



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("ministry") reconsideration decision of November 2, 2015 wherein the ministry denied disability assistance to the appellant because he has assets with a total value of more than \$5000 which is in excess of the asset limit allowed under Section 10(2) of the Employment and Assistance for Persons with Disabilities Regulations ("EAPWDR").

PART D – Relevant Legislation

EAPWDR Sections 1, 10 and 29

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The evidence before the ministry at reconsideration included:

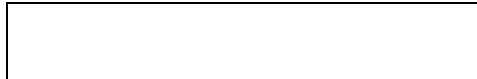
- The appellant's request for reconsideration dated October 1, 2015 outlining dates of contacts between the ministry and the appellant, a summary of bank balance totals in the amount of \$6355.47 and on which no reasons for reconsideration were stated by the appellant.
- Financial Institute #1 (FI#1) bank profile dated September 28, 2015 showing personal chequing balance of \$25 and GIC and Term Deposit balance of \$506.50
- FI#1 statement dated September 28, 2015 showing balance between June 30, 2015 and September 11, 2015 of \$25CR
- Financial Institute #2 (FI#2) profile dated September 27, 2015 showing Personal chequing account balance of \$3,814.77 and Personal savings account balance of \$2009.20
- FI#2 Account Activity – Details dated September 28, 2015 for period September 3-24, 2015 showing balance of \$3,684.64; period August 4-27, 2015 balance \$3,486.35; period July 15-29, 2015 balance \$3,106.93;
- FI#2 Account Activity – Details for Savings Account dated September 28, 2015 for period September 24, 2015 balance \$2009.20; period August 31, 2015 balance \$2008.20; period July 3-31, 2015 balance \$2008.11
- Letter from the ministry to the appellant dated September 24, 2015 informing the appellant that because not all the requested information had been received, that eligibility could not be determined and the appellant is no longer eligible for assistance. The letter offered the appellant the right to request a reconsideration of the decision.
- Reconsideration and Appeals Brochure
- Letter from the ministry to the appellant dated September 9, 2015 informing next assistance payment will be held until all information requested had been provided.
- Employment and Assistance Review signed by the appellant dated August 26, 2015
- Letter from the ministry to the appellant dated August 20, 2015 requesting appellant contact them on or prior to August 27, 2015 at 11:00am for a compliance review and to submit information.

The appellant's Notice of Appeal dated November 12, 2015 states: "The \$500 at (FI#1) is a GIC expiring in Dec 2016. Please wait for bank statement as part of \$5000 is carbon tax credits"

In an email from the Ministry dated December 3, 2015, they write: "The ministry's submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision."

In the Appellant Submission the appellant provided the following:

- 14 pages of Deposit Account History from August 27, 2010 balance \$49.95 to October 5, 2015 balance \$2106.15
- handwritten note signed by the appellant stating "BC sales tax credit is \$150; some of \$2008 in saving account is GST and carbon tax credits; there is about \$2700 in GST and carbon tax credits"



Admissibility of Additional information:

The copies of the Deposit Account History from the appellant are considered supporting documents of the information before the ministry at time of reconsideration so admissible as evidence per Section 22(4) of the Employment and Assistance Act (“EAA”). The handwritten note indicating deposits made were for GST and carbon tax credits was not in support of the information before the ministry at time of reconsideration.

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 as a result of having assets valued at more than the allowable limit, pursuant to Section 10(2) of the 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;
 - (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.

Section 1 of the EAPWDR provides:

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 partythat 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 29 of the EAPWDR provides:

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

- (a) the report must be submitted by the 5th day of the calendar month following the calendar

month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

Ministry's Position

The ministry's position from the reconsideration decision is:

- The available information shows \$6,355.47 standing to the appellant's credit with FI#2 and FI#1 in chequing, savings and GIC and Term Deposits accounts. The appellant does not dispute this.
- The amount in the GIC and Term Deposit is as a GIC (Guaranteed Investment Certificate) and the appellant does not dispute this. Therefore the minister is satisfied that the amount is in a GIC and not a term deposit.
- Accordingly, as money in chequing, savings and GIC's generally must be paid to people on demand and the appellant has not provided any information to show otherwise, the minister finds the money in chequing, savings and GIC meets the definition of a cash asset and therefore an asset under Section 1 of the EAPWDR.
- The minister takes into consideration the appellant statement that assistance payments do not count towards the calculation of asset level, and notes there are only deposits in August and September matching the assistance amounts provided (\$436.29 each of these months). The minister notes there is no corresponding deposit in July matching assistance issued at the end of July (\$436.29). After deducting \$436.29 from August and September end of month totals, the minister notes that total cash asset levels are \$5,646.54 at the end of July, \$5,589.76 at the end of August, and \$5,789.05 at the end of September. The minister also notes that even without the \$506.50 GIC amount included in July and August, your asset levels for those months at \$5,140.04 NS \$5,083.26 respectively. Furthermore, the appellant has not provided information showing he no longer has these assets. Therefore the minister finds you have assets with a total value of over \$5,000.
- Section 10(1) of EAPWDR stipulates exemptions for assets. However, the appellant has not provided any information to demonstrate that he has met any of the legislated exemptions for the assets. Rather, the information indicates you were holding cash assets in undeclared accounts. Additionally, while the appellant states he still needs to buy glasses and dentures, there are no exemptions for these expenditures in the legislation. Therefore, the minister

cannot find that any of the aforementioned assets are exempt under section 10(1) of the EAPWDR

- Under Section 29 of the EAPWDR a change in assets is to be reported by the 5th day of the month following the month the income is received. The asset level is then calculated for the following month of assistance. As such, the appellant's asset level at the end of July 2015 was to be reported by August 5, 2015 and is calculated for September 2015 assistance, the asset level at the end of August 2015 was to be reported by September 5, 2015 and is calculated for October 2015 assistance, and the asset level at the end of September 2015 was to be reported by October 5, 2015 and is calculated for your November 2015 assistance.
- Section 10(2) of the EAPWDR sets out that the appellant, as a sole recipient, are not eligible for disability assistance if he has assets with a total value of more than \$5000. Accordingly the minister must determine you are not eligible for disability assistance under section 10(2) of the EAPWDR because you have assets with a total value of more than \$5,000.

Appellant's Position

The appellant provided additional bank records from 2010 to 2015 showing regular deposits of approximately \$150 each quarter. The appellant wrote that these deposits, totaling \$2700, were for GST and carbon tax credits.

Panel Decision

Section 10(1) of the EAPWDR stipulates exemptions for assets. Section 10(1)(f) allows for an exemption of a GST credit and (g) climate action credit. The appellant indicated that some of the deposits into his bank accounts were for tax credits, however this information was not before the minister at the time of reconsideration and there is no evidence in the appeal record that shows that the tax credits the appellant is referring to were declared as income or assets, as required per Section 29 EAPWDR.

Section 1 of the EAPWDR defines cash assets as meaning money in the possession of the person and money standing to the credit of the person with a savings institution that must pay it to the person on demand. The appellant does not dispute that he has over \$5000 in his combined accounts.

Section 10(2) of the EAPWDR stipulates that a sole recipient with assets with a total value of more than \$5000 is not eligible for disability assistance. The panel finds that the ministry reasonably determined that the appellant is not eligible for disability assistance, pursuant to Section 10(2) of the EAPWDR as a result of having assets with a total value of more than \$5000.

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.