

PART C – Decision under Appeal

The decision being appealed is the Ministry of Social Development and Social Innovation (the “ministry”) October 9, 2014 reconsideration decision wherein the ministry denied disability assistance to the Appellant because she owns an asset with a value of more than \$5,000.00 which is in excess of the asset limit allowed under Section 10(2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

EAPDWR Sections 1, 10(1) and 10(2).

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing pursuant to Section 22(3)(b) of the Employment and Assistance Act.

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

1. Information from its files that the Appellant was a recipient with a Persons with Disabilities (PWD) designation. As of February 2014 when her son turned 19 years of age, she no longer had dependants, and was then considered a single person with a PWD designation. As of March 2014 the ministry no longer provided benefits to the Appellant.
2. A document confirming the Appellant's ownership of her primary vehicle since October 27, 2011.
3. A vehicle insurance document from ICBC effective August 2, 2013 insuring a stored vehicle. The declared value of the vehicle, a specialty car, was \$110,000.00, and the Appellant was listed as the insured party.
4. A February 28, 2011 formal appraisal of the Appellant's specialty car, in its current condition, at between \$95,000.00 and \$110,000.00. (Appraisal 1) Body work to repair sandblasting was estimated between \$27,000.00 and \$30,000.00. The mechanical condition was described as 'as new', the interior was described as 'as new', the glass was described as good, the body was described as being in excellent condition, and the paint was described as new.
5. A November 15, 2013 email providing a second appraisal of the specialty car outlining its current value as between 5,000.00 and \$6,000.00. The car could be brought up to par with other comparable specialty cars, but needed work estimated between \$30,000.00 and \$40,000.00. (Appraisal 2)
6. An undated Craigslist 'for sale' ad of the specialty car at \$80,000.00.
7. An Auto Trader 2014 'for sale' ad listing the specialty car at \$80,000.00.
8. A 2014 Kijiji 'for sale' ad listing the specialty car at \$80,000.00.
9. A 2014 posting in Gyos, free classifieds, listing the specialty car for sale at \$80,000.00.
10. The Appellant's September 10, 2014 request for reconsideration was accepted and her submissions are summarized within the reconsideration decision. The Appellant stated that she inherited her specialty car from her father's estate and had to pay her sisters \$5,000.00 each for storage fees, and did not receive the vehicle until 2000.

On October 20, 2014 a Notice of Appeal was received outlining that the specialty car was incorrectly valued at \$110,000.00 and that the Appellant has two other appraisals listing the value of the vehicle at \$5,000.00 and \$12,000.00. Current estimates of mechanical repairs were at \$58,610.00. The Appellant obtained legal counsel to represent her on this matter.

On November 4, 2014 legal counsel provided submissions to the Tribunal. This included the following new documents:

1. An October 5, 2014 estimate (Appraisal 3) indicating a present value of \$8,000.00 for the specialty car, and repairs estimated at \$58,610.00 plus taxes.
2. An October 18, 2014 certificate of appraisal (Appraisal 4) of the specialty car at \$12,000.00. The certificate confirmed that in reaching this estimate, the inspector utilized standard industry methods in assessing current market conditions, and personally inspected the vehicle.
3. 3 receipts reflecting payments concerning the specialty car in the amounts of \$470.00, \$1,300.00, and \$2,000.00 for the 2012 calendar year. and,

4. A written submission on behalf of the appellant.

The ministry did not object to the admissibility of the new written evidence. The panel determined that the written evidence was admissible under S. 22(4) of the Employment and Assistance Act, as it is in support of the information and records before the ministry at reconsideration, in particular, the valuation of the specialty car. The written submission was considered by the panel as argument on behalf of the appellant.

By way of email dated November 10, 2014, the ministry confirmed that its submission in this matter is the reconsideration summary provided in the Record of Ministry Decision.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of October 9, 2014, which held that the Appellant was not entitled to disability assistance because she owns an asset with a value of more than \$5,000.00 which is in excess of the asset limit allowed under Section 10(2) of the EAPWDR was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the Appellant. The ministry found that the specialty car owned by the Appellant was not used for her day to day transportation needs, and was accordingly not an exempt asset; was valued at more than \$5,000.00; and as a result the Appellant was not eligible for disability assistance as per Section 10(2)(a) of the EAPWDR because she had an asset with a value of more than \$5,000.

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal.

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);

- (a) clothing and necessary household equipment;
- (b) one motor vehicle generally used for day to day transportation needs;

.....

10(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...

Parties' positions

The Appellant agrees that the specialty car is not an exempt asset, and submits that the actual value of the vehicle in its present condition is between \$5,000.00 and \$8,000.00. The Appellant submits that withholding her benefits because of an asset which is valued (at maximum) \$3,000.00 over the mandatory limit imposes an undue hardship on the Appellant which is severe and out of proportion to the amount in question.

The ministry's position is that the Appellant is not eligible for disability assistance as per section 10(2)(a) of the EAPWDR because she has an asset with a value of more than \$5,000.00.

The Panel's Findings and Conclusion

The Appellant does not dispute that she is the sole owner of an asset within the meaning of the EAPWDR Section 1(1), in particular personal property described herein as a specialty car, which can be converted into cash. The Appellant acknowledged that the specialty car is not an exempt asset under the EAPWDR Section 10(1)(b), as the Appellant uses another vehicle for her day to day transportation needs.

The panel finds that the ministry reasonably determined that the specialty car is valued in excess of \$5,000.00.

All but one of the appraisals submitted into evidence support a minimum value of the specialty car in excess of \$5,000.00 regardless of any completed, outstanding or recommended repairs to the vehicle and the Appellant listed the vehicle for sale in 2014 at \$80,000. Appraisal 1 was the highest at between \$95,000.00 and \$110,000.00, while Appraisal 2 was the lowest, suggesting a value between \$5,000.00 and \$6,000.00. Both new appraisals completed in 2014 confirm estimates greater than \$5,000.00, although significantly lower than Appraisal 1. Appraisal 3, which included a list of outstanding work to be done on the specialty car, valued the vehicle in its' current condition at \$8,000.00. Appraisal 4 confirmed that in reaching the estimate of \$12,000.00, the inspector utilized standard industry methods in assessing current market conditions, and personally inspected the vehicle. Although the Appellant argued that she would attempt to sell the vehicle "in an appropriate price range within the next 90 days", there was no additional evidence provided that the Appellant had attempted to sell the vehicle at any time for less than \$80,000. The panel concludes that the ministry reasonably determined that a preponderance of evidence supports a valuation of the specialty car in excess of \$5,000.00.

Once this determination was made, the ministry was required to apply the appropriate legislation in the Appellant's circumstances. The EAPWDR Section 10(2) is mandatory legislation.

The panel finds that the ministry reasonably determined that the appellant is not eligible for disability assistance because her assets exceed the allowable limit of \$5,000.00, and she is a sole recipient with no dependent children, in keeping with the EAPWDR Section 10(2).

Having considered all of the evidence and the legislation applicable to the Appellant's circumstances, the panel finds that the ministry decision was reasonably supported by the evidence and confirms the ministry's reconsideration decision.