

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated December 10<sup>th</sup>, 2014, which found the appellant had an asset as defined under Section 1 of the *Employment and Assistance Regulation* (EAR) of real property which can be converted into cash, and the value of that asset exceeds \$2,000, the legislated limit as set out in section 11(2) of the EAR, and therefore the appellant is not eligible for income assistance.

The ministry was satisfied that while Section 11 (1)c of the EAR allows the place of residence to be an exempt asset, information showed the appellant does not live there and so that exemption does not apply. The ministry further found that there are no other applicable exemptions in section 11 of the EAR.

## PART D – Relevant Legislation

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

## PART E – Summary of Facts

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

- The appellant's Request for Reconsideration dated December 2, 2014 (RFR) stating that she could not afford the apartment so she rented it out, and will be putting it on the market very soon.
- An annual mortgage statement for the 2013 year which shows monthly mortgage payments with taxes of \$668.61, and a mortgage balance owing as at December 31, 2013 of \$122,061.26.
- A property tax payment change notice dated July 23, 2013 showing tax payments changing from \$140.15 monthly to \$98.55 monthly;
- Minutes from the annual general meeting of the appellant's apartment complex showing strata fees for the appellant's unit of \$204.36 monthly.
- Property tax statement for 2013 showing the property assessed value of \$169,200.
- A residential rental agreement between owner and the appellant as tenant showing a possession date of September 19, 2014, monthly rental of \$625.00, and a security deposit of \$312.50 which had been paid on September 19, 2014.
- 2014 property assessment notice showing assessed value of the appellant's apartment of \$165,400.

In her Notice of Appeal the Appellant states that she is on social assistance by the advice of CPP Disability, she was denied CPP Disability in the end, does not feel better but is looking for work. She moved for personal family reasons and health. She states that if she never had cancer she would not have this need and would have work. The renter is paying the mortgage.

At the hearing the appellant stated she has a diploma and thought she could get a job with the regional health district but has discovered there are further qualifications she requires for that position. She had a grant previously and had produced business but then got sick. She has huge debts and has maxed out her credit card and line of credit paying her mortgage and common expenses. When she left her previous residence no one mentioned that she could not own a house and collect social services. The appellant confirmed she did not check with the ministry prior to moving. She thought she would rent out her residence to make the payments and to move to a place where there were more job opportunities for her and her payments would be less. She had been trying to find a job in her previous location for a year. She called the ministry to report the asset and she did not realize she was "doing anything wrong." The renter is paying the mortgage, the property taxes and strata fees and there is about \$120 left over. She does not have the 2015 Notice of Assessment for her property yet but says the value has decreased and other owners have units for sale and have been decreasing their asking prices. The appellant acknowledged that although the value of the property has likely decreased, she still has equity in the property. She has not yet put her property for sale and wanted to await the outcome of this process before doing so.

### *Admissibility of New Evidence*

At the hearing the appellant provided oral testimony regarding her efforts to locate work, her finances, and the potential value of her property. She also produced two further documents, one being a Vocational Psychological Assessment dated August 23, 2013, and the second a letter dated January 6th, 2015 from a program coordinator at the self employment program where she had worked with

the appellant.

The panel finds the Vocational Psychological Assessment is not evidence in support of information and records before the Ministry at the time of reconsideration and therefore has not admitted this information. While the aforementioned assessment discusses the appellant's physical and mental health, it does not relate to the issue before the Ministry at the time of reconsideration which is ownership of an asset and potential exemption of an asset from consideration in terms of entitlement to assistance.

The panel finds the letter dated January 6<sup>th</sup>, 2015 provides support for the appellant and a character reference, and The panel has considered this letter as argument on behalf of the appellant.

The oral evidence from the appellant is evidence in support of information and records before the ministry at the time of reconsideration so the panel has admitted this information into evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

The ministry relied on the reconsideration decision. The ministry confirmed the decision is based on legislation, and personal background does not have effect. The appellant was not denied based on employment obligations but was denied based on legislation. The ministry confirms legislation says that a person can claim assistance and own a residence but the residence needs to be the one they are living in. The appellant was denied assistance because she has an asset that appears to have a value over \$2,000 which is the legislated limit.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision which found that the appellant has an asset and the appellant is therefore not eligible for income assistance was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant.

In particular, was the ministry reasonable in determining that:

- The appellant has an asset as defined under Section 1 of the *Employment and Assistance Regulation*
- That asset, being equity in real property, can be converted to cash;
- The equity in the real property has a total value of more than \$2,000, the legislated limit set out in Section 11(2) of the *Employment and Assistance Regulation*
- *The property is not an exempt asset under Section 11(1) of the EAR.*

Section 1 of the *Employment and Assistance Regulation* gives the following definition of "asset":

"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;

Section 11 of the *Employment and Assistance Regulation* states as follows:

### Asset limits

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

(B.C. Reg. 197/2012)

- (a) clothing and necessary household equipment;
- (b) subject to subsection (2.3), one motor vehicle used for day to day transportation needs if (B.C. Reg. 197/2012)
  - (i) the equity in the motor vehicle does not exceed \$10 000, (B.C. Reg. 197/2012)
  - (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;

(B.C. Reg. 48/2010)

- (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; (B.C. Reg. 197/2012)
- (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); (B.C. Reg.180/2010)
- (h) an uncashed life insurance policy with a cash surrender value of \$1500 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; (B.C. Reg.304/2005)
- (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; (B.C. Reg. 276/2004)
- (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)
- (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; (B.C. Reg. 462/2003)

(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*];

(B.C. Reg. 197/2012)

(z) Repealed (B.C. Reg. 85/2012)

(aa) payments granted by the government of British Columbia under section 8 of the *Child, Family and Community Service Act* [*agreement with child's kin and others*];

(bb) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program. (B.C. Reg. 115/2003)

(cc) Repealed (B.C. Reg. 85/2012) (B.C. Reg 209/2003)

(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. (B.C. Reg. 209/2003) (B.C. Reg. 197/2012)

(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.

(B.C. Reg. 22/2005)

(ff) funds held in a registered education savings plan. (B.C. Reg. 305/2005)

(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.(B.C. Reg. 192/2006)

(hh) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada). (B.C. Reg. 250/2006)

(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. (B.C. Reg. 195/2007)

(jj) funds held in, or money withdrawn from, a registered disability savings plan; (B.C. Reg. 362/2007) (B.C. Reg. 20/2013)

(kk) a working income tax benefit provided under the *Income Tax Act* (Canada). (B.C. Reg. 48/2008)

(ll) Repealed (B.C. Reg. 180/2010)

(mm) the climate action dividend under section 13.02 of the *Income Tax Act*; (Reg. 94/2008)

(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. (B.C. Reg. 87/2008)

(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. (B.C. Reg. 242/2010)

(pp) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program; (B.C. Reg. 85/2012)

(qq) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program; (B.C. Reg. 85/2012)

(rr) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program, (B.C. Reg. 85/2012)

(ss) a tax refund; (B.C. Reg. 197/2012)

(tt) a BC basic family bonus. (B.C. Reg. 197/2012)

(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. (B.C. Reg. 31/2014)

(vv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program. (B.C. Reg. 172/2014)

(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). (B.C. Reg. 462/2003)

(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.

(B.C. Reg. 197/2012)

(2.1) Despite subsection (2), a family unit that includes an applicant or a recipient who has applied for and has not been denied, or who the minister is satisfied has a genuine intention to apply for, designation as a person with disabilities under section 2 of the *Employment and Assistance for Persons with Disabilities Act* may receive income assistance, subject to all other eligibility criteria, if the family unit has assets with a total value of no more than

(a) \$5 000, if the applicant or recipient has no dependants, or (B.C. Reg. 197/2012)

(b) \$10 000, if the applicant or recipient has one or more dependants. (B.C. Reg. 197/2012)

(2.2) For the purposes of subsection (2.1), in addition to the assets described in subsection (2.1) (a) or (b), the family unit may own one motor vehicle generally used for day to day transportation needs.

(2.3) Subsection (1) (b) does not apply to a family unit to which subsection (2.2) applies.

(B.C. Reg. 86/2008)

(3) The minister may authorize one or more of the following:

(a) that for a family unit that includes a person who has persistent multiple barriers to employment or a person who has reached 65 years of age, the total cash surrender value of an uncashed life insurance policy of an applicant or recipient is not to be included as an asset for the purposes of subsection (2) for the period specified by the minister;

(b) that saleable acreage and buildings owned by an applicant or recipient are to be treated as though they were the place of residence of the applicant's or recipient's family unit for the period specified by the minister.

(4) Repealed (B.C. Reg. 197/2012)

The ministry's position is that the appellant is a sole recipient of income assistance and, therefore, the applicable asset limit under Section 11(2)(a) of the EAR is \$2,000. The ministry argued that the appellant owns an asset being equity in real property which can be converted to cash in the approximate amount of \$43,338, and further that the value of that asset exceeds \$2,000. The ministry argued that as the appellant does not reside in that residence it is not an exempt asset as Section 11(1) (c) of the EAR states.

The appellant did not dispute that she owns the real property, does not live at that residence but rents it out, and admits she has not taken steps to list the property for sale. The appellant argued that she was not able to pay the mortgage and strata fees, had maxed out her credit, and decided to rent out

her residence to make the payments and to move to a place where there were more job opportunities for her and her payments would be less. The available Property Tax Assessment indicates there may equity of approximately \$43,000 but the appellant's position is that the property value has decreased, based on listing values on properties currently for sale in the same building. The 2015 Property Tax Assessment Notice has not yet been received.

#### *Panel Decision*

Section 11(2) of the EAR provides that a family unit is not eligible for income assistance if a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$2,000. The appellant does not dispute that she is a sole recipient with no dependent children, and nothing has been shown to prove that the real property asset value is less than \$2,000

Section 1 of the EAR provides the definition of asset to include equity in any real property that can be converted to cash. The appellant admits she owns real property, and has not shown any reason that the property could not be converted to cash. 'Equity' in real property is the current market value of the property less any outstanding debts, and the panel finds that the ministry reasonably concluded that that the equity in the real property is approximately \$43,338. Using tax assessed value of \$165,400, less the outstanding mortgage amount of \$122,061, the equity in the real property exceeds \$2,000.

Section 11 (1) (c) of the EAR provides that a family unit's place of residence is an asset exempt for the purposes of subsection (2). The appellant admits that she does not reside in the asset property.

Accordingly the panel finds that the ministry's decision, which found that the appellant has an asset as defined under section 1 of the EAR being equity in real property, that is not the appellant's place of residence, and has a value of over \$2,000 making the appellant ineligible for income assistance, was reasonable.

#### **Conclusion**

The panel finds that the ministry's reconsideration decision that determined that the appellant had an asset as defined under Section 1 of the EAR of equity in real property which can be converted into cash, the appellant is not residing in that property therefore it is not an exempt asset as provided in Section 11 (1) (c), and the value of that asset exceeds \$2,000, the legislated limit as set out in section 11(2) of the EAR, was reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. Therefore, the panel confirms the ministry's reconsideration decision.