

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated November 24, 2014 which found that the appellant is not eligible for disability assistance for the period January 2011 to September 2014 as a result of having assets valued at more than the allowable limit, pursuant to Section 10(2) of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1 and 10

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 1

PART E – Summary of Facts

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

- 1) Ministry “Disability Assistance and Trusts” brochure;
- 2) Letter dated October 6, 2011 from a lawyer to the ministry enclosing a copy of the Trust Agreement dated October 6, 2011 for the appellant and stating in part that the capital of the trust will be derived from the appellant’s father’s estate which will total approximately \$69,000, held under the \$100,000 threshold. The appellant and her friend will act as trustees;
- 3) Copy of the appellant’s Trust Agreement dated October 6, 2011;
- 4) Trust Account Application dated October 7, 2011 in the name of the appellant and her friend and attaching copies of personal identification documents;
- 5) Statement for a credit union for the period ending November 30, 2011 indicating a 0 balance in an USD account and \$90.62 in a chequing and savings account;
- 6) Account Funding Confirmation dated December 5, 2011 for an account in the name of the appellant’s father, indicating a cheque issued November 28, 2011 for \$12,976.98;
- 7) Currency Conversion as of December 14, 2011 for \$45,458.02 USD to \$47,303.62 CAD;
- 8) Investment Report from a brokerage firm in another country for the period January 1 through December 31, 2011 showing an ending balance of \$2,740.89 in an account in the name of the appellant, after withdrawal of the sum of \$9,990 and transfer between accounts of \$12,254.68;
- 9) Investment Report from a brokerage firm in another country for the period January 1 through December 31, 2011 showing a balance of \$0 in an account in the name of the appellant and her father, after transfers between accounts in the sum of \$12,254.68;
- 10) Investment Report from a brokerage firm in another country for the period December 7 through December 31, 2011 showing a balance of \$23,390.98 in an account in the name of the appellant;
- 11) Statement for a credit union for the period ending December 31, 2011 indicating a 0 balance in a tax free savings account in the appellant’s name, \$41,697.05 in an USD account (with a deposit of \$45,458.02 USD noted as “father’s sale of home”) and \$2,615.62 in a chequing and savings account;
- 12) Account statement dated January 10, 2012 with a credit union in the name of the appellant’s trust indicating a balance of \$43,975.21;
- 13) Investment Report from a brokerage firm in another country for the period January 1 through January 31, 2012 showing a balance of \$49,531.80 in an account in the name of the appellant’s father;
- 14) Cheque dated March 16, 2012 for \$1,600 from an account in another country payable to the appellant for a benefit payment;
- 15) Statement for a credit union for the period ending March 31, 2012 indicating a balance of \$5,492.80 in a tax free savings account in the appellant’s name, \$22,789.18 in a USD account in and \$5,978.61 in a chequing and savings account;
- 16) Investment Report from a brokerage firm in another country for the period January 1 through March 31, 2012 showing a balance of \$25,319.62 in an account in the name of the appellant;
- 17) Investment Report from a brokerage firm in another country for the period April 1 through April 30, 2012 showing a balance of \$25,046.30 in an account in the name of the appellant;
- 18) Ministry internal Trust Query cover page dated May 18, 2012 to the litigation section requesting advice as to whether the appellant’s trust is discretionary or non-discretionary;
- 19) Investment Report from a brokerage firm in another country for the period May 1 through June 30, 2012 showing a balance of \$24,305.11 in an account in the name of the appellant;
- 20) Investment Report from a brokerage firm in another country for the period July 1 through July 31, 2012 showing a balance of \$24,638.27 in an account in the name of the appellant;

- 21) Letter dated August 2, 2012 from the ministry to the appellant advising that the ministry will treat the trust property as her asset, which will be an exempt asset as long as the aggregate value of all trust property contributed to the trust is no more than \$100,000 in value;
- 22) Statement for a credit union for the period ending August 31, 2012 indicating a balance of \$5,492.80 in a tax free savings account in the appellant's name, \$64.55 in an USD account and \$339.59 in a chequing and savings account;
- 23) Investment Report from a brokerage firm in another country for the period August 1 through September 30, 2012 showing a balance of \$25,511.40 in an account in the name of the appellant;
- 24) Investment Report from a brokerage firm in another country for the period October 1 through October 31, 2012 showing a balance of \$25,318.47 in an account in the name of the appellant;
- 25) Investment Report from a brokerage firm in another country for the period November 1 through November 30, 2012 showing a balance of \$23,591.58 in an account in the name of the appellant;
- 26) Statement for a credit union for the period ending November 30, 2012 indicating a balance of \$5,492.80 in a tax free savings account in the appellant's name, \$3.80 in an USD account and \$47.37 in a chequing and savings account;
- 27) Investment Report from a brokerage firm in another country for the period January 1 through December 31, 2012 showing a balance of \$1,880.95 in an account in the name of the appellant;
- 28) Investment Report from a brokerage firm in another country for the period December 1 through December 31, 2012 showing a balance of \$23,591.78 in an account in the name of the appellant;
- 29) Statement for a credit union for the period ending December 31, 2012 indicating a balance of \$5,492.80 in a tax free savings account in the appellant's name, \$86.23 in an USD account and \$793.40 in a chequing and savings account;
- 30) Investment Report from a brokerage firm in another country for the period February 1 through February 28, 2013 showing a balance of \$7,179.89 in an account in the name of the appellant's father;
- 31) Statement for a credit union for the period ending February 28, 2013 indicating a balance of \$5,550.63 in a tax free savings account in the appellant's name, OD [overdraft] of \$0.52 in an USD account and \$1.54 in a chequing and savings account;
- 32) Letter dated March 7, 2013 from the appellant to the brokerage firm in another country requesting the sale of securities in her father's name and transfer of funds to her account;
- 33) Investment Report from a brokerage firm in another country for the period January 1 through March 31, 2013 showing a balance of \$23,592.36 in an account in the name of the appellant;
- 34) Statement for a credit union for the period ending April 30, 2013 indicating a balance of \$5,550.63 in a tax free savings account in the appellant's name, \$536.03 in an USD account and \$493.81 in a chequing and savings account;
- 35) Statement with a brokerage firm in another country for a balance of \$11,382.17 as of June 30, 2013 in an account in the name of the appellant's father;
- 36) Investment Report from a brokerage firm in another country for the period April 1 through June 30, 2013 showing a balance of \$23,592.95 in an account in the name of the appellant;
- 37) Bank draft dated August 5, 2013 for \$9,996 drawn on an account in another country and payable to the appellant;
- 38) Currency Conversion as of August 13, 2013 for \$9,996 USD to \$10,340.86 CAD;
- 39) Statement for a credit union for the period ending August 31, 2013 indicating a balance of \$5,550.63 in a tax free savings account in the appellant's name, \$4,197.07 in an USD account

- and \$3,993.50 in a chequing and savings account;
- 40) Investment Report from a brokerage firm in another country for the period July 1 through September 30, 2013 showing a balance of \$23,593.55 in an account in the name of the appellant;
 - 41) Cheque dated October 22, 2013 from the brokerage firm in another country in the amount of \$19,565.25 and payable to the appellant;
 - 42) Receipt dated October 23, 2013 for a deposit of \$9,996 USD to an account in the name of the appellant's trust, with a total balance of \$12,192.32 USD;
 - 43) Currency Conversion as of October 23, 2013 for \$9,996 USD to \$10,380.86 CAD;
 - 44) Statement with a brokerage firm in another country for a balance of \$.20 as of October 31, 2013 in an account in the name of the appellant, following cheques issued for \$9,996 on October 18, and \$4,452 and \$19,565.25 on October 22, 2013;
 - 45) Statement for a credit union for the period ending October 31, 2013 indicating a balance of \$5,550.63 in a tax free savings account in the appellant's name, \$12,192.47 in an USD account and \$3,063.73 in a chequing and savings account;
 - 46) Receipt dated November 4, 2013 for a deposit of \$19,565.25 USD to an account in the name of the appellant's trust, with a total balance of \$31,757.72 USD;
 - 47) Currency Conversion as of November 4, 2013 for \$19,565.25 USD to \$20,377.21 CAD;
 - 48) Receipt dated November 23, 2013 for a deposit of \$0.20 USD to an account in the name of the appellant's trust, with a total balance of \$30,005.92 USD;
 - 49) Statement with a brokerage firm in another country for a balance of \$0 as of November 30, 2013 in an account in the name of the appellant;
 - 50) Statement for a credit union for the period ending November 30, 2013 indicating a balance of \$5,550.63 in a tax free savings account in the appellant's name, \$30,007.45 in an USD account and \$3,676.38 in a chequing and savings account;
 - 51) Statement with a brokerage firm in another country for a balance of \$0 as of December 31, 2013 in the account in the appellant's name, after a withdrawal of \$47,122.98 and transfers between accounts of \$44,737.98;
 - 52) Investment Report from a brokerage firm in another country for the period October 1 through December 31, 2013 showing a balance of \$23,594.14 in an account in the name of the appellant;
 - 53) Account Funding Confirmation dated February 5, 2014 for an account in the name of the appellant's father, indicating a cheque issued to the appellant dated October 22, 2013 for \$4,452;
 - 54) Letter dated March 20, 2014 from the credit union to the ministry enclosing documents for the appellant's trust, bank profiles for all 3 accounts and bank statements for the trust account from account opening October 2011 to February 2014;
 - 55) Statement dated March 20, 2014 indicating account balances of \$174.26 in chequing, \$48.95 in "Plan 24", \$6.38 in shares and .01 in RSP/RIF/TFSA, for a total of \$229.60 and \$34,120.14 in the appellant's trust account;
 - 56) Statement with a brokerage firm in another country for a balance of \$11,383.50 as of March 31, 2014 in an account in the name of the appellant's father;
 - 57) Statement with a brokerage firm in another country for a balance of \$23,594.72 as of March 31, 2014 in an account in the name of the appellant;
 - 58) Statement with a brokerage firm in another country for a balance of \$23,595.30 as of June 30, 2014 in an account in the name of the appellant; and,
 - 59) Request for Reconsideration dated October 22, 2014.

At the hearing, the appellant provided further documents, namely:

- 1) Inheritance and Trust Time Line which set out a chronology of events as follows, including:
 - January 2011- the appellant's father informed them that his cancer had recurred and the appellant was in a car accident.
 - May 2011- the appellant experienced stress due to a tornado missing her mother's house by ½ block.
 - June 2011- the appellant's father was critically ill and passed away in another country. The process of sorting out the estate and inheritance issues began.
 - August 2011- the appellant returned to Canada without family support. She was seeking a financial advisor but those she contacted are selling financial products. An advocate suggested that she look into a disability trust.
 - September 2011- the appellant approached a lawyer about a disability trust and she asked a friend to be the co-trustee. She sought an accountant to deal with her financial issues but had no success.
 - October 2011- the lawyer prepared the trust and the appellant understood that as monies become available from her inheritance she had 3 months to move them into the trust. She lost many days due to illness.
 - November 2011- the appellant tried to understand elements of her inheritance in order to access it. She was not familiar with many of the terms, abbreviations and concepts. She experienced barriers to her best cognitive functioning, including grief, ill health and parenting concerns.
 - December 2011- the appellant looked, without success, for an appropriate accountant, a financial advisor, or someone at the ministry who can answer questions about how "this all works with regard to disability benefits."
 - January 2012- the appellant spoke with the ministry who said the trust had been submitted for approval. She was advised to carry on spending from the trust according to the trustees' best understanding of the terms of the trust. She asked for this information in writing but it was never received.
 - For the period February through August 2012- the appellant pursued her studies to be able to begin a new career.
 - August 2012- the appellant received a letter from the ministry accepting the trust. She tried to contact the ministry.
 - September 2012- the appellant was overwhelmed by the record keeping and reporting requirements of the ministry but she tried to comply; and,
- 2) Written statement by the advocate.

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

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

- She did not have reasonable access to the assets the ministry deems "assets over."
- The ministry has not taken realistic consideration of her physical and mental health variability.

At the hearing, the appellant's advocate referred to her written statement and stated that:

- The appellant did not actively seek a disabling illness or money inherited from her father but she must function at all times within the confines of these two situations.
- The appellant was diagnosed, had exhausted all her own financial resources and she obtained assistance for herself and her dependent child in the form of monthly shelter and living allowance cheques of approximately \$1,200 from the ministry.
- The appellant received an inheritance after her father's death in July 2011 and she sought help to establish if and how her assistance would be affected.
- The appellant asked the ministry, community advocates, and legal counsel and each time she was told that the inheritance money did not disqualify her from assistance as long as it was placed in a trust fund and used only for expenses that follow certain criteria.
- The appellant proceeded to put the inheritance, as it came available, into a disability trust and she set out to follow the criteria, providing documentation to the ministry as proof that the criteria were being followed.
- The appellant used her time and all her available energy to meet with the terms of the trust and to provide documentation to the ministry but the ministry was not satisfied.
- The appellant set out to provide documentation again, to the point that she was exhausted and experiencing more illness, but the ministry was not satisfied with the documentation of spending from the trust. The appellant sought help through an advocate who showed the ministry that the appellant had met the requirements for documentation.
- The appellant became noticeably more ill. The appellant has been ill at all relevant times.
- The appellant should pay for any money taken from the trust that was outside of ministry protocol for a trust fund, even if she was not made aware or failed to understand the ministry's rules, provided that the ministry gives clear and reasonable rules that can be followed from within the confines of the appellant's illness. The advocate states that any paperwork beyond that would be asking the appellant to function outside the confines of her illness and the ministry should be required to provide the appellant with a ministry-paid assistant to complete the paperwork to their own satisfaction.

At the hearing, the appellant stated that:

- The ministry decision keeps referring to a time-limited exemption period and she did not understand that and still does not fully understand this concept.
- Late in 2011 she established a trust and her understanding was that eligibility for assistance hinged on the question of reasonable access to assets. This means actually having one's hands on the money or being able to direct it to pay for products or services.
- The ministry keeps insisting that the conditions of her life are not relevant to her eligibility for benefits but she takes issue with that. She has had to fight through debilitating conditions, mainly as a result of pain and other medical aspects, to think clearly and to arrive at decisions and to take action. Everyone else in this situation, especially the ministry, has more access to organize paperwork and numbers.
- She is aware that she is confused today and less sharp than she would like to be.
- Her main point is to help the panel understand the difference between "paper" assets and her real life, which includes her child and her landlord.
- Her father put her name on his investments in 2011 and she did not know about this asset until later on. She has been boggled by the amount of her inheritance and she struggled to come to terms with it at the same time as coming to term with her father's passing. She has spent hours looking at the paperwork and going through the account numbers. She saw one account labeled as "IRA" and thought it had something to do with taxes, like the "IRS" [Internal

Revenue Service in the United States], but the investment firm advised her that it means Individual Retirement Account, which does not relate to taxes. She used colour-coded papers to try to organize the different accounts.

- With each account, there has been a learning curve for her to understand. There is an assumption that she knows what these terms mean, but she has never had money and she has not been able to find a financial advisor.
- She has also had to re-learn things and she has kept a journal of conversations to help.
- She has had to fight hard to find the energy to go through this process. She has not tried to hide assets and has been proactive in asking for help from the ministry and other relevant expert advice.
- She takes issue with many statements in the ministry's "Summary of Facts." For example, the ministry refers to "undeclared" accounts but she did not know that she had to declare something when she did not have control over the account. She thought she did not have to declare the account until she became aware of how to use it and she was in a position to be able to direct it.
- From her perspective, these accounts were not assets, they were "liabilities" because she started to worry that the IRS would be after her.
- Every time she had enough clarity, she would consistently direct the funds to her disability trust. Sometimes she would provide information about the accounts to the ministry, through her advocate. Despite her illness, she provided all the information that the ministry asked for.
- In the fall of 2012, the ministry began to want receipts for all the expenses from the trust and statements from the trust and personal information. The ministry had previously been provided with comprehensive information.
- Her brother, as executor of their father's estate, had sent emails which were forwarded to the ministry and even he felt harassed by the ministry requests.
- She did not have "access" to the information because she did not feel well enough to access the information. She did as best that she could. Although the ministry wrote that they had to request information from the investment firm directly, the appellant signed a Release allowing the ministry to approach the investment firm directly.
- The ministry wrote that in April 2014 she was given 6 months to put the moneys with the investment firm into her trust. She does not remember this. She has always pursued the option of putting the monies in trust, as best as she could.
- She feels that the ministry is misconstruing information as the ministry wrote that, in September 2014, she had advised that she was not putting monies in trust because she is leaving it at the investment firm "for the IRS" for taxes. She has been in fear of being pursued by the IRS because she does not understand the taxes and the IRS published its intention of pursuing unpaid taxes of citizens living in other countries. She tried to get help regarding her obligations and discovered that the investment firm already withholds funds for taxes when investments are liquidated. She spoke with someone in the "inherited advisor group" at the investment firm who wanted to know how much she needed withheld for taxes.
- All she has tried to do was to be responsible but she cannot access the expertise needed. Her brother offered to introduce her to his accountant but that never happened.
- She files her taxes here and has been on the "up and up" as she could be with the ministry too. She has tried to be transparent and provided the needed paperwork. She has several bags of paperwork with her and she cannot get to it. It feels overwhelming.
- When she tried to contact the ministry about the disability trust, she either got no response or was told not to worry. She did speak to someone with the ministry who was supposed to be the "designated trust expert." He explained that the ministry required monthly as well as

annual reports from the trust. She and the co-trustee almost had nervous breakdowns in 2013 trying to meet the ministry's requirements.

- If she could “jump through all the hoops” set up by the investment firm to be in a position to spend the investment accounts in her name, she intended to put the funds into trust.
- The ministry wrote that in September 18, 2014 the ministry determined that she “held” assets in excess of the allowed amount but she could not “hold” assets that she was not aware that she was holding.
- In the fall of 2011, she became aware, when she “came up for air” from the events surrounding her father's demise, that she would be receiving an inheritance.
- In terms of her “reasonable access” to the funds, she did not even know about them at first. She feels she is being asked to prove a negative, which is impossible. It is like she is being asked to prove that she does not own a purple canary but a purple canary does not exist.
- When the lawyer set up the trust, she did not know the details. She met with the lawyer and he just asked her to carefully select her co-trustee as someone she trusts. She made up a list of potential trustees and prioritized the list and then selected her friend.
- The ministry wrote that she had stated she owes more cross-border taxes than all the money she has and while an accountant told her this, he would not advise her officially. However, the ministry has misrepresented what she said. She actually said she had an hour-long meeting with an accountant who told that her financial issues would cost more to handle and resolve than the funds she has available to pay an accountant. The accountant would not take her on as a client even though she was prepared to pay the high rate for his services.
- The trust account with the credit union is in both Canadian and US dollars because of the funds received from the investment firm.
- The ministry wins the paperwork contest since she has not been able to generate the paperwork. However, some of the references by the ministry to withdrawals from the investment firm accounts, like that for \$9,996, was for deposit into the trust.
- The letter that she sent to the investment firm dated March 7, 2013 was all part of her effort to bring the monies into her trust.
- One cheque was issued from the investment accounts to compensate her brother for acting as the executor for their father's estate.
- She objects to the ministry's insinuation that she has tried to hide assets. All of the statements have been provided to the ministry because she signed a Release to allow the ministry access to this information.

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

- The different account statements show that money was moving around after the date of the passing of the appellant's father in July 2011. As the appellant is the only one on the account at that time, the money transfers and withdrawals must be under her control and at her direction.
- Asked about the investment account which had originally been in the name of the appellant's father, the ministry confirmed that it was not ‘payable on demand’ to the appellant until after the father's death in July 2011 and, therefore, would not be considered her asset until after that time.
- At the time that the appellant's disability trust was set up, she would have received information about the limits that apply.
- Unless the appellant can show that the funds in these accounts were not accessible to her, the fact that the account is in her name shows that it is her “asset” as defined in the legislation.

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 disability assistance for the period January 2011 to September 2014 as a result of having assets valued at more than the allowable limit, pursuant to Section 10(2) of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 10 of the EAPWDR provides in part that:

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;
- (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 disability 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. 2, s. 3 (b).]
- (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 8 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 under section 70.1 of this regulation, and received and used for the purposes set out in the business plan;
- (y) assets exempted under
 - (i) section 11 (2) [asset development accounts],
 - (ii) section 12 (2) [assets held in trust for person with disabilities], or
 - (iii) section 12.1 (2) [temporary exemption of assets for person with disabilities or person receiving special care];
- (z) Repealed. [B.C. Reg. 85/2012, Sch. 2, 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. 2, 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. 2 (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 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;
 - (b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$10 000. . . .

Section 12 of the EAPWDR provides:

Assets held in trust for person with disabilities

- 12 (1) In this section, "disability-related cost" means the cost of providing to a person with disabilities or a person receiving accommodation or care in a private hospital or a special care facility, other than a drug or alcohol treatment centre,
- (a) devices, or medical aids, related to improving the person's health or well-being,
 - (b) caregiver services or other services related to the person's disability,
 - (c) education or training,
 - (d) any other item or service that promotes the person's independence, and
 - (e) if a person with disabilities does not reside in a special care facility, a private hospital or an extended care unit in a hospital,
 - (i) renovations to the person's place of residence necessary to accommodate the needs resulting from the person's disability, and
 - (ii) necessary maintenance for that place of residence.
- (2) If a person referred to in subsection (1) complies with subsection (4), up to \$200 000, or a higher limit if authorized by the minister under subsection (3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts, calculated as follows:
- (a) the sum of the value of the capital of each trust on the later of April 26, 1996 or the date the trust was created, plus
 - (b) any capital subsequently contributed to a trust referred to in paragraph (a),
is exempt for the purposes of section 10 (2) [asset limits].
- (3) If the minister is satisfied that, because of special circumstances, the lifetime disability-related costs of a person referred to in subsection (2) will amount to more than \$200 000, the minister may authorize a higher limit for the person for the purposes of subsection (2).
- (4) A person referred to in subsection (2) who has a beneficial interest in one or more trusts must keep records of the following and make the records available for inspection at the request of the minister:
- (a) for a trust created before April 26, 1996, the capital of the trust on that date;
 - (b) for a trust created on or after April 26, 1996, the capital of the trust on the date the trust was

created;

(c) the amount of capital contributed in each subsequent year to a trust referred to in paragraph (a) or (b);

(d) all payments made after April 26, 1996 to or on behalf of the person from a trust in which that person has a beneficial interest.

(5) For the purposes of this section, the real or personal property of a "patient", as defined in the Patients Property Act, who is a person with disabilities is to be treated as if the real or personal property were held in trust for the patient by the patient's committee.

Section 1 of the EAPWDR 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 Persons With Disabilities Act* (EAPWDA) 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 was a sole recipient of disability assistance up to October 1, 2012 and was a recipient with one dependent child after this date and, therefore, the applicable asset limits under Section 10(2)(a) and (b) of the EAPWDR are \$5,000 for the period from January 2011 to September 2012 and \$10,000 from October 2012 to September 2014. The ministry argued

that the three listed investment accounts in the appellant's name fall within the definition of "assets" as set out in Section 1 of the EAPWDR as it includes "cash assets." "Cash assets" are further defined in Section 1 as 'money standing to the credit of a person held in a savings institution or third party that must pay it to the person on demand.' The ministry argued that the appellant's name was on three investment accounts that had a balance of more than \$12,000 since at least December 31, 2010 and the appellant has not provided information showing she did not have the three listed investment accounts at any time during the period of January 2011 through September 2014.

The ministry argued that while Section 10(1)(y) states that assets held in trust for persons with disabilities are exempt if the specific criteria in Section 12 of the EAPWDR are met, the investment accounts in the appellant's name do not have the other trustee's name on them and are not held in trust and are, therefore, not exempt. The ministry argued further that although the ministry's policy allows a time-limited exemption period in order to allow a recipient to put funds into the trust, the appellant advised in April 2014 that she is not putting the monies into her trust. The ministry argued that the appellant's cash assets are considered an asset beyond the allowable limit of \$5,000 from January 2011 to September 2012 and beyond the allowable limit of \$10,000 from October 2012 to September 2014 and the appellant, therefore, is not eligible for disability assistance during this time.

Appellant's position

The appellant's position, as set out in her Notice of Appeal, is that she did not have reasonable access to the assets the ministry deems "assets over" and the ministry has not taken realistic consideration of her physical and mental health variability. The appellant argued that she has had to fight through debilitating conditions, mainly as a result of pain and other medical aspects, to think clearly and to arrive at decisions and to take action on the accounts. The appellant argued that "reasonable access to assets" means actually having one's hands on the money or being able to direct it to pay for products or services. The advocate argued that the appellant has been ill at all relevant times and this should be taken into consideration. The advocate argued that the appellant proceeded to put the inheritance from her father, as it came available, into a disability trust. The advocate argued that the appellant set out to follow the criteria for maintaining a disability trust, providing documentation to the ministry as proof that the criteria were being followed.

Panel decision

Section 10(2) of the EAPWDR stipulates that a family unit is not eligible for disability assistance if a sole recipient has no dependent children and has assets with a total value of more than \$5 000 [Section 10(2)(a)] or a recipient has one or more dependants and the family unit has assets with a total value of more than \$10 000 [Section 10(2)(b)]. The appellant did not dispute that she was a sole recipient of disability assistance up to October 1, 2012 and was a recipient with one dependent child after this date, and, therefore, the applicable asset limits under Section 10(2) of the EAPWDR are \$5,000 from January 2011 to September 2012 and \$10,000 from October 2012 to September 2014.

The definition of "cash asset" in Section 1 of the EAPWDR 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 ministry provided a spreadsheet and copies of account statements that show the appellant's name on three different investment accounts held at a brokerage firm in another country, one of which had a balance of more than \$10,000 at different times over the period January 2011 through to September 30, 2014. The appellant did not dispute the balance of funds in the three accounts but argued that she did not have reasonable access to these accounts because she did not have her "hands on the money" and she was not capable of directing the funds to pay for

products or services, due to her inexperience with financial accounts and lack of expert advice, and her pain and “other medical aspects.” The panel finds that the definition of “cash assets” in the EAPWDR focuses on the savings institution or third party being required to pay the funds to the person on demand as the directory language “must” is used. While the appellant stated at the hearing that if she could “jump through all the hoops” set up by the investment firm to be in a position to spend the investment accounts in her name, she intended to put the funds into trust, the appellant has not provided information to show that there was any barrier that would prevent the brokerage firm from paying the funds from the 3 listed investment accounts to the appellant on her demand.

Section 10(1)(y) of the EAPWDR provides an exemption for assets held in trust for persons with disabilities if the specific criteria in Section 12 of the EAPWDR are met, and the ministry acknowledged that the appellant established a disability trust which had been approved by the ministry. The letter dated August 2, 2012 from the ministry to the appellant advised her that the ministry will treat the trust property as her exempt asset as long as the aggregate value of all trust property contributed to the trust is no more than \$100,000 in value. The appellant set up an account in the name of her trust at a local credit union and the ministry did not dispute that the funds in this account were considered an exempt asset as result of the disability trust. Likewise, the appellant did not dispute that the funds in the 3 investment accounts in her name, on deposit with a brokerage firm in another country, are not held in her disability trust.

The appellant stated that she intended to move the funds from the investment accounts in her name into the account in the name of her trust and, as soon as she achieved “a level of clarity,” she did withdraw some of the funds from the investment accounts. The appellant provided an example of her withdrawal of the sum of \$9,996 from one of the investment accounts for deposit into her trust account. This transaction is confirmed by a receipt dated October 23, 2013 for a deposit of \$9,996 USD to the account with the credit union in the name of the appellant’s trust. However, although the appellant withdrew some of the funds from the investment accounts for deposit into the disability trust account, she did not withdraw all of the funds from her investment accounts for deposit to her disability trust. At the hearing, the appellant took issue with the ministry’s statement that she had advised that she was not putting monies in trust because she was leaving it at the investment firm “for the IRS” for taxes since she had spoken with someone in the “inherited advisor group” at the investment firm and she understood that funds are withheld by the firm for taxes when a withdrawal is made.

The panel finds that the ministry reasonably determined that the appellant maintained a balance of funds of more than \$10,000 in one of the three investment accounts outside of her disability trust over the period January 2011 through September 2014. The panel finds that the ministry reasonably concluded that the appellant's cash assets are an asset beyond the allowable limit of \$5,000 from January 2011 to September 2012 and beyond the allowable limit of \$10,000 from October 2012 to September 2014 and the appellant is, therefore, not eligible for disability assistance during this time, pursuant to Section 10(2)(a) and (b) of the EAPWDR.

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.