

### PART C – Decision under Appeal

The decision under appeal is the June 18, 2015 reconsideration decision of the Ministry of Social Development and Social Innovation (the Ministry) in which the Ministry decided the Appellant was not eligible for assistance because her asset level exceeds the legislated asset limit as defined in the Employment and Assistance Regulation Section 1 and set out in the Employment and Assistance Regulation Section 11.

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) , Section 1  
Employment and Assistance Regulation (EAR), Section 11

## PART E – Summary of Facts

The documents before the Ministry at the time of reconsideration included the following:

- A used value analysis for the 3 vehicles registered to the Appellant, that is, the truck and the 2003 and 2010 vehicles.
- A letter from the Appellant which states she does not own any of the vehicles registered in her name. She explains the 2003 vehicle was bought by her brother for \$1,500 and sold to her for \$1.00 for use driving around the city. A car dealer has told her it is currently worth \$575 and she feels it is worthless. Her brother also bought the 2010 vehicle for \$4,000 and sold it to her for \$1,000, which she owes him, for her primary vehicle. A car dealer told her the value is \$4,075 but it also needs \$1,600 of work on it. She states the truck is owned by her parents and purchased by their company for \$10,000. She plans to repay them when her self-employment becomes stable. She needed it in her name to comply with jobsite regulations. She says it has been parked since she got pregnant in February of 2012, that she sold it to herself for \$1 to be able to put regular insurance on it, and that she plans to use the vehicle as her source of income once her health is restored.
- A bill of sale for \$4,000 for the 2010 vehicle in the Appellant's brother's name.
- A bill of sale dated April 27, 2015 for \$1,000 for the 2010 vehicle from the Appellant's brother to the Appellant.
- A bill of sale dated March 8, 2013 for the truck from the Appellant's father to the Appellant's self-employment company.
- A vehicle registration certificate for the truck.
- A commercial insurance policy dated September 5, 2013 for the truck.
- A note dated September 5, 2013 stating liability limits for a job site.
- A picture of a vehicle license plate from out of province.
- A vehicle registration certificate for the truck showing the Appellant as buyer and seller.
- An insurance document for the 2003 vehicle and the truck.
- Bank account information of the Appellant's self-employed company.
- A "black book" estimated value for the 2010 vehicle at \$4,300.
- Receipts for registration and insurance for the 2010 vehicle and truck.
- A picture of the truck and 3 pictures of the 2003 vehicle.

The Request for Reconsideration document states the Appellant has been receiving income assistance as a single parent with one dependent child. Her file was reopened in February 2015 and on April 21, 2015 her file was auto-generated for a review. The Ministry received copies of the out of province vehicle registrations listing the Appellant as owner of the 2003 vehicle, the truck and a 1998 trailer. The Ministry also received from the Appellant the out of province vehicle registrations for the truck and the 2010 and 2003 vehicles, each insured until October 31, 2015. The vehicles are registered in the other province because the BC laws are stricter and the 2003 and 2010 vehicles are parked at the Appellant's parent's home in the other province.

Through an online estimate of value, the Ministry concludes the Appellant's equity in the 2010 vehicle is worth \$2,425 - \$4,600, her equity in the truck is greater than \$16,800, and the equity in the 2003 vehicle is \$975. The Ministry determined the 2010 vehicle is exempt as it is used for day to day transportation however the combined value of the 2003 vehicle and the truck is \$17,775 and exceed the legislated \$4,000 asset limit for the Appellant's family unit.

Documents introduced by the Appellant for the hearing included:

- A 3 page letter dated July 13, 2015 from a law advocate on behalf of the Appellant (the Advocate).
- A letter dated June 9, 2015 from the Appellant's father that states the Appellant bought the truck from his company for \$10,000 in 2011. The Appellant paid \$3,000 towards the purchase price and the amount owing is on his shareholder loan. The Appellant intends to complete the purchase of the truck when she is able to work again.
- Excerpts from the Ministry public documents and a tax court case (Exhibit 2).
- An invoice from the Appellant's self- employed company to a client dated November 6, 2012 for \$787.50 (Exhibit 3).
- An invoice from the Appellant's self- employed company to a client dated November 13, 2012 for \$1,727.42 (Exhibit 4).
- A 5 page document entitled "What does your work truck say about you?" which describes a work truck as a tool (Exhibit 5).

Documents brought to the hearing by the Appellant included 11 pictures of the truck showing it being utilized as a working welding truck in different jobsites and showing the truck bed being altered and outfitted as a welding truck. She explained the truck was necessary to access various worksites and to carry the necessary equipment needed for contracted welding jobs.

The Ministry had an objection to the timing of the letter dated June 9, 2015 but did not object to the content of any of the submitted evidence. The Panel finds the 3 page letter from the Advocate, the excerpts from public documents and a tax court case and the 5 page document about work trucks as supporting argument. The Panel finds the June 9, 2015 letter from the Appellant's father, the invoices, and the pictures of the truck as evidence that support the evidence that was before the Ministry at the time of the reconsideration decision and admits the documents as evidence under EAA, Section 22(4)(b).

At the hearing, the Appellant stated her truck is a tool for work and that she has held on to it because she hopes to heal and return to work. Using the pictures, she explained she and her coworker made alterations to the truck to accommodate her welding equipment and how it functioned on various job sites. She said she used the truck for no other purpose other than work and keeping it is a necessity if she can return to work. She stated the 2003 vehicle has lost a tire and the repairs needed are more than it is worth and that it will be taken to a junk yard. She also stated the Ministry had assessed the value of the truck too high but she did not have an alternative estimate of value.

Upon questioning, the Appellant stated the truck is in BC at her residence. She had done some work with it in this province but soon after her son's birth two years ago she injured herself and that was her last job with the truck. She has herniated 3 discs in her back and now can't work until she heals. She was going to fill out an application for a person with disability but was told to wait. She says she is in denial and the fact that she can't work is frustrating. She has attempted to re train as a welding inspector and as a steel fabricator but so far the training hasn't worked out. She says her son's father was an abusive partner and that he is not in any way connected to her or her son.

At the hearing the Ministry reviewed how the estimate of value for each vehicle was established and that the Ministry uses the on line estimate of value rather than the car dealers "black book" value because the "black book" value is considered a wholesale price and the Ministry believes a market

price such as is available on the online estimate of value is a truer reflection of asset value. The Ministry stated the combined value of the 2003 vehicle and the truck is estimated at \$17,775 and is over the legislated limit of \$4,000 as per Section 11(2)(b) of the EAR. The Ministry is satisfied that the Appellant intended to apply for a Persons with Disabilities status because the Appellant had asked the Ministry for a Persons with Disabilities application on April 10, 2015. The Ministry concludes that the Appellant's assets are over the legislated limit of \$10,000 as specified under Section 11(2.1)(b) of the EAR.

The Ministry explained that the truck is not exempt as assets used by the Appellant in operating a small business because the Appellant does not have prior approval from the Ministry to enter in to a self -employment program, neither does she have the necessary Person with Persistent Multiple Barriers qualifications as required to be eligible to participate in a self- employment program as per Section 77.1 of the EAR.

The Panel finds as fact that the following:

- The Appellant's primary use vehicle is the 2010 vehicle.
- The equity of the Appellant's 2003 vehicle value is below the \$4,000 asset limit allowed.
- The truck's value is in the range of \$10,000 - \$16,800.
- The Appellant is the truck's registered owner.
- The Appellant has not worked as a welder since soon after her son's birth, that is, approximately 2 years.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry reasonably decided that the Appellant was not eligible for assistance because her asset level exceeds the legislated asset limit as defined in the EAR Section 1 and set out in the EAR Section 11.

The following legislation applies to this appeal:

### **EAR Section 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;

### **Section 11**

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

*(b) subject to subsection (2.3), one motor vehicle generally used for day to day transportation needs if*

*(i) the equity in the motor vehicle does not exceed \$10 000,*

*(i) business tools;*

*(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;*

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

*(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;*

*(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*

*(b) \$10 000, if the applicant or recipient has one or more dependants.*

The Advocate, on behalf of the Appellant, does not contest the Ministry's finding that the 2010 vehicle is exempt as the Appellant's primary vehicle or the determination that the 2003 vehicle is an asset under the \$4,000 asset limit as defined in the EAR Section 11(1)(i). The Advocate argues that the truck is a business tool as defined in the legislation and therefore an exempt asset. The Appellant was a self-employed rig welder in another province and required the vehicle which was adapted for welding use. He argues a welding rig is a specialized tool that the Appellant will need when she returns to work as she intends to. He refers to a court decision that did not find fault in a truck described exclusively as a business tool and the submitted 5 page document that describes work trucks as business tools.

The Appellant argues the 2003 vehicle is worthless, and she owes her brother \$1,000 for the 2010 vehicle and her parents \$7,000 for the truck. She argues the truck is a business tool and she is holding on to it for when she can return to work.

The Ministry argues the 2010 vehicle has equity of \$2425 - \$4,600 and there is insufficient evidence to demonstrate there is money owing against it. Because the other two vehicles are registered out of province and the 2010 vehicle is the Appellant's main vehicle, the Ministry determines the 2010 vehicle as an exempt asset under Section 11(1)(b)(1).

The Ministry argues the value of the 2003 vehicle at \$975 based on the online estimate because there is a lack of evidence to support the Appellant's statement that it is worthless.

The Ministry argues there is insufficient evidence to demonstrate there is money owing against the truck. The Ministry argues the truck is not exempt as a small business asset exemption of \$50,000 under Section 11(1)(x) of the EAR because the Appellant has not been approved to participate in a self-employment program funded or established by the Ministry nor is the Appellant qualified as a Person with Persistent Multiple Barriers as required to be eligible to participate in a self-employment program. The Ministry argues there are no other applicable asset exemptions under Section 11 of the EAR for the 2003 and truck and therefore with non-exempt assets over the \$4,000 and the \$10,000 limits, the Appellant is not eligible of income assistance.

The Appellant and her Advocate state that the 2010 vehicle is the Appellant's commuting vehicle and the Ministry accepts that it is her primary vehicle. The Panel finds the Ministry's decision to find that the 2010 vehicle exempt as the Appellant's primary vehicle as reasonable.

The Appellant states her 2003 vehicle is worthless but submits no documentation to establish its worth, the Advocate accepts the Ministry's estimate of value and the Ministry determines it is an asset of \$975 based on an online estimate of value. The Panel finds the Ministry's determination of the 2003 vehicle equity at \$975 is reasonable.

The Appellant states she does not have an estimate of value for the truck, but has submitted evidence that it was sold to her company for \$10,000, and she made alterations and additions to the truck after purchasing it. The Ministry estimates the value of the truck at \$16,800 based on an online estimate of value. The registration submitted states the Appellant is the owner of the truck, however there is conflicting evidence that the Appellant may or may not possess full equity in the truck. Because the registration has previously been in the Appellant's company name and is now in the Appellant's name, the Panel finds the Ministry reasonably determined the truck as the Appellant's asset. The online estimate of value is an independent estimate and the only submitted current estimate of value. The Panel finds the Ministry's determination that the value of the truck is \$16,800 is reasonable.

There is no evidence to establish that the Appellant is in a ministry approved self employment program, nor is the Appellant qualified as a Person with Persistent Multiple Barriers with the Ministry. The Panel finds the Ministry's determination that the truck is not exempt as a small business asset exemption of \$50,000 under Section 11(1)(x) of the EAR is reasonable.

The Advocate submits the truck is a business tool as defined in the legislation based on an article regarding work trucks and a case from the tax court of Canada. The Advocate submits that this claim could seem outlandish. The submitted excerpt from the facts of the case states the appellant described his vehicle as "exclusively a business tool". There is no documentation to support that this description was accepted as a definition as defined by the tax court.

The truck is outfitted to transport welding equipment to jobsites. From the pictures submitted and the oral explanation, the equipment is taken off the truck as needed to complete the work. The Appellant stated the truck was necessary to access isolated and construction worksites however the Appellant has not been able to work and use the truck for approximately two years. The equipment carried on the truck may be determined as business tools however the truck itself simply transports those tools. The Panel finds the Ministry reasonably determined there are no other applicable asset exemptions under Section 11 of the EAR for the 2003 and the truck is not exempt under Section 11(1)(i) as a business tool.

Accordingly, the Panel finds the Ministry's determination that there are no other applicable asset exemptions under Section 11 of the EAR for the 2003 vehicle and truck and therefore with non – exempt assets over \$4,000 and the \$10,000 limits, the Appellant is not eligible for income assistance. The Panel finds the Ministry's determination to deny the Appellant income assistance a reasonable application of the legislation in the circumstances of the Appellant. The Panel therefore confirms the Ministry's decision.