

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (the "Ministry") reconsideration decision dated August 22, 2013 which held that the appellant was ineligible for disability assistance due to having assets in excess of the allowable limit of \$5,000.00 pursuant to section 3 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA") and sections 1 and 10 of the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR")

**PART D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act*, section 3  
*Employment and Assistance for Persons with Disabilities Regulation*, section 1 and 10

## PART E – Summary of Facts

The evidence before the Ministry at reconsideration was as follows:

1. Letter dated July 31, 2013 from the appellant's daughter (the "Daughter") to the Ministry (the "AD Letter")

The Daughter, in response to a letter written by the Ministry dated July 30, 2013, addressed a number of issues that were unresolved at the time of writing the AD Letter that have since been addressed by the Ministry in the Reconsideration Decision dated August 22, 2013 (the "Reconsideration Decision") and no longer form part of the issue under appeal.

Of continued relevance, however, was property located in another province (the "Extra-Provincial Property") that was identified as property belonging to both the Daughter and the appellant as joint tenants.

The Daughter explained that she purchased the Extra-Provincial Property independently and clarified that it was in June 27, 2009 not January 4, 2011 as suggested by the Ministry.

The Daughter stated that the appellant was added to title to allow him to have the authority to sell the Extra-Provincial Property and care for the Daughter in the event she was unable to take care of herself. According to the Daughter the transfer took place prior to the appellant's accident.

The Daughter stated that the transfer was done by way of a Power of Attorney ("POA") previously signed by the appellant giving the Daughter POA over the appellant. The POA was added to title December 14, 2010. The Daughter noted that she emailed to the Ministry on January 4, 2011 notifying the Ministry of the "registration number" of the land title document.

The Daughter further explained that appellant was not on the mortgage to the Extra-Provincial Property and when it was sold the appellant did not receive any of the sale proceeds.

2. Letter dated August 3, 2013 from an advocate (the "Advocate") at a Brain Injury Society to the Ministry (the "BI Letter")

The Advocate addressed a number of issues that were unresolved at the time of writing the BI Letter that have since been addressed by the Ministry in the Reconsideration Decision and no longer form part of the issue under appeal.

Of continued relevance, however, was a message left on the Advocate's voice mail from the Ministry revealing the Ministry had discovered the appellant was an "owner" of the Extra-Provincial Property.

The Advocate stated that she questioned the appellant about the Extra-Provincial Property and he insisted he only owned two properties in British Columbia: 1) his primary residence ("Property One") and 2) vacant land ("Property Two"). Property One and Property Two were previously disclosed to the Ministry and do not form part of the issue under appeal.

The Advocate stated that she contacted the Daughter to inquire about the Extra-Provincial Property and it was revealed by the Daughter that she had in fact added the appellant onto title sometime *after* she purchased the Extra-Provincial Property.

The Advocate explained the reason given by the Daughter was that if anything happened to the Daughter that he would "receive" the condo. The Advocate was informed that the Daughter was planning on marrying and that she had already sold the condo and that the appellant received none of the sale proceeds.

3. Letter dated August 7, 2013 from AA ("Advocate Two"), husband of AB, an advocate of the appellant, to the Ministry (the "AA Letter")

Advocate Two addressed a number of issues that were unresolved at the time of writing the AA Letter namely that the appellant had been working and that the appellant had a mortgage. These issues have since been addressed by the Ministry in the Reconsideration Decision and do not form part of the issue under appeal.

4. The Ministry Information/Documentation Checklist dated May 28, 2012 required by the Ministry to determine the appellant's eligibility for income assistance.
5. The Ministry Application for Disability (Part 1) signed by the appellant and dated May 22, 2012.
6. The Ministry Application for Disability (Part 2) signed by the appellant and dated May 22, 2013.
7. Assessment Roll Report dated July 17, 2012 for Property One showing the assessed value at \$285,000 in 2012.
8. Form A Freehold Transfer registered at the Land Title Office on September 23, 2002 showing Property One being transferred from the sellers to the appellant for consideration of \$50,000.00.
9. Assessment Roll Report dated May 17, 2012 for Property Two showing the assessed value at \$77,000 in 2012.
10. Form A Freehold Transfer registered at the Land Title Office on May 15, 2009 showing Property Two being transferred from the sellers to the appellant for consideration of \$63,000.00.
11. Land Title Certificate for the Extra-Provincial Property showing the appellant and the Daughter as joint tenants on title. The Extra-Provincial Property was registered in the appellants name by way of a Power of Attorney on January 4, 2011. Consideration for the transfer is listed as nominal.
12. Letter from a realty company signed by the Daughter (no date on the letter) stating that Property Two was put on the market "over a year ago" and gave a general explanation of the slow market in the area where Property Two is located.

13. Residential MLS Listing Contract Exclusive Seller Brokerage Agreement dated May 1, 2012 showing the asking price of Property Two in the amount of \$63,000.00. The agreement expired May 1, 2013.
14. Statutory Declaration dated August 26, 2011 (page two of the Power of Attorney) signed by the Daughter. The Statutory Declaration stated that the Daughter was the Power of Attorney for the appellant and that she was nineteen years of age at the time of the appointment which was on June 23, 2011.
15. Residential MLS Listing Contract Exclusive Seller Brokerage Agreement dated June 11, 2011 showing the asking price of the Property Two in the amount of \$85,000.00. The Agreement expires in August 2015.
16. Real Estate Board for Property Two showing the listing date being September 9, 1995.
17. Real Estate Board for Property Two showing the listing date being January 15, 2008.
18. Real Estate Board for Property Two showing the listing date being July 13, 2009.
19. Real Estate Board for Property Two showing the listing date as February 10, 2010 for the Property Two.
20. Real Estate Board for Property Two showing the listing date being September 14, 2010.
21. MLS Listing Contract for Property Two with the listing date expiration being January 31, 2014.

The appellant provided the following additional documentary evidence:

1. Letter dated September 3, 2013 from the real property lawyer (the "Lawyer") to the Daughter (the "Lawyer Letter") which detailed, among other things, the sale price being \$236,000.00 and after adjustments and paying out the mortgage what the net sale proceeds were that were to be payable to the Daughter on completion.
2. Letter dated September 3, 2013 from the Lawyer to the mortgagee of the Extra-Provincial Property (the "Lender") showing the mortgage being paid out from the sale proceeds of the Extra-Provincial Property.
3. Payout Statement from the Lender showing the total amount to payout the mortgage.
4. Copy of the Lender Mortgage Statement from the Lender to the Daughter.
5. Letter dated September 3, 2013 from the Lawyer to the Daughter detailing the Lawyer's statement of account for the sale of the Extra-Provincial Property.
6. Letter dated September 3, 2013 from the Lawyer to Daughter with the Lawyer's Trust Reconciliation Statement showing the sale proceed being paid to the Daughter.

7. Statement of Adjustments (the "SOA") for the Extra-Provincial Property listing the appellant and the Daughter as the "vendor" for the Extra-Provincial Property with a sale price of \$236,000.00.
8. Property Tax Statement of Account for the Extra-Provincial Property showing an account balance owing in the amount of \$579.80.
9. Letter dated September 6, 2013 from the Daughter to "whom this may concern" ("AD Letter Two")

The Daughter stated that the appellant "will absolutely not be receiving any funds from the sale of the Extra-Provincial Property." The daughter explained that her and her husband will be purchasing the Second Extra-Provincial Property on September 23, 2013 and the sale proceeds will be used "solely" for the down payment.

The Daughter also stated that she included a copy of the Daughter and her husband's joint account showing the sale proceeds being deposited into their account, as well as a copy of the contract for the purchase of the Second Extra-Provincial Property.

10. Copy of a deposit receipt dated July 4, 2013 from the Lawyer showing the net sale proceeds being deposited into a bank account in the amount of \$15,183.49. The document states the amount was paid to the Daughter with an explanation listed as "net sale proceeds to client."
11. Copy of a statement of account dated April 30, 2013 to May 31, 2013 in the name of the Daughter and her husband.
12. Copy of a statement of account dated June 28, 2013 to July 31, 2013 in the names of the Daughter and her husband.
13. Copy of a statement of account dated July 31, 2013 to August 30, 2013 in the names of the Daughter and her husband.
14. Residential Purchase Contract in the names of the Daughter and her husband for the Second Extra-Provincial Property which shows a final signing date of August 1, 2013.
15. Land Title Certificate title showing current registered owners of the Extra-Provincial Property as of August 13, 2013. Consideration for the Extra-Provincial Property was listed at \$236,000.00.
16. Land Title Certificate title showing the current registered owners of the property for property that is to be purchased by the Daughter and her husband on September 23, 2013 (the "Second Extra-Provincial Property"). The consideration of the property was listed at \$450,000.00.
17. Letter dated September 11, 2013 from the appellant to the Employment and Assistance Appeal Tribunal of British Columbia (the "Tribunal") (the "Appellant Letter")

The appellant stated that he did not receive any funds or benefits "of any kind, at any time" from the Daughter for the sale of the Extra-Provincial Property and that the Daughter only put his name on title long after she bought the Extra-Provincial Property in the event something happened to her.

The appellant explained that the Daughter has since sold the Extra-Provincial Property and that the Daughter and her husband are using the equity from the sale of the Extra-Provincial Property to buy property completing on September 23, 2013.

At the hearing, the appellant provided the following additional oral evidence:

1. the appellant did not pay property taxes, utilities or other monthly household expenses for the Extra-Provincial Property;
2. the appellant did not sign the sale documents for the Extra-Provincial Property, including the contract of purchase and sale and other legal documents. He stated that he did not have a say or know what the selling price was or what the net sale proceeds were; and
3. the appellant injured himself on February 4, 2011.

The Ministry objected to the additional written evidence submitted by the appellant. When asked what the basis of the objection was the Ministry stated that the evidence could have been submitted earlier than the date it was submitted and therefore should not be accepted at this later date.

The panel determined the additional evidence was admissible under section 22(4) of the EAA as it was in support of the records before the Ministry at reconsideration.

## PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision to deny the appellant disability assistance due to the appellant having assets in excess of the allowable limit of \$5,000.00 pursuant to section 10(2)(a) of the EAPWDR is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstance of the appellant.

The legislation provides that a recipient is not eligible for disability assistance if the recipient has assets over the allowable limit of \$5,000.00 unless there is an exemption that expressly provides for the asset.

Assets have been defined by section 1(1)(a) of the EAPWDR and defines 'assets' to include equity in real property that can be converted to cash. Section 1(1)(a) of the EAPWDR states the following:

1 (1) In this Act:

"asset" means

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

Section 10 of the EAPWDR further provides for circumstances that will render a 'family unit' ineligible for disability assistance. Specifically section 10(2)(a) of the EAPWDR states that a family unit is not eligible for disability assistance if, among other things, the family unit has assets with a total value of more than \$5,000.00. A family unit is defined in section 1(1)(2) of the EAPWDA to include a "recipient."

Section 10(2)(a) states:

(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;

The Ministry argues that the appellant is not eligible for disability assistance as the appellant has property in another province (in addition to Property One and Property Two which have been disclosed to the Ministry and does not form part of this appeal) which he is listed as a joint owner along with the Daughter.

The Ministry concluded that as there is no exemption listed in section 10(1) of the EAPWR that would otherwise entitle the appellant to have an asset over \$5,000.00 he was therefore not eligible for disability assistance.

The appellant argues that he did not own property in another province and that he was unaware that he had been transferred onto title with the Daughter as joint tenant as this had been done by the Daughter without the appellant's knowledge as a precautionary measure in the event something happened to the Daughter.

The appellant stated that he did not contribute or expend any monies to the overall costs associated with the Extra-Provincial Property. He claimed that he was not a mortgagor on the mortgage registered on the title to the Extra-Provincial Property and he did not receive any of the sale proceeds from the recent sale.

***Does the appellant have an asset in excess of \$5,000.00?***

The appellant submitted a number of documents to support he was added to the Extra-Provincial Property title by way of a Power of Attorney. One of which was a Land Title Certificate for the Extra-Provincial Property which confirmed the appellant was transferred onto title by way of Power of Attorney. The Land Title Certificate listed a registered Power of Attorney on January 4, 2011 with the appellant listed as 'Grantor' and the Daughter listed as "Attorney."

The appellant and the Daughter both gave evidence that the only reason the appellant was transferred to title was as a "preventative measure" in the event anything were to happen to the Daughter the appellant would be able to take care of her.

The appellant claimed that he was not on the mortgage to the Extra-Provincial Property and did not contribute financially for the property taxes, utilities or other monthly expenses.

The mortgage documents that were submitted confirm that the Daughter was the only one on title at the time of purchase and remained the only mortgagor until the time she sold the Extra-Provincial Property and paid out the mortgage.

The monthly property taxes were also debited from an account belonging to the Daughter which was evidenced by the Daughter's bank statement. There were no documents to support that other household expenses were made only by the Daughter, however, given the limited financial position of the appellant it is reasonable to believe that he did not contribute financially to the Extra-Provincial Property.

The appellant also claimed that he "did not receive any funds or benefits of any kind, at any time" from the Daughter for the sale of the Extra-Provincial Property and submitted sale documents for the sale confirming the sale proceeds were paid directly to Daughter by the Lawyer and deposited into a joint account with her husband.

The Lawyer also addressed all the correspondence exclusively to the Daughter with the exception of the Statement of Adjustments which listed both the appellant and the Daughter as seller. The Lawyer did include both the appellant and the Daughter in the "re" section of a letter to the Lender regarding the discharge of the mortgage, but this letter was attached to a payout statement from the Lender showing the Daughter as the only mortgagor responsible for the mortgage.

The appellant additionally gave evidence that he did not sign the sale documents and did not have any control over the ultimate selling price. He added that he did not know the amount of the net sale proceeds which is reasonable considering the Daughter signed the legal documents by way of the appellant's POA.

The appellant indicated that the sale proceeds belonged to the Daughter and were going to be used as a down payment for the Daughter and her husband's new home. The Contract of Purchase and Sale signed by the Daughter and her husband was submitted confirming an upcoming purchase by the Daughter and her husband that was to take place on September 23, 2011. The Daughter also confirmed that the sale proceeds were to be used as a down payment for a home for her and her husband.



While the evidence strongly supports that the appellant did not have a beneficial interest in the Extra-Provincial Property, the appellant was a "legal joint owner" on title. The question thus remains: did the appellant "have" an asset in the excess of \$5,000.00?

The law states if a recipient "has" an asset that does not fall within one of the listed exemptions that is in excess of \$5,000.00 the recipient is not eligible for disability assistance.

The Merriam-Webster dictionary defines "have" as something to "hold or maintain as a possession, a privilege, or entitlement..." The definition suggests a sense of ownership that entails an inherent right of possession or disposal with possibility of benefit or a claim to an asset or in this instance the Extra-Provincial Property.

It is clear from the evidence that the appellant was added to title by way of Power of Attorney which was registered on title to the Extra-Provincial Property. The appellant provided sufficient documentation to confirm that he did not contribute financially to assist in the maintenance the Extra-Provincial Property and that he did not profit from the sale.

Having said that, the evidence therefore does not support that the appellant "held or maintained" the Extra-Provincial Property for his benefit or that he had any "entitlement" or "claim" to the Extra-Provincial Property as evidence in his lack of involvement with the Extra-Provincial Property. Again the appellant did not contribute financially to the Extra-Provincial Property and did not receive any financial benefit by being on title when the Extra-Provincial Property sold.

Simply the evidence supports that the appellant was on title as a joint tenant as a precautionary measure taken by the Daughter and done so by way of the appellant's POA. Transferring the appellant to title was to assist the Daughter in possible future health matters if anything were to happen to her, but not with the intention of transferring any interest in the Extra-Provincial Property to the appellant. The appellant - though he was on title as a joint owner, did not "have" an asset.

As the evidence shows that the appellant did not have an asset with a total value of more than \$5,000.00, the panel finds the Ministry's determination that the appellant was ineligible for disability assistance due to having assets in excess of the allowable limit of \$5,000.00 pursuant to section 3 of the EAPWDA and section 1 and 10 of the EAPWDR was not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the decision.