

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated August 12, 2016 wherein the ministry denied disability assistance to the appellant because he owns real property valued in excess of the asset limit allowed under Section 10(2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and which does not fall within the allowable exemptions set out in EAPWDR Section 10(1).

### PART D – Relevant Legislation

EAPWDR Sections 1(1), 10(1) and 10(2)

## PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

- The appellant's request for reconsideration dated July 27, 2016 which included a three page written submission stating that:
  - He needs the social assistance to pay his bills and that it is nearly impossible for him to pay all of his bills on time and in full based on his disability assistance amount of \$863.00 [Canada Pension Plan (CPP) disability amount];
  - He has a mortgage on a property at Location X (Property X) upon which he had to take out a mortgage a couple of years ago when he bought out his brothers' interests in the property;
  - He had a joint mortgage on a property at Location Y (Property Y) with his ex-spouse which was re-financed together with Property X when he bought out his brothers' interests in Property X;
  - Since the mortgage was refinanced he and his ex-spouse are each responsible for paying an equal share of the mortgage on the two properties each month;
  - He is asking the ministry to pay him an additional \$43 per month, representing the difference between the \$863 per month CPP disability amount he currently receives and the disability assistance payment amount of \$906 per month, and to provide him with a bus pass;
  - He cannot sell either of the properties because he lives in Property X and his ex-spouse lives in Property Y; and
  - He does not want to become homeless;
- A six page Employment and Assistance Persons with Disabilities Review form in the name of the appellant dated May 18, 2016 indicating monthly expenses including a jointly-owned mortgage payment of \$1,500 and a 50% share in real property assets for Property X valued at \$841,000 and for Property Y valued at \$850,000;
- Bank profiles dated April 18, 2016 and May 19, 2016 indicating the current balances on those dates of a chequing account in the name of the appellant and a personal loan and mortgage held jointly between the appellant and the appellant's ex-spouse;
- Six pages showing recent transactions in the above-noted chequing account in the name of the appellant;
- Two page statement showing recent transactions in the above-noted personal loan account in the name of the appellant and his ex-spouse;
- One page statement showing recent transactions in the above-noted mortgage account in the name of the appellant and his ex-spouse;
- A 2016 property assessment roll report dated April 19, 2016 showing a total actual 2016 value of of \$918,000 for Property Y;
- Other recent property assessment roll reports, property tax notices, a 2015 property assessment notice for Property X and assorted utility bills for both properties; and
- Letter from the appellant's ex-spouse dated June 9, 2016 confirming that she made a deposit of \$1,200 on April 11, 2016 and a deposit of \$1,600 on May 10, 2016 into the joint mortgage account identified above.

The appellant is a single person with a persons with disabilities (PWD) designation.

At the hearing the appellant said that currently he co-owns both properties together with his ex-spouse, and that he cannot convert or sell either property because he lives in one property and his ex-spouse lives in the other and that neither of them is willing to sell.

The appellant stated that he had provided the ministry with a letter written by his wife confirming her non-willingness to sell Property Y. In response to a question from the ministry the appellant stated that the letter from his wife had been provided to the ministry in 2012 or earlier in relation to an earlier appeal and had not been re-submitted with this appeal.

The appellant explained that he was currently receiving a Canada Pension Plan (CPP) disability pension of \$863.00 per month and that he was only asking the ministry for \$43.00, which was the difference between the CPP disability pension and the PWD disability assistance entitlement of \$906.00, plus a monthly bus pass.

Despite a statement in the ministry's reconsideration decision which said that the appellant had a mortgage on Property X, the appellant confirmed that there is no mortgage on Property X, which is his residence and which the ministry has acknowledged is exempt. He says that the mortgage in on Property Y which is his ex-spouse's residence, is their joint (50/50) responsibility and is currently valued at \$376,000.

In addition the appellant and his ex-spouse share an outstanding debt on a related line of credit totalling \$50,000, for a total outstanding debt of \$426,000. The mortgage was taken out to enable the appellant to buy out his brothers' interest in Property X and was placed against Property Y.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision dated August 12, 2016 wherein the ministry denied disability assistance to the appellant because he owns real property valued in excess of the asset limit allowed under Section 10(2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and which does not fall within the allowable exemptions set out in EAPWDR Section 10(1).

The relevant legislation is set out in the EAPWDR:

### Definitions

**1** (1) In this regulation:

... "**asset**" means

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

### Asset limits

**10** (1) The following assets are exempt for the purposes of subsection (2):

... (c) a family unit's place of residence ...

(2) A family unit is not eligible for disability assistance if the family unit has assets with a total value of more than the following:

(a) in the case of a family unit that includes one applicant or recipient who is designated as a person with disabilities ... \$100 000 ...

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### *The Appellant's Position*

In his Notice of Appeal (NOA) dated September 13, 2016 the appellant stated that the ministry did not consider all of the reasons and it was making housing an issue. He stated that the ministry wants him to sell one of his houses and live on the street.

### *The Ministry's Position*

The ministry relied on its reconsideration decision, which it summarized at the hearing. The ministry said that the reason that the reconsideration decision stated that the appellant had a mortgage on Property X was because the appellant had stated in his request for reconsideration that "I have a mortgage on (Property X) in the amount of \$375,000." The appellant explained at the hearing that he meant to say that he *used to have* a mortgage on Property X before he and his ex-spouse bought out the appellant's brothers' interest in Property X by taking out a joint mortgage on Property Y. He said he was not qualified to apply for mortgage by himself. In either case, the ministry's position is that the appellant has non-exempt equity in Property Y which can be converted to cash in an amount that exceeds the legislated limit of \$100,000.

### *The Panel's Decision*

EAPWDR Section 1 defines asset to include equity in any real or personal property that can be converted to cash, therefore both Property X and Property Y fit the definition of asset.

Section 10(1)(c) of the EAPWDR says that an asset is an exempt asset for the purpose of determining an applicant's eligibility for disability assistance if it is the family unit's place of residence. Because Property X is the appellant's place of residence, it is an exempt asset.

Section 10(2)(a) of the EAPWDR states that a family unit which includes one applicant who is designated as a PWD is not eligible for disability assistance if the family unit has assets with a total value of more than \$100,000. The appellant represents a family unit comprising a single person who has been designated as a PWD, therefore he is not eligible for disability assistance if he has assets with a total value in excess of \$100,000.

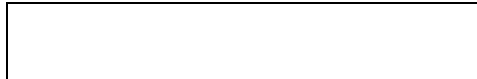
The fact that the appellant has a 50% ownership in Property Y, the non-exempt asset, is not contested by the appellant. The evidence shows that the mortgage is held jointly by the appellant and his ex-spouse, and that appellant's ex-spouse makes regular contributions towards the mortgage by depositing funds monthly into the appellant's bank account. The panel finds that the ministry has reasonably determined that the appellant and his ex-spouse share a 50% ownership in Property Y.

With respect to the appellant's contention that his ex-spouse will not consent to the sale of Property Y, the ministry contends that there is no evidence to indicate that the appellant's ex-spouse is preventing the appellant from accessing his equity in Property Y or that he is unable to pursue legal action to access it. Furthermore, the ministry contends that the appellant's ex-spouse is co-owner of both properties, acquiring a half share in Property X in 2013, and continues to make payments towards the mortgage which is jointly held. The panel finds that the ministry reasonably determined that there is insufficient evidence to establish that the appellant is unable to convert his share of the equity in Property Y to cash.

The ministry has assessed the value of the non-exempt property co-owned with the appellant's ex-spouse at \$918,000. The panel finds that the ministry reasonably determined the current value of the property at that amount as it represents the 2016 assessed value of the property for tax purposes.

Based on an assumption that the mortgage was on Property X, the ministry had determined that the appellant's interest in Property Y was one half of its assessed value, or \$459,000. Because the mortgage is on Property Y, which is the non-exempt property, the panel calculates the appellant's equity in Property Y to be one half of the difference between the assessed value of the property (\$918,000) and the outstanding mortgage (\$376,000), or \$271,000, ignoring the outstanding line of credit amount. However, the appellant has argued that the \$50,000 line of credit is secured by the mortgage and is therefore an additional debt relating to Property Y and should be added to the \$376,000 in mortgage debt before calculating the appellant's equity in the property. The panel finds that even if the full value of the line of credit owing is assigned to the appellant and is secured against Property Y, the appellant's equity interest in Property Y is \$221,000, or \$121,000 in excess of the asset limit pursuant to Section 10(2)(a) of the EAPWDR.

Given the evidence presented, the panel finds that the ministry reasonably concluded that the appellant was not eligible for disability assistance because he owns non-exempt real property which



can be converted to cash valued in excess of the asset limit allowed under Section 10(2) of the EAPWDR.

*Conclusion*

The panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and reasonably supported by the evidence and confirms the ministry's decision. The appellant was not successful in his appeal.