



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the "ministry") reconsideration decision of May 18, 2016 in which the ministry denied income assistance to the appellant because he 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 real property that was not the family unit's personal residence under EAR Section 11(1)(c) with an equity value that exceeded the maximum allowable exemption of \$2,000 under EAR Section 11(2)(a).

PART D – Relevant Legislation

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

PART E – Summary of Facts

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

1. A Request for Reconsideration (RFR) signed and dated May 10, 2016 which states in part that the appellant has been unable to find work despite his best efforts;
2. An Application for Income Assistance Parts 1 and 2 signed by the appellant and dated April 26, 2016, in part indicating real property owned by the appellant in the form of a one-story house valued at \$55,800; and,
3. An Assessment Notice dated January 13, 2014 for real property in the name of the appellant showing a 2014 property assessment value for the property for tax purposes of \$55,800.

The appellant is a single person with no dependents. In April 2016 he applied for income Assistance as a sole recipient.

In his Notice of Appeal dated May 25, 2016, the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that without income assistance he will be homeless and that he has no family or friends in the community in which he lives. The prospect of becoming homeless causes him extreme stress and fear.

A witness attended the hearing on behalf of the appellant and stated that he manages a combined single men's shelter and low income housing facility in the appellant's home community. He stated that he has known the appellant for several years, that the appellant had previously resided in the single men's shelter, and that the appellant was currently living in a low income housing unit for which he was responsible for rent for the month of June which had not yet been paid.

While a party may wish to submit additional evidence to the panel on appeal, the panel is only empowered to admit oral or written testimony in support of the record of the ministry reconsideration decision. If the additional evidence does not substantiate or corroborate the information and records before the minister at reconsideration it does not meet the test of admissibility under Section 24(4)(b) of the Employment and Assistance Act (EAA).

The panel determined that the additional oral evidence of the appellant's witness regarding the appellant's current living arrangements was admissible under Section 22(4) of the EAA as evidence in support of the records before the ministry at reconsideration because it supported the appellant's contention expressed in the RFR that he needs financial support for rent and food.

At the hearing, the appellant said that he has been actively looking for full-time employment and had recently found a part time job. He indicated that he had no job prospects in any other community, and that he would not be able to find work in or near the community in the Province in which his residential property was located. The appellant said that the property in his name is a small portion of a 150 acre farm jointly owned by the appellant and his four siblings. The appellant also stated that he is estranged from his siblings and is not on speaking terms with them.

He stated that the portion of the property on which the house sits was signed over to him when his uncle died and he has legal title to that portion of the property. The appellant stated that he used to

live in the single-story house on the property and that it has been vacant since he left the community several years ago. He confirmed that there were no loans outstanding against the property, but that there were some property taxes owing.

The panel accepted the appellant's contention that there were some property taxes owing on the property as argument.

A representative of the ministry attended the hearing and did not introduce any new evidence: the ministry relied on its reconsideration decision, which was restated in summary form at the hearing.

PART F – Reasons for Panel Decision

The issue under appeal is the ministry's reconsideration decision of May 18, 2016 wherein the ministry determined that the appellant was not eligible for income assistance because he owned a non-exempt asset with an equity value that exceeded the asset limit allowed under Sections 11(1) and 11(2) of the EAR was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant legislation is as follows:

Section 1

Definitions

1 (1) In this regulation:

"asset" means

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

Section 11

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 \$10 000,
 - (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 supported 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 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;

(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 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) one applicant or recipient in the family unit 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 the family unit has assets with a total value of more than \$100 000;

(d) 2 applicants or recipients in the family unit receive accommodation and care in a private hospital or a special care facility, other than an alcohol or drug treatment centre, or are admitted to a hospital for extended care, and the family unit has assets with a total value of more than \$200 000.

(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) in the case of a family unit that includes one applicant or 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, \$100 000, or

(b) in the case of a family unit that includes 2 applicants or recipients who have applied for and have not been denied, or who the minister is satisfied have a genuine intention to apply for, designation as a person with disabilities, \$200 000.

(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.

(3) The minister may authorize one or more of the following:

(a) that for a family unit that includes a person who has persistent multiple barriers to employment or a person who has reached 65 years of age, the total cash surrender value of an uncashed life insurance policy of an applicant or recipient is not to be included as an asset 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.

(4) Repealed. [B.C. Reg. 197/2012, Sch.1, s. 9.]

Panel Decision

Appellant's Position

The appellant does not dispute ownership of an asset in the form of real property, nor does he question its assessed value.

However, he does state that any attempt to sell his portion of the property would be extremely difficult as it would be complicated by joint ownership of the entire property. Although he agrees with the ministry's position that there are no loans outstanding against the property, the appellant asserts that there are some property taxes owing.

Ministry's Position

The ministry argues that because Section 11(2) of the EAR says that a person is not eligible for income assistance if he/she has assets with an equity value in excess of \$2,000, and because the real property owned by the appellant is valued at more than \$2,000 and is not his personal residence, he is not eligible for income assistance under the Section 10 of the EAA.

Equity Value of the Real Property

In the reconsideration decision the ministry determined that the equity in the appellant's real property amounted to \$55,800 based on the 2014 property assessment for tax purposes and considering the information available at reconsideration which indicated that there were no debts against the property.

The panel finds that the ministry reasonably determined that the appellant's equity in the real property was an asset that can be converted to cash under EAR Section 1(1). While it is possible that the current value of the asset is less than \$55,800 based on the appellant's testimony that there are property taxes outstanding, the panel finds that it is reasonable to assume that the asset value after any outstanding property taxes are paid will exceed the maximum allowable exemption of \$2,000 under EAR Section 11(2)(a).

Appellant's Eligibility for Income Assistance

All of the evidence indicates that the appellant is the sole owner of the real property asset in question. EAR Section 11(2) states that a family unit consisting of an applicant with no dependants who is not receiving accommodation and care in a private hospital or a special care facility, other than an alcohol or drug treatment centre, or who has not been admitted to a hospital for extended care, is not eligible for income assistance if the applicant possesses assets having a total value of more than \$2,000. An applicant's place of residence is exempted from the maximum allowable asset total of \$2,000 under EAR Section 11(1)(c).

The panel finds that the ministry reasonably determined that the maximum total value of assets of

\$2,000 allowed under EAR11(2)(a) is the appropriate total value of assets to be used in determining the applicant's eligibility for income assistance because the appellant was a sole applicant who was not receiving accommodation and care in a private hospital or a special care facility and had not been admitted to a hospital for extended care. The panel finds that the ministry reasonably determined that the appellant's real property was not an eligible exemption under EAR Sections 11(1)(c) because it was not the appellant's place of residence. The panel further finds that that the ministry reasonably determined that the equity value of the asset exceeds the asset limit allowed in establishing income assistance eligibility under EAR Section 11.

Conclusion

The panel finds that the ministry's determination that the appellant was not eligible for income assistance because he owned a non-exempt asset with an equity value that exceeded the asset limit allowed under Section 11(2) of the EAR was reasonably supported by the evidence. The panel confirms the reconsideration decision in accordance with sections 24(1)(a) and 24(2)(a) of the EAA and therefore finds that the appellant is not successful in his appeal.