

APPEAL NUMBER
2021-0075

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of April 8, 2021 in which the Ministry denied the Appellant income assistance due to having assets that exceeded the allowable limit pursuant to Section 11, 12 & 13 of the *Employment and Assistance Regulation*.

PART D – RELEVANT LEGISLATION

EAR – *Employment Assistance Regulation*, Section 11, 12, 13

PART E – SUMMARY OF FACTS

The information before the Ministry at the time of reconsideration included the following:

- 1) **February 22, 2021** – The Appellant submitted an application for Income Assistance including the following information: they are a single person with no dependents, they are bipolar and unable to work outside the home, they are applying for Person with Disabilities status (PWD/income assistance), and their assets include a \$100,000 [locked in] RRSP, a vehicle, and \$500.00 in a CIBC bank account.
- 2) **March 24, 2021** – The Ministry completed the eligibility review based on the submitted documents and determined that the Appellant was ineligible for income assistance for having assets that exceeded the allowable limit. The Ministry relied on the following asset information:
 - A CIBC bank profile – dated/completed February 25, 2021
 - A CIBC bank statement – dated March 2, 2021
 - A CIBC USA bank statement – dated/submitted March 15, 2021The ministry determined the total value of the assets at application was \$104,260.06 and was more than the allowable limit (\$100,000.00) for a sole applicant with no dependents and therefore, determined they were not eligible for (PWD) income assistance. The RRSP portfolio balance as of March 15th was \$103,760.06. The chequing account balance as of March 2, 2021 was \$566.11 The USA account balance as of March 15th was \$0.13.
- 3) **March 24, 2021** - The Appellant requested a reconsideration and indicated they realize that they will have to withdraw from the RRSP to reach the \$100,000 limit. The Appellant did not provide any updated banking information.
- 4) **April 8, 2021** - The ministry proceeded with the review. The Appellant had not submitted any new banking information since submitting the Request for Reconsideration.

Additional Information

The Appellant submitted an updated (April 14, 2021) investment/portfolio evaluation on April 15, 2021 and before the hearing. The Ministry made no objections to the admissibility of the document. The panel admitted this information as new evidence; as it was determined to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal, pursuant to section 22(4) of the *Employment and Assistance Act*.

The Appellant did not attend the hearing. After confirming the Notice of Hearing was delivered on April 20, 2021 at 10:58 am and after waiting ten minutes beyond the time set for the hearing to begin (9:00 am), the panel proceeded in their absence, pursuant to Section, 86 of the *Employment and Assistance Regulation*.

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision of April 8, 2021 in which the Ministry denied the Appellant income assistance due to having assets that exceeded the allowable limit pursuant to Sections 11, 12 & 13 of the *Employment and Assistance Regulation*.

Legislation

Asset Limits

11 (1) The following assets are exempt for the purposes of subsections (2) and (2.1): (None listed)

(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 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 \$5 000; (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 \$10 000; (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.

(2.2) Repealed. [B.C. Reg. 122/2019] (2.3) Repealed. [B.C. Reg. 122/2019]

(3) The minister may authorize one or more of the following: (a) that for a family unit that includes a person who has persistent multiple barriers to employment or a person who has reached 65 years of age, the total cash surrender value of an uncashed life insurance policy of an applicant or recipient is not to be included as an asset for the purposes of subsection (2) for the period specified by the minister; (b) that saleable acreage and buildings owned by an applicant or recipient are to be treated as though they were the place of residence of the applicant's or recipient's family unit for the period specified by the minister.

(4) Repealed. [B.C. Reg. 197/2012, Sch.1, s. 9.]

Asset development accounts

12 (1) In this section: "asset development account" means a savings institution account that is (a) established exclusively for the purpose of enabling an applicant or a recipient to participate in an asset development account program, and (b) comprised exclusively of deposits of money contributed by an applicant or a recipient and additional amounts that (i) are contributed by or through the operator of the asset development account program, and (ii) equal the percentage of the applicant's or recipient's contributions established for the applicant or recipient under the program; "asset development account program" means a saving program that is (a) designed to assist individuals to achieve savings for the purposes of future self-sufficiency or future enhanced self-sufficiency, and (b) approved by the minister for the purposes of this regulation. (2) For the period that an applicant or recipient is participating in an asset development account program, the applicant's or recipient's asset development account is exempt as an asset for the purposes of section 11 (2) and (2.1)[asset limits]. (3) If an applicant or recipient does not use all or part of the money contributed to an asset development account for the purposes specified under the program, subsection (2) ceases to apply to that portion of the money not used for those purposes. [am. B.C. Reg. 197/2012, Sch. 1, s. 10.]

Assets held in trust for person receiving special care

13 (1) In this section, "disability-related cost" means the cost of providing any of the following to a person receiving accommodation or care in a private hospital or a special care facility, other than a drug or alcohol treatment centre: (a) devices, or medical aids, related to improving the person's health or well-being; (b) caregiver services or other services related to the person's disability; (c) education or training; (d) any other item or service that promotes the person's independence. (2) For a person (a) who is receiving accommodation or care in a private hospital or special care facility, other than a drug or alcohol treatment centre, or to whom section 11 (2.1) applies, and (b) who complies with subsection (4), up to \$200 000, or a higher limit if authorized by the minister under subsection (3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts, calculated as follows: (c) the sum of the value of the capital of each trust on the later of April 26, 1996 or the date the trust was created, plus (d) any capital subsequently contributed to a trust referred to in paragraph (c) is exempt for the purposes of section 11 (2) and (2.1)[asset limits]. (3) If the minister is satisfied that, because of special circumstances, the lifetime disability-related costs of a person referred to in subsection (2) will amount to more than \$200 000, the minister may authorize a higher limit for the person for the purposes of subsection (2). (4) A person referred to in subsection (2) who has a beneficial interest in one or more trusts must keep records of the following and make the records available for inspection at the request of the minister: (a) for a trust created before April 26, 1996, the capital of the trust on that date; (b) for a trust created on or after April 26, 1996, the capital of the trust on the date the trust was created; (c) the amount of capital contributed in each subsequent year to a trust referred to in paragraph (a) or (b); (d) all payments made after April 26, 1996 to or on behalf of the person from a trust in which that person has a beneficial interest. (5) For the purposes of this section, the real or personal property of a "patient", as defined in the Patients Property Act, is to be treated as if the real or personal property were held in trust for the patient by the patient's committee. [am. B.C. Regs. 86/2008, s. 2; 197/2012, Sch. 1, s. 11.]

Temporary exemption of assets for person applying for disability designation or receiving special care

13.1 (1) In this section: "person applying for a disability designation" means a person to whom section 11 (2.1) applies; "person receiving special care" means a person who is receiving accommodation or care in a

private hospital or special care facility, other than a drug or alcohol treatment centre. (2) During the exemption period described in subsection (3), an asset received by a person applying for a disability designation or by a person receiving special care is exempt for the purposes of section 11 (2) and (2.1) [asset limits] if the minister is satisfied that the person intends to (a) establish a registered disability savings plan or trust, and (b) contribute some or all of the asset to the registered disability savings plan or trust. (3) The exemption under subsection (2) starts on the date the person receives the asset and ends 3 months after that date unless (a) the exemption period is extended to a later date under subsection (4), or (b) the exemption ceases to apply under subsection (5). (4) The minister may extend the exemption period to a specified date if the minister is satisfied that the person is making reasonable efforts to establish a registered disability savings plan or trust. (5) The exemption under subsection (2) ceases to apply if (a) the person contributes all of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the asset on the date of the contribution, (b) the person contributes a portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to that portion on the date of the contribution, or (c) the minister becomes aware of information that, in the minister's opinion, indicates that (i) the person does not intend to contribute any portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the asset on the date specified by the minister, or (ii) the person has contributed some of the asset to a registered disability savings plan or trust but does not intend to contribute any remaining portion of the asset to a registered disability savings plan or trust, in which case the exemption ceases to apply to the remaining portion on the date specified by the minister. (6) Amounts expended from an asset to which the exemption under subsection (2) applies are deemed to be money or value received from a trust within the meaning of paragraph (l) of the definition of "unearned income" in section 1 (1).

Panel Decision

The Ministry's position is that the Appellant is not eligible for income assistance due to the Appellant's assets exceeding the asset exemption limit (\$100,000). The Ministry submits that as a single person with no dependents, the Appellant would normally have an asset limit of \$5,000. The Ministry determines that the Appellant indicates a genuine intent to apply for the person with disabilities (PWD) designation, and therefore the Appellant may have up to \$100,000 in assets for the purposes of receiving income assistance as a temporary exemption to allow time for the Appellant to complete the PWD application. After considering all (three) banking documents submitted by the Appellant, the Ministry determined the Appellant's assets (\$104, 260.17) exceeded the \$100,000 exemption limit which resulted in an ineligibility for income assistance. The Ministry relied on the following documents: A RRSP portfolio balance as of March 15th, 2021 of \$103,760.06. A CIBC chequing account balance as of March 2, 2021 was \$566.11 and a \$0.13 USA account balance as of March 15th, 2021.

The Appellant's position, as was outlined on their financial statement, that their total net worth as per the April 14, 2021 CIBC Portfolio Evaluation was now less than \$100,000, as their RRSP amount had decreased. The total amount indicated on the Portfolio Evaluation was \$99, 346.06.

As outlined in *Section 11 of the Employment and Assistance Regulation*, 1) no listed asset exemptions, and 11 (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 \$5 000; (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.

The panel finds that the evidence establishes the Appellant initially (March 2021) provided a series of banking documents (three documents above) that indicated the total (non-exempt) asset worth of the Appellant to be \$104, 260.17. The Appellant did not object to this information, and therefore the panel finds this total asset worth to be fact – as of March 15, 2021. The panel therefore finds that the Ministry’s decision was reasonable to determine that the Appellant was ineligible for income assistance due to the asset limit exemption of \$100,000 being over and above the limit – by \$4, 260.17.

The panel finds that the evidence establishes the Appellant submitted a current (April 14, 2021) Portfolio Evaluation that indicated the total asset worth to be \$99, 346.06. The panel admitted this information as evidence, and without any objection from the Ministry. The panel considered that the Appellant did not provide the same three sources of information (the same three banking documents above) as they did at the time the Reconsideration Officer would have made their determination regarding the application and exempt asset total. The panel considered that while the information on the updated Portfolio Evaluation, dated April 14, 2021 indicated a decrease in total asset worth to be below the asset exemption limit of \$100,000, the panel did not have the benefit of the other (two) banking documents initially submitted, and therefore was not able to consider a completed update of the current financial asset worth – as of April 14, 2021.

In addition, the panel considered the Ministry’s observation that the RRSP’s reported by the Appellant as “locked-in” are not in fact “locked-in”, but are convertible to cash, and can be accessed by the Appellant, as evidenced by the subsequent reduction in the value of the RRSP by transfer of funds.

Considering all of the evidence in this appeal that was reasonably required for a full and fair disclosure of all matters related to the decision under appeal, the panel finds that the Ministry was reasonable in its determination to deny the Appellant income assistance as requested under *Section 11 of the Employment and Assistance Regulation*.

Accordingly, the panel confirms the Ministry’s decision, and the Appellant is not successful in this appeal, pursuant to *Section 24(1)(a) and (2)(a) of the Employment and Assistance Act*.

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2021-00075

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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

21/05/05

PRINT NAME

Patrick Cooper

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

21/05/05

PRINT NAME

Linda Pierre

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

21/05/05