

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 16, 2014 which found that the appellant is not eligible for income assistance as a result of having assets valued at more than the allowable limit, pursuant to Section 11(2) of the *Employment and Assistance Regulation* (EAR).

### PART D – Relevant Legislation

*Employment and Assistance Regulation* (EAR), Sections 1 and 11

*Employment and Assistance Act* (EAA), Section 1

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Letter dated March 27, 2014 from the assistant branch manager at a financial institution 'To whom it may concern' regarding a GIC [guaranteed investment certificate] held in a RRSP [registered retirement savings plan] in the name of the appellant's spouse. The assistant manager wrote that the GIC is locked in until July 26, 2014. The GIC was invested for a term of 18 months and is not eligible for early redemption in part or in full until the maturity date;
- 2) Letter dated September 24, 2014 from the manager at a financial institution 'To whom it may concern' regarding a GIC held in a RRSP in the name of the appellant's spouse. The manager wrote that the GIC is locked in until July 26, 2019. The GIC was invested for a term of 60 months and is not eligible for early redemption until the maturity date; and,
- 3) Request for Reconsideration dated October 1, 2014, attaching a handwritten letter from the appellant's spouse.

At the hearing, the appellant provided a further document, namely a letter dated November 12, 2014 from the financial institution 'To Whom It May Concern' in which the financial services manager wrote that a garnishment was placed on the account with the RRSP in the name of the appellant's spouse on January 29, 2013. The funds held under this plan are unavailable until the garnishment has been removed or resolved.

The ministry did not object to the admissibility of the letter. The panel admitted the letter pursuant to Section 22(4) of the *Employment and Assistance Act* as relating to the availability of the asset in question and being in support of information and records that were before the ministry at reconsideration.

In the Request for Reconsideration, the appellant's spouse wrote that:

- The appellant is his wife and they have been married for more than 10 years.
- He is the income-generator and his income supports the family unit when he is employed.
- He has been unemployed since May 5, 2014 and has been seeking employment since then.
- He has a GIC with a financial institution that is valued at more than \$17,000. This certificate was invested in a 60-month term and is not eligible for early redemption until it matures.
- He has met with the manager at the financial institution to have this money released because of the hardship his family is going through as he is still unemployed. This money has been frozen by the province of B.C. pending a Family Maintenance debt.
- When the fund matured on July 26, 2014, he moved it to a 60-month GIC to protect it from FMEP [family maintenance enforcement program].
- Their application for assistance is based on their need for accommodation, food, clothing, etc.
- When they were denied, they indicated that they could not touch the GIC.
- He will be back to work and off assistance as soon as possible. He is currently working a few part-time jobs with two construction contractors and, when he earns income, he and his wife report it to the ministry on their monthly report cards.
- The denial of a cheque for October has left them with no money to pay their rent, hydro, etc.

In her Notice of Appeal dated October 23, 2014, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- The GIC in question belongs to her husband and she has no say and no access.
- The GIC has been locked. When it matured, FMEP would have or is making claim to it since

there is a pending court case.

- Her husband directed the financial institution to release the funds to them and agreed to surrender the penalty of approximately \$2,000. When they attempted to release the funds, the financial institution said the money cannot be released because of the FMEP hold. They will not be able to access the GIC until FMEP releases the hold.
- The case is in the courts through the 'ISO' procedure and has not yet been ruled on.
- They have no income and need to receive this support in order to survive.
- Her husband is continuing to search for full-time employment and will notify the ministry as soon as he obtains employment.

At the hearing, the appellant stated that:

- The GIC was under a garnishee before she applied for income assistance in March of 2014 and the ministry was aware that it was worth about \$17,000 and she could not access it.
- If they could have gotten the funds, she would have asked her husband to access them because she did not want to apply for assistance.
- There are arrears of about \$44,000 in child support that they now have a lawyer looking at. She cannot do anything about it because it is between her husband and his ex-wife.
- She is named as a beneficiary on the RRSP but that is only for if her husband was to die. Even if he was to die, it would then become an issue between her and the ex-wife.
- The issues with her husband's ex-wife were from a time long before they got married and the husband's children are now of age, although one says he is furthering his education.
- She understands that the ex-wife is only entitled for child support during part of the time that the ex-wife is claiming.
- These issues have been going on for years and her "hands are tied" and there is nothing she can do to get the money.
- The "ISO" process is the inter-jurisdictional support order since her husband's ex-wife resides in another province. FMEP lost all the paper work at one point so there were delays in the process and no information was available.
- She does not have an asset for \$17,000 as it is "only on paper" and she cannot get the funds.
- Her husband decided to put the funds in a GIC for another 5 years to protect it from the FMEP.
- Her husband got the funds for his RRSP through his employer but she is not sure if it is part of a superannuation plan.

The ministry relied on its reconsideration decision, as summarized at the hearing. The ministry also stated that:

- Although the GIC is in the name of the appellant's husband, eligibility is income and asset tested for the entire family unit and an asset owned by one person affects the eligibility for everyone in the family unit.
- There is no exemption for an RRSP account unless it is a superannuation plan which is locked in until retirement, and there is also no deduction for the amount of a garnishment.
- The ministry contacted the financial institution and was advised that, in a hardship situation, the funds in the husband's GIC can be released.
- Regarding the letter from the financial institution dated November 12, 2014, the ministry requires that the appellant cash the GIC despite the garnishment and even if all the funds are then applied to the debt through FMEP.
- The funds from the GIC would be treated as income to the family unit in the month that they are cashed.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which found that the appellant is not eligible for income assistance as a result of having assets valued at more than the allowable limit, pursuant to Section 11(2) of the *Employment and Assistance Regulation* (EAR), is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 11 of the EAR provides in part that:

### **Asset limits**

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

- (a) clothing and necessary household equipment;
- (b) subject to subsection (2.3), one motor vehicle generally used for day to day transportation needs if
  - (i) the equity in the motor vehicle does not exceed \$10 000,
  - (ii) the motor vehicle has been significantly adapted to accommodate the disability of a recipient in the family unit,
  - (iii) the motor vehicle is used to transport a disabled dependent child, or
  - (iv) the motor vehicle is used to transport a disabled foster child, if the child is in the care of the applicant or recipient;
- (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;
- (e) a Canada child tax benefit;
- (f) a goods and services tax credit under the Income Tax Act (Canada);
- (g) a tax credit under section 8 [refundable sales tax credit], 8.1 [low income climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the Income Tax Act (British Columbia);
- (h) an uncashed life insurance policy with a cash surrender value of \$1 500 or less;
- (i) business tools;
- (j) seed required by a farmer for the next crop-year;
- (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;
- (m) fishing craft and fishing gear owned and used by a commercial fisher;
- (n) prepaid funeral costs;
- (o) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (p) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;

- (q) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus;
- (r) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (s) money that is
  - (i) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
  - (ii) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (t) money paid under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (u) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 6 (e).]
- (v) money paid to a person in settlement of a claim of abuse at an Indian residential school, except money paid as income replacement in the settlement;
- (w) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (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;
- (y) assets exempted under
  - (i) section 12 (2) [asset development accounts],
  - (ii) section 13 (2) [assets held in trust for person receiving special care], or
  - (iii) section 13.1 (2) [temporary exemption of assets for person applying for disability designation or receiving special care];
- (z) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 3.]
- (aa) payments granted by the government of British Columbia under section 8 [agreement with child's kin and others] of the Child, Family and Community Service Act;
- (bb) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

- (cc) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 3.]
- (dd) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the Child, Family and Community Service Act, for contributions to the support of a child;
- (ee) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
  - (i) Autism Funding: Under Age 6 Program, or
  - (ii) Autism Funding: Ages 6 — 18 Program;
- (ff) funds held in a registered education savings plan;
- (gg) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
- (hh) a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);
- (ii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (jj) funds held in, or money withdrawn from, a registered disability savings plan;
- (kk) a working income tax benefit provided under the Income Tax Act (Canada);
- (ll) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]
- (mm) the climate action dividend under section 13.02 of the Income Tax Act;
- (nn) money paid or payable to a person under the Criminal Injury Compensation Act as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
- (oo) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
- (pp) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (qq) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (rr) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (ss) a tax refund;
- (tt) a BC basic family bonus;
- (uu) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;

(vv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program.

(1.1) Despite subsection (1), assets described in subsection (1) (x) (ii) (A) are not exempt under subsection (1) (i), (j), (k), (l) or (m).

(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;
- (b) subject to paragraph (c), an applicant or a recipient has one or more dependants and the family unit has assets with a total value of more than \$4 000;
- (c) an applicant or a recipient receives accommodation and care in a private hospital or a special care facility, other than an alcohol or drug treatment centre, or is admitted to a hospital for extended care, and
  - (i) has no dependants and has assets with a total value of more than \$5 000, or
  - (ii) has one or more dependants and the family unit has assets with a total value of more than \$10,000. . . .

Section 1 of the EAR provides that:

#### 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.

**"cash assets"** in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
  - (i) a savings institution, or
  - (ii) a third party

that must pay it to the person or the dependant on demand,

- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

Section 1 of the *Employment and Assistance Act* (EAA) provides that:

#### Interpretation

1 (1) In this Act:

**"dependant"**, in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child;

**"family unit"** means an applicant or a recipient and his or her dependants.

*Ministry's position*

The ministry's position is that the appellant is a recipient with a family unit of 3 and, therefore, the applicable asset limit under Section 11(2)(a) of the EAR is \$1,500. The ministry argued that the GIC falls within the definition of "assets" as set out in Section 1 of the EAR as it includes cash assets which are further defined as money in possession of a person or money standing to the credit of a person held in a savings institution or third party. The ministry argued that there are no provisions in Section 11(1) of the EAR to exclude a GIC from the calculation of the total value of the appellant's assets, or cash assets. The ministry acknowledged that the appellant stated that the funds are currently inaccessible, but the ministry argued that, under hardship, the GIC can be cashed in with a penalty as confirmed by the financial institution. The ministry pointed out that the reason that the funds have been reinvested is due to personal debt incurred through family maintenance; the funds can be converted to cash but the appellant has chosen not to do so due to these personal debts. The ministry argued that the appellant's cash asset is considered an asset beyond the allowable limit of \$1,500 and the appellant is, therefore, not eligible for income assistance.

*Appellant's position*

The appellant's position is that the GIC in question belongs to her husband and she has no say and no access to the funds. The appellant argued that the GIC has been locked and, when it matured, FMEP would have or is making claim to it since there is a pending court case. The appellant argued that her husband directed the financial institution to release the funds to them and agreed to surrender the penalty of approximately \$2,000 but when they attempted to release the funds, the financial institution said the money cannot be released because of the FMEP hold. The appellant argued that they will not be able to access the GIC until FMEP releases the hold and the case is in the courts through the 'ISO' procedure and has not yet been ruled on. The appellant pointed to the letter from the financial institution dated November 12, 2014 and argued that this letter is confirmation that the funds in the RRSP are unavailable until the FMEP garnishment is removed or resolved.

*Panel decision*

Section 11(2) of the EAR stipulates that a family unit is not eligible for income assistance if a recipient has one or more dependants and the *family unit* has assets with a total value of more than \$4,000. As the definition of "family unit" set out in Section 1 of the EAA means a recipient of income assistance and her dependants and "dependant" means anyone who resides with the appellant and who is her spouse, the panel finds that the appellant's spouse is both her dependant and part of the appellant's family unit. Therefore, while the appellant argued that the GIC belongs to her husband and that she has no say regarding the funds, the panel finds that the ministry reasonably determined that the GIC is in the name of a member of her family unit. The panel finds further that as the appellant is a recipient of income assistance with one or more dependants, namely her husband, the applicable asset limit is \$4,000, pursuant to Section 11(2)(b) of the EAR, rather than the stated \$1,500 limit. The panel also finds that it is not disputed that the appellant's spouse has a GIC that is valued at more than \$17,000, which amount exceeds either limit.

The definition of "cash asset" in Section 1 of the EAR is "...money standing to the credit of the person or the dependant with a savings institution, or a third party, that must pay it to the person or the dependant on demand." The appellant argued that the letter from the financial institution dated November 12, 2014 confirms that the funds in the RRSP are not available until the FMEP garnishment is removed or resolved and this matter has been ongoing between her husband and his ex-wife for years, is before the courts, and has not yet been resolved. The ministry argued that the financial institution also confirmed that, in a hardship situation, the GIC could be cashed prior to the



maturity date upon payment of a penalty. The appellant argued that her husband directed the financial institution to release the funds to them and agreed to surrender the penalty of approximately \$2,000 but when they attempted to release the funds, the financial institution said the money cannot be released because of the FMEP hold. The appellant's spouse acknowledged in the Request for Reconsideration that when the fund matured on July 26, 2014, he moved it to a 60-month GIC "to protect it from FMEP." The panel finds that the financial institution followed the direction of the appellant's spouse in July 2014 to invest the funds in another GIC despite the garnishment having been placed on the account in January of 2013, as set out in the letter from the financial institution. The panel finds that the ministry reasonably determined that the savings institution must pay out the GIC to the dependant, the appellant's spouse, on a demand by him even though the savings institution may be required to immediately apply the funds to an outstanding debt of the appellant's spouse, as re-directed by the garnishee, and the funds, therefore, would not ultimately be available to the appellant's family unit.

The panel finds that the ministry reasonably determined that the approximate amount of \$17,000 funds in the GIC falls within the definition of a "cash asset", which is included in the definition of an "asset" in Section 1 of the EAR. The panel finds that the ministry reasonably determined that the appellant is not eligible for income assistance, pursuant to Section 11(2)(b) of the EAR, as a result of having assets with a total value of more than \$4,000.

#### *Conclusion*

The panel finds that the ministry reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the EAA.