

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“the ministry”) dated 05 December 2017 that found that the appellant is not eligible for income assistance. The ministry determined that the value of the appellant’s cash assets in his bank account exceeds the allowable limit of \$2000 for a sole applicant as specified in section 11(2) of the Employment and Assistance Regulation (AER). The ministry also held that the minister is not satisfied that the appellant has a genuine intent to apply for person with disabilities (PWD) designation and that therefore the asset limit of \$100,000 as set out in section 11(2.1) of the EAR does not apply to him.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR), sections 11(2) and 11(2.1).

PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included:

1. The appellant's Application for Assistance (Part 2), dated 30 October 2017.
According to ministry records, with his application the appellant declared \$5,799.99 in a bank account.
2. From the ministry's files, as reported in the reconsideration decision:
The ministry sent a message to the appellant via its online My Self-Serve facility inquiring if he was intending on applying for PWD designation, and the appellant replied on 17 November 2017, "I am not sure regarding PWD (persons with disabilities) status as I will only be disabled for about three months post operation, and therefore not meeting some requirements (regarding the length of time)."
3. The appellant's Request for Reconsideration dated 23 November 2017. Under Reasons, the appellant writes:
"I would like to make a request for reconsideration based on the attached documents of the prior email, please check file, bearing my reason for applying for assistance. I have rent to pay and am incapable of working, my available balance is \$4,419.89 and as of December 2 will be less than \$4,000. My mother's business has slowed down as it is winter and she needs me to help out with rent and utilities."

With his Request for Reconsideration, the appellant provided the following:

- A "To whom it may concern" letter from the appellant's personal care coordinator, dated 07 November 2017, who writes:
"Due to [the appellant's] injury to his left wrist he is unable to use his left hand in a normal capacity therefore he is unable to work at this time. He is scheduled for surgery December 21, 2017 and is expected to need an additional three months off for recovery following the procedure. Should you require any additional information please contact [name and phone number of physician]."
- An updated bank profile, undated, showing 4,419.89 in his account.
- An October and November 2017 rent invoice, an MSP invoice and an invoice for occupational therapy services.

Notice of Appeal

The appellant's Notice of Appeal is dated 05 December 2017. Under Reasons, the appellant quotes from the reconsideration decision: "The minister determines you have not indicated a genuine intent to apply for PWD designation and therefore section 11(2.1) does not apply to you." He then writes, "Please review our transcripts, I have indicated just that and continue to do so."

The hearing

With the consent of both parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

In a submission before the hearing, the appellant refers to two communications with the ministry, the first dated 08 November 2017, headed "Request more information." He writes:

"I have no current EI claim to make, no physical ROE either but I was employed in [city] and [another city] this summer past when I snapped my wrist. Perhaps PWD status is what I'm requesting, what do you think?

I am staying with my mother, living off savings and was presumed to be healed by now but due to complications (malformed scaphoid) I am in need of surgery which hampers my productivity for a further 12 weeks from December 21 on.

The last 60 day bank statement was a printable version from the [bank] website, this one is a screenshot of the actual website, thanks."

The second communication is dated 17 November 2017, headed "Request for more information." This reads the same as quoted in para. 2 above, but ends "Please advise. Thank you."

The balance of the appellant's submission goes to argument (see Part F, Reasons for Panel Decision, below)

In an email dated 02 January 2018 the ministry states that its submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of additional information

As the communications referred to by the appellant in his submission were before the ministry at reconsideration, the panel accepts the appellant's Notice of Appeal and submission as argument.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry was reasonable in finding that the appellant was not eligible for income assistance. More specifically, the issue is whether the following ministry determinations are reasonably supported by the evidence or are a reasonable application of the legislation in the circumstances of the appellant:

- The value of the appellant's cash assets in his bank account exceeds the allowable limit of \$2000 for a sole applicant as specified in section 11(2) of the EAR); and
- The minister is not satisfied that the appellant has a genuine intent to apply for person with disabilities (PWD) designation and that therefore the asset limit of \$100,000 as set out in section 11(2.1) of the EAR does not apply to him.

The relevant legislation is from the EAR:

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;

Asset limits

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

[a list of 46 different types of assets, none of which the appellant argues apply to this appeal]

(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.

Analysis

The position of the appellant, as explained in his submission on appeal, is that the premise of his appeal is founded on the fact that he was ignored or denied information regarding his request for PWD status. He writes that he certainly provided genuine intent and refers to communications with the ministry that he states were not included in the appeal record.

The appellant argues that, while he was requesting information pertaining to his situation and a move to PWD status, he was formally processed. He thought he was helping but in hindsight he now sees that he was interfacing with what he terms "stock, somewhat fitting, pasted responses designed to conclude the interaction." He then quotes verbatim the emails he sent on 08 and 17 November 2017 (see Part F above).

The appellant explains that he never received an answer to these questions, particularly that in the second communication, and argues that there was no mistaking the intention of that email. He writes that he feels it should be noted that, before he made any request for assistance, he waited many months for his wrist to heal before finding out that he would need to have it re-broken and some new bone grafted into the area. If he qualifies for PWD this should have been clear to the minister at least a month ago. He has rent to pay, uncovered medical bills and medical insurance bills, he cannot work and he will have been disabled for eight months by the time he is expected by the doctor to be recovered.

The position of the ministry, as set out in the reconsideration decision, is that the value of his bank account meets the definition of "asset" under section 1 of the EAR because it is money standing to his credit with a savings institution and is therefore considered a cash asset. Although the appellant has indicated that as of 02 December 2017 he will have less than \$4,000 in his account, the ministry noted that the most recent information confirms his balance is currently \$4,419.89, an amount that exceeds the allowable limit of \$2,000 for a sole applicant as specified in EAR section 22(2).

As the balance in the appellant's bank account is available to him as cash on demand, the panel finds that the ministry was reasonable in determining that the funds in his bank account are "cash assets" and therefore meet the definition of "asset" under section 1(1) of the EAR. The panel finds that the ministry was also reasonable in determining that, on the basis of the most recent information available to the ministry, the value of this asset exceeded the \$2000 at the time of reconsideration.

The ministry also found that there are no exemptions listed for this type of asset in section 11(1) of the EAR. The appellant does not argue that any of these exemptions apply. The panel has reviewed the 46 different types of assets listed in section 11(1), and without any information provided by the appellant that his asset falls into one of these categories, finds that the ministry was reasonable in determining that none of these exemptions apply to the appellant's assets.

In its decision, the ministry recognized that the appellant has a medical condition that is currently preventing him from working. However, the ministry determined that the appellant has not indicated a genuine intent to apply for PWD designation and therefore EAR section 11(2.1) does not apply to him.

The legislation requires that the minister be "satisfied" that the person has a genuine intention to apply for PWD designation. In the panel's view, for the minister to be "satisfied" with this intention, it is reasonable for the ministry to expect the person to provide the ministry with a definitive statement of intent, or would be demonstrated by a request to the ministry for the Persons with Disabilities Designation Application booklet. In this case, the evidence is that the ministry asked the appellant whether he was intending on applying for PWD designation, and in his response on 17 November 2017 the appellant stated that, "I am not sure regarding PWD status," going on to explain that he will be disabled for only about three months post-operation and "therefore not meeting some of requirements (regarding length of time)." He concluded by asking, "Please advise." The panel considers it unreasonable for the appellant to expect the ministry, without a complete picture of the nature, duration, severity, and impacts of his impairments as would be documented in a PWD Designation Application, to respond by prejudging an adjudication of any application that might be made.

Based on the evidence, the panel therefore finds that the ministry was reasonable in determining that the appellant has not indicated a genuine intent to apply for PWD designation and that therefore EAR section 11(2.1) does not apply to him.

Conclusion

Based on the foregoing, the panel finds that the ministry's decision determining that the appellant was not eligible for income assistance is reasonably supported by the evidence. The panel therefore confirms the ministry's decision. The appellant is thus not successful in this appeal.