

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated 21 February 2023, in which the ministry denied the appellant income assistance for possessing assets that exceed the legislated limit for the family unit size.

Part D - Relevant Legislation

Employment and Assistance Act (Act) - Section 1, 2, 5, 10 and 14.

Employment and Assistance Regulations (Regulation) - Section 1, 11 and 39.

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The evidence before the minister at reconsideration included:

The Appellant's Request for Reconsideration which included the following statements from the appellant;

She does not own a Yamaha motorcycle or a Maserati. She has a BMW car that is valued at \$4600, that is currently not drivable and has over 235000k on it. She has tried but has been unable to sell it. The appellant states she has zero income and has been living off credit cards and her line of credit. The appellant stated she is a person with mental illness and has a history of physical abuse and a drug and alcohol problem, that she is currently in the state of losing her home, and her power is getting disconnected.

The appellant states she has no source of income to feed her son and there are no assets that she has that will help her get through the month. She is currently going through further mental health evaluation and has no means of being able to take care of herself and her son.

The appellant states she has sent bank statements and credit statements and car loan statements from a bank she does not bank with, as she does not have a CIBC bank account.

The appellant claims to have done and sent everything requested of her and all the documents that were ever required are posted on the myself serve website. She currently owes \$3700 on her line of credit and \$3500 on her credit card and will be homeless and lose her son if she does not get help.

The appellant closes by saying she can provide other sorts of papers and documents that are needed.

In the document there also appears to be a hardship assistance request; and requests for documents under section 10 of the Act that had not been complied with.

There are also a number of other documents;

- A January 20, 2023 letter from the Ministry providing the original decision,
- Simplii Financial chequing account statement for 20 November 2022, to 22 January 2023,
- A CIBC credit card statement for the period 1 June 2022, to 16 January 2023,

- A TD Account chequing account statement for the period 1 December 2022 to 17 January 2023,
- A Simplii Financial tax Free Savings account statement for the period 20 October 2022, to 22 January 2023,
- Internet site vehicle valuations,
- ICBC vehicle ownership searches, and
- An Equifax consumer report.

Evidence received after reconsideration.

Documentary

In the Notice of Appeal (NOA), the appellant writes that; She is a single mom with a newborn baby and has not worked due to an illness of depression and mental health. She has no source of help and income, has no assets and is behind in her bills, living off her credit card and line of credit. She has no way of taking care of her son, born Aug [REDACTED] 2022. She has no other way of surviving unless she goes into a shelter, she needs help immediately and or will be homeless. She asks for a further look into help as a single mother. She doesn't know where else to turn and has requested help for her hydro bill, food, shelter, and assistance with her son.

Following the submission of the NOA the appellant submitted four (4) individual packages of information.

A summary of these documents follows;

1. A package of five documents containing;
 - a. Representative authorisation to an advocate to include the making of decisions,
 - b. email from a doctor dated 16 Jan 2023 showing medical history of the appellant which includes anxiety, depression and substance abuse, and a list of medications.
 - c. email from a BMW repair facility dated 3 February 2023 reiterating recommendations from a May 2022 visit for repairs. The repairs are in some part optional however (\$1678) but include \$4236 for needed items, not including shop supplies and taxes.
 - d. An Owners certificate of Insurance and vehicle license dated 4 Feb 2023 showing ownership for a Yamaha motorcycle under the name of the appellant's brother,

- e. BC Transfer Tax Forms for seller and buyer for the Yamaha motor cycle showing sale from appellant to a relative for \$1000, dated 4 Feb 2023.
2. A Motor Vehicle Appraisal Form dated 23 June 2022 to the appellant from a dealer for her 2012 BMW at a value of \$4158.00 as the vehicle requires a significant number of repairs and is not safe to drive. The mileage shown on this form for the BMW is 189,962.
3. Two documents which are;
 - a. A Vehicle Transfer tax form, dated 18 January 2023 showing a sale at zero cost (\$0) for a Maserati Ghibi which is shown on the next document, and
 - b. An ICBC Owners Certificate of Insurance and vehicle License for a Maserati Ghibi, dated 18 January 2023 in the name of the appellant's father.
4. A two-page ICBC Owners Certificate of Insurance and vehicle License dated 18 January 2023 for a Maserati Ghibi including the actual insurance costs. This is the full copy of the partial document shown on 3b above.

The ministry advised that they may enter a single page document that was a summary document relating to banking information contained in the appeal record at time of testimony.

Hearing

The hearing was held as a teleconference.

Appellant

At the hearing the appellant stated that she would address her application for income and hardship assistance. She and her advocate summarised the reasons for the denial for income assistance by referring to the ministry decision, the vehicles listed as assets over \$12, 000 and the ministry acceptance that the appellant does not own a Honda.

The appellant stated that the Motor Vehicle Branch was wrong in listing the appellant as the owner of the Maserati, so she went and rectified the error by transferring the car to her father. She stated that she does have a BMW and did have a Yamaha motorcycle but had recently sold it.

The appellant stated she was not aware she needed to submit documents although she had logged into her ministry account and explained the concerns. She disagreed with the reconsideration decision and wanted another opportunity to support her argument. She stated that the BMW is still in the mechanic's shop and is not insured. That is the reason she came to the tribunal.

The appellant stated that she is not in good health and in a situation where she cannot support herself and her son, until she gets better. She is now receiving counselling and going to a clinic to deal with post partum depression.

The advocate led the panel through the four submissions received after reconsideration, highlighting a medical report from a medical doctor which the appellant stated is why she finds it difficult to talk to ministry officials. The June 2022 submission from a BMW dealer states the actual value of the car, once the necessary repairs are considered, to be \$4158.00, and that this was supported by a quotation from the dealer on the needed repairs from May 2022. These documents prove the ministry is incorrect in its valuations provided in the decision.

The appellant stated that if the true value of the BMW and the Yamaha motorcycle were then added they would be less than the \$10,000 allowed under legislation and she had to sell the motorcycle as she needed the money.

She stated that she could have submitted a copy of her fathers' bank statement to show that he had purchased the car however it is a private and confidential document, and she is not comfortable sharing it, however, could do so if requested.

The advocate pointed out the new documents of transfer of ownership dated 18 January 2023 shows the ministry erred in finding the appellant as the owner of the Maserati. The appellant added that her insurance broker had advised her to gift the car, which she did to her father, to avoid taxes.

In answer to the Ministry's question as to why information requested has not been provided to the ministry, the appellant stated that she had a baby in August and has been suffering from 'foggy brain' and was simply trying to survive her health problems and has never struggled this bad. If it was not for her advocate being with her, she would not be able to sit here today.

The appellant answered a question regarding the reported motorcycle trailer by stating she has no knowledge of any trailer and the computer print outs in the decision show the Yamaha and the trailer as having the same VIN number, thereby showing an error.

The appellant advised she sold the motorcycle on the 4 February 2023 to her brother, and the reason for selling it at \$1000, was that it was all he could afford at the time, and she needed the money.

The appellant stated she is still paying the mortgage on her home by automatic payment from her bank. She advised her last payment to BC hydro from her credit card had 'bounced'.

The appellant stated payments with Sunlife of \$196 per month were for extended health prescription payments however the last payment was in October 2022. In response to questions on where deposits, in the amount of \$5 300, to the TD chequing account came from the appellant stated these were not income, they were transfers to herself from a line of credit and back again but that it was not evident on the bank statement itself.

The appellant appeared to have difficulty answering a question as to the date when the Maserati car was purchased by her father, stating that she accompanied her father to the dealership, and he purchased the vehicle with a bank draft. She said both the dealership and the ICBC insurance representative made errors in putting the car in her name instead of her father's. The appellant then stated the purchase was about a week before she received the original ministry decision and then ultimately settled on it being January 17 or 18 2023. The appellant could not comment on what name the dealership had put on the bill of sale document. The bill of sale was not produced as part of the appeal record by the appellant.

In answer to a question about why she did not follow the ministry's suggestion to reapply for assistance if her circumstances had changed, the appellant reiterated her previous comment that it was because she did not agree with the decision and wanted another chance to explain her side.

The appellant responded to a question from the panel regarding the medical information she provided saying that she has not applied to the ministry for designation as a person with disabilities.

In a summary comment the advocate repeated that the appellant is only focusing on the valuation of the vehicles as reported in the decision.

Ministry

The ministry relied upon the reconsideration decision and stated it needed to provide background details of the appellant's case. The ministry stated that following a file review in October 2022, the appellant had her income assistance discontinued in November 2022 pending the receipt and review of documents which have still not been provided.

The ministry provided a series of dollar value figures and wished to enter a document into evidence showing a summary of the appellants bank account totals, information that had apparently been provided by the appellant, but is not contained in the appeal record. The appellant objected to the inclusion of the evidence.

With regard to the appellant's most recent request for review and reconsideration the ministry restricted the decision to the value of owned vehicle assets as income cannot be verified and determined the appellant continued to possess a 2015 Maserati Ghibli, a 2012 BMW and a 2015 Yamaha Motorcycle. The process at that time was to conduct an up-to-date review of the values using third party market agencies such as CARFAX, Buy and Sell.

According to the third party checks the ministry completed with ICBC and with independent valuation, the appellant is listed as possessing the following:

- 2015 Maserati GHIBL – valued at approximately \$41,995
- 2012 BMW 528xi – valued at approximately \$7,625
- 2015 Yamaha motorcycle – valued at approximately \$4,420

The ministry explains it exempts the Maserati as an asset because the appellant uses this vehicle for her day-to-day transportation needs. The BMW and Yamaha are currently valued at a total of \$12,045 and are considered “assets” because they are equity in personal property that can be converted to cash.

In response to questions from the panel, the ministry stated that while they updated the current value of the vehicles, they did not repeat the ownership searches, as they had not been provided with any information on ownership changes.

Admissibility of new information

Section 22(4) of the 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.

In this case the appellant submitted personal testimony and a number of documents demonstrating current ownership and recent disposition of vehicles previously identified as assets by the ministry. The ministry did not object to the inclusion of the documents.

The panel admits the appellant's 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.

The ministry provided summary dollar values of the bank accounts for the appellant to which the appellant objected. The appellant claimed to not remembering providing the information and to not having an opportunity to see and consider the evidence before the hearing.

The panel considered the admissibility of the ministry document. As the hearing was by teleconference it was not possible to share the information by video or provide a short recess for consideration by the appellant. The panel considered that the evidence was not new evidence but was summary in nature and found therefore it would not be prejudicial to the ministry if not admitted. Further the panel considered that no reason was given for the late submission and found an adequate hearing could be held without the document. Lastly, the panel considered the principle of procedural fairness to the appellant given the time period required to adjourn the hearing and found to do so would cause unreasonable delay.

The panel therefore refused to admit the ministry summary document into evidence.

Findings of Fact

Upon review of the available evidence including the documented evidence contained in the appeal record, the oral testimony and the four submissions by the appellant, the panel made several initial findings of fact.

The panel, noting the imprecise comments by the appellant and after reviewing the ICBC printed records, finds the Maserati car was purchased on 30 December 2022, and was registered in the name of the appellant on that date. From the credit card records contained in the appeal record the panel finds the appellant paid \$857.68 to ICBC on 30 December 2022. There is no other vehicle registered to her name that this payment could apply to.

Based on the appellant's statements and the submitted documentation the panel finds the ownership of the Maserati car was transferred to her father on 18 January 2023 as a gift, at no cost, and the car was then registered and insured on the same date in his name. With no alternate valuation provided by the appellant the panel finds the value as provided by the ministry of \$41, 995.

Based on a June 2022 approved valuation of the BMW car, and the May 2022 emailed communication on the vehicle condition and needed repairs in the order of \$4,236, the panel finds the BMW car to be valued at \$4,158. The panel also finds this vehicle to be not currently driveable or insured and to have an odometer reading of 189 962 kilometres, not over 235 000 km as stated by the appellant.

Noting the valuation provided by the ministry for the motorcycle and without an alternate valuation submission by the appellant, the panel finds the Yamaha motorcycle to be valued at \$4 420. From review of the sale and transfer documents submitted by the appellant, the panel finds the ownership was transferred from the appellant to the appellant's brother on 4 February 2023, for a sum of \$1 000, and note this is 25% of its value, sold the day after the appellant filed the request for reconsideration.

The panel, noting statements in the request for reconsideration that the appellant does not have a CIBC account, have reviewed documentary bank records contained in the appeal record. The panel finds the appellant has both a Simplii Financial (a division of CIBC) chequing account and a CIBC issued credit card.

The panel noted that recent bank statements indicate the appellant has very little credit amounts and owes money on her credit card, however no statements were presented for the appellant's line of credit account. The panel found that one of the chequing accounts shows deposits in for the period of 1 December 2022 until 17 January 2023 totaling \$5,300.

Part F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision that the appellant is not eligible for income assistance at this time because she has assets that exceeds the \$10,000 asset limit set out in Section 11(2)(b) of the EA Regulation. In particular, was the ministry's decision that the appellant continues to possess a 2012 BMW and 2015 Yamaha Motorcycle currently valued at a total of \$12,045 supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the appellant?

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant states she is a single mom with a newborn baby and has not worked due to depression and mental health illness and has no source of help and income. Further that she has no assets, is behind in her bills and has been living off her credit card and line of credit.

The appellant states she has no way of taking care of her son and needs help immediately or will be homeless. The appellant also states she has requested help for her hydro bill and food.

The appellant argues that she doesn't own a motorcycle and that she has a car that is valued at \$4600, reflective of the over \$4k worth of repairs needed. Further the appellant argues that she does not own a Maserati and is only listed as an additional driver because her BMW is broken down in the shop.

The appellant argues any assets she has are valued at less than \$10 000 in total.

Ministry Position

The ministry states that following a file review in October 2022, the appellant had her income assistance discontinued in November 2022 under section 10 of the Act, pending the receipt and review of documents which have still not been provided.

The ministry argues that ICBC indicates the appellant currently has a Maserati, a BMW and a Yamaha motorcycle and a motorcycle trailer registered in her name. The ministry argues it completed a valuation review and currently, the value of the appellant's 2012 BMW 528xi

is approximately \$7625, and the current trade in value of a 2015 Yamaha motorcycle was found to be approximately \$4,420.

The ministry argues these two vehicles, currently valued at a total of \$12,045, are considered "assets" because they are equity in personal property that can be converted to cash.

The ministry argues that as the appellant has not provided any evidence to support her dispute that she no longer possesses these items, such as proof of sale or registration transfer papers, and as the assets exceed the \$10,000 asset limit set out in legislation, she is not eligible for income assistance at this time.

Panel Decision

The panel notes the ministry has argued that as it is unable to verify income of the appellant the decision relates only to assets, and the appellant has stated she is only arguing the reason for the decision, namely the correctness of the assets.

The panel notes several comments in the appeal record relating to a request for hardship assistance and numerous requests for documents under section 10 of the Act. However, these issues were not part of the Reconsideration decision and therefore the panel does not have jurisdiction to make determinations on them. As such, the panel's jurisdiction is limited to determining the reasonableness of the reconsideration decision itself.

Value of Assets

Section 1 of the Regulation defines as "asset" to mean;

- equity in any real or personal property that can be converted to cash,
- a beneficial interest in real or personal property held in trust, or
- cash assets.

Section 11(1) of the regulation states that one motor vehicle generally used for day-to-day transportation needs may be exempt for the purposes of calculating total assets, and a family unit is not eligible for income assistance if 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.

The panel has noted the statements of the appellant in the request for reconsideration that she did not own a Maserati or a Motorcycle and has found that the vehicles were

disposed of around the time of the original decision and the appellant had not informed the ministry.

The panel has noted there is no clear evidence to show who originally paid for the Maserati in December 2022, but has found it was registered in the appellant's name, who then gifted it to her father some three weeks after purchase. Although the panel has found the appellant made a payment of \$857.68 to ICBC on 30 December 2022, the day on which the Maserati was purchased, the purpose is unknown.

The panel notes the address of the father on the current registration certificate is shown as the same address as that of the appellant, although the address for storage of the car when not in use is a different address in the same municipality, that of the father. The appellant is listed as an additional driver and household member and the father is listed as the principal driver.

The panel notes no evidence to suggest the appellant has any equity remaining in the Maserati car that may be converted to cash, or any beneficial interest in trust, or if there was a cash payment other than the declaration on the transfer form, suggested by the insurance agent, to gift the car at no cost to avoid taxes on a sale. The panel therefore finds the Maserati no longer an asset of the appellant.

The panel notes that information about gifting the Maserati was not before the Ministry at Reconsideration. The panel further notes section 14 of the *Employment and Assistance Act* which concerns the disposal of property. As this section has not been considered by either the Ministry or the appellant, the panel wants to make it clear that this decision makes no finding related to or in any way comments on the potential application or non-application of section 14.

The BMW has been found to be owned by the appellant and valued at \$4,158 and has not been insured or in a drivable condition since June 2022. As such the appellant has not been using it for day-to-day transportation needs, instead using the Maserati. The panel finds the BMW to be an unexempted asset for the purposes of total asset value determination.

The Yamaha motorcycle has been found to be valued at \$4 420 and sold to a member of the appellant's family for a substantially reduced amount of \$1 000. The reasons provided by the appellant were noted that she needed the money and that the price was all her brother could afford at the time. The panel notes no evidence to show the motorcycle had been offered for sale at any other price or if any other offers were received.

The panel notes that information about the sale of the Yamaha motorcycle was not before the Ministry at Reconsideration. Further, there was no evidence of the motorcycle being offered for sale at any other price. Again, the Panel notes section 14 of the *Employment and Assistance Act* which concerns the disposal of property. As this section has not been considered by either the Ministry or the appellant, the Panel wants to make it clear that this decision makes no finding related to or in any way comments on the potential application or non-application of section 14.

The panel notes no evidence to suggest the appellant has any equity remaining in the motorcycle that may be converted to cash, or any beneficial interest in trust or if there was any other cash payment than the declaration on the transfer form and finds the Yamaha motorcycle no longer an asset of the appellant.

Based on all the evidence the panel finds the appellant to have vehicle assets of \$4,158 and a newly converted cash asset of \$1,000. Therefore, the panel finds the ministry was not reasonable in its determination that the appellant has vehicle assets that exceeds the \$10,000 asset limit set out in Section 11(2)(b) of the EA Regulation

Summary

The panel found the appellant does not have assets in excess of the legislated amount, and reiterates this decision is limited to the reconsideration decision only and does not address any potential issues of hardship assistance, any request for documents under section 10 of the Act or any potential application of section 14 of the Act.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision denying income assistance because the appellant possessed assets to be valued over the \$10,000 limit to no longer be supported by the evidence.

The ministry's reconsideration decision is rescinded. The appellant is successful on appeal.

Appendix A

EMPLOYMENT AND ASSISTANCE ACT

Eligibility of family unit

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

- (a) each person in the family unit on whose account the income 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 income assistance, hardship assistance or supplement under this Act.

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.

Information and verification

10 (1) For the purposes of

- (a) determining whether a person wanting to apply for income assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for income 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 income 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 income 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 income assistance, hardship assistance or a supplement for the prescribed period.

Consequences of not accepting or disposing of property

14 (1)The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

- (a)failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements;
- (b)disposed of real or personal property for consideration that, in the minister's opinion, is inadequate.

(1.1)The Lieutenant Governor in Council may specify by regulation sources of income, types of assets or other means of support that the minister must not consider under subsection (1) (a).

(2)A family unit is not eligible for income assistance for the prescribed period if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

- (a)disposed of real or personal property to reduce assets;
- (b)[Not in force.]

(3)In the circumstances described in subsection (1), the minister may

- (a)reduce the amount of income 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 of the person ineligible for income assistance or hardship assistance for the prescribed period.

EMPLOYMENT AND ASSISTANCE REGULATION

Part 1 — Interpretation

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;

Asset limits

11 (1) The following assets are exempt for the purposes of subsections (2) and (2.1):
(b) one motor vehicle generally used for day to day transportation needs;

(2) A family unit is not eligible for income assistance if any of the following apply:

- (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;

Part 4 — Hardship Assistance

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.

APPEAL NUMBER 2023-0060

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

Don Stedeford

Signature of Chair

Date (2023/March/28)

Print Name

Glenn Prior

Signature of Member

Date (2023/March/28)

Print Name

Sarah Bijl

Signature of Member

Date (2023/03/28)