



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of October 9, 2015, which denied the Appellant income assistance (IA) because the value of her assets exceeded the eligibility threshold established in section 11(2)(a) of the Employment and Assistance Regulation (EAR) and are not exempt under section 11(1)(b) of the EAR.

PART D – Relevant Legislation

(EAR) Employment and Assistance Regulation Sections 11(2)(a) and 11(1)(b)

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The documents before the ministry at reconsideration:

Request for Reconsideration dated August 25, 2015

Reconsideration Decision of October 9, 2015

Integrated Case Management Decision Report for a decision made September 1, 2015

Application for Income Assistance dated August 28, 2015

The appellant's TD Canada Trust statement of August 4, 2015 showing a balance of \$1,500 in a high interest Tax Free savings account and other banking statements showing deposits and expenditures.

The Appellant is a sole applicant.

According to Insurance Corporation of British Columbia (ICBC) reports there were five vehicles registered under the Appellant's name with the following values derived from the Vehicle Market Research Canada Site:

- 1) Vehicle 1, a 2005 Pontiac, insured and identified as the Appellant's primary vehicle, valued at \$2,100;
- 2) Vehicle 2, a 2005 Dodge, with a broken engine, valued at \$4,100;
- 3) Vehicle 3, a 1994 Dodge, valued at \$700;
- 4) Vehicle 4, a 2002 Ford, insured and used to drive family and friends, valued at \$2,425; and
- 5) Vehicle 5, a 2005 Dodge valued at \$3,000.

Additional information presented after the reconsideration decision:

Notice of Appeal which stated that the 2005 Dodge (vehicle # 2) will be sold as scrap, the 1994 Dodge (vehicle#3) has been sold, and I will not be insuring the 2002 Ford (vehicle #4) for my friend.

The panel determined the additional evidence was not before the ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant income assistance is 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 value of the Appellant's assets exceeded the \$2000 limit specified in Section 11(2)(a) of the EAR thereby making her ineligible for income assistance.

The relevant legislation is as follows:

Asset limits

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

- (a) clothing and necessary household equipment;
- (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 \$10000,
 - (ii) the motor vehicle has been significantly adapted to accommodate the disability of a recipient in the family unit,
 - (iii) the motor vehicle is used to transport a disabled dependent child, or
 - (iv) the motor vehicle is used to transport a disabled foster child, if the child is in the care of the applicant or recipient;
- (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 income 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

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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. 1, s. 6 (e).]

(v) money paid to a person in settlement of a claim of abuse at an Indian residential school, except money paid as income replacement in the settlement;

(w) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;

(x) for a recipient who is participating in a self-employment program funded or established by the minister under section 7 of the Act,

(i) up to a maximum of \$5 000 kept by the recipient in a separate account described in section 4 (2) (b) (ii) of Schedule B, and

(ii) up to a maximum of \$50 000, or a greater amount approved by the minister, consisting of

(A) the value of assets used by the recipient in operating a small business under the self-employment program, and

(B) a loan that is not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and received and used for the purposes set out in the business plan;

(y) assets exempted under

(i) section 12 (2) [*asset development accounts*],

(ii) section 13 (2) [*assets held in trust for person receiving special care*], or

(iii) section 13.1 (2) [*temporary exemption of assets for person applying for disability designation or receiving special care*];

(z) Repealed. [B.C. Reg. 85/2012, Sch. 1, 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. 1, 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. 1 (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.

(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 income assistance if any of the following apply:

(a) subject to paragraph (c), a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$2 000;

(b) subject to paragraph (c), an applicant or a recipient has one or more dependants and the family unit has assets with a total value of more than \$4 000;

(c) an applicant or a recipient receives accommodation and care in a private hospital or a special care facility, other than an alcohol or drug treatment centre, or is admitted to a hospital for extended care, and

(i) has no dependants and has assets with a total value of more than \$5 000, or

(ii) has one or more dependants and the family unit has assets with a total value of more than \$10 000.

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

(a) \$5 000, if the applicant or recipient has no dependants, or

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

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

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

Position of the Appellant:

The Appellant's position is that the money in her TFSA is not available to her and should not be considered in calculations to determine the value of her assets. Some of the transactions in her bank account are for other people who have moved money through her account; some deposits are from her mother to assist her and her sister and should also not be considered in the calculation of assets. She argued she did not state the cash deposits were from cash stored in her safe from a settlement reached with ICBC.

She submits that vehicle 1, the 2005 Pontiac, is her primary vehicle and exempt and thus should not be considered in the calculation of the total value of her assets. Vehicle 2, the 2005 Dodge, will be sold for scrap; Vehicle 3, the 1994 Dodge, has been sold, Vehicle 4, the 2002 Ford, will not be insured for her friend and Vehicle 5, the 2005 Dodge, is no longer in her name and that ICBC has verified this to be correct. She argues that when all this is taken into consideration, her assets are below the allowable limit set in the legislation.

Position of the ministry:

The ministry position is that the appellant is ineligible for IA because she has assets in excess of the allowable limits in the legislation. Under section 11(1)(b) the primary vehicle, in this case vehicle #1, the 2005 Pontiac, is exempt from the calculation of the total value of assets. Although the appellant indicated that the 2005 Dodge, vehicle #5, is no longer registered to her, no evidence has been submitted to support that statement.

No evidence was submitted that the Vehicle Market Research Canada Site wholesale values for the vehicles were not correct. The appellant has not provided evidence to support the statement that she is unable to access funds in the TFSA, but even excluding this amount and the value of the vehicle #5 in the calculation of total assets, the value of non-exemptible assets totals \$7,225 which exceeds the maximum allowable asset value of \$2,000 and thus the appellant is not eligible for income assistance.

Panel Decision:

The Appellant provided no evidence to the ministry at reconsideration that she had a dependent and as it was not before the ministry when the decision being appealed was made or corroborate such information or documentation, it cannot be "in support" as required for admissibility under section 22(4) EAA. Further, there is no evidence that her child met the definition of a "dependent" under the legislation which would allow the appellant's assets to be considered under the higher exemption limit for assets for person with dependents, a total asset value of \$4,000.

The Appellant argues and the ministry accepts that vehicle #1, the 2005 Pontiac, is the

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primary vehicle and exempt from the calculation of total assets under section 11(1)(b) EAR.

The panel finds that although the appellant indicated that the 2005 Dodge, vehicle #5, is no longer registered to her, the appellant did not submit evidence to support that statement.

While the appellant makes arguments regarding vehicles 2, 3 and 4, no evidence or argument was before the ministry at reconsideration. Also no evidence to refute the values assigned to these vehicles was presented. As such, the panel finds the ministry's decision to include these vehicles at the indicated value in the calculation of total assets reasonably supported by the evidence.

The panel finds the ministry decision that the appellant's non-exempt assets exceeded the legislated limit for a sole applicant as per s. 11(2)(a) was reasonably supported by the evidence as even accepting that the appellant could not access her TFSA, and exempting that amount and the amount for vehicle #5, the total amount was \$7,225, exceeding the legislated limit of 2,000.

Conclusion

The panel finds that the ministry's decision that the appellant was ineligible for income assistance was a reasonable application of the legislation in the circumstances of the appellant because the Appellant's non-exempt assets valued at \$7,225.00 exceeding the \$2,000.00 limit for assets as stipulated in section 11(2)(a) of the EAR. The panel therefore confirms the ministry's decision.