basic breeding-stock held by a farmer at the date of the applicant's submission of the application for income assistance (part 2) form, and female stock held for stock replacement;

- (l) essential equipment and supplies for farming and commercial fishing;...

- (x) for a recipient who is participating in a self-employment program funded or established by the minister under section 7 of the Act,

- (i) up to a maximum of \$5 000 kept by the recipient in a separate account described in section 4 (2) (b) (ii) of Schedule B, and

- (ii) up to a maximum of \$50 000, or a greater amount approved by the minister, consisting of
 - (A) the value of assets used by the recipient in operating a small business under the self-employment program, and

- (B) a loan that is not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and received and used for the purposes set out in the business plan; ...

The ministry agreed that the cattle trailer was an exempt asset since the appellant resides in it and it falls under s. 11(1)(c) as a family unit's place of residence. As well, the ministry agreed that the 2001 pickup truck was exempt as his primary vehicle valued under \$10,000.00 under s. 11(1)(b)(i) of the EAR. However, the ministry argued that the appellant had not established the horse trailer value is not more than \$2,000.00 since he had not provided any evidence from a qualified appraiser. Further, the ministry argued that the horse trailer and the horses did not meet any of the exemption criteria listed in s. 11(1) of the EAR, specifically that he had not established he had a farmer status and therefore the horses were not exempt as basic breeding stock held by a farmer (s. 11(1)(k) of the EAR) and that the horse trailer was not considered as essential equipment for farming (s. 11(1)(l) of

the EAR). Additionally, the ministry argued that the appellant was not enrolled in a self-employment program funded or established by the minister and thus, could not benefit from the exemption under s. 11(1)(x) of the EAR. Thus, the ministry argued, his assets were well over the \$2,000.00 limit set by s. 11(2)(a) of the EAR and he was not eligible for income assistance accordingly.

The appellant argued that he had sold his trailer \$1,400.00 and that was the most reliable value for this piece of equipment. He stated his horses and horse trailer were tools for his trade and while he admitted their value exceeded \$2,000.00 he claimed they should be exempted as tools for his business as a wrangler. He argued that horses and horse trailers were necessary for this occupation and that he needed them if he wanted to work, which he occasionally did.

The panel finds the appellant did not provide any evidence that he was a farmer, that he had breeding stock or that he was part of a self-employment program and thus, the ministry reasonably determined that those exemptions did not apply to him. However, in terms of "business tools", the panel notes that the appellant made this argument before the reconsideration officer in his documentation: the appellant stated in his request for reconsideration that he was "living in the cattle trailer + it is used to haul my horses to [my work] when I get work" and "When I find work I won't need assistance + will have my tools of my trade." According to the Canadian Oxford Dictionary, the definition of "tool" includes "a thing used in an occupation or pursuit (the tools of ones trade...)" but yet the ministry admitted that it did not consider whether those items could be considered as "business tools" under s. 11(1)(i) of the EAR. The evidence shows the appellant made that claim at reconsideration and again before the panel at the hearing but the ministry failed to make any determination in that respect while it did make a determination on a number of other exemptions, including those that the appellant had not even argued, for instance the self-employment program under s. 11(1)(x) of the EAR that the appellant stated he knew nothing about. The panel finds it was unreasonable for the ministry not to consider the "business tools" exemption and not making a determination under s. 11(1)(i) of the EAR.

The panel finds the ministry's decision was not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the decision. Therefore, the ministry's decision is overturned in favour of the appellant.