

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated July 12, 2022, which determined the appellant was not eligible for disability assistance as per the Employment and Assistance for Person with Disabilities Regulation, sections 1 and 10 because the value of the appellant's asset was higher than the allowable limit.

**Part D – Relevant Legislation**

Employment and Assistance for Person with Disabilities Regulation (EAPWDR), sections 1 and 10

**Part E – Summary of Facts****Relevant Evidence Before the Minister at Reconsideration****Ministry records show:**

- The appellant is a sole recipient with Persons with Disabilities (PWD) designation.
- On April 26, 2022 the ministry completed a review of the appellant's file and determined that she is the sole owner of her property (specific address provided). The appellant does not dispute this.
- As part of the review, the appellant provided a mortgage statement (balance owing, \$39,149.57).
- A BC Assessment statement confirmed the value of the property to be \$258,100.
- The ministry determined the appellant was not eligible for disability assistance because she had assets (equity in real property) valued more than the allowable limit of \$100,000.

**Mortgage Statement (printed November 15, 2021)**

Balance owing on property - \$39,149.57

**BC Assessment Statement (January 19, 2022)**

Total Value for property (as of July 1, 2021) - \$258,100

**Letter from Ministry to Appellant (April 25, 2022)**

The ministry wrote that on November 25, 2021 it was disclosed to the ministry that the appellant moved out of her residence; the property has been rented and the appellant was living in a camper at another location in the province.

A file review for assets in excess and undeclared rental income was started on February 1, 2022. It was disclosed to the ministry that the date the appellant moved from her property was approximately June 2, 2021. On February 2, 2022 a temporary exemption on the assets regarding her property was given by the ministry to allow the appellant time to either dispose of her asset or move back in, as her primary residence.

On February 11, 2022 a shelter information form was submitted to the ministry for the appellant's relocated residence and tenancy was noted until spring 2022.

On March 16, 2022 an update was submitted to the ministry from the appellant's advocate stating that the appellant felt her property was not worth selling, that a contractor gave a quote on its value in its current condition and a quote to clean it up for a better sale. It was also noted that the appellant contacted a real estate agent but had not heard back. No further action to place her property up for sale has been made and the appellant has not confirmed that she will be moving back to her property as her primary residence. The appellant is no longer eligible for PWD.

**Request for Reconsideration (July 8, 2022)**

The appellant stated she had to leave her property as she was in a lot of pain due to too much work and arthritis. As well, there was the pressure of people wanting to live on her property but not paying rent. It

was very stressful as nothing was working in her home and she didn't have enough money to maintain it and get it to a livable standard. She has since been able to find friends to live in her house, a mother and daughter. If she moves back, they would have to move out and be homeless.

In addition, the appellant no longer felt safe at her property due to a person, connected to a previous assault on her, being released from prison. It has impacted her mental health. She states it's important that she feels safe wherever she lives.

The appellant states she left her property temporarily to look for land with a friend (before selling her property) as it was no longer safe and affordable to live there. They are having trouble finding land in the current property boom and often properties are sold before they can make an offer to get financing in order. The appellant and her friend are trying to buy something together to make it more affordable.

The appellant also states that people are collecting rent cheques - claiming they live at her property. She doesn't know who most of these people are and receives no income from them. This causes more worry and stress and has contributed to the appellant not being able to feel safe on her property.

The appellant also believes her property has been over valued by BC Assessment. She states it needs a large amount of work, which would cost in excess of \$170,000 in order to be comfortable and safe to live in. She also believes it is not legal to sell as it is not insured. The appellant states she still owes \$48,000 for the mortgage and her payments are higher than they should be because the property is not insured and not to lock up.

The appellant adds that leaving the property was not meant to be a permanent move. She left her home due to fear but also realized that living there is not sustainable on her PWD income. She doesn't know how she will ever manage to get enough money to do the necessary repairs to her home. Also, her home is on a hill and her bed is high up a difficult ladder- accessing is getting more difficult as she ages.

The appellant states she has faced many challenges in her life and just wants to find a quiet safe place to live with her dog. Employment is very difficult to maintain or even get. She has applied for many jobs in her new location but has not had any responses. She cannot work full time due to arthritis and other challenges. The appellant states she was supported by her social worker who knew she was struggling and needed to get away for a short while.

## **Additional Information**

### Appellant

#### **Notice of Appeal (July 20, 2022)**

#### Appellant Submission (August 18, 2022)

#### **Statement Written by the Appellant's Family Member (August 16, 2022)**

They state that the appellant has been cut off from income assistance and now might lose her home. When she was 18, and going to school in another province, she was attacked. The attacker was sentenced to prison. In 2013, he was released from prison on day parole to two half-way houses in British Columbia, under surety of his family.

The appellant has post traumatic stress disorder (PTSD) and severe anxiety from the attack. Upon learning that her attacker had been released from prison, she fled her home as she did not feel comfortable staying there where she could possibly be found.

The appellant needs income assistance to pay her mortgage while she is staying safe on the road and continuing counselling. She needs to be allowed to be away from her home to do so.

#### **Media Articles**

*- to demonstrate that the appellant's attacker is dangerous and still located close to the appellant's home*

#### **Letter to EAAT from Appellant's Advocate (August 15, 2022)**

The advocate states their team first met the appellant in September 2021. She had recently left her home as she feared for her life after learning of the release of the attacker who had assaulted her when she was younger. The appellant has a very real fear that her attacker would want to hunt her down and harm her again. She began to search for a new home, where she hoped to feel safe.

The appellant became ineligible for PWD once it was disclosed that she had left her home. She reports leaving temporarily to find a new place to live and has been living in her camper. She continues the search for land with her friend but is finding the current market difficult. The appellant has been part of 'the system' for the majority of her life. She speaks of the struggles of living on welfare, raising children and trying to make a home for them. She shares stories of buying her property with the help of an inheritance, and the plans and dreams she had for this place. Leaving her home is not her preferred choice and she is yet to find somewhere else that feels like home again. Being isolated and facing many challenges throughout her life, the appellant trusts only her family and good friends. She has a close family member and trusts them and their experience in carpentry. The appellant is aware that her options are to return to or sell her property. However, she does not believe that she can sell her property in its current state. Her family member reinforces this narrative, which the community services team knows is contradictory to advice from real estate agents and others. The ministry had been paying the appellant's mortgage for many years, but this stopped with PWD ceasing.

The appellant received a letter from a lawyer stating that the full mortgage amount owing was due August 12<sup>th</sup>. The appellant only saw the letter after this date and has no means to pay. It looks like she will lose the property. Throughout the time that the advocate has worked with the appellant, she has found her to be a kind and generous person. In spite of having little, she is the first to try and help another person or link them with services that can help them. The advocate believes that the appellant is not trying to take advantage of the current situation or using her property to gain any wealth.

**Letter from a Law Corporation to Appellant (July 26, 2022)**

- advising of an outstanding mortgage and that failure to pay (terms as outlined) will constitute a default on the mortgage.

**Note (January 24, 2022)**

To Whom it May Concern:

The writer states that when the appellant was a young woman, she experienced significant trauma by a serial offender who was on the run for over 10 years before being caught. The appellant had to attend court and the trial was well publicized. In 2016, the appellant learned that her attacker was released from prison and was in British Columbia. The proximity to her property created so much fear that she does not feel safe living there. The appellant experiences PTSD due to the trauma of this event.

**Note from a Friend (no date)**

The appellant's friend states they have known the appellant for 12 years. They are good friends and have been searching together to find property. The appellant has been traumatized from an experience involving an attack and so is seeking refuge. Her previous home is no longer a viable place to live and needs new accommodation. She has a good heart and they are helping her, but because of domestic concerns, they have been in another province and unable to attend to this issue. They will be returning, hopefully, by spring.

At the hearing, the appellant stated the dwelling on her property is more of an art studio than a house and that she left her property in 2020, not 2021 as the ministry stated. The appellant's advocate stated that returning to her property is not an option. She is afraid to go back and is camping with a friend. The appellant owns the camper she is living in.

Regarding the assessed value of her property, the appellant stated she contacted BC Assessment and BC Assessment lowered the assessed value of her property to \$244,000 (land value - \$194,000, building value - \$50,000).

The appellant's family member stated that there isn't a proper foundation on the building and there are open permits, so the building would need to be torn down in order for the property to be sold. Because of demolition costs the property would have to be sold for far less than its value. The appellant's advocate said she reached out to real estate agents who advised her that they would be able to sell the property in the condition it's in.

Ministry

At the hearing, the ministry explained the various assistance payments made to the appellant over the past few months and advised that the ministry does not tell the appellant what she should do but helps the appellant explore options. However, the ministry added that at this point in time the appellant is not living at her property and so the property becomes an asset.

The ministry did not raise any objections to the appellant's additional submissions.

The panel determined the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's reconsideration decision that determined the appellant was not eligible for disability assistance because the value of the appellant's asset is higher than the allowable limit, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

**Appellant Argument**

The appellant argues she no longer felt safe at her property due to someone, connected to a previous assault on her, being released from prison. It has impacted her mental health and she feels it's important that she feels safe wherever she lives. The appellant's advocate argued that returning to her property is not an option.

The appellant also argues that she had to leave her property as she was in a lot of pain due to too much work and arthritis. As well, there was pressure of people wanting to live on her property but not paying rent. Nothing was working in her home and she didn't have enough money to maintain the house and get it to a livable standard.

The appellant also argues her property has been over valued by BC Assessment as it needs a large amount of work, which would cost in excess of \$170,000 in order to be comfortable and safe to live in. She also believes it is not legal to sell as it is not insured.

**Ministry Argument**

The ministry argues that although the appellant indicated the value of her property is less than what BC Assessment indicates, as she has not provided any evidence, (e.g. independent market appraisal), to show what the current market value is, the ministry relied on the assessment of \$258,100 provided by BC Assessment. As the most recent mortgage statement (as of November 2021) shows the appellant owed \$39,149.57 on her mortgage, the ministry determined the value of the appellant's equity in her property to be \$218,950.43 (\$258,100 - \$39,149.57).

The ministry argues further that as the appellant has not provided any evidence that her property cannot be sold due to its condition or for legal reasons, the ministry is unable to establish that the equity in her property cannot be converted to cash. Therefore, the ministry is satisfied that the value of the appellant's equity in her property meets the definition of asset under section 1 of the EAPWDR because it is equity in real property that can be converted to cash.

Also, the ministry argues that as the appellant's property is not the appellant's place of residence it is not exempt under Section 10(1) of the EAPWDR. Therefore, the ministry argues that as the value of the appellant's equity is more than the \$100,000 limit for a sole recipient, the appellant is not eligible for disability assistance in accordance with section 10(2) of the EAPWDR.

## Panel Analysis

### EAPWDR, section 1 – asset definition

In section 1, "asset" "means equity in any real or personal property that can be converted to cash". The panel notes ministry records show the appellant is the sole owner of her property (specific address provided). The appellant does not dispute this.

The appellant argues she believes her property is not legal to sell as it is not insured. At the hearing, the appellant's advocate stated that they reached out to real estate agents who advised that they would be able to sell the property in the condition it's in.

Although the appellant's family member stated, at the hearing, that the property would have to be sold for far less than its value, the panel finds as there is insufficient evidence to demonstrate the appellant's property cannot be sold, it finds the property can be converted to cash and therefore meets the definition of asset, as per section 1 of the EAPWDR.

### EAPWDR, section 10 – asset limit

Section 10(1) provides a list of asset exemptions, which include, "a family unit's place of residence". In a letter from the ministry to the appellant (April 25, 2022) the ministry states it was disclosed to the ministry that the date the appellant moved from her property was approximately June 2, 2021. At the hearing the appellant stated she left her property in 2020.

The panel notes the legislation does not define "place of residence". However, the panel finds it is reasonable to conclude that a place of residence is a physical place where a person currently resides (or lives), most of the time. As the appellant stated that she left her property in 2020, and has no plans to return, the panel finds the appellant's property cannot be considered her place of residence and therefore cannot be considered an asset exemption as per section 10 of the EAPWDR.

Section 10(2) states one recipient, who is designated as PWD, is not eligible for disability assistance if they have assets with a total value of more than \$100,000. The panel notes ministry records show the appellant is a sole recipient with PWD designation.

The panel also notes evidence submitted in the form of a mortgage statement shows the appellant's outstanding mortgage balance as \$39,149.57 (as of November 2021) and a BC Assessment valuation for the appellant's property as \$258,100 (as of July 1, 2021). At the hearing, the appellant stated BC Assessment re-evaluated her property as \$244,000. Even accepting this as the value of the property, as  $\$244,000 - \$39,149.57 = \$204,850.43$ , the value of the appellant's property is still greater than the \$100,000 allowable under the legislation.

Therefore, the panel finds the ministry reasonably concluded that the appellant is not eligible for disability assistance as she has assets with a value of more than \$100,000, as per section 10(2) of the EAPWDR.



**Conclusion**

In conclusion, the panel finds the ministry's reconsideration decision that determined the appellant was not eligible for disability assistance as per the EAPWDR, sections 1 and 10 because the value of the appellant's asset is higher than the allowable limit, was reasonably supported by the evidence.

The appellant is not successful on appeal.

## Schedule of Legislation

### Employment and Assistance for Person with Disabilities Regulation

#### **Definitions**

**1** (1) In this regulation:

...

"asset" means

(a) equity in any real or personal property that can be converted to cash,

#### **Asset limits**

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

...

(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 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;

APPEAL NUMBER 2022-0164

**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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2022/09/01

Print Name

Melissa McLean

Signature of Member

Date (Year/Month/Day)

2022/09/01

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2022/09/01