

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "Ministry") September 10, 2012 reconsideration decision denying the Appellant, who has Persons With Disabilities ("PWD") designation, disability assistance because the Ministry determined that she has an equity interest in real property exceeding the \$3,000 asset limit provided for section 10(2) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Sections 3, 5, and 6.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 10.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from its files that:

- The Appellant has disability status since October 2002 and she applied for disability assistance in British Columbia.
- The Ministry received information on July 20, 2012 from the Public Guardian/ Trustee of another province advising that it is the Property Guardian of the Appellant's real estate in that province. The property was being cleaned out and would be put up for sale by the Public Guardian/Trustee. On August 10, 2012, that trustee's office indicated that a realtor valued the property at about \$32,000 although the house is not livable.
- A real estate agency's competitive market analysis dated March 28, 2012 and prepared for the Public Guardian/Trustee indicating a potential sale value of about \$30,000 to \$32,000 and no outstanding liens. The property was described as having been placarded and some cleanup has been done, but due to no furnace, wiring and plumbing the value was based on the condition and mostly on the value of the lot.
- The Appellant told the Ministry that the value of the property for both the land and residence was only \$2,000 and the house was condemned.

2. Appellant's request for reconsideration in which she stated that she has no income, has multiple medical conditions. Also, if the house sells, the Appellant wrote that she doubted she would come off assistance immediately. The Appellant stated that if she doesn't receive assistance she will die because her 92 year old mother cannot afford to support her.

In her notice of appeal, the Appellant stated that a condemned house is not a liquid asset and she doubts that it will sell. She also wrote that the house is in trust. She provided a name and phone number for the trustee's office. The Appellant stated that the trustee's office said they were not going to sell for a year. She is staying at her mother's house.

The Appellant's advocate provided additional information about the Appellant's circumstances, documents from the Public Guardian/Trustee and written argument supporting the Appellant's position. The advocate wrote that the Appellant has severe mental health conditions and had been committed. For this reason, the Public Trustee in the other province was appointed for her. The Appellant is currently receiving care from her mother.

The advocate provided the following documents to support the Appellant's position:

- Letter dated October 31, 2012 from the advocate to the Ministry advising that documents relating to the Appellant's incompetence and the Public Guardian/Trustee's authority to act on her behalf were forwarded to the Ministry.
- Letter dated November 9, 2012 from the advocate to the Ministry again advising that the Public Trustee's documents were sent to the Ministry and that the trustee also communicated with the Ministry via email. The advocate also wrote that the Appellant had been committed and found to be incompetent. The advocate further requested full disclosure of all the documents the Ministry had for purposes of this appeal, including email communications between the Ministry and the trustee. The advocate indicated that the Ministry told her that the necessary documents were in the appeal record, and documents pertaining to the trustee were not relevant to this appeal hearing.

- Acknowledgement dated February 15, 2012 signed by the Public Guardian and Trustee of the other province stating that, pursuant to that province's Public Guardian and Trustee Act, it is the "Property Guardian" for the Appellant. The Ministry sent a copy of this document to the advocate on about November 5, 2012.
- Letter dated November 29, 2012 from a Trust Officer with the Public Guardian and Trustee Office of the other province to the Ministry regarding the Appellant. That trust officer wrote that as the "Trust Officer" for the Appellant, "decisions are made regarding financial matters." The officer attached a copy of the province's authority to act as the Public Guardian and Trustee. The trust officer also wrote that the Appellant's property in that province is listed for sale. As the "Property Guardian" for the Appellant, that "office has authority to make all decisions concerning [the Appellant's] finances and property". The Appellant was "issued a Certificate of Incompetence" on December 6, 2011. "The reason our office is Property Guardian for [the Appellant] is because she is found to be certified incompetent. When [the Appellant] initially applied for income assistance in British Columbia, I forwarded the requested documents on her behalf. [The Appellant's] previous income was social assistance in [the other province], prior to moving to British Columbia."
- Copy of the other province's Authority of Public Guardian and Trustee as Property Guardian, setting out when and how it can act as property guardian of a dependent adult, including when a certificate of incompetence has been issued. This document also states what the property guardian has the authority to do, including to "do all things that the dependent adult could do if competent, including the power to sell, mortgage or otherwise dispose of real property".

The written arguments submitted by the Appellant's advocate are set out in Part F of this decision.

On December 11, 2012, the Ministry wrote to this tribunal advising that when the Appellant applied for assistance, she submitted documentation confirming that her property is held in trust with the Public Guardian and Trustee of the other province. The Ministry also wrote that unfortunately that documentation was not linked to the Appellant's active file at the time of reconsideration. The Ministry therefore did not review it during the reconsideration process and the Ministry regrets the difficulty this caused the Appellant. The Ministry wrote that it "is satisfied that the documentation in question establishes that [the Appellant's] property is held in trust and does not oppose rescindment of the ministry decision finding her ineligible for disability assistance." On December 18, 2012, the Ministry indicated it also relies on its reconsideration decision.

The Panel finds that the statements by the Appellant and her advocate regarding her circumstances and the trustee documents submitted by the Appellant are directly related to the information that the Ministry had at reconsideration. Moreover, based on the November 29, 2012 letter from the Public Guardian and Trustee and the Ministry's December 11, 2012 submission, the Panel finds that the Ministry had that information available when it made its reconsideration decision. Therefore, the Panel admits all of the statements and documents as being in support of the evidence the Ministry had at reconsideration under section 22(4) of the EAA.

The Panel makes the following findings of fact:

1. The Appellant has Person with Disabilities designation.
2. The Public Guardian and Trustee of another province is the Property Guardian for the Appellant with the authority to make all decisions regarding the Appellant's finances and property in that province.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant, who has PWD designation, disability assistance because it determined that she has an equity interest in real property exceeding the \$3,000 asset limit provided for in EAPWDR section 10(2).

The following sections of the EAPWDA apply to the Appellant's circumstances in this appeal:

Eligibility of family unit

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

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Hardship assistance

6 (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 disability assistance.

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

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal:

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

10(2) (2) A family unit is not eligible for disability assistance if any of the following apply:

- (a) a sole applicant or recipient has no dependent children and has assets with a total value of more than \$3 000;
- (b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$5 000.

Assets held in trust for person with disabilities

12(2) If a person referred to in subsection (1) complies with subsection (4), up to \$100 000, or a higher limit if authorized by the minister under subsection (3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts, calculated as follows:

- (a) the sum of the value of the capital of each trust on the later of April 26, 1996 or the date the trust was created, plus (b) any capital subsequently contributed to a trust referred to in paragraph (a), is exempt for the purposes of section 10 (2) [asset limits].

In its reconsideration decision, the Ministry stated that it fully reviewed the information provided. The

Ministry noted that the Appellant applied for assistance as a single applicant and she had disability status since October 2002. The Ministry wrote that it also had information that the Appellant owns property in another province, which is expected to sell for between \$30,000 and \$32,000. As a single applicant with no dependents, the asset limit for the Appellant is \$3,000. The Ministry stated that no information was provided to confirm that the property is held in trust, or that the equity in the property cannot be readily converted to cash. The Ministry therefore determined that because the Appellant has equity in property in excess of the allowable limit in the EAPWDR she is not eligible for disability assistance.

In the reconsideration decision, the Ministry also wrote that it considered whether the Appellant would be eligible for repayable hardship assistance. However, the Ministry noted that the Appellant's family unit does not include dependent children and the Ministry also was not satisfied that the equity in the property is not immediately available to meet her basic needs.

Subsequently, for this appeal, the Ministry submitted that it "is satisfied that the documentation in question establishes that [the Appellant's] property is held in trust and does not oppose rescindment of the ministry decision finding her ineligible for disability assistance."

The Appellant's advocate argued that the Ministry's reconsideration decision was unreasonable because when it made that decision the Ministry did not consider all of the information it had available and that the Appellant's property is held in trust. It specifically did not consider documents and information confirming that the Public Guardian and Trustee of another province was the Property Guardian for the Appellant because she had been declared incompetent. The Appellant is eligible for assistance because her property is in trust and all decisions regarding her finances are made by the trustee. The advocate further submitted that the appeal record that the Ministry provided for this appeal was not complete. It did not contain the documents received by it from the other province confirming the trustee's authority over the Appellant's property. The Ministry, therefore, failed to provide full disclosure to the Appellant when she appealed its decision.

Based on the evidence, specifically the February 15, 2012 Public Guardian and Trustee Acknowledgement, the information the Ministry received from the Public Trustee and Guardian in July and August 2012, and based on the Ministry's submission for this appeal that it is satisfied that the Appellant's property is held in trust, the Panel finds that when the Ministry made its reconsideration decision it did have information and documents confirming that the Public Guardian and Trustee of another province has the authority to make all decisions regarding the Appellant's finances and property. The Panel finds that it was not reasonable for the Ministry to find in its reconsideration decision that the Appellant's property was not held in trust. Further, there is evidence from a real estate market analysis that the sale value of that property is between \$30,000 and \$32,000; that is, below the \$100,000 limit in section 12(2) of the EAPWDR. Therefore, the Panel finds that it was not reasonable for the Ministry to determine that the Appellant's property asset was not exempt under section 12(2) of the EAPWDR for the purposes of determining her eligibility for assistance.

In addition, the Panel finds that there is no evidence that the real property in question had been sold or that a sale was pending. The evidence indicates that the Public Guardian and Trustee is preparing to list or has listed the property for sale, and then it has the authority to make all decisions regarding the Appellant's finances and property. Therefore, it was not reasonable for the Ministry to find that

the equity in the property is readily available to meet the Appellant's basic needs.

In conclusion, the Panel rescinds the Ministry's reconsideration decision because it was not reasonably supported by the evidence and was not a reasonable application of the applicable enactments in the Appellant's circumstances.