

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the ministry) Reconsideration Decision dated January 21, 2019 which determined that under section 11 (2.1) of the *Employment and Assistance Regulation* that the Appellant was not eligible for income assistance because his asset total exceeded the \$100,000 limit allowed to an applicant for assistance.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR) sections 11 (1)(c) & (d), (2) & (2.1)(a)
Employment and Assistance Act (EAA), section 14

PART E – SUMMARY OF FACTS

Documents and Information Before the Minister at Reconsideration

A. The evidence before the ministry at the time of the Reconsideration Decision included

1. The decision to be reconsidered dated October, 2018

The Decision to be Reconsidered stated that the Appellant's Income Assistance has been discontinued because the Appellant had assets in excess of the asset limit; it stated that the Appellant owns a home, does not reside in it, that the home had a 2018 assessed value of \$218,300, with the mortgage of about \$90,000 against it, resulting in equity of about \$128,300. The decision further stated that as the Appellant was not residing in the home, it was not an exempt asset and is subject to the asset limit for recipients of Income Assistance, for whom the asset limit is \$2,000.

2. The Appellant's Request for reconsideration dated January 8, 2019, in which the Appellant stated

- that he was in the process of applying for designation as a Person with Disabilities (PWD)
- that he had no source of income
- that he intended it to have his application for PWD status completed by his doctor by October 23, 2018 but it was not completed by that date
- that he was in the process of transferring his house to his parents because he is unable to work and cannot pay the mortgage
- that he does not own any other assets, aside from bicycles and skateboards, and a damaged car with no value which he uses for storage
- that he has mental health conditions and a physical disability arising from a motor vehicle crash
- that he struggles with substance abuse
- that he is unable to work and has no other options

3. Letter from the ministry dated October 25, 2018

The ministry wrote to the Appellant advising him that he is no longer eligible for assistance because he has advised the ministry he is not residing in the house he owns, that there is a 2018 assessed value of \$218,300 in the mortgage against that property of about \$90,000, leaving approximate equity of about \$128,300. The ministry wrote that as the Appellant is not residing in his home it is not an exempt asset and is subject to the asset limit for recipients of Income Assistance, and that the asset limit for him is a \$2000 and as a result he is not eligible for income assistance.

4. Assessment Roll Report

There was an Assessment Rule Report for the Appellant's property dated October 2, 2018 showing an assessed value of \$218,300

5. Bank Statement

There was a bank statement dated June 4, 2018 showing a small balance on deposit in the Appellant's savings account, and liabilities, being principally a mortgage, of approximately \$95,645.29

6. Letter from a Provincial Health Authority

There was a letter dated November 20, 2018 from one of the Provincial Health Authorities requesting the ministry to grant an extension for the Appellant to file his reconsideration application for income assistance due to the Appellant's mental health and addiction issues, saying that the Appellant was seeking an advocate to assist with the process has not yet been able to obtain an appointment at an advocacy organization and that his physician is "finishing up" with the Appellant's disability medical report.

B. Other Documents and Information

7. A Consent to Disclosure of Information - Service Authorization dated January 8, 2019

8. The Appellant's bank statement as at January 7, 2019 showing total assets of \$1169.10 and liabilities, principally a mortgage, totaling \$91,600.97

9. The Reconsideration Decision dated January 21, 2019

In the Reconsideration Decision the ministry determined that the Appellant was not eligible for Income Assistance because the Appellant was no longer residing in his home, which has equity in it in excess of the allowable limit, and the Appellant was residing in another community while renting out his home. The ministry determined that the Appellant's equity in his home exceeded \$100,000, and as his asset limit was \$2000, and the \$100,000 exceeded that amount, the Appellant was not eligible for Income Assistance. Despite that \$2000 limit, on reconsideration, the ministry was satisfied that the Appellant had a genuine intention to apply for PWD status, and that therefore section 11 (2.1) *EAR* would apply, increasing the Appellant's asset exemption to \$100,000 from \$2,000. However, the ministry determined that the Appellant still had assets in excess of this limit and was therefore ineligible for Income Assistance.

Notice of Appeal

In his Notice of Appeal dated January 30, 2019, the Appellant states as his reason for appealing that he is transferring his house to his parents and that he disagrees with the ministry's Reconsideration Decision because he is in the process of transferring the house to his parents because he cannot afford to pay the mortgage.

New Evidence - Appellant

The Appellant submitted two letters from an Advocate, to each of which were attached various documents.

A. Letter from the Appellant's Advocate dated February 11, 2019

The Appellant's Advocate submitted a letter in which the advocate outlined some personal circumstances of the Appellant, and stated that the Appellant's income assistance "*was discontinued for owning a home with an assessed equity of \$128,300*", that the Appellant's request for reconsideration was denied for similar reasons and that following the decision the Appellant transferred his property ownership to a third party citing that he was unable to pay the mortgage. The Advocate referred to an assessment conducted by a bank giving the Appellant's net worth and stating that that net worth "*is now consistent with eligibility criteria set forth in the BC Employment and Assistance Act, indicating that a sole recipient cannot have single 'assets of the total value of more than \$2000'*", and urging the Tribunal to consider these recent changes to the Appellant's assets when making any decisions about his eligibility for income assistance. The documents attached to the letter were

- a Bank Profile and Consent dated February 8, 2019 showing the Appellant's financial position with the bank
- An Info Sheet on how to set up direct deposits or pre-authorized debits
- a bank statement showing the Appellant's financial position as at February 28th 2019

B. Letter from the Appellant's Advocate dated February 21, 2019

The Appellant's advocate submitted a letter addressed to the Employment and Assistance Appeal

Tribunal dated February 21, 2019, attaching a number of documents and asking that the Tribunal consider these documents even though they were submitted past the deadline for written submissions. The documents attached to that letter were:

- a Land Title Act Form A Freehold Transfer showing a transfer of the Appellant's home from himself to his parents for \$1.00 dated January 23, 2019
- a Seller's Statement of Adjustments showing a sale price of \$250,000, payout of outstanding debts (municipal taxes of \$5,925.16, mortgage of \$90,404.51, the Crown in Right of British Columbia of \$1,385.08) a deposit of \$152,285.25 paid to the Appellant, all of which amounted to \$250,000, the sale price, with the adjustment, completion and possession dates all being January 25, 2019
- GST exempt certificate dated January 23, 2019
- Statutory Declaration for Income Tax Act exemption dated January 23, 2019
- Date of Gift dated January 23, 2019 between the Appellant and his parents, gifting almost the deposit shown in the Seller's Statement of Adjustments in the sum of \$152,300.99 to his parents dated January 23, 2019

Appellant's New Evidence – Ministry's Position

The ministry submitted a letter dated February 22nd 2019 addressed to the Tribunal, responding to the Appellant's Advocates letter of February 11, 2019. The ministry reiterated that the decision was made that the Appellant was not eligible for Income Assistance because the Appellant had assets in excess of \$100,000. The ministry opposes admission of the Appellant's new evidence concerning transferring the Appellant's property, opposes admission of the evidence about the Appellant being unable to pay the mortgage, and opposes admission of the bank statement showing the Appellant's is balances both as to a line of credit and mortgage are \$0. The ministry objected, arguing that the Appellant's new evidence was not before the reconsideration officer at the time of reconsideration, that no evidence has been presented that the property is no longer in the Appellant's name, and saying further that if he did transfer the property to someone else, he would be ineligible for income assistance under section 14 (3) (b), arguing that the disposal would have been done for the purpose of reducing his assets.

Panel Finding on New Evidence - February 11, 2019 Letter and Documents Attached to It

The panel finds that the letter from the advocate dated February 11, 2019 is argument, and not evidence, and therefore considers the arguments set forth in it in making the decision in this appeal. The Panel finds that the documents attached to that letter are admissible pursuant to section 22 (4) (b) of the *Employment and Assistance Act* as they are written testimony in support of the information and records that were before the Minister when the decision under appeal was made; specifically those documents explain the Appellant's statements at reconsideration that he has no money with which to pay the mortgage, and is not in a credit position with the bank, thereby verifying, in part, that he does not own any other assets

Panel Finding on New Evidence - February 21, 2019 Letter and Documents Attached to It

The panel finds that the evidence submitted by the advocate attached to the letter of December 21, 2019 is admissible pursuant to section 22 (4) (b) of the *Employment and Assistance Act* as it is written testimony in support of the information and records that were before the Minister when the decision under appeal was made; specifically those documents explain the Appellant's statement at reconsideration that he was in the process of transferring his house to his parents.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the Ministry of Social Development and Poverty Reduction's (the ministry) Reconsideration Decision dated January 21, 2019 which determined that under section 11 (2.1) of the *Employment and Assistance Regulation* that the Appellant was not eligible for income assistance because his asset total exceeded the \$100,000 limit allowed to an applicant for assistance, was a reasonable application of the legislation in the circumstances of the Appellant or was reasonably supported by the evidence.

Relevant Legislation

Employment and Assistance Regulation, sections 11 (1)(c) & (d), (2)(a) & (2.1)(a)

Asset limits

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

- (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;

(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;

(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

Employment and Assistance Act, section 14

Consequences of not accepting or disposing of property

14 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income 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 income 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 income assistance for the prescribed period if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

- (a) disposed of real or personal property to reduce assets;

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

- (b) declare the family unit of the person ineligible for income assistance or hardship assistance for the prescribed period.

PARTIES' POSITIONS AT APPEAL

As this is a written hearing, the parties' positions must be taken from the submissions set out in Part E above.

Appellant's Position

The Appellant's position can be summarized as saying that he is impecunious, because he has no money and has disposed of his house, because he could not afford to pay the mortgage, and is therefore entitled to Income Assistance.

Ministry Position

The ministry's position can be summarized as saying that at the time the Appellant applied for Income Assistance, he had assets in excess of those allowed and therefore was not entitled to any assistance.

In its argument of February 22, 2019, the ministry argued that there was no evidence that the Appellant's property is no longer in his name. This assumes that the Panel does not admit the evidence submitted by the Appellant's Advocate on February 21, 2019. The ministry further argued that if the Appellant had shown that he did transfer his property to a third party he would be eligible for Income Assistance under section 14 (3) (b) *EAA*.

Panel Determination

The Panel notes that in order to apply for PWD status, an applicant must either be in receipt of Income Assistance or meet the asset and income test under the *Employment and Assistance for Persons with Disabilities Act*. The panel notes that at the time the Appellant applied for PWD status, he was not in receipt of Income Assistance, nor had he applied for such status, so it cannot be said that he had met the income test. He was therefore was not eligible for PWD status.

The Panel finds that when the Appellant applied for Income Assistance, he was the owner of a home, was not residing in it, was renting it out while he himself was living in a different community, and had equity in excess of \$100,000 in that home.

To paraphrase the provisions of section 14(1)(a) & (b) *EAA*, if an applicant for Income Assistance, within 2 years before the date of the application or any time while Assistance is being provided, disposes of real property for what is, in the minister's opinion, inadequate consideration, then the minister may declare the applicant ineligible for Income Assistance for a prescribed period.

The Panel further finds that when the Appellant's Request for Reconsideration was denied on January 21, 2019, two days later on January 23, 2019 he transferred his real property to his parents for \$1.00 and gifted the equity in it, of approximately \$152,300.99, to them. The Panel finds that the transfer of the property occurred within the two-year prohibited period set out in section 14 *EAA*.

Applying section 14(3)(b) *EAA* is not quite as simple as the ministry submits; it is not simply transferring property to a third party which makes an Applicant ineligible for Income Assistance under section 14 *EAA*. The test is that the property must have been transferred for what the Minister considers to be inadequate consideration. Implicit in section 14 is the notion that the consideration received in exchange for the property must be retained by the Applicant. Section 14 would make no sense if the purpose was anything else other than preventing an Applicant with assets from creating a situation where he appears to be without assets and does so rendering himself eligible for Income Assistance. In this case, it is clear, even if not explicitly stated, that the minister considers selling the property, and leaving himself with no assets, as the minister points out in the letter of February 22, 2019, was a device to ensure that the Appellant has in the fact disposed of his real property for inadequate consideration by a two-step process - appearing to sell the property for its tax-assessed value and then gifting any monies left over to his

parents, and the Panel so finds.

There was no evidence that money even actually changed hands; on the contrary from the documents submitted by the Appellant the consideration paid by the parents was a paper transaction only, with no money even flowing to the Appellant and back from him to his parents.

The Panel finds that the Appellant's transfer of the property to his parents and gifting them the equity in it was for the purpose of divesting himself of assets, such that he would then be eligible for Income Assistance. The Panel finds that this is an act described by section 14(1)(b) and 14(2)(a) *EAA*, namely a disposition of real property within two years of applying for Income Assistance in order to reduce assets, and therefore the Appellant has committed an act that attracts the consequences of section 14(3)(b) *EAA*, which are that if an applicant disposes of real property in order to reduce assets, the Minister may declare the Appellant ineligible for Income Assistance. The Panel further finds that the Minister did in fact declare the Appellant ineligible for Income Assistance.

On the evidence, it would appear that the Appellant was very poorly advised concerning the transfer of his real property to his parents, and gifting the equity to them. If the Appellant's intent in transferring the property to his parents for one dollar and gifting the equity in it to them was to make himself eligible, or appear to be so, for Income Assistance, then that might be seen as an artifice intended to mislead the ministry and so gain an advantage over it. In that case, the Appellant would have attempted a fraud upon the ministry.

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's Reconsideration Decision, which determined that the Appellant was not eligible for income assistance because his assets exceeded the \$100,000 limit allowed to an applicant for assistance was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the Appellant's circumstances.

The Appellant is not successful in his appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

DONALD R. (DAN) McLEOD

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/MAR/05

PRINT NAME

ANGIE BLAKE

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/MAR/05

PRINT NAME

ANNE RICHMOND

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/MAR/05