

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) reconsideration decision of February 24, 2015 in which the ministry denied disability assistance to the appellant because his assets exceeded the allowable limit set out in Section 10 Employment Assistance for Persons with Disabilities Regulation (EAPWDR) and he did not meet the criteria for a small business asset exemption under EAPWDR Schedule B, Section 4.

PART D – Relevant Legislation

EAPWDR Section 10 and Schedule B, Section 4

PART E – Summary of Facts

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

- request for reconsideration received by the ministry February 19, 2015 to which was attached a 5 page document from the appellant explaining why he disagreed with the ministry's decision to declare him ineligible for disability assistance (DA). Those statements which are relevant to the matter under appeal are summarized as follows:
 - the appellant's DA file was automatically closed in error in October 2014 because the ministry was unaware that the appellant was continuing to participate in the Self-Employment Program (SEP) and was therefore eligible for business asset exemptions;
 - the appellant submitted all of his outstanding monthly self-employment (SE) reports and related business as requested by the ministry;
 - the appellant cashed three \$1,000 cheques from his business account as back payments on his mother's line of credit;
 - the non-business vehicle ("the car") that the appellant purchased is for his daughter's use only and does not have a value greater than \$500;
 - the appellant's business account balance is no longer at \$14, 418.79 because he has had to live off that money since the ministry cut off his DA, and because some of the funds are reserved for income taxes, GST, a business website and other monthly operating costs;
 - the appellant's accountant made an error in calculating his 2012 income tax return, necessitating an amended tax return;
 - the appellant has been making a genuine effort to build a business and eventually become independent of the ministry.
- the appellant appended the following copied documents to his request for reconsideration:
 - February 2010 business plan, advertising details and concluding letter from Community Futures dated February 19, 2010;
 - 2012 CRA tax adjustment request form;
 - business account bank statement for the period January 21-February 17, 2015;
 - 2013 comparative tax summary;
 - 2013 tax return;
 - camper trailer transfer of ownership form from the appellant to his mother signed January 27, 2015 and insurance certificate dated January 27, 2015 listing the appellant's mother as registered owner;
 - transfer of ownership of the car from a third party to the appellant at a purchase price of \$500;
 - insurance certificate for the car showing the appellant to be the registered owner;
 - monthly bank statements from the appellant's personal account for the period October 24, 2014 – January 23, 2015;
 - certificates of completion of training and entitlement for the appellant to conduct his specific type of business.
 - initial SE report with attached business account bank statement and copies of cancelled cheques for the period January 2010;
 - monthly SE reports with bank statements, copies of cancelled cheques and business credit card statements for the periods July 2013 and January – December 2014;
 - line of credit statements in the name of the appellant's mother for the period September 8 – October 8, 2014 showing an outstanding balance of \$221,932.14 and for the period November 7 – December 8, 2014 showing an outstanding balance of \$232,911.41;

- real estate purchase documents and State of Title Certificate in the name of the appellant dated June 10, 2014 relating to a house purchased by the appellant for \$168,788 (House #2) which became his principal residence in October 2014 when he moved from his former residence (House #1);
- personal account activity statements for the period October – December 2014;
- copies of Google searches of the appellant's business.

In his March 3, 2015 Notice of Appeal the appellant stated that he did not agree with the ministry's determination that he was ineligible for DA because his business account is for business-related expenses and should be exempt from the ministry's calculation of assets. He also disagreed with the ministry's valuation of the car at \$1,600 and noted that because it has high mileage he would be lucky to get \$500 for it.

Prior to the hearing the appellant submitted the following additional documents for consideration at the appeal:

1. statement dated March 25, 2015 of monthly average business expenses of \$1640 per month and 2015 projected costs of 13,973;
2. 2012 amended income tax return;
3. 2012 amended GST tax return;
4. 2013 GST tax return;
5. CRA Notice of Assessment dated March 12, 2015 indicating reassessment of the appellant's federal and provincial tax credits and assessing a late-filing penalty of \$397.72;
6. appellant's 2013 income tax return with accompanying motor vehicle expenses report;
7. personal account statement for the period January 24 – February 23, 2015;
8. municipal business licence for the year 2014;
9. accreditation fees receipt for \$350 dated October 22, 2014;
10. business credit card statement for the period February 5 – March 5, 2015;
11. business account statement of banking activity for the period February 25 – March 25, 2015;
12. truck repair and service invoices dated February 4, 2015 showing typed and handwritten maintenance estimates totaling approximately \$2,000;
13. new tire purchase quote of \$1,600.

The ministry did not object to the submission of the new documentary evidence. The panel determined that the evidence was admissible under S. 22(4) of the EAA as evidence in support of the records before the ministry at reconsideration because it provided additional financial details to substantiate the appellant's position that the funds in his business account were already allocated to current and future business-related expenses.

At the hearing the appellant stated that since 2010 he has repeatedly submitted a record of his business expenses to the ministry and until October 2014 the ministry had always approved his monthly report as allowable within the SEP exemptions. He added that the only reason his DA cheque production was discontinued and his file closed in October 2014 is because his DA cheque was returned to the ministry by the post office as a result of his move from House #1 to House #2, which triggered a file review and investigation.

The appellant outlined his current and projected business expenses as set out in Item #1 above and stated that his truck requires major service work, and he urgently needs a new laptop and website.

He has added a sub-contracting business which is related to his principal area of business, and hires others to do the physical work because his disability prevents him from doing it himself. He explained that his former accountant made serious errors in calculating his 2012 and 2013 income tax returns, and that his outstanding tax obligations exceed \$8,000, which is more than his current business account balance. He is frustrated that the ministry has failed to take his projected expenses and outstanding tax arrears into account when determining his assets. When asked by a panel member about three \$1000 withdrawals from his business account on November 20, 2014 he acknowledged that he had withdrawn the money in order to support himself because he was no longer receiving DA.

He also agreed that he had used his business account and his business credit card for personal items and services such as alcohol, restaurant meals, clothing, cigars, golf course fees and supplies, and was unable to demonstrate that he had reimbursed his business account for these personal items. All business credit card payments were charged to his business account. The appellant also explained that prior to October 2014 he resided House #1, which is owned by his mother. He now owns and resides in House #2, which is his principal residence, and pays mortgage payments and utilities from his business account.

In conclusion the appellant stated that the \$5,000 asset limit for a self-employed recipient of DA is too low and doesn't take into account the accumulated expenses which must be paid yearly. He considers the \$5,000 figure to be a "contingency fund" which covers business expenses that flow in and out of the business account.

The ministry relied on its reconsideration decision, which differed from the ministry's original position as set out in Section 2 of the request for reconsideration in the following ways:

- the ministry accepts that the appellant has been a participant in the SEP from 2010 to January 2015 despite the fact that he failed to submit monthly SE reports between August 2013 and December 2014;
- the appellant's truck and truck loan plus any equity the appellant holds in House #2 are exempt from the ministry's calculation of assets, as are the travel trailer, boat and boat trailer.

The items considered assets by the ministry at the time of reconsideration were:

1. the car (minimum value, assessed by independent third party)	\$ 1,600.00
2. the appellant's personal bank account (January 23, 2015 balance)	\$ 372.77
3. the appellant's business account (at January 2015)	<u>\$10,146.44</u>
TOTAL:	\$12, 119.21

At reconsideration the ministry also found that the appellant was paying all of his mortgage and utility payments from his business account, but under EAPWDR Schedule B, Section 4 (1) (1) was allowed to claim only a portion of his personal residence rent and utilities provided that he is not also claiming a shelter allowance as part of his DA, and noted that the appellant was requesting a shelter allowance.

In the reconsideration decision and at the hearing the ministry representative explained that there is room to exceed the \$5000 asset limit if it can be demonstrated to be part of the normal ebb and flow of a business so long as excess funds move quickly in and out of the account and receipts are provided.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision in which the ministry denied disability assistance to the appellant because his assets exceeded the allowable limit set out in Section 10 Employment Assistance for Persons with Disabilities Regulation (EAPWDR) and he did not meet the criteria for a small business asset exemption under EAPWDR Schedule B, Section 4.

The relevant legislation is set out in the EAPWDR:

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;
- (i) business tools;
- (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;

(2) A family unit is not eligible for disability assistance if any of the following apply:

- (a) a sole applicant or recipient has no dependent children and has assets with a total value of more than \$5 000;

Schedule B

Small business exemption

4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

- (a) purchase of supplies and products;

- (b) accounting and legal services;
- (c) advertising;
- (d) taxes, fees, licences and dues incurred in the small business;
- (e) business insurance;
- (f) charges imposed by a savings institution on an account and interest;
- (f.1) payments, including principal and interest, on a loan that is
 - (i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
 - (ii) received and used for the purposes set out in the business plan;
- (g) maintenance and repairs to equipment;
- (h) gross wages paid to employees of the small business, but not including wages paid to
 - (i) the person participating, or
 - (ii) a person in the family unit of the person participating;
- (i) motor vehicle expenses;
- (j) premiums for employment insurance or workers' compensation benefits;
- (k) employer contributions for employment insurance, workers' compensation or the *Canada Pension Plan*;
- (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) or (ii) of paragraph (h) unless
 - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;
- (m) office expenses;
- (n) equipment purchases or rentals.

(2) Earned income of a recipient of disability assistance is exempted from the total income of the recipient's family unit if

- (a) the recipient is participating in a self-employment program, and
- (b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and
 - (i) is used for permitted operating expenses of the small business, or
 - (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for

the purpose of paying permitted operating expenses of that small business, and

(B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or

(iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount approved by the minister, if the renovations are part of a business plan accepted by the minister under section 70.1 of this regulation.

The appellant argues that any funds in his business account that exceed the maximum allowed under the legislation are already allocated to current monthly business expenses of approximately \$1,600 and projected costs of approximately \$14,000 for truck maintenance, website development, a new laptop computer, business licences, accounting fees, tax arrears and current taxes owing. He believes that once he has paid his 2013 and 2014 taxes he will be bankrupt. He also argues that the \$5,000 asset limit is too low and does not take into account these projected costs, and he believes that the \$5,000 asset limit should be regarded as a contingency fund for use when the need arises.

The appellant also argues that the ministry's valuation of the car at \$1,600 is far too high, and that due to the condition of the car and high mileage it would probably not sell for more than \$500.

The ministry concedes that the appellant has been a participant in the SEP from 2010 to the present despite the fact that he failed to submit monthly SE reports between August 2013 and December 2014, and that he is entitled to the asset exemptions set out in EAPWDR Section 10 (1) and Section 4 of Schedule B, which include his and truck loan plus any equity he holds in House #2.

The items considered assets by the ministry at the time of reconsideration were:

4. the car (minimum assessed value)	\$ 1,600.00
5. the appellant's personal bank account (at January 23,2015)	\$ 372.77
6. the appellant's business account (at January 2015)	<u>\$10,146.44</u>
TOTAL:	\$12,119.21

The ministry also argued that the funds held in the appellant's business account did not meet the criteria for a \$50,000 exemption set out in EAPWDR Section 10 (1) (x) (ii) as this is a separate exemption for capital equipment and loans. In addition the ministry argued that appellant was paying all of his mortgage and utility payments from his business account but pursuant to Schedule B, Section 4 (1) (1) was allowed to claim only a portion of his personal residence rent and utilities provided that he is not also claiming a shelter allowance as part of his DA, and noted that the appellant was requesting a shelter allowance.

Panel Decision

EAPWDR Section 10 (x) (i) allows a DA recipient who is participating in a SEP to hold a maximum of \$5,000 in assets provided that they are kept in a separate account and used exclusively for permitted operating expenses as set out in Schedule B, Section 4 (2) (b) (ii) (A). Business account bank statements tendered as evidence by the appellant for the period January – November 2014 show a monthly average credit balance of approximately \$18,754 and a monthly average minimum balance

of \$15,094 which far exceed the allowable \$5,000 maximum amount. Also the appellant has not used his business account exclusively for business-related expenses; his business credit card, which is paid for from his business account, shows extensive monthly purchases for personal items and services such as alcohol, restaurant meals, clothing, cigars, golf course fees and supplies. There is no evidence of reimbursement of these expenses from the appellant's personal account. The appellant has also paid all of his mortgage and utilities costs from his business account while at the same time requesting a shelter allowance as part of his DA, which is not permissible under Section 4 (1) (l) of Schedule B.

The SEP \$5,000 asset exemption set out in Section 4 (2) (b) (ii) (A) of Schedule B applies only to permitted operating expenses which flow in and out of a small business on a regular basis and does not include funds which are retained over the period of a year for major capital purchases and lump sum payments of income taxes and tax arrears. Section 10 (1) (x) (ii) provides a separate exemption of \$50,000 for buildings, vehicles and equipment and for a business loan to purchase enable major capital purchases, provided that it meets the criteria set out in the recipient's business plan.

Because the appellant has not used his business account exclusively for permitted operating expenses as required by EAPWDR Section 4 (2) (b) (ii) (A) the panel finds that the ministry reasonably determined that the appellant's January 2015 business account balance of \$10,146.44 is a non-exempt asset. The panel also finds that the ministry reasonably determined that the appellant's January 2015 personal account balance of \$327.77 is a non-exempt asset and that because the appellant's car is not his primary vehicle it is also a non-exempt asset. The ministry has also reasonably determined that the minimum value of the car is \$1,600 as shown in the independent assessment report attached to the reconsideration decision. The total of these three non-exempt assets at the time of reconsideration was \$12,119.21, which exceeds the \$5,000 allowable asset limit for a recipient of DA under EAPWDR Section 10 (2).

The panel therefore finds that the ministry reasonably determined that the appellant is not eligible for DA because he has assets which exceed the \$5,000 allowable limit for a DA recipient set out in EAPWDR Section 10(2), and confirms the decision.