

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision (the decision) dated November 1, 2021 which held that the appellant was ineligible for disability assistance due to having assets that exceed the allowable limit for the family unit.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 3, 10.
Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, Sections 1, 10, 11, 12, 12.1,

Part E – Summary of Facts

The evidence before the minister at reconsideration included the following:

The appellant is a sole recipient of disability assistance, with no dependents on file, and received the PWD designation effective February 2012.

Since March 2012 the appellant has been residing in the appellant's own home, reporting expenses for a mortgage and utilities. The actual shelter expenses recorded on file have not been updated since 2012.

On December 8, 2020 the appellant reported receiving a \$450,000 inheritance and had already received a \$100,000 payment in September 2020.

On December 23, 2020 the Ministry sent the appellant a letter and booklet on Disability Assistance and Trusts and exempted the asset for 3 months to allow time for the appellant to review the booklet, options, and establish a Trust and/or Registered Disability Savings Plan (RDSP). The letter requested documentation to confirm the amount and source of the asset.

In March, the appellant's April assistance was held due to the Ministry not receiving any further updates about the assets and/or decision about setting up a Trust and/or RDSP.

In April 2021, the appellant submitted a letter including the following:

- there has been some confusion, to not having a Trust, that the appellant was a residual and contingent beneficiary of the estate only.
- to already having submitted proof of receiving the money.
- having advised there is \$490K in a (Guaranteed Investment Certificate) GIC that pays once per year and \$75K in a tax-free account that pays in 3 months.
- that these funds ultimately will be used for accommodations and essential items for the appellant, and
- that due to Covid 19 pandemic restrictions, not having been able to seek legal advice on whether or not the appellant should create a Trust, and
- requesting an extension of time to get the legal advice or set up a Trust.

In May 2021 the appellant provided proof to the ministry of having reached out for legal advice from a lawyer. A copy of an email from a lawyer's office suggested a mid-June date for a meeting to discuss estate planning, provided a rough quotation of \$1500 to \$2500 for setting up a will and or a trust and offered to set up a referral to another lawyer who specialises in wills and trusts if the appellant wanted a date earlier than mid-June.

In June 2021 the ministry requested a copy of the Trust or letter from a lawyer or financial institution confirming the appellant was in the process of setting up a trust arrangement, and indicated the information was required no later than June 29, 2021.

On July 8, 2021 the ministry sent another message and letter requesting the same information, with a deadline of August 3, 2021.

On July 19, 2021 the ministry turned cheque production off as the appellant had not responded to multiple messages or the letter requesting updates on the Trust. The note on file indicated the appellant was ineligible due to having assets in excess of the allowable limit, already receiving the exemption for well over 3 months, and having received no response to multiple messages for updates on Trust/RDSP documents. The appellant's file was switched to Medical Services Only (MSO) at this time.

On September 3, 2021, after no contact or response from the appellant, the ministry sent a letter advising that the appellant was no longer eligible for assistance, for failing to provide the Trust documents/statements previously requested December 23, 2020, March 10, 2021 and June 15, 2021.

On September 28, 2021 the appellant contacted the ministry to request a reconsideration.

On October 4, 2021 the appellant submitted the Request for Reconsideration, indicating confusion over the reason for the decision. The appellant stated the decision is unreasonable as the appellant cannot provide documents that don't exist, that it's unreasonable to deny assistance on the basis that the appellant doesn't turn over the inheritance to a 3rd party and relinquish all say in its use, and notes the entirety of the inheritance has been set aside for an exempt purpose (a residence for the appellant, still to be built).

Additional information

The appellant's notice of appeal (NOA) contained a handwritten statement that the appellant has no home, so assets used to rebuild home cannot be used against the appellant to stop assistance.

At the hearing the appellant wished to bring to the panel's attention a document in hand. It is a Demolition Permit, issued by the local Regional District which authorises demolition of the appellant's house in June 2021. The appellant states that this permit is available for viewing online.

Oral submissions

The hearing was held by telephone.

Appellant

The appellant stated that the appellant is currently living in a small camper on the property as the house was leaking, had rot and was contaminated by mold as confirmed by a hazmat report and the residence was demolished in June 2021. The appellant referred to the demolition permit for that purpose.

The appellant advised that the inheritance monies were from the sale of a grandmother's house and were put into a de-facto trust for the building of a replacement home, and that those monies should be exempt.

The appellant feels the legislation should be interpreted broadly and liberally in line with the requirements of the BC Interpretation act, and that relevant sections of the EAPWD Act do show that the monies are exempt from asset income.

The appellant feels that the COVID 19 pandemic has restricted the ability to contact a lawyer and seek detailed advice, in effect there was no way to do that in 2020. Further the appellant stated that when the state of emergency was declared in February 2020 the provincial government allowed that reporting purposes could be fulfilled by submitting verbal information.

The appellant testified to discussing the monies a number of times and the status with ministry staff and trying to explain that the money was in a trust but it was not in the format they wanted.

The appellant admits that the ministry asked several times for information on the type of trust and advised that the asset was exempt for a period of time.

The appellant provided some examples of why the monies should be exempt from asset income. They included a scenario of a house burning down and if the ministry policy was valid an individual would be barred from using the insurance money to rebuild a home and yet another example is that a crisis grant does exempt income for house repair purposes.

The appellant does not accept that the legislation limits a time exemption to 3 months as the ministry had stated. The appellant stated to having previously requested an extension of this 3 month period. In June of 2021 business premises were not open and access to legal advice was not possible.

In response to questions and after much discussion the appellant agreed that utility payments were being made on the still standing garage on the property and a dilapidated trailer is all that is left as the residence has been demolished. The appellant states that the ministry contention that a mortgage is being paid by the appellant on the residence is incorrect as it stands for the month of November 2021. The appellant is not living in the residence and is not paying a mortgage on the residence.

The appellant advised that the author of the 8 December 2020 letter to the appellant is the Trustee who received the monies from the appellant's relative's estate and paid the monies to the appellant. Also, that the property became the property of the appellant on the death of the relative and was then sold by others. In answer to a question from the panel as to whether the trust could have been a testamentary trust, the appellant believed so, saying that the money came to the appellant because the appellant's father died so soon after the appellant's grandmother.

Also, in answer to questions from the panel the appellant;

- confirmed still having a RDSP that was set up by the appellant in October of 2020,
- that no funds have been placed in the RDSP account,
- that the appellant is the sole owner of the account, and
- that no-one else has access to the funds.

The appellant offered that when it appeared that putting money into the trust would limit the amount allowed to be taken out the appellant chose not to deposit any funds. This was in response to a request the appellant made to the federal government who had not responded about how much monies the appellant could withdraw annually.

The appellant stated that the letter of 6 April 2021 from the appellant to the ministry indicated that the appellant was seeking advice from a lawyer to see what should be done as far as depositing monies to the new RDSP opened in October 2020.

At questioning the appellant advised having not met with the lawyer who sent an email on 23 April 2021 or any other lawyer since.

The appellant offered that the entire house had been knocked down and only a garage exists and an old truck camper in which the appellant currently lives. The appellant has not discussed this information with the ministry.

In answer to a question the appellant stated that a new residence was under construction, on the same property and is being funded with the inheritance monies. The appellant reiterated to having control of the inheritance monies, that the builder cannot access any of the funds nor control how the monies are spent.

In response to a question to the appellant from the panel after the ministry had completed testimony the appellant stated to having a verbal trust with a builder. It is an agreement to use the inheritance monies for the construction of a house, currently under construction, to which the builder has no access or control through the financial institution. The appellant feels that the money would be forfeited if not used to construct the house but could not, when asked, provide any evidence on how this would occur.

In summation the appellant advised that it was common sense that if a residence is exempt from asset limits then funds set aside to be used for the construction of a residence must also be so. The appellant stated to not being agreeable to paying \$3k minimum to a lawyer for a trust.

Ministry

The ministry relied upon the reconsideration decision and provided a summation of the reconsideration decision itself, reinforcing that information had been sent to the appellant on the aspect of assets, numerous letters had also been sent to the appellant seeking information on whether the appellant intended to set up a RDSP or Trust or similar, providing a 3-month exemption for the appellant to seek advice.

The file indicates the appellant is paying a mortgage and therefore that property is an exempt asset under section 10 of the EAPWD regulation. The ministry had found the inheritance was not from a sale of the appellant's previous family home and had been received through the fathers' estate.

The ministry advised to having provided numerous extensions to the temporary exemption period of three months and that the appellant had ultimately complied with the reporting requirements and had informed the ministry of the appellant's intention to not set up any form of trust for the deposit and sheltering of the assets.

As such the ministry's position is the appellant was no longer eligible for an exemption and the cash exceeded any personal exemption amount allowed in legislation. Further, no information had been received to show any other exemption class for the assets.

The funds had been reported to include a GIC and a Tax-Free account totalling over \$500 000. The cash accounts are deemed as pay on demand and are not in any exempt category. A review of the assets showed the amount exceeded the allowable limit.

At questioning the appellant asked a number of questions of the ministry.

They included a desire to know whether the ministry believes that a trust can be set up as a verbal trust and not have a legal agreement drawn up, and if so, sought agreement that there would be no need to submit any documents. The ministry responded that if the intention is to set up a trust then information has to be provided to the ministry on the form and substance of the trust. That information would then be sent to the ministry legal section for a determination if the trust complies with the legislation and ministry policy.

The appellant asked if monies set aside to build a house can be a trust; to which the ministry responded that the legislation does not allow for that, but that monies in a trust can be used for a number of purposes including modification and repairs to a house.

The appellant wished to know whether if a trust existed would it be exempt as an asset; to which the ministry said it would be if the legal department agreed. The appellant stated that his verbal trust was refused as it had not been referred to the ministry lawyers, and the ministry responded that no details of a verbal trust had been provided.

The appellant asked if a trust could be used to build a house and the ministry agreed it could be up to a certain amount, the cost above that amount not being exempt.

In response to questions the ministry replied that it had not considered the personal, furniture and household necessities and costs of the appellant with regards to the inheritance.

Admissibility of new information

Section 22(4) of the *Employment and Assistance Act* (EAA) says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

The ministry did not raise any objections to the panel admitting the existence of the appellant's document or oral testimony into evidence.

The appellant did not raise any objections to the panel admitting the ministry testimony.

The new evidence at hearing comprised the existence of documents purporting to be a hazmat survey of the appellant's home and an RDN demolition permit. At hearing the appellant testified to the existence of a verbal trust set up for the purposes of building a replacement house.

The panel finds that this information is relevant because it supports the testimony provided in the request for reconsideration and argument on the part of the appellant regarding not having a home and addresses the apparent confusion surrounding a trust and the need to report to the ministry any details of a trust.

The panel admits the new information under section 22(4) of the Employment and Assistance Act ("EAA") as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision which held that the appellant was ineligible for disability assistance due to having assets that exceed the allowable limit for the family unit of \$100,000.

In particular, was the ministry determinations that the appellant had not provided any updated banking information or verification to establish that some or all of the appellant's assets are being held in one of the exempt assets, such as an RDSP, Registered Education Savings Plan (RESP) or Trust, and that no exemption exists for monies being set aside to build a residence for the appellant to live in, reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

Further, was the ministry reasonable in its determination that there is no documentation provided to establish that the inheritance money is being held in an Asset Development Account Program, and that it had not been approved by the ministry for this purpose.

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant has written that it's unreasonable to deny assistance on the basis that the appellant doesn't turn over the inheritance to a 3rd party and relinquish all say in its use. The appellant states that the monies from the entirety of inheritance have been set aside in a trust for an exempt purpose.

In oral argument at hearing the appellant described the inheritance funds received as a de-facto trust and that the ministry had not properly reviewed this claim. The appellant claims to indeed have a verbal trust between the appellant and the builder and that this trust is without any legal documents. Further, that the trust contains a forfeiture agreement if the money is not used for the construction of the home, which is currently underway.

The appellant provided new information that the house at the residential address was demolished in June 2021.

Ministry Position

The ministry at reconsideration accepted that the appellant, given the multiple requests by letter and being provided with a Trust Package had been sufficiently advised of the requirement to provide updates to the ministry about efforts and intentions to establish a Trust or RDSP with the inheritance money received.

As the appellant reported not intending to set up a Trust or RDSP, and indeed that the entirety of the inheritance has been set aside for the purpose of building a new home, the ministry is satisfied that the appellant has met the necessary reporting requirements and the temporary

exemption provided for the appellant to consider shielding the asset ceases to apply.

As the appellant has not transferred the money to one of the exempt classes of asset a review shows the appellant has assets that exceed the allowable limit for the appellant's family unit of \$100,000 and the appellant is therefore ineligible for disability assistance.

Panel Finding

The applicable legislation is contained within the EAPWD Regulation section 10 (2) which provides a sole applicant or recipient with no dependents is not eligible for disability assistance if the family unit has assets that exceed \$100,000.

Section 10 (1) provides classes of assets that are exempt for the purposes of the calculation and include a family unit's place of residence; money received from an agreement for sale of the family unit's previous place of residence, and funds held in, or money withdrawn from, a registered disability savings plan, as well as a number of other classes.

Section 10 also allows for other assets exempted under section 11 - *asset development accounts*, section 12 (2) - *assets held in trust for person with disabilities*, and section 12.1 (2) - *temporary exemption of assets for person with disabilities*.

The panel will address each situation separately.

Family Place of Residence

At hearing the appellant confirmed living at the same address since at least 2012 but disputes living in the home itself due to it being recently demolished and to not having a mortgage for this residence. The panel notes the appellant also advises to be currently living in a camper on the property and that a new house is currently under construction but that no invoices or other evidence has been provided to confirm any construction expenditures.

The panel accepts the oral testimony that the appellant is building or is intending to build a new house on the property. The panel, noting that the appellant has not provided any information since 2012 to update the status of the shelter expenses currently listed on file finds that the ministry's decision that this residence is currently an exempt asset under section 10(1)(c) is reasonably supported by the evidence.

Sale of Family Previous Place of Residence

Upon review of the lawyer's letter of December 2020 letter and the appellant's letter of April 2021 the panel finds the \$450,000 was money received from an inheritance received through the father's and grandmother's estates and is not related to any money received from a sale of a previous place of residence of the appellant's family unit, therefore the panel finds the ministry decision that the exemption listed in section 10(1)(d), is not applicable to the appellant to be reasonably supported by the evidence.

Temporary Exemption

Section 12.1 allows for a temporary exemption period of three months after the asset is received by a person with disabilities if the minister is satisfied that the person intends to establish a registered disability savings plan or trust and contribute some, or all of the asset to the registered disability savings plan or trust. This time exemption can be extended; however, if the minister becomes aware of information that, in the minister's opinion, indicates that the person does not intend to contribute any portion of the asset to a registered disability savings plan or trust the exemption ceases to apply.

The panel notes the concerns raised by the appellant with regards to the difficulty in contacting a lawyer and the position that a three-month exemption period is not a legislated requirement. The panel is aware that the Covid 19 pandemic has included stay at home instructions at times during the period from February 2020 onwards and can empathize with the time delays encountered by all parties in making arrangements and in communication.

The panel notes that the appellant's request for more time to seek legal advice as to whether to set up a trust, and then several months later writing in the request for reconsideration as to not having a trust set up and to not turning over the inheritance to a 3rd party and thereby relinquishing all say in its use. The appellant also provided oral testimony to not speaking to a lawyer and to not being agreeable to paying \$3k to a lawyer to set-up a trust.

The panel notes the number of extensions provided by the ministry over a period of nine months, from December 2020 until September 2021, to set up a trust and that during that period the email from the appellant's lawyer offered a referral to another lawyer who specialises in trusts if the appellant wanted a date earlier than mid-June.

The panel finds that the effects of the pandemic notwithstanding the appellant had the opportunity during the multiple time extensions to seek legal advice and make a determination on the set up of a trust or other vehicle for sheltering the inheritance.

The panel finds that once the appellant had advised the ministry of the intention not to set up a trust or transfer funds to a RDSP this legislated temporary time exemption ceased. Therefore, on the facts the panel finds the ministry decision that the appellant is no longer eligible for a temporary exemption to be reasonably supported by the evidence.

RDSP

Section 10(1) (jj) of the EAPWD Regulation exempts funds contained in or withdrawn from an RDSP for the purposes of determining total asset value.

The panel notes the formal establishment of a RDSP by the appellant in October 2020 with the appellant listed as both holder and beneficiary. Written contact between the appellant and lawyers occurred in December 2020 and then in April 2021 but notes the appellant appears not to have made any other approaches to discuss the transfer of funds, nor appoint a trustee. At hearing the appellant advised that the RDSP had no funds deposited to it and, as the RDSP

owner, the appellant has no intention of placing funds in the RDSP.

On the facts the panel finds the funds are not currently held by the appellant in an RDSP and any funds currently being used for the construction of a new house were not withdrawn from the RDSP.

The panel also notes the appellant has not provided any evidence or argument to suggest the inheritance funds are being held in an RESP.

The panel finds the ministry decision that the appellant has not demonstrated that some or all of the assets are being held in the exempt assets class listed in section 10(1) of an RDSP or RESP to be reasonably supported by the evidence.

Asset Development Account

An asset development account (ADA) described in section 11(1) of the EAPWDR is a savings institution account that is established for the purpose of enabling participation in an asset development account program. This is a saving program that is designed to assist individuals to achieve savings for the purposes of future self-sufficiency or future enhanced self-sufficiency and must be approved by the minister for the purposes of exempting this asset under section 11(2).

The panel sees no testimony by the appellant or discussions with the ministry regarding the set up or approval of such an account or enrollment in an asset development program and therefore on the facts the panel finds the ministry decision that the inheritance is not being held in an ADA to be reasonably supported by the evidence.

Trust

The legislation in section 12 (1) of the EAPWDR allows that assets held in trust are exempt for the purposes of determination of asset limits if the assets are used for providing to a person with disabilities any of a list of items such as an item or service that promotes the person's independence, and renovations to the person's place of residence necessary to accommodate the needs resulting from the person's disability, and necessary maintenance for that place of residence.

The only restrictions in the EAPWDR affecting exempt trusts are those set out in section 12 which defines "disability-related costs", has provisions that can allow up to \$200 000 of funds belonging to an appellant with a beneficial interest in a trust to be exempt for the purposes of calculating total assets if records are provided to the minister of payments made on behalf of the beneficiary.

Under section 10 of the EAPWDA the ministry is empowered to seek such information as necessary to determine or audit eligibility for disability assistance, and that this information is to be supplied to the minister within the time and in the manner specified by the minister. The minister is also empowered to seek verification of any information supplied to the minister in this regard from the appellant or others.

The panel notes that the appellant had written on two occasions to the ministry that no trust or deed exists and that there is no trust set up for the appellant and there was no trust that gave the appellant assets as part of a trust. Further, the appellant has written that it is unreasonable for the ministry to deny assistance on the basis that the appellant does not turn over the inheritance to a 3rd party and relinquish all say in its use.

The panel finds that at the time of reconsideration the ministry decision that the appellant has not demonstrated that some or all of the assets are being held in a trust according to the EAPWDR section 10(1)(y)(ii) or section 12 of a trust to be reasonably supported by the evidence.

However, at hearing the panel notes that the appellant first declared the existence of a trust during oral testimony. The appellant described the funds received from the inheritance as currently being used to build a house for the appellant and to be a de-facto trust and that the ministry had not properly reviewed this claim.

The appellant argues that a verbal trust between the appellant and a builder exists and that this trust is without any legal documents, and that the appellant had tried to explain this to the ministry.

In this instance the panel is faced with the question of what a trust is within the meaning of the legislation.

The panel notes that the ministry at oral argument testified that trust information would be sent to the ministry legal section for a determination if the trust complies with the legislation and ministry policy.

The panel accepts that the ministry may create internal policies to assist ministry staff interpretation of legislation, and notes that while such policy is not binding upon the panel itself, the panel may adopt the ministry's policy as a reasonable interpretation of the legislation.

In this case the ministry policy states that the fundamental concept of a trust is that the legal ownership of the asset (essentially, the authority to manage or dispose of the asset) is separated from the beneficial ownership (the right to benefit from the asset). The policy states that staff will work with the Strategic Policy and Legislation Branch (SPLB) and with lawyers from the Legal Services Branch of the Ministry of Attorney General to review the trust information and determine whether the trust is valid, whether the trust is to be considered an asset, and if it is exempt.

The policy also provides that a trust document itself is not enough to create a trust. The legal title to the asset in trust must be transferred to the trustee to make the trust effective.

The policy also states that for those clients with the persons with disabilities (PWD) designation, staff must inform them of the trust program and the Registered Disability Savings Plan (RDSP) exemption and refer them to the "Disability Assistance and Trusts" booklet and Trust Query Submission Guidelines for Clients.

The panel notes that the ministry included a document entitled *Trust Query Submission Guidelines for Clients* and also a booklet entitled *Disability and Trusts* in the December 2020 letter to the appellant, and this booklet also refers to the ministry policy and procedure manual, available online. Subsequent letters to the appellant have also suggested the appellant seek assistance from a lawyer or others regarding setting up a trust. The panel finds that in the circumstances of the appellant the ministry has followed its policy regarding the provision of information.

The booklet provides a definition of a trust as a legal relationship where someone (the trustee) holds the legal interest in (legally owns) money or other assets for someone else's benefit (that person is called the "beneficiary"). On the facts the panel finds that the appellant was advised of the ministry definition of a trust.

At hearing the appellant argued that the BC Interpretation Act should be used to provide a liberal interpretation of the uses of the asset. The panel notes this to be a reference to section 8 of the Interpretation Act.

The panel finds that the definition provided by the ministry in the booklet to be an interpretation commonly applied to the term of trust and accepts the ministry policy of the meaning of the legislation that a trust is an arrangement whereby a person holds money as its nominal owner for the good of another persons as beneficiary.

The panel notes the ministry letter of December 2020 to the appellant, referred to above, included a requirement to submit;

- complete documents that set out the terms of the trust,
- trust agreement or deed,
- financial statements to show the asset was transferred to the trustee and is being held in trust,
- proof of signing for the trust account, and

that the ministry has sent further letters to the appellant in March, June and July of 2021 requesting the same documentation to demonstrate the setting up of a trust.

That the appellant has some understanding of the ministry requirement to turn over legal authority within a trust is evident to the panel from the comments at various stages by the appellant about not turning over the inheritance to a third party and relinquishing say in the use of the funds.

The appellant stated during oral testimony that the ministry agrees it does not need to be set up by a lawyer to be valid. The panel notes that the policy accepts that trusts may not have been set up by, or with the assistance of a lawyer and that the ministry will accept any valid trust.

While this legal arrangement does not need to be in a written form the panel accepts the ministry requirement that the appellant must demonstrate to the ministry the requirements of the trust, such as banking arrangements, terms of the trust, defining who has control of the funds, and to track the use of the funds to demonstrate continued eligibility for disability assistance

through ongoing reporting to the ministry.

During questioning at hearing by the panel, when requested for this information the appellant was either unwilling or unable to provide details of the arrangement. The appellant reiterated the fact that only the appellant has control of the funds from the inheritance.

At the hearing the appellant stated having and retaining unrestricted access and control of the funds without any demonstration of how the intended trust works.

The panel has previously recorded that once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

Based on all admissible evidence, including that at appeal, the panel finds that there is no trust established between the appellant and the builder and the ministry decision that the appellant has not demonstrated that some or all of the assets are being held in a trust to be reasonably supported by the evidence.

Total Amount of Asset

The panel has found no evidence to substantiate some or all of the appellant's assets being held in one of the exempt assets, and that no exemption exists for monies being set aside to build a residence for the appellant to live in. Further the panel has found that the inheritance is not being held in an ADA.

The panel notes that in the April 2020 letter the appellant reported the inheritance funds were being held as unrestricted cash-like assets in a GIC and tax-free savings account, with a total value of approximately \$560,000. No information has been submitted on the actual amount of the funds at present and the panel therefore finds the appellant's total unexempted assets to be in an amount of approximately \$560 000.

As noted earlier in section 10 (2) of the EAPWDR limits the unexempted total assets in the circumstances of the appellant to \$100 000. As the inheritance amount currently exceeds the asset limit of \$100,000 for the appellant's family unit the panel finds the ministry decision that the appellant is ineligible for disability assistance to be reasonably supported by the evidence.

Conclusion

The panel has found the ministry's decision that the appellant was ineligible for disability assistance due to having assets that exceed the allowable limit for the family unit was reasonably supported by the evidence and a reasonable interpretation of the legislation in the circumstances of the appellant.

The appellant is not successful upon appeal and the panel confirms the reconsideration decision.

Appendix A

Employment and Assistance with Persons with Disabilities Act

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.

Information and verification

10 (1) For the purposes of;

- (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
- (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
- (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

(4) If an applicant or a recipient fails to comply with a direction under this section, 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 ineligible for disability assistance, hardship assistance

or a supplement for the prescribed period.

(4.1) The Lieutenant Governor in Council may prescribe circumstances in which subsection (4) (a) or (b) does not apply.

Employment and Assistance with Persons with Disabilities Regulation

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
- (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*];
- (jj) funds held in, or money withdrawn from, a registered disability savings plan;
- (hhh) an amount that is paid or payable, as a single payment or series of payments, as follows:
 - (iii) the amount is paid or payable as full or partial compensation for loss of the residential use of the premises, including for eviction, relocation, demolition, temporary displacement during repair, renovation or redevelopment, or as an inducement to cease or suspend residential use;

(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;

(3) The minister may authorize one or more of the following:

- (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.

Asset development accounts

11 (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 10 (2) [*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.

Assets held in trust for person with disabilities

12 (1) In this section, "disability-related cost" means the cost of providing to a person with disabilities or 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, and
- (e) if a person with disabilities does not reside in a special care facility, a private

hospital or an extended care unit in a hospital,

- (i) renovations to the person's place of residence necessary to accommodate the needs resulting from the person's disability, and
- (ii) necessary maintenance for that place of residence.

APPEAL NUMBER 2021-0218

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)

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

Part H – Signatures

Print Name

Donald Stedeford

Signature of Chair

Date (Year/Month/Day)

2021/12/07

Print Name

Joan Cotie

Signature of Member

Date (Year/Month/Day)

2021/12/07

Print Name

R.W. Fenske

Signature of Member

Date (Year/Month/Day)

2021/12/08