

Part C - Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“Ministry”) dated March 20, 2024, in which the Ministry denied the Appellant disability assistance. The Ministry determined that the Appellant was not eligible for disability assistance because he had assets that exceeded the allowable limit of \$100,000 under section 10(2) of the Employment and Assistance for Persons with Disabilities Regulation.

Part D - Relevant Legislation

Employment and Assistance Regulation (“Regulation”) section 10

Full text of the legislation is provided in the Schedule of Legislation after the Reasons.

Part E – Summary of Facts

The hearing took place by teleconference. The Appellant was unable to attend the hearing for medical reasons, but was represented at the hearing by his father, acting under the authority of a Power of Attorney. The Appellant's step-mother also attended the hearing and provided additional submissions on his behalf.

Evidence Before the Ministry at Reconsideration:

The Appellant was a recipient of disability assistance. He owned, and lived in, a condominium apartment. BC Assessment Authority assessed the value of the condominium apartment at \$704,400, in December 2023, and \$634,000 in February 2024.

After a dispute with the Strata Council, the Appellant was required by court order to sell the condominium. To comply with the court order, he transferred title to a family member, and no money changed hands. In early December 2023, the Appellant moved from the condominium into a rented apartment. The condominium was rented to a third party on February 1, 2023, and the rental income was applied towards the rent of the Appellant's current residence.

Evidence at the Hearing:

At the hearing, the Appellant's father stated:

- The Appellant's disability is mental, not physical.
- The Appellant bought the condominium over 20 years ago, for less than \$100,000.
- The Appellant's situation has worsened; he has been evicted from the rental apartment, and he is now in hospital.
- The Appellant's father manages the condominium property and the rental income.
- Given the Appellant's mental health, it would not be good for him to have access to the amount of money that he would receive if the condominium was sold.

Admissibility of Additional Evidence:

The Ministry did not object to the additional oral evidence of the Appellant's father. The Panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under the Act, section 22(4).

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's reconsideration decision, in which the Ministry denied disability assistance because the Appellant had assets with a value of more than \$100,000, was reasonably supported by the evidence, or was a reasonable application of the legislation.

Appellant's Position:

The Appellant's father argues that the Ministry should continue to provide disability assistance to the Appellant. He maintains that the Ministry gave the Appellant a "pass" to be able to own the condominium when it was valued at over \$100,000, and it should continue to use discretion to allow the Appellant to use the rent from the condominium to pay for his current accommodation. He says that the Appellant's current situation is due to his mental disability, which makes it inadvisable to sell the condominium and give him access to the sale proceeds. He also argues that the loss of disability assistance, and resulting financial stress, is contributing to the Appellant's worsening mental health.

Ministry's Position:

The Ministry says that it is bound by the Regulation, which provides that a person is not eligible to receive disability assistance if they have non-exempt assets with a value of more than \$100,000. The Appellant's condominium was exempt while he lived there because a person's place of residence is an exempt asset under section 10(1) of the Regulation. However, once the Appellant moved out, it was not exempt, and the value of the condominium is more than \$100,000. At the time of the reconsideration decision, the condominium was still registered in the Appellant's name, and the Appellant was receiving rental income. Although the Appellant's father stated that the condominium had been transferred to another family member, the Ministry did not have documented evidence of the transfer, so it did not consider that evidence.

At the hearing, the Ministry said:

- A person cannot avoid the asset limit by "inadequate disposal" or transferring assets for less than their fair market value in a non-arms-length transaction.
- Even if the condominium had been transferred to someone else, it was still generating income for the Appellant, and therefore it was not an exempt asset.

Panel Reasons:

The Panel finds that the Ministry's reconsideration decision, in which it determined that the Appellant was not eligible to receive disability assistance because he had assets with a total value of more than \$100,000, was a reasonable application of the legislation in the Appellant's circumstances.

Under section 10(2) of the Regulation, a person is not eligible to receive disability assistance if they have assets with a total value of more than \$100,000. Some assets are exempt; those assets are listed in section 10(1) of the Regulation. A person's place of residence is one of those exempt assets.

The Appellant owned a condominium with a current assessed value of \$634,200. The Panel finds that the Appellant transferred legal title to the condominium to a family member, to comply with a court order to sell the property, but no money changed hands. The Panel also finds that the rent from that property has been used for the benefit of the Appellant, to provide alternate accommodation.

While the Appellant lived in the condominium, it was an exempt asset under section 10(2) of the Regulation. Once he moved out of the condominium, it was no longer his place of residence, and therefore it was no longer an exempt asset. While the Appellant's father thought the Ministry had given the Appellant a "pass" for the condominium while the Appellant lived there, in fact the Ministry was following the legislation, which provides that the condominium was an exempt asset while it was the Appellant's place of residence. The Ministry cannot exempt assets except as listed in the legislation. The legislation does not give the Ministry discretion to exempt other assets, no matter the circumstances.

Nor does the Appellant's current situation fit any other category of exempt assets in the legislation. For example, under section 10(1)(d) of the Regulation, money received from a mortgage on, or an agreement for sale of, a person's previous place of residence is exempt if the money is applied to rent for the person's current place of residence. Rental income from a previous place of residence is not exempt, even if it is applied to rent for the person's current place of residence.

At the hearing, the Ministry also advised that assets with a value up to \$1,000,000 could be exempt if they are held in a non-discretionary trust approved by the Ministry. However, the Ministry advised that it does not assist in setting up those trusts, and there is no evidence that the Appellant, or his Attorney, has taken steps to place the Appellant's assets in a non-discretionary trust approved by the Ministry.

Conclusion:

The Panel finds that the Ministry's reconsideration decision, in which it determined that the Appellant was not eligible to receive disability assistance because he had assets with a value of more than \$100,000, was a reasonable application of the legislation in the Appellant's circumstances.

The Appellant is not successful in the appeal.

Schedule of LegislationEmployment and Assistance Regulation**Asset limits**

s. 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
 - (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*], 8.2 [*BC harmonized sales tax credit*] or 8.3 [*renter's 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 disability 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. 2, s. 3 (b).]
- (v) and (v.1) Repealed. [B.C. Reg. 99/2023, App. 2, s. 2 (a).]
- (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 8 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 under section 70.1 of this regulation, and received and used for the purposes set out in the business plan;

(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*];

(z) Repealed. [B.C. Reg. 85/2012, Sch. 2, 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. 2, 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);
- (hh.1) a rental housing benefit provided under the [Rental Housing Benefit Act](#) (Canada);
- (hh.2) a dental benefit provided under the [Dental 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. 2 (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;

(ww.2) a BC family 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) and (ddd) Repealed. [B.C. Reg. 99/2023, App. 2, s. 2 (a).]

(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) to (III) Repealed. [B.C. Reg. 99/2023, App. 2, s. 2 (a).]

(mmm) a voted support payment;

(nnn) money that is paid or payable under or from an Indigenous financial settlement.

(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 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;

(c) in the case of a family unit that includes 2 applicants or recipients who are designated as persons with disabilities, \$200 000.

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

(a) that the total cash surrender value of an uncashed life insurance policy of an applicant or recipient is not to be included as an asset of the family unit for the purposes of subsection (2) for the period specified by the minister;

(b) that saleable acreage and buildings owned by an applicant or recipient are to be treated as though they were the place of residence of the applicant's or recipient's family unit for the period specified by the minister.

(4) If money is paid under or from an Indigenous financial settlement to an Indigenous governing body, the exemption under subsection (1) (nnn) includes investment income earned on that money by the Indigenous governing body before it is distributed to a person.

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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
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2024/04/23

Print Name
Adam Shee

Signature of Member

Date (Year/Month/Day)
2024/04/23

Print Name
Katherine Wellburn

Signature of Member

Date (Year/Month/Day)
2024/04/23