

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated October 15, 2014 which found that the appellant failed to pursue an asset that would enable the appellant to be completely or partly independent of income assistance, as set out in Section 14 of the *Employment and Assistance Act* (EAA), and reduced the appellant's income assistance until the failure is remedied, pursuant to Section 31 of the *Employment and Assistance Regulation* (EAR).

### PART D – Relevant Legislation

*Employment and Assistance Act* (EAA), Sections 1 and 14

*Employment and Assistance Regulation* (EAR), Sections 1 and 31

## PART E – Summary of Facts

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

- 1) Print out of Term Investment Details from the financial institution indicating a GIC [guaranteed investment certificate] with a current value of \$17,175.36 and which matures July 26, 2014;
- 2) Letter dated March 27, 2014 from the assistant branch manager at a financial institution 'To whom it may concern' regarding a GIC 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;
- 3) 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,
- 4) Request for Reconsideration dated October 1, 2014.

In the Request for Reconsideration, the appellant wrote that:

- She was under the impression from her husband that the GIC was under garnishee by FMEP [family maintenance enforcement program] and that it was non-cashable.
- The money in question was moved because of the matter before the courts between a third party and the appellant's husband.
- The B.C. government has the GIC locked and it cannot be accessed.
- She does not have access to the money in any way. It is solely in her husband's name and she is merely named as a beneficiary in case of death.

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.

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

- She is not sure who the ministry spoke to at the financial institution.
- Her husband has provided a letter.
- The GIC is still locked in and they are still in need of assistance.
- She is currently appealing her disability application.

In the letter from the appellant's husband dated October 23, 2014, he wrote that:

- He met with the financial manager at the financial institution and asked him to release the funds held in the GIC and agreed to pay all the penalties for early withdrawal, which were over \$2,000.
- When the manager called his head office for release of the funds, he was told the money cannot be released to him because of the hold by FMEP.
- The ministry contacted the financial institution and the ministry was told that this money can be released.
- 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.

- He is daily searching for a job and will notify the ministry as soon as he obtains employment.
- They have reported all their part-time income in the past from jobs he has been able to obtain.

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 her 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:

- The appellant is an employable recipient with a dependent spouse and one dependent child.
- 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.
- When the appellant applied for assistance in March 2014, the GIC was set aside by the ministry in error because the appellant was required to pursue this asset at the time because it is valued at more than the applicable asset limit.
- 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.
- To 'pursue' the RRSP funds would include cashing or redeeming the GIC and directing the financial institution to pay the funds to the appellant's spouse.

The ministry did not object to the admissibility of the letters from the financial institution or from the appellant's spouse. The panel admitted the letters 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.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant failed to pursue an asset that would enable the appellant to be completely or partly independent of income assistance, as set out in Section 14 of the *Employment and Assistance Act* (EAA), and reduced the appellant's income assistance until the failure is remedied pursuant to Section 31 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 14 of the EAA provides:

#### 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.
- (2) A family unit is not eligible for income assistance for the prescribed period 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) disposed of real or personal property to reduce assets;
  - (b) [Not in force.]
- (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.

### Section 31 of the EAR provides that:

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

- 31 (1) For the purposes of section 14 (3) (a) [consequences of not accepting or disposing of property] of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is
- (a) if the income, assets or other means of support are still available, until the failure is remedied, and
  - (b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.
- (2) For a family unit that is declared ineligible under section 14 (3) (b) of the Act for income assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 14 (1) (a) of the Act, the period of

ineligibility is,

(a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and

(b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(3) For the purposes of section 14 (3) (a) 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,

(a) the amount of the reduction is \$100 for each calendar month for each applicant or recipient in the family unit, and

(b) the period of the reduction is one calendar month for each \$2 000 of the value of the forgone consideration.

(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.

(5) For the purposes of section 14 (2) (a) of the Act, the period of ineligibility is 2 calendar months for each \$2 000 of the value of the real or personal property that was disposed of to reduce assets.

### **Section 1 of the EAR provides that:**

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 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 GIC held in an RRSP account in the name of the appellant's spouse is an asset that is available for redemption to the family unit even if there is a penalty to redeem it. The ministry argued that when the appellant's spouse locked in the GIC for an additional 60 months in July 2014, the appellant's family unit failed to pursue the asset that, in the ministry's opinion, would have enabled the appellant to be completely or partly independent of income assistance. The ministry argued that, in these circumstances, the ministry may reduce the amount of income assistance provided to or for the family unit by the prescribed amount, for the prescribed period, pursuant to Section 14(3) of the EAA. The ministry argued that, pursuant to Section 31(1) of the EAR, the prescribed amount is \$100 for each calendar month for each recipient in the family unit, or a total of \$200 for the appellant and her husband, and the period of the reduction is until the failure is remedied since the asset is still available.

#### *Appellant's position*

The appellant's position is that although her husband has a GIC in an RRSP account in his name, she does not have access to the money in any way as she is merely named as a beneficiary in case of her husband's death. The appellant argued that the financial institution confirmed, in the letter dated November 12, 2014, that a garnishment was placed on the account with the RRSP in the name of the appellant's spouse on January 29, 2013 and the funds held under this plan are unavailable until the garnishment has been removed or resolved. The appellant argued that the money in question was moved because of the matter before the courts between the appellant's husband and his ex-wife. The appellant argued that the issues between her husband and his ex-wife have been going on for years and her "hands are tied" and there is nothing she can do to get the money.

#### *Panel decision*

Section 14(1)(a) of the EAA stipulates that the ministry may take action under subsection (3) if, at any time while income assistance is being provided, a recipient has failed to pursue income, assets or other means of support that would, in the ministry's opinion, enable the recipient to be completely or partly independent of income assistance. 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 the appellant's family unit and is an asset available for the appellant to pursue.

The ministry pointed out at the hearing that when the appellant and her husband applied for income assistance they provided a copy of the Term Investment Details from the financial institution indicating a GIC with a current value of \$17,175.36 which matured on July 28, 2014 and the ministry had erroneously advised the appellant that this asset would be exempt until the maturity date since the appellant was actually required to pursue this asset immediately because it is valued at more than the applicable asset limit. In the letter dated October 23, 2014, the appellant's husband wrote that he

met with the financial manager at the financial institution and asked him to release the funds held in the GIC and agreed to pay all the penalties for early withdrawal, which were over \$2,000, but when the manager called his head office for release of the funds, he was told the money cannot be released to the appellant's husband because of the hold by FMEP. In her Request for Reconsideration, the appellant acknowledged that the money in question was moved on the maturity date because of the matter before the courts between a third party and the appellant's husband. The panel finds the action by the financial institution on the GIC maturity date, by following the direction of the appellant's husband to invest the RRSP funds in a new GIC for a period of 5 years, demonstrates that the appellant's husband maintained control of the RRSP funds and that the financial institution followed his direction and did not honour a "hold" by FMEP or pay the funds over to the garnishee at that time even though the garnishee had been in place since January of 2013.

The panel finds that the ministry reasonably determined that the appellant failed to pursue the RRSP funds as an asset that would enable her, in the ministry's opinion, to be completely or partly independent of income assistance. While the financial institution is required to immediately apply the funds requested by the appellant's spouse to his outstanding debt, as re-directed by the FMEP garnishee, the amount of the garnishee is not confirmed and there may be some funds remaining to pay out to the appellant's spouse. At the hearing, the appellant stated that there are arrears of about \$44,000 in child support that she and her husband are now having a lawyer look at and she understands that the amount may be less since the ex-wife is only entitled for child support during part of the time that she is claiming. In the absence of information to confirm the amount of any judgment in favour of FMEP that must be recovered through the garnishee, the panel finds that the ministry reasonably determined that the RRSP funds are an asset that, in the ministry's opinion, would enable the appellant to be at least partly independent of income assistance.

In these circumstances, Section 14(3)(a) of the EAA provides that the ministry may reduce the amount of income assistance provided to or for the family unit by the prescribed amount for the prescribed period. Section 31 (1)(a) of the EAR set out that for the purposes of section 14 (3)(a) of the EAA in relation to a failure to pursue assets, the amount of a reduction is \$100 for each calendar month for each recipient in the family unit and the period of the reduction, if the assets are still available, is until the failure is remedied. As the appellant and her spouse are both recipients of income assistance, the panel finds that the ministry reasonably reduced the amount of income assistance provided to or for the appellant's family unit by a total of \$200 per month until the failure is remedied, or the RRSP funds are pursued and the GIC redeemed.

### *Conclusion*

The panel finds that the ministry decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the reconsideration decision pursuant to Section 24(2)(a) of the EAA.