

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry)'s reconsideration decision dated December 10, 2013, finding the Appellant is not eligible to continue to receive assistance as a person with disabilities because a member of his "family unit" has an active sanction of ineligibility.

PART D – Relevant Legislation

The relevant legislation is sections 1, 1.1, 13 and 16 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and sections 27 and 71 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART E – Summary of Facts

The Appellant was not in attendance at the meeting, but the panel was satisfied that he was appropriately notified of the hearing in accordance with section 86(b). A Release of Information is on file signed by the Appellant providing written authorization for both advocates to attend the hearing on his behalf.

The Appellant has been receiving disability assistance since January 2009.

On February 14, 2013, the Appellant contacted the Ministry to inform them that he was now living with his spouse. His spouse had been receiving income assistance as a single person. Upon being notified of this change in living circumstances, the Ministry treated the Appellant and his spouse as a "family unit" under the relevant legislation.

On March 4, the Appellant's advocate was advised that the Appellant and his spouse were ineligible for assistance. The issue was that the Appellant's spouse was subject to an active sanction of ineligibility due to the disposal of an asset for inadequate consideration. Once the Appellant informed the Ministry that he and his spouse were living together they became a "family unit" and that ineligibility applied to both.

In regards to this sanction: the Appellant's spouse transferred her mobile home to her mother by a signed and witnessed note in November 2008. However, this transfer was not registered until August 8, 2012 when the Appellant legally transferred the mobile home to her mother for \$1.00. The Appellant's spouse's mother then sold the mobile home to third party for \$54,500. The Ministry became aware of this transaction in March 2013 and imposed a sanction of 27-months' ineligibility for assistance on the Appellant's spouse. The Ministry provided the Appellant's spouse with an opportunity to have this decision reconsidered, but she did not pursue that option.

On March 8, the Appellant informed the Ministry that he and his spouse had split up. The Ministry removed the spouse from the Appellant's file and he continued to receive assistance.

On November 21, the Appellant again contacted the Ministry to inform them that he and his spouse were living together. The Ministry then advised the Appellant that his "family unit" was ineligible for assistance due to the spouse's active sanction of ineligibility.

The Appellant submitted a request for reconsideration on November 27.



PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's decision finding the Appellant is not eligible to receive assistance as his "family unit" is subject to an active sanction of ineligibility.

The relevant legislation is sections 1, 1.1, 13 and 16 of the EAPWDA:

Interpretation

1 (1) In this Act:

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child;

"family unit" means an applicant or a recipient and his or her dependants;

Meaning of "spouse"

1.1 (1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if

- (a) they are married to each other, or
- (b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

Consequences of not accepting or disposing of property

13 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for disability assistance or hardship assistance or at any time while disability 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 disability assistance, hardship assistance or supplements;
- (b) disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.

(2) A family unit is not eligible for disability assistance for the prescribed period if, within 2 years before the date of application for disability assistance or hardship assistance or at any time while disability assistance or hardship assistance is being provided, an applicant or a recipient has disposed of real or personal property to reduce assets.

(3) In circumstances described in subsection (1), the minister may

- (a) reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
- (b) declare the family unit of the person ineligible for disability assistance or hardship assistance for the prescribed period.

Reconsideration and appeal rights

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;

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- (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
 - (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
 - (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
 - (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
 - (e) a decision respecting the conditions of an employment plan under section 9 [employment plan].

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3) Subject to a regulation under subsection (5) and to sections 9 (7) [employment plan], 17 and 18 (2) [overpayments], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the *Employment and Assistance Act* and the regulations under that Act.

- (5) The Lieutenant Governor in Council may designate by regulation
- (a) categories of supplements that are not appealable to the tribunal, and
 - (b) circumstances in which a decision to refuse to provide disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

and sections 27 and 71 of the EAPWDR:

Effect of failing to pursue or accept income or assets or of disposing of assets

27 (1) For the purposes of section 13 (3) (a) [consequences of not accepting or disposing of property] of the Act in relation to a failure to accept or pursue income, assets or other means of support referred to in section 13 (1) (a) of the Act, the amount of a reduction is \$100 for each calendar month for each applicant or recipient in the family unit and the period of the reduction is

- (a) if the income, assets or other means of support are still available, until the failure is remedied, and
- (b) if the income, assets or other means of support are no longer available, for one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(2) For a family unit that is declared ineligible under section 13 (3) (b) of the Act for disability assistance or hardship assistance because an applicant or recipient in the family unit failed to accept or pursue income, assets or other means of support referred to in section 13 (1) (a) of the Act, the period of ineligibility is,

- (a) if the income, assets or other means of support are still available when the declaration is made, until the failure is remedied, and
- (b) if the income, assets or other means of support are no longer available when the declaration is made, one calendar month for each \$2 000 of the value of the forgone income, assets or other means of support.

(3) For the purposes of section 13 (3) (a) of the Act in relation to the family unit of an applicant

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or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate,

- (a) the amount of the reduction is \$100 for each calendar month for each applicant or recipient in the family unit, and
- (b) the period of the reduction is one calendar month for each \$2 000 of the value of the forgone consideration.

- (4) For the purposes of section 13 (3) (b) of the Act in relation to the family unit of an applicant or recipient who has disposed of real or personal property for consideration that, in the minister's opinion, is inadequate, the period of the ineligibility is one calendar month for each \$2 000 of the value of the forgone consideration.
- (5) For the purposes of section 13 (2) of the Act, the period of ineligibility is 2 calendar months for each \$2 000 of the value of the real or personal property that was disposed of to reduce assets.

How a request to reconsider a decision is made

- 71 (1) A person who wishes the minister to reconsider a decision referred to in section 16 (1) *[reconsideration and appeal rights]* of the Act must deliver a request for reconsideration in the form specified by the minister to the Ministry office where the person is applying for or receiving assistance.
- (2) A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 16 (1) of the Act and may be delivered by
 - (a) leaving it with an employee in the Ministry office, or
 - (b) being received through the mail at that office.

The Ministry's position is that the Appellant's spouse disposed of assets for inadequate consideration as described in section 13(1)(b) of the EAPWDA and consequently has an outstanding sanction of ineligibility under section 13(3)(b) such that her "family unit" is not eligible to receive assistance until May 2015. As the Appellant and his spouse are currently living together, they constitute a "family unit" under sections 1 and 1.1 of the EAPWDA. This means that the Appellant's spouse's active sanction of ineligibility applies to the "family unit" in accordance with section 27(2) of the EAPWDR.

At the hearing, the Appellant's advocate argued that the Ministry is not required to impose a sanction of ineligibility against the Appellant's spouse under section 13(3)(b), but has the option rather to reduce the Appellant's spouse's assistance under section 13(3)(a).

The Ministry's position in this regard as stated in its reconsideration decision is that its decision to impose a sanction on the Appellant's spouse is not in issue here because no reconsideration decision was applied for or made on this decision and the 20-day time limit to request a reconsideration under section 71(2) of the EAPWDR has expired.

The panel finds that the decision under review in this appeal is the decision of the Ministry to deny the Appellant assistance as a person in his "family unit" is currently under an active sanction of ineligibility. The panel finds that it does not have jurisdiction to consider either the merits or the application of the sanction imposed by the Ministry on the Appellant's spouse. This is because no

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reconsideration decision in this regard was ever made, so there is no decision for the panel to review, and because the reconsideration decision before the panel is the Ministry's decision to find the Appellant ineligible, not a decision to impose a sanction on the Appellant's spouse.

The legislation is clear that a sanction imposed on a recipient under section 13(3)(b) of the EAPWDA applies to the recipient's "family unit". Sections 1 and 1.1 of the EAPWDA mean that the Appellant and his spouse form a "family unit" (indeed this was never in dispute). It therefore follows that Appellant's spouse's sanction applies to him as a member of the "family unit".

Accordingly, the panel finds that the Ministry's decision to find the Appellant ineligible to continue to receive assistance was a reasonable application of the relevant legislation and confirms the Ministry's reconsideration decision.