



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of September 2, 2015, which found that the appellant did not qualify for disability assistance because his asset level exceeds his asset limit. The ministry determined that the appellant had assets with a total value of more than \$5000 which renders him ineligible for disability assistance according to section 10(2) of the Employment Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

EAPWDR sections 1, 10 and 12.1

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

1. Parts 1 and 2 of the *Application for Disability Assistance* dated August 8, 2015. In Part 2 the appellant has provided the following financial information:
 - a. CPP monthly income of \$699.24
 - b. Retirement Savings Plan funds of \$35,146.67
 - c. Investments of \$23,550.48
 - d. A vehicle valued at \$500
2. An *Account Information Statement* from a bank dated August 10, 2015 showing that the appellant has \$356.12 in his day to day banking account and \$100.26 in a TFSA.
3. A handwritten letter from an investment firm dated August 14, 2015 accompanied by an account summary of the appellant's assets held by the investment firm and a summary of the appellant's Registered Disability Savings Plan held by a bank. The account summary shows that the investment firm is holding funds in the amount of \$23,550.48 and the Registered Disability Savings Plan has a market value of \$35,146.87.
4. The appellant's *Request for Reconsideration* signed and dated by the appellant on August 25, 2015 which states that he receives a Federal disability payment of \$600 each month but he has close to \$800 in monthly expenses. He explains that the money he has is an inheritance from his father that he plans to use for his retirement. He is unable to work due to mental and physical impairments and he considers it unfair that he has to use his retirement funds to support his monthly expenses. He notes that he was on income assistance provided by the ministry but the government switched him to federal disability while he was in hospital. He states that he was told by a ministry representative that he was eligible for a supplement of about \$300 on top of his federal disability.

The appellant's *Notice of Appeal* was dated September 8, 2015. He states the following as the reasons for his appeal: "*I was placed in a (hospital) in 2013 and while there I was removed from ministry assistance to Federal assistance. I was told I should have been receiving ministry assistance on top of Federal. I would like this money to be retroactively given as I was unable to support myself on \$600 a month for those two years and racked up a debt to my mother to cover my monthly expenses. Also I am using the money from my inheritance for retirement as I cannot work.*"

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision that the appellant did not qualify for disability assistance because his asset level exceeds his asset limit was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant had assets with a total value of more than \$5000 which renders him ineligible for disability assistance according to section 10(2) of the Employment Assistance for Persons with Disabilities Regulation (EAPWDR).

The relevant legislation is as follows:

EAPWDR

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;

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;
- (ww) a BC early childhood tax benefit.
- (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.
- (3) The minister may authorize one or more of the following:
- (a) that the total cash surrender value of an uncashed life insurance policy of an applicant or recipient is not to be included as an asset of the family unit 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.

[]

12.1 (1) In this section, "**person receiving special care**" means a person who is receiving accommodation or care in a private hospital or special care facility, other than a drug or alcohol treatment centre.

(2) During the exemption period described in subsection (3), an asset received by a person with disabilities or by a person receiving special care is exempt for the purposes of section 10 (2) [*asset limits*] if the minister is satisfied that the person intends to

(a) establish a registered disability savings plan or trust, and

(b) contribute some or all of the asset to the registered disability savings plan or trust.

(3) The exemption under subsection (2) starts on the date the person receives the asset and ends 3 months after that date unless

(a) the exemption period is extended to a later date under subsection (4), or

(b) the exemption ceases to apply under subsection (5).

(4) The minister may extend the exemption period to a specified date if the minister is satisfied that the person is making reasonable efforts to establish a registered disability savings plan or trust.

(5) The exemption under subsection (2) ceases to apply if

(a) the person contributes all of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the asset on the date of the contribution,

(b) the person contributes a portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to that portion on the date of the contribution, or

(c) the minister becomes aware of information that, in the minister's opinion, indicates that

(i) the person does not intend to contribute any portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the asset on the date specified by the minister, or

(ii) the person has contributed some of the asset to a registered disability savings plan or trust but does not intend to contribute any remaining portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the remaining portion on the date specified by the minister.

(6) Amounts expended from an asset to which the exemption under subsection (2) applies are deemed to be money or value received from a trust within the meaning of paragraph (1) of the definition of "unearned income" in section 1 (1).

The Appellant's Position

The appellant argues that he was told by a ministry worker that he was eligible to receive a "top-up" payment of about \$300 per month on top of his federal disability payments. In addition, he thinks it is unfair that he is expected to use funds from an inheritance which he plans to use to support his retirement having to be used to cover his monthly expenses.

The Ministry's Position

The ministry accepts that the appellant's vehicle is exempt under section 10(1) of the EAWPDR because he uses it for day to day transportation. Similarly, the ministry accepts that funds held in, or money withdrawn from, a registered disability savings plan is exempt. Accordingly, the appellant's money in the RDSP is exempt under section 10 of the EAWPDR.

The ministry concludes that the appellant has additional assets totaling \$24,006.86. The ministry also acknowledges that some or all of these funds could be contributed by the appellant to his existing RDSP or a trust. The ministry argues that it advised the appellant of these options but the appellant

has not stated or demonstrated that this is his intention. Rather, the ministry notes that the appellant has indicated that these monies are for his retirement but that he has had to use it (at least in part) for his monthly expenses. Accordingly, the ministry is not satisfied that the appellant intends to contribute some or all of these additional funds into his RDSP or a trust and so he cannot claim an exemption for these funds under sections 10 and 12.1 of the EAWPDR.

The ministry acknowledges that accessing these additional funds would generate fees and commission costs that would reduce the funds available to the appellant to less than \$23,550.48. Nonetheless, the ministry concluded that even with fees and commission costs the remaining funds would exceed the allowable limit of \$5,000 under EAPWDR section 10. Consequently, the ministry determined that the appellant is not eligible for disability assistance because he has assets with a total value of more than \$5,000 under section 10 of the EAWPDR.

Conclusion

The panel notes that the ministry has agreed that the value of the appellant's vehicle and the assets held in his RDSP are exempt under section 10 of the EAWPDR. But the value of the remaining assets is approximately \$23,500 and these funds are not exempt under sections 10 or 12.1 of the EAPWDR. Accordingly, the appellant does have non-exempt assets in excess of the allowable limit of \$5,000 and therefore the appellant does not satisfy the requirements of section 10(2) of the EAWPDR.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's determination that the appellant is not eligible for disability assistance because his asset level exceeds his asset limit under section 10 of the EAWPDR was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel therefore confirms the ministry decision.