

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision, dated January 8, 2023 (the “Reconsideration Decision”), which held that the Appellant was not eligible for hardship assistance because the Appellant’s family unit had assets in excess of \$10,000.00, which is contrary to section 11(2)(b) of the *Employment and Assistance Regulation* (“EAR”). The Ministry also determined the Appellant was not eligible for hardship assistance in January 2023 because the Ministry had already provided three months of hardship assistance to the Appellant between October and December 2022.

Part D – Relevant Legislation

Employment and Assistance Act (“EAA”)- section 5
EAR- sections 1, 11, 39, and 46

Part E – Summary of Facts

The Appellant's family unit consists of the Appellant, the Appellant's spouse, and two children. The Appellant was provided hardship assistance for the months of October, November, and December, 2022.

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

- a summary of assets and liabilities from the Appellant's bank, showing a chequing account with a modest balance and a mortgage with a balance owing of \$25,608.81 (the "Bank Summary");
- a tax assessment (the "Assessment") for a mobile home property owned by the Appellant outside of British Columbia (the "Property"), indicating that the 2022 assessed value for the Property was \$57,400.00;
- the Appellant's Request for Reconsideration, dated December 15, 2022, which included:
 - a typed note from the Appellant, indicating that:
 - the Appellant was trying to rectify the situation with the Property;
 - the Appellant's sister-in-law's partner was laid off from work in 2020 and the sister-in-law had student loans which prevented either of them from qualifying for a mortgage to purchase the Property;
 - the Property has reduced the Appellant's income making it difficult to keep food in the Appellant's household and to provide other essentials;
 - a summary of the monthly expenses of the Appellant and his spouse.

In the January 10, 2023 Notice of Appeal, the Appellant again included a typed note dated January 11, 2023 which set out that:

- the Appellant's sister-in-law and her spouse were living at the Property by agreement and paying the mortgage and pad rental fees until she could secure a mortgage;
- the Appellant's sister-in-law had a student debt and her spouse had lost his job due to the COVID pandemic and was not able to get a mortgage until the probationary period for his current employment was up;
- his sister-in-law would be paying only enough to pay out the mortgage balance and closing costs so the Appellant could not simply sell the Property for the appraised price; and
- the Appellant was concerned about having enough food to eat and having power at his current residence.

At the hearing of the appeal, the Appellant advised that the Property cannot be sold because his sister-in-law has been living in it since approximately 2014 and paying the mortgage since that time. The mortgage payments have increased to approximately \$240.00 per month, the current amount, from about \$200.00 per month when the sister-in-law started to make the payments. The Appellant could not say what portion of those amounts were going towards the principal and how much was interest. The Appellant described the arrangement between himself and his-

sister-in-law as a rent to own for the Property. The Appellant stated that the approximate fair market value of the Property was about \$40,000.00, in spite of the property assessment, which valued the Property at \$57,400.00. The Appellant is currently living in British Columbia at a residence owned by the Appellant's parents. The Appellant stated he is looking for work but suffers from health issues and so far has been unsuccessful in securing a job and that without additional hardship assistance, the Appellant is not certain how he would be able to pay rent or afford groceries.

The Ministry stated that without an enforceable and written contract of purchase between the Appellant and his sister-in-law that clearly indicated that the Property was being sold for fair market value, the Ministry did not have any discretion to provide hardship assistance beyond three months because of section 39 of the EAR.

The panel admits the Appellant's January 11, 2023 typed note and the oral evidence provided at the hearing, pursuant to section 22(4) of the EAA as evidence that is not part of the record but which the panel considers is reasonably required for a full and fair disclosure of all matters related to the appeal.

Part F – Reasons for Panel Decision***Issue on appeal***

The issue in this appeal is whether the Ministry was reasonable in its decision that the Appellant was not eligible for hardship assistance in January 2023 because the Appellant's family unit had assets in excess of \$10,000.00, contrary to section 11(2)(b) of the EAR and because the Ministry has already provided three months of hardship assistance to the Appellant from October to December 2022.

Panel Decision

Pursuant to section 5 of the EAA, hardship assistance is available to a family unit that is not otherwise eligible for income assistance but meets the criteria for hardship assistance.

Section 39 of the EAR sets out that hardship assistance is available to a family unit that is not eligible for income assistance for any of the reasons sets out in sections 41 through 47.21 of the EAR. However, section 39(3) provides that family units whose circumstances are described in sections 41, 44, 46, or 43 of the EAR cannot receive hardship assistance for three consecutive months after receiving hardship assistance for three consecutive months. The Appellant had received hardship assistance for October, November, and December, 2022 and, in the result, would not be eligible for hardship assistance for January, February, or March, 2023 if any of sections 41, 44, 46, or 43 applied to the Appellant's circumstances.

In the case of the Appellant, the family unit is ineligible for income assistance because of the circumstances set out in section 46 of the EAR. Namely, the Appellant's assets exceed the asset limits provided for in section 11 of the EAR for a family unit that has the same makeup as the Appellant's. Section 11(2)(b) specifically sets out that for a family unit which consists of an applicant or a recipient with one or more dependants, like the Appellant's family unit, the asset limit is \$10,000.00.

Section 1 of the EAR defines "asset" broadly to include equity in real property. The equity in the Property does not otherwise fit into any of the exempted categories of assets set out in section 11(1) of the EAR. In the result, the equity in the Property is an "asset" for the purposes of calculating the Appellant's family unit's assets and for purposes of determining the Appellant's eligibility for both income assistance and hardship assistance.

The best information available to the Ministry about the equity in the Property comes from the Bank Summary and the Assessment, which suggest that the Property has a value of approximately \$57,400.00 but is subject to a mortgage with a balance of \$25,608.81, which suggests that the Property may have equity of up to approximately \$32,000.00. Even accepting the Appellant's more modest estimate of the value of the Property (\$40,000.00), the equity in the Property exceeds the \$10,000.00 asset limit which applies to the Appellant's family unit. While the Appellant argued at the hearing that he had, in effect, no beneficial interest in the Property because of the agreement with the sister-in-law, the only evidence of such an agreement consisted of the Appellant's stating that such an agreement existed. The agreement

does not appear to have been reduced to writing, leaving the Ministry with just the Bank Summary and the Assessment as a means of determining the Appellant's assets.

In view of all of the above, the panel finds that the Ministry was reasonable in its finding that the equity in the Property was an asset that exceeded the asset limit set out in section 11(2)(b) of the EAR and that the Ministry had no discretion to provide hardship assistance to the Appellant in January 2023, after having already provided hardship assistance to the Appellant for the months of October through December 2022, pursuant to section 39(3) of the EAR.

The Appellant is not successful in the appeal.

Applicable Legislation

Section 5 of the EAA permits the Ministry to provide hardship assistance:

Hardship assistance

5 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that

- (a) is eligible for it, and
- (b) is not eligible for income assistance.

(2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

Section 1 of the EAR sets out the definition of asset:

Definitions

1 (1) In this regulation:

...

"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;

Section 11 of the EAR sets out what assets are not included in the calculation of a family unit's assets and prescribes the limits on assets for various types of family units:

Asset limits

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

- (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 income 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. 1, s. 6 (e).]
- (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;
- (v.1) money that is paid or payable to or for a person if the payment is in accordance with

- (i) the Sixties Scoop Settlement made November 30, 2017, or
- (ii) the Federal Indian Day Schools Settlement made March 12, 2019, as amended May 13, 2019;
- (w) financial assistance payments provided under Part 6 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 7 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 by the minister under section 77.2 of this regulation, and received and used for the purposes set out in the business plan;
- (y) assets exempted under
 - (i) section 12 (2) [*asset development accounts*],
 - (ii) section 13 (2) [*assets held in trust for person receiving special care*], or
 - (iii) section 13.1 (2) [*temporary exemption of assets for person applying for disability designation or receiving special care*];
- (z) Repealed. [B.C. Reg. 85/2012, Sch. 1, 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. 1, 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. 1 (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;
- (oo.1) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement and Supplementary Agreement approved by the Federal Court June 22, 2018 in Court File No. T-370-17, *Todd Edward Ross et al. v. Her Majesty the Queen*;
- (oo.2) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement approved by the Federal Court January 30, 2019 in Court File No. T-1068-14, *Raymond Michael Toth v. Her Majesty the Queen*;
- (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;
- (ww.1) a BC child opportunity 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);
- (fff) money, or goods or services in kind, received or to be received by a participant in the Ministry of Social Development and Poverty Reduction's Work Experience Opportunities Grant program from a grant under the program;
- (ggg) a rebate of all or part of a premium paid to the Insurance Corporation of British Columbia under the *Insurance (Vehicle) Act* and the plan operated under that Act;
- (hhh) an amount that is paid or payable, as a single payment or series of payments, as follows:
 - (i) the amount is paid or payable by a person who is or was a landlord, owner or manager, or a person who holds or held a similar position, in relation to leased, rented or licensed residential premises, whether or not the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* applies to that premises;
 - (ii) the amount is paid or payable to a person who is or was a tenant, lessee, licensee or occupant, or a person who has or had a similar right or permission to use the premises for residential purposes;
 - (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;
 - (iv) the amount is paid or payable under an enactment, a policy or a contract, or voluntarily or at the discretion of the person referred to in subparagraph (i);
- (iii) money that is exempt under section 8 of Schedule B;
- (jjj) money that is paid or is payable to or for a person from a settlement under the Williams Treaties Settlement Agreement signed August 22, 2018;
- (kkk) money that is paid or is payable to or for a person from a settlement under the Missanabie Cree First Nation Treaty Land Entitlement Settlement Agreement signed April 24, 2020;

(lll) money that is paid or is payable to or for a person from a settlement under the Peepeekisis Cree Nation File Hills Colony Specific Claim Settlement Agreement signed March 23, 2021;

(mmm) money that is paid or is payable to or for a person from a settlement under an agreement to settle claims relating to the transfer of the Seabird Island Indian Reserve in 1959 by the Government of Canada to the Seabird Island Band and the distribution of shared trust funds on a per capita basis.

(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) - (2.3) Repealed. [B.C. Reg. 122/2019, App. 1, s. 4 (d).]

(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.

Section 39 sets out the limits on hardship assistance that the Ministry can provide:

Hardship assistance — eligibility and limitations

39 (1) For a family unit to be eligible for hardship assistance, the family unit

(a) must be ineligible for income assistance for one or more reasons set out in sections 41 to 47.21, and

(b) must not be ineligible for income assistance for any other reason.

(2) A family unit that is eligible for hardship assistance must be provided with hardship assistance

(a) in accordance with Schedule D,

(b) only for the calendar month that includes the income assistance application date, and

(c) only from the date in that calendar month on which the minister determines that the family unit is eligible for hardship assistance, subject to

(i) section 4 (2) of Schedule D for hardship assistance provided under sections 41 to 46 and 47.21, and

(ii) section 4 (3) of Schedule D for hardship assistance provided under section 47.2.

(3) A family unit to which hardship assistance has been provided for 3 consecutive calendar months because of the circumstances described in

(a) section 41, 44 or 46, or

(b) section 43, unless the source is employment insurance,

is not eligible for hardship assistance under any of those sections for the 3 consecutive calendar months immediately following those 3 consecutive calendar months of receipt.

(3.1) A family unit is not eligible for hardship assistance under section 47.21 if the family unit has received hardship assistance for 6 or more calendar months under this regulation or the Employment and Assistance for Persons with Disabilities Regulation.

(4) If

- (a) hardship assistance has been provided to a family unit under section 47.2 for the calendar month referred to in subsection (2) (c) of this section,
- (b) the family unit continues to be ineligible for income assistance because a member of the family unit has not satisfied the requirement under section 4.1 (2) (b) respecting the completion of searches for employment, and
- (c) the member of the family unit who has not satisfied that requirement is, if applicable, taking the steps to satisfy the requirement as directed by the minister,

hardship assistance may be provided under section 47.2 for a further 2 consecutive calendar months following the initial calendar month for which the hardship assistance is provided.

Section 46 limits hardship to three months for family units whose assets exceed the asset limit set out in section 11 of the EAR:

Family units that have excess assets

46 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the assets of the family unit exceed the applicable limit under section 11 (2) and (2.1) [*asset limits*] if

- (a) the minister considers that undue hardship will otherwise occur,
- (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
- (c) the applicant satisfies the minister that
 - (i) the assets that caused the family unit to be ineligible are not immediately available to meet the family unit's basic needs, and
 - (ii) every effort has been made and continues to be made to sell the assets,
 and
- (d) the family unit
 - (i) includes one or more dependent children, or
 - (ii) includes only persons who have reached 65 years of age or persons who have persistent multiple barriers to employment.

2023-0010

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
Adam Shee

Signature of Chair

Date (Year/Month/Day)
2023/01/30

Print Name
Carmen Pickering

Signature of Member

Date (Year/Month/Day)
2023/01/30

Print Name
Robert Kelly

Signature of Member

Date (Year/Month/Day)
2023/01/30