

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of August 30, 2019 (the “Reconsideration Decision”), which held that the Appellant was not eligible for disability assistance by virtue of the Appellant’s family unit having assets in excess of the \$100,000.00 asset limit prescribed in section 10(2) of the *Employment and Assistance For Persons With Disabilities Regulation* (“EAPWDR”).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (“EAPWDA”), section 3
EAPWDR, sections 1, 10

PART E – SUMMARY OF FACTS

The Appellant is a recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration Decision included:

- a two-part Bank Profile and Consent form (the “Consent Form”), detailing the Appellant’s holdings at Credit Union #1, which included:
 - several savings and chequing accounts, having a total balance of \$17,051.91 (calculated as \$17,052.01 in the Reconsideration decision);
 - a registered retirement savings plan (the “R.R.S.P.”), having a balance of \$19,409.21; and
 - a home equity line of credit (the “HELOC”) debt in the amount of \$128,341.59;
- an Assessment Roll Report for a property (the “Second Property”) owned by the Appellant, which has a current assessed value of \$264,100.00;
- a mortgage statement from Bank #2, showing that the mortgage balance for the Second Property, as at December 31, 2018 was \$91,106.28 (the “Mortgage”);
- the Appellant’s Request for Reconsideration (“RFR”), dated August 16, 2019, which included:
 - a typed letter, setting out that the Appellant’s assets were incorrectly calculated as follows:
 - Cash: \$16,926.67;
 - RRSP: \$19,409.21; and
 - Equity: \$81,893.72

and that the Ministry should be deducting the balance owing on the HELOC from its calculation of the Appellant’s assets, that two of the accounts included in the Ministry’s calculation of the Appellant’s cash holdings are actually accounts for the Appellant’s children, and that the Ministry was neglecting to factor into its calculation of the Appellant’s assets the tax consequences of cashing in the R.R.S.P.;

- the Consent Form with handwritten notes pertaining to the HELOC and identifying the accounts belonging to the Appellant’s children;
- a printout from Credit Union #1, with further details on the HELOC, including that the HELOC is secured against a different property than the Second Property and that the balance had increased to \$167,124.39; and
- an updated account summary from Credit Union #1, confirming that:
 - two of the accounts having balances of \$301.16 and \$651.78, respectively, appear to be in the name of the Appellant’s children;
 - several of the account balances had increased marginally, presumably to account for interest earned on them since they were previously listed on the Consent Form; and
- the Appellant also had equity shares in Credit Union #1, which had a value of \$34.07;

In the Appellant's Notice of Appeal, dated September 4, 2019, the Appellant advised that the Appellant disagreed with the Reconsideration Decision because the Ministry was "expecting me to go into a situation of undue hardship" to meet its requirements and that the Appellant believed that the Appellant met the financial requirements.

Subsequent to filing the Notice of Appeal, the Appellant provided a supplemental submission (the "Supplemental Submission"), which included:

- a summary of transfers between various accounts at Credit Union #1, which took place between April 20, 2015 and August 12, 2016 (the "Transfers Summary");
- the Ministry's letter to the Appellant, dated August 31, 2019, confirming that the Appellant had been designated as a person with a disability, pursuant to the EAPWDA;
- minutes of the annual general meeting, held on June 14, 2018, of the strata (the "Strata") where the Second Property is located which pertained to discussion by the owners at the Strata about selling the entire building to a developer;
- an e-mail to the owners of the strata, dated June 17, 2018, proposing a subsequent meeting regarding the question of selling to a developer;
- a note, dated September 20, 2019, indicating that a municipal official had indicated that the municipality in which the Strata was located was waiting on making any decisions on redevelopment in the area of the Strata until they had further information from the Federal Government concerning an infrastructure project and that it could take up to three and a half to four years before any redevelopment plan was complete;
- a hypothetical 2019 tax return, presenting the potential tax consequences to the Appellant of selling the Second Property and cashing in the R.R.S.P. in 2019 (namely, a tax liability of \$22,330.15);
- a spreadsheet (the "Spreadsheet"), prepared by the Appellant, showing:
- the net value of the Appellant's non-exempt assets, after deducting the HELOC and an additional \$20,000.00 in debt, is actually only \$22,000.54; and
- the potential impact to the Appellant's financial position if the Appellant were required to dispose of the Second Property and R.R.S.P., having regard to the tax liabilities associated with their disposition and the impact on child support that the Appellant would lose as a result of increased income for 2019.

At the hearing of the appeal, the Appellant presented another spreadsheet correcting calculation errors that were made in the Spreadsheet. The Ministry did not object to the admissibility of this second spreadsheet.

At the hearing of the Appeal, the Appellant gave oral evidence about having previously owned two businesses but being unable to continue carrying on those businesses as a result of a lengthy history of concussions from a variety of incidents, including sports injuries and motor vehicle accidents. The Appellant described having constant headaches and having been unable to find any treatments that have helped. The Appellant's health issues have taken a significant toll on the Appellant's family and children, in respect of whom the Appellant has a shared custody arrangement.

With respect to assets, the Appellant submitted that all of the Appellant's debts, including the HELOC, which the Appellant explained had increased due to the Appellant having borrowed approximately

\$39,000.00 earlier this year for treatment of a health condition, have a significant impact on the Appellant's ability to live. In addition to the HELOC debt, the Appellant explained that the Transfers Summary reflect borrowing from and repayments to the Appellant's parents and that the Appellant still owes the Appellant's parents \$20,000.00 on top of the amount owing on the HELOC, which is registered against the home of the Appellant's parents but had originally been a debt of the Appellant and the Appellant's spouse prior to their separation. The Appellant's only sources of income currently are Canada Pension Plan disability benefits and the net rental income from the Second Property, which is negligible. Although the Appellant initially was found to have exceeded the income limits set out in the EAPWDR, the Ministry has since determined that the income the Appellant receives does not disqualify the Appellant from disability assistance.

The Appellant gave evidence that the issues surrounding redevelopment in the area where the Second Property is located will make it difficult to sell, according to a realtor with whom the Appellant consulted. The Appellant stated that an owner would have to disclose to a potential purchaser that the owners of the Strata were considering selling to a developer which would likely demolish the building, making it more difficult to sell the Second Property and/or result in a lower sale price. The Appellant did confirm that there are no formal restrictions in place preventing the Appellant from selling the Second Property and that the Appellant has not had it appraised to determine whether its tax assessed value, used by the Ministry in its calculation of the equity in the Second Property, accurately reflects its true market value.

The crux of the Appellant's submissions was that the Ministry's failure to take into account the tax consequences (as well as the potential impact on the Appellant's child support) of disposing of the Second Property and the R.R.S.P. and failure to take into account the balance owing on the HELOC and the \$20,000.00 still owing to the Appellant's parents means that the Ministry has not accurately valued the Appellant's assets. Regarding the money in the bank accounts in the names of the Appellant's children, the Appellant stated that the accounts were created to teach the children about finances and that it was hard on the children to know that their money in the bank was "being used against" the Appellant.

At the hearing the Ministry relied on the Reconsideration Decision and confirmed that it did not expect the Appellant to liquidate all of the assets but that it had no discretion in including the equity in the Second Property in the calculation of the Appellant's assets and that there was no legislative discretion allowing it to deduct the balance owing on the HELOC, the Appellant's other debts, or any potential financial consequences of disposing of any of the assets when calculating the value of the Appellant's assets.

The panel admits into evidence the Supplemental Submission and the spreadsheet presented at the hearing of the appeal as written testimony in support of the information and documents that were before the Ministry at the time of the Reconsideration Decision, pursuant to section 22(4)(b) of the *Employment and Assistance Act* ("EAA"). Likewise, the panel admits into evidence the Appellant's oral evidence as oral testimony in support of the information and documents that were before the Ministry at the time of the Reconsideration Decision, pursuant to section 22(4)(b) of EAA.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for disability assistance by virtue of the Appellant's family unit having assets in excess of the \$100,000.00 asset limit prescribed in section 10(2) of the EAPWDR.

Relevant Legislation

Section 3 of the EAPWDA establishes the conditions for eligibility for disability assistance as follows:

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

Section 1 of the EAPWDR defines assets and cash assets as follows:

"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;

"cash assets" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party

that must pay it to the person or the dependant on demand,

- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

Sections 10(1) and 10(2) of the EAPWDR enumerate an exhaustive list of assets that are exempt from inclusion in the calculation of a family unit's assets and prescribe the limits on the amount of assets a family unit may have in order to maintain eligibility for disability assistance:

Asset limits

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

- (a) clothing and necessary household equipment;
- (b) one motor vehicle generally used for day to day transportation needs;
- (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;
- (e) a Canada child tax benefit;
- (e.1) a Canada child benefit;
- (f) a goods and services tax credit under the [Income Tax Act \(Canada\)](#);
- (g) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the [Income Tax Act \(British Columbia\)](#);
- (h) an uncashed life insurance policy with a cash surrender value of \$1 500 or less;
- (i) business tools;
- (j) seed required by a farmer for the next crop-year;
- (k) basic breeding-stock held by a farmer at the disability assistance application date, and female stock held for stock replacement;
- (l) essential equipment and supplies for farming and commercial fishing;
- (m) fishing craft and fishing gear owned and used by a commercial fisher;
- (n) prepaid funeral costs;
- (o) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (p) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (q) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus;
- (r) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (s) money that is

- (i) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
- (ii) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (t) money paid under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (u) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 3 (b).]
- (v) money paid to a person in settlement of a claim of abuse at an Indian residential school, except money paid as income replacement in the settlement;
- (w) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (x) for a recipient who is participating in a self-employment program funded or established by the minister under section 8 of the Act,
 - (i) up to a maximum of \$5 000 kept by the recipient in a separate account described in section 4 (2) (b) (ii) of Schedule B, and
 - (ii) up to a maximum of \$50 000, or a greater amount approved by the minister, consisting of
 - (A) the value of assets used by the recipient in operating a small business under the self-employment program, and
 - (B) a loan that is not greater than the amount contemplated by the recipient's business plan, accepted under section 70.1 of this regulation, and received and used for the purposes set out in the business plan;
- (y) assets exempted under
 - (i) section 11 (2) [*asset development accounts*],
 - (ii) section 12 (2) [*assets held in trust for person with disabilities*], or
 - (iii) section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*];
- (z) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 3.]
- (aa) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the [Child, Family and Community Service Act](#);

- (bb) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (cc) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 3.]
- (dd) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;
- (ee) payments granted by the government of British Columbia under the Ministry of Children and Family Development's
- (i) Autism Funding: Under Age 6 Program, or
 - (ii) Autism Funding: Ages 6 — 18 Program;
- (ff) funds held in a registered education savings plan;
- (gg) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;
- (hh) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act (Canada)*;
- (ii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (jj) funds held in, or money withdrawn from, a registered disability savings plan;
- (kk) a working income tax benefit provided under the *Income Tax Act (Canada)*;
- (ll) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]
- (mm) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (nn) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;
- (oo) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
- (pp) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (qq) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(rr) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

(ss) a tax refund;

(tt) a BC basic family bonus;

(uu) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;

(vv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(ww) a BC early childhood tax benefit;

(xx) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

(yy) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;

(yy.1) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;

(yy.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;

(zz) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

(aaa) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;

(bbb) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;

(ccc) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;

(ddd) money that is paid or payable from a settlement under

(i) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or

(ii) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada;

(eee) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the *Department of Public Safety and Emergency Preparedness Act* (Canada).

(1.1) Despite subsection (1), assets described in subsection (1) (x) (ii) (A) are not exempt under subsection (1) (i), (j), (k), (l) or (m).

(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, other than a family unit to which paragraph (b) applies, \$100 000;

(b) in the case of a family unit that includes one applicant or recipient who is designated as a person with disabilities, and another applicant or recipient who has applied for and has not been denied designation as a person with disabilities, \$200 000;

(c) in the case of a family unit that includes 2 applicants or recipients who are designated as persons with disabilities, \$200 000.

Panel Decision

In this case, the Appellant is a recipient of disability assistance in a family unit where one person has been designated as a person with disabilities and, pursuant to section 10(2)(a) the Appellant is eligible for disability assistance only if the total value of the assets held by the Appellant's family unit, which includes the Appellant's children, is less than \$100,000.00.

The assets included by the Ministry in its calculation of the Appellant's assets are:

- the equity in the Second Property of \$172,993.71, determined by deducting the balance owing on the Mortgage, as at December 31, 2018 (\$91,106.28) from its tax assessed value (\$264,100.00);
- the balance in the R.R.S.P. of \$19,409.21;
- the balances in the Appellant's accounts at Credit Union #1, including those in the names of the Appellant's children, which totaled \$17,052.01 on the Consent Form (although their balance appears to be marginally higher now).

As the Second Property is not the Appellant's place of residence, the panel finds that the Ministry was reasonable in determining that its equity was not exempt from inclusion in the calculation of the Appellant's assets as there is no other category of exemption into which the equity in the Second Property could fall.

The R.R.S.P. and the balance in the Appellant's accounts at Credit Union #1 meet the definition of "cash assets" in section 1 of the EAPWDR. Money in the bank accounts of the Appellant's children must also be included in the calculation of the value of the assets, because the Appellant's children are part of the family unit that would receive benefits. Because those assets also do not fall into any of the exemption categories enumerated in section 10(1) of the EAPWDR, the panel also determines that the Ministry reasonably included the balances in the R.R.S.P. and the Appellants accounts at Credit Union #1 in the calculation of the Appellant's assets.

The Appellant submits that the Ministry ought to have deducted the amount owing on the HELOC and the \$20,000.00 debt to the Appellant's parents from its calculation of the Appellant's assets. However, there is no statutory or legislative discretion afforded to the Ministry to do so. While the HELOC, which is a debt in the name of the Appellant and the Appellant's parents, might conceivably have reduced the equity in the Second Property had it been registered against the title to the Second Property, it is instead registered against the title to the property owned by the Appellant's parents and does not serve to reduce the equity in the Second Property. Moreover, there is no provision in sections 10(1) or 10(2) of the EAPWDR for deducting unsecured debts, such as the HELOC and the debt owing to the Appellant's parents, from a family unit's asset total.

The Appellant also submits that the Ministry ought to have considered the financial implications of disposing of the Second Property and the R.R.S.P. in valuing the family unit's assets. While there is also no provision in the EAPWDR for deducting the notional disposition costs with respect to those (or any other assets), based on the calculations prepared by the Appellant, even if the Ministry were legislatively authorized to deduct the potential tax liability of \$22,330.15 from its calculation of the Appellant's assets, the Appellant would still have assets in excess of the asset limit prescribed in section 10(2) of the EAPWDR.

Finally, the Appellant submitted that the Ministry failed to consider the impact of disposing of the R.R.S.P. and the Second Property on the Appellant's income and the child support that the Appellant would be eligible to receive from the mother of the Appellant's children, with whom the Appellant shares custody, and that the Appellant might instead be ordered to pay. In addition to the fact that there is also no provision in the EAPWDR for deducting a loss of child support received by a family unit or an increase in support payable by a family unit, the Appellant's evidence about the impact of disposing of the R.R.S.P. and Second Property on child support was speculative.

In the result, the panel also finds that the Reconsideration Decision was reasonable in not deducting the Appellant's unsecured debts and in not deducting either the notional costs of disposing of the Appellant's assets or the impact that disposing of the assets might have on the Appellant's child support rights and obligations.

The Appellant is not successful in this appeal.

APPEAL NUMBER

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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/16

PRINT NAME

Susan Ferguson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/17

PRINT NAME

Roy Wares

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/19