

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of February 10, 2016 in which the ministry denied income assistance to the appellant because she owned a non-exempt asset with an equity value that exceeded the asset limit allowed under Section 11 (2) of the Employment and Assistance Regulation (EAR), namely a motor vehicle with an equity value that exceeded the maximum allowable exemption of \$10,000 for a motor vehicle under EAR Section 11(1) (b) (i).

PART D – Relevant Legislation

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

Employment and Assistance Act (EAA) Section 14 (1).

PART E – Summary of Facts

The appellant was not in attendance at the hearing. After confirming that she had been notified the hearing proceeded under EAR Section 86 (b).

The appellant is a single person with one dependent child. In November 2015 she applied for income assistance.

The evidence before the ministry at the time of reconsideration relevant to this appeal included the following:

- Request for reconsideration received by the ministry on February 4, 2016 in which the appellant stated the following information relevant to this appeal:
 - on November 17, 2015 she applied for income assistance and was informed by a ministry employee that she was required to sell her motor vehicle within 60 days;
 - she received income assistance for the month of December, 2015;
 - she received an assessment from a used motor vehicle dealer valuing her motor vehicle at \$12,000 due to damage, number of kilometer driven and lack of accessories;
 - the motor vehicle belongs to her mother;
 - she requires the motor vehicle travel to and from work and to drive her child to and from her distributed learning centre;
- December 8, 2015 letter from the office of the Ombudsperson advising the appellant that they had closed their investigation on the appellant's behalf because the ministry had granted temporary income assistance to the appellant, and urging the appellant to obtain a vehicle valuation;
- VMR Canada used car valuation setting the wholesale value of a used vehicle of the same age, make and model at \$17,825 and the retail value at \$20,675;
- dealership vehicle estimate form dated January 4, 2016 assessing the value of the appellant's motor vehicle at \$12,000;
- ICBC vehicle registration form showing the appellant as registered owner of the motor vehicle.

In her Notice of Appeal dated February 26, 2016 the appellant stated that she disagreed with the reconsideration decision of the ministry because the ministry had not considered Section 14(1) of the EAA.

A representative of the ministry attended the hearing, and stated that the ministry had recalculated the value of the appellant's motor vehicle and determined that the current value of the vehicle falls within the maximum allowable exemption for a motor vehicle under EAR Section 11(1) (b) (i).

The panel determined that the additional oral evidence of the ministry regarding recalculation of the appellant's motor vehicle was admissible under Section 22 (4) of the Employment and Assistance EAA as evidence in support of the records before the ministry at reconsideration because it referred specifically to the valuation of the appellant's motor vehicle, which was information before the ministry at the time of reconsideration.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of February 10, 2016 which denied income assistance to the appellant because she owned a non-exempt asset with an equity value that exceeded the asset limit allowed under EAR Section 11 (2), namely a motor vehicle with an equity value that exceeded the maximum allowable exemption of \$10,000 for a motor vehicle under EAR Section 11(1) (b) (i).

The relevant legislation is as follows:

EAR:

Definitions

1 (1) In this regulation:

"asset" means

(a) equity in any real or personal property that can be converted to cash,

Asset limits

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,

(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;

EAA:

Consequences of not accepting or disposing of property

14 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

(a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements.

The appellant argues that she needs her motor vehicle in order to travel to and from work and to drive her child to and from her distributed learning centre. She adds that she is unable to sell the vehicle because it was purchased by her mother. The appellant also argues that the ministry failed to take

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into account the provisions of EAA Section 14 (1) and (3) which allows the ministry to reduce or deny assistance for an applicant who fails to accept assets that would enable the applicant to be completely or partly independent of income or hardship assistance.

In the reconsideration decision the ministry determined that the appellant was ineligible for income assistance because she is the registered owner of a motor vehicle which has an equity value of \$12,000, which exceeds the maximum allowable asset limit of \$4,000 for a two person family unit set out in EAR Section 11(2) (b) and which also exceeds the motor vehicle asset exemption of \$10,000 allowed under EAR Section 11 (1) (b) (i). The ministry also determined that the additional exemptions set out in Sections 11(2.1), (2.2) and (2.3) were not applicable to the appellant's circumstances. Because the appellant did not meet any of the exemption criteria the appellant was deemed ineligible for income assistance.

At the hearing the ministry argued that it had reconsidered and recalculated the equity value of the motor vehicle to be under the allowable motor vehicle asset exemption of \$10,000, and asked that the reconsideration decision of February 10, 2016 be rescinded.

PANEL DECISION

1. Jurisdiction of the Panel

If a hearing is held under EAA Section 22 the panel must make a determination under Section 24 as follows:

24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and
- (b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

The panel has no discretion to dismiss the appeal by its own motion unless it considers the appeal to be frivolous, vexatious or trivial. If the appellant and the ministry do not submit a signed consent to dismiss the appeal under Section 23 before the panel makes a decision, the panel is required to determine the reasonableness of the reconsideration decision.

2. Equity Value of the Motor Vehicle

In the reconsideration decision the ministry determined that the equity in the appellant's motor vehicle amounted to \$12,000, based on a dealership's independent valuation of the vehicle. At the hearing the ministry representative gave oral evidence that the ministry had recalculated the value of the vehicle to be within the allowable asset limit of \$10,000. However, the ministry did not provide a new equity valuation amount and did not provide any third party documentation to support its verbal evidence.

Taking into account the independent VMR Canada wholesale valuation of \$17,825, the purchase price of \$14,422 and the dealership's January 4, 2016 independent valuation of \$12,000 the panel finds that the ministry reasonably determined that the equity value of the appellant's motor vehicle exceeded the maximum allowable equity value of \$10,000 allowed under EAR Section 11(1) (b) (i).

3. Appellant's Eligibility for Income Assistance

The appellant is the sole registered owner of the motor vehicle in question. EAR Section 11 (2) (b) states that a family unit consisting of an applicant and one or more dependants is not eligible for income assistance if it possesses assets with a total value of more than \$4,000. A motor vehicle used for day to day transportation needs is exempted from the maximum allowable asset total of \$4,000 provided that its equity value does not exceed \$10,000.

The panel finds that the ministry reasonably determined that the appellant's vehicle was not an eligible exemption under EAR Section 11 (1) (b) (i) because its equity value exceeded the \$10,000 allowable maximum. The panel also finds that the ministry reasonably determined that the appellant was ineligible for income assistance because she possessed non-exempt assets with a total value of more than \$4,000.

4. Application of EAA Section 14 (1)

EAA Section 14 allows the ministry to reduce or deny assistance for an applicant who fails to accept assets that would enable the applicant to be completely or partly independent of income or hardship assistance. In her Notice of Appeal the appellant argued that the ministry failed to consider EAA Section 14 (1) in making the reconsideration decision, presumably because she had accepted the motor vehicle as a gift from her mother to assist with travel to and from work.

The panel finds that the ministry was reasonable in not applying EAA Section 14(1) because a gift of a motor vehicle with an equity value exceeding \$10,000 is not listed as an allowable asset exemption under EAR Section 11 (1).

5. Conclusion

In conclusion the panel finds that the ministry's determination that the appellant was ineligible for income assistance because her assets exceeded the allowable asset limit of \$4,000 for a two person family unit and did not meet the exemption criteria set out in EAR Section 11(1) is a reasonable application of the applicable enactments in the circumstances of the appellant, and confirms the decision.