

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated September 30, 2014, which held that the appellant is not eligible for income assistance (IA), pursuant to section 14(1)(b) and 3(b) of the Employment and Assistance Act (EAA) for disposing of real or personal property for consideration that, in the ministry's opinion, is inadequate and that the appellant remains ineligible for the prescribed period set out under section 31(4) of the Employment and Assistance Regulation (EAR).

PART D – Relevant Legislation

Employment and Assistance Act (EAA) – sections 14 (1)(b) and 3(b)
Employment and Assistance Regulation (EAR) – section 31

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consists of:

1. Request for Reconsideration signed and dated August 11, 2014, which, in part, states:
 - The appellant spoke to a ministry worker regarding the transferring of his home to his former spouse who is the mother of his 3 children and was given misinformation;
 - He inquired as to whether or not the transfer of the home would cause any problems with his IA;
 - He provided a number of reasons for why he wanted to transfer the home to his former spouse;
 - a) He has a family history of heart disease and he also suffers from a heart condition that causes his heart to flutter and speed-up;
 - b) He has very severe depression;
 - c) His former spouse is also on IA and therefore cannot afford to purchase the home;
 - d) He wanted to make certain that his children are taken care of;
 - e) He has no living relatives and his children are all the family he has;
 - f) He has moved to another city to be closer to his doctor; and
 - g) In the event he is sued due to his involvement in a make work project, he does not want to lose his asset and become homeless.
 - The ministry worker did not advise him of section 14 [of the EAA] otherwise he would have handled the situation differently;
 - As of August 9, 2014, he has his son living with him and therefore he has added expenses, and he paid for a damage deposit for his new residence; and
 - The ministry is not qualified to make statements that the appellant's heart condition is not terminal.
2. A receipt for \$200, dated August 1, 2014 for a damage deposit, and a receipt dated August 1, 2014 for a rental amount of \$400;
3. A Property Tax Notice in the name of the appellant's former spouse, for the property that was transferred from the appellant to his former spouse, which states that the property taxes are due July 2, 2014;
4. A freehold transfer paper from the Land Title Office, signed by the appellant with an execution date of June 7, 2013, but not signed by his lawyer, showing that the property in question was transferred from the appellant to his former spouse for \$1 and registered on June 5, 2014;
5. A monthly expenses sheet showing Hydro at \$290.00 for March 30, 2012 to April 20, 2014, Property Taxes at \$206.25 for the same period, Hydro at \$179.15 for November 05, 2014 with no end date, Property Taxes at \$ 246.93 for May 29, 2012 to July 15, 2014, other utilities at \$50 for November 05, 2012 to July 15, 2014 and Phone at \$35 per month from April 29, 2013 with no end date;
6. A Shelter Information form signed and dated July 27, 2014 showing that the appellant has secured housing in another city;
7. A Medical Report-Persons With Persistent Multiple Barriers signed and dated November 30, 2012 by the appellant physician which confirms that the appellant has depression;
8. The front and back copy of a Ministry monthly reporting card, signed and dated August 7, 2014, on which the appellant reports that his 3 year old son now resides with him.

In the Notice of Appeal, signed and dated October 10th, 2014, the appellant states he was put on this

course of action by misinformation given to him by a ministry worker.

At the hearing the witness [the appellant's former spouse] stated the following:

- She was present when the appellant inquired with the ministry regarding the disposal of his property and the worker did not mention anything or give any information that would have caused the appellant to reconsider his course of action;
- The worker advised that no big change would occur to the appellant's IA;
- The appellant was transparent and upfront about his intentions and that the two were just swapping homes;
- At the time of this conversation with the worker, the appellant was living in the home in question and the witness in a home in another city but now they have switched;
- The witness did not attend the lawyer's office with the appellant at the time of the house's transfer; and
- The ministry worker was also advised that the appellant's son will also be moving in with him and that the appellant would repay the ministry for any IA received once he started making money as he is pursuing opportunities.

At the hearing the appellant stated:

- He and his former spouse are not living together;
- The ministry gave him misinformation despite being asked specific questions regarding IA and did not document the conversation in the computer;
- All decisions regarding the transfer of the home were based on the conversation with the worker which took place 1-2 weeks prior to transferring the home;
- If the worker had given the proper information, he simply would have added his former spouse to the title instead of a transfer;
- He chose to transfer the home to his former spouse because he has a medical condition, he has recently see his doctor in this regard, has no other living relatives and wanted his former spouse to avoid having the deal with lawyers and probate and to have his children taken care of;
- He suffers from depression but still pursues various projects so he can get off of IA;
- Previously when he was on IA, he paid the ministry back about \$7800 and has this same goal now; and
- The date on the land title of June 7, 2013 is incorrect.

At the hearing the ministry relied on the reconsideration decision and added:

- Health issues that necessitate end of life planning can be considered in cases involving s. 14(1)(b) of the EAA;
- There is no ministry record of a conversation with the appellant regarding the transfer of his property to his ex-spouse prior to July 2, 2014, and that it hopes any conversation regarding the disposal of a major asset would involve a lengthy conversation;
- There is no ministry record of what the appellant was asked to provide to demonstrate he has a medical condition;
- Hard copies of legislation can be provided by ministry workers;
- Not all records pertaining to the appellant are necessary or accessible for Tribunal hearings;
- Any misinformation is regrettable but not intended, and the ministry could only respond to such misinformation within the limits of the legislation as it still stands;

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which held that the appellant is not eligible for IA for disposing of real or personal property for consideration that, in the ministry's opinion, is inadequate, 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 is not eligible for income assistance (IA), pursuant to section 14(1)(b) and 3(b) of the Employment and Assistance Act (EAA) for disposing of real or personal property for consideration that, in the ministry's opinion, is inadequate and that the appellant remains ineligible for the prescribed period set out under section 31(4) of the Employment and Assistance Regulation (EAR)?

The relevant legislation is as follows:

EAA

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.

(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.

EAR

Effect of failing to pursue or accept income or assets or of disposing of assets

31 (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 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.

The Appellant's Position

The appellant's position is that he has a medical condition and wants to ensure that his 3 children are cared for should he expire. He also did not want his former spouse, and mother of his children, to have to deal with probate and lawyers. To ease the situation he transferred his home to his former spouse. However, prior to doing this, he asked the ministry. The appellant argues that the ministry misinformed him of the consequences to his IA should he transfer his home to his former spouse. The appellant also argues that if he was told upfront of the consequences of transferring the home to his former spouse, he would not be in this situation as he would have simply added her name to the title.

The Ministry's Position

The ministry's position is that the appellant sold his real property for inadequate consideration. The ministry argues that the appellant has not provided any information to support that the property was sold in lieu of maintenance under a maintenance order, or provided any medical documentation to support that he has a heart condition which requires him to put his affairs in order. The ministry also argues that the appellant has not provided any other consideration as to the reason for selling his home for \$1 and therefore concludes that he sold his home for inadequate consideration, and is therefore ineligible for assistance pursuant to the legislation.

The Panel's Decision

Section 14(1)(b) of the EAA states that the minister can take action if an applicant or recipient has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate. The ministry argues that by selling his home for \$1, without any other consideration, the appellant is in violation of section 14(1)(b) of the EAA, and that the consequences of ineligibility as stated in subsection (3)(b) of the EAA applies for the prescribed period set out in section 31(4) of the EAR. The appellant argues that he was not informed that there would be any consequences to his IA if he transferred the property to his former spouse despite asking a ministry worker. He also argues that he has provided consideration in that he stated he has a family history of heart disease, he recently saw his doctor and has a heart condition himself, and needs to ensure that his children are taken care of, and that the ministry is not qualified to make judgments about terminal conditions. The panel finds that at the time of the reconsideration decision or the Tribunal hearing, the appellant has not provided any evidence to support his claim of a heart condition which leads him to believe he needs to have his affairs in order. However, in evidence is a medical report for his application for Persons with Persistent Multiple Barriers signed by the appellant's physician and dated November 30, 2012, which states that the appellant's primary medical condition is depression and the space for secondary medical condition is left blank. With no further information or evidence provided, the panel finds that the appellant has not demonstrated or established that he has a heart condition and that this condition led him to get his affairs in order.

In addition, the panel finds discrepancies in some of the information provided by the appellant. The land title transfer form is signed and dated for June 7, 2013, and has the land title registration date as June 5, 2014. The appellant has argued that the June 7, 2013 date was an error made by his lawyer but did not provide the correct date other than to say that the year should be 2014 and that he is not good with dates. If the suggested correct date is June 7, 2014 then this too would be incorrect as the land title office cannot accept registration of the home prior to the transfer date. Also, on the land title form, which the panel finds was signed on June 7, 2013, the appellant's former spouse's home address is listed as the address of the property in question, but she testified that she lived in a separate dwelling prior to the transfer of the property. At the hearing and in his request for reconsideration, the appellant stated that the purpose behind transferring the property to his former spouse was to ensure that his 3 children are taken care of. However, in the request for reconsideration, the appellant is also cognizant of the possibility of a law suit where he could lose his asset (his home) and become homeless. Yet, he makes no mention of this at the hearing or providing no further evidence in this regard. For these reasons, the panel finds that the appellant has failed to demonstrate that he has purpose for disposing of his real or personal property for consideration that was inadequate. In this case, the panel finds that the appellant has failed to demonstrate or provide any information that supports that the property was sold in lieu of maintenance under a maintenance order, he has a heart condition which requires him to put his affairs in order or any other consideration as to the reason for selling his home for \$1. As a result, in the circumstances of the appellant, the panel finds that the ministry reasonably determined that the evidence establishes that the appellant disposed of his property for consideration that was inadequate as pursuant to section 14(1)(b) of the EAA and is therefore ineligible for IA pursuant to section 3(b) for the prescribed period set out in 31(4) of the EAR.

Conclusion:

The panel finds that the ministry reasonably concluded that the evidence establishes that the appellant disposed of his property for consideration that was inadequate as pursuant to section 14(1)(b) of the EAA and therefore denied the appellant IA as pursuant to section 31(4) of the EAR. The panel confirms the ministry's reconsideration decision.