Reasons for Decision:

Order #AP1819-0689

On <date removed>, the appellant filed an appeal of the Director's decision to deny their application based on their excess assets. The decision letter was dated <date removed>.

The letter communicating the decision stated the Department could not establish the appellant's eligibility because they had significant marital assets and undetermined income from asset sales.

At the hearing, the Department stated it was unable to determine the appellant's financial eligibility for a number of reasons.

The appellant last received income assistance in <date removed>. The Department suspected the appellant was selling assets from the family farm, including a $20,000 John Deere tractor.

The Department told the Board it tried to get the appellant to provide information about their assets and income several times. The Department withheld their assistance on more than one occasion, but in the Department's opinion they never complied fully with its information requests. the appellant simply asserted they were selling assets for their spouse, who was in prison, or for friends.

The Department attempted to meet with the appellant to review the list of assets, but was unsuccessful. As a result, the Department closed the appellant's file.

When the appellant reapplied for assistance on <date removed>, the Department advised them that it still required the information it had previously requested. The appellant eventually provided a copy of their separation agreement with their spouse, dated after their file closed in <date removed>.

The Department noted the separation agreement did not provide for an equitable distribution of marital assets. The appellant waived their interests in the marital home, valued at $392,000, in return for sole ownership of the farm property, valued at $43,000. According to Department policy, <name removed> must pursue their share of the marital home, and the farm property must be liquidated as an excess asset.

The Department asserted the appellant must have been aware of the separation agreement in <year removed>, when the Department was seeking information about their assets, but did not disclose the existence of the agreement to the Department.

The Department stated clause 32.0 of the separation agreement acknowledged that the appellant had sold many of the farming assets and cattle, and had retained the sale proceeds. The Department reiterated that the appellant has not provided an accounting of those sales.

The Department also noted the house on the farm property had reportedly burned down, implicitly reducing the assessed value of the land and increasing the disparity in the distribution of assets.

The Department stated the appellant waived all rights to child support in clauses 19.0 and 20.0 of the separation agreement , despite the Department's requirement that income assistance recipients pursue child support. The Department understands that the spouse will not be able to pay child support while they are in prison, but notes the appellant waived child support in the future, after the spouse's release from prison and return to farming.

In summary, the Department stated it cannot confirm the appellant's financial eligibility because they have not provided sufficient information. Any information provided by the appellant has tended to support the Department's suspicion they are not financially eligible.

The appellant told the Board they attempted to sell the tractor on their spouse's behalf to pay their legal bills. The appellant asserted that they were unable to sell the tractor.

The appellant stated they sold the cattle before they applied for assistance, and that the proceeds were used to pay outstanding bills.

The appellant asserted that they had supplied all the information requested by the Department to their previous worker, but the worker had not forwarded that information to other people in the Department. The appellant stated they provided their bank statements to their current worker. The current worker told the Board they did not have bank statements from the appellant. The appellant asserted the Department has a bias against them.

The appellant acknowledged that they were selling assets, because they have no source of income other than the Child Tax Credit, and they are raising a five-year old child and two-year old twins on their own.

The Board questioned the fairness of the division of assets in the separation agreement. The appellant stated they kept the sale proceeds from the cattle, but the value was not recorded in the separation agreement. The appellant stated that they brought very few assets into the marriage, and did not want to take an unfair share of their spouse’s pre-existing assets.

The appellant explained to the Board that they waived their child support rights because the separation agreement sets out equally-shared custody time, and allows them to keep all of the Child Tax Credit.

In response to question from the Board, the appellant stated the farmland was currently being used to graze a few horses.

In response to a question from the Board, the appellant stated their spouse was eligible for parole in <date removed>, but they expressed doubts that they would be paroled then.

The Department told the Board the appellant listed a 2012 Dodge Journey as their vehicle. The Department then discovered they were driving a 2011 GMC Terrain. The appellant explained that the Journey required major repairs, so they put the Journey up for sale and acquired the Terrain. The appellant initially told the Department they would provide the purchase documents for the Terrain, then later told the Department their female family member had given them the vehicle. When the Department checked the registration on the vehicle, it discovered the vehicle was registered to a man. The appellant told the Board the man was a friend of their female family member.

The Department told the Board the appellant was allowed to have one vehicle. The Department suggested the difficulty it had establishing where the Terrain came from was symptomatic of its relationship with the appellant. There has been no accounting for the sale of the cattle or any other asset, no disclosure of the fire on the farm property, despite the fact the separation agreement allocates the insurance proceeds to the appellant, and no effort to pursue an equitable distribution of assets.

In response to a question from the Board, the appellant confirmed the mobile home on the farm property burned down. The appellant stated they were unsure if there was insurance on the home, and noted the fire was being investigated as an arson.

In response to a question from the Board, the appellant stated their spouse paid the property taxes on the farm property they received through the separation agreement. The appellant asserted they did not know how or why the spouse paid the farm taxes. The appellant stated the property taxes on the marital home their spouse received had not been paid.

In response to a question from the Board, the appellant stated they had not yet made plans to find a new residence when their spouse was released on parole.

The Board noted the appellant's description of when they separated from their spouse differed from the date in the separation agreement. The appellant told the Board that their previous worker required them to provide a separation date, so the appellant and their spouse "made the date up".

The Department reiterated that it required a complete accounting of assets previously owned and sold, as well as a valuation of existing assets, before it can establish the appellant's financial eligibility.

The Board notes that the appellant's position is that the appellant and their spouse have separated, the assets have been divided and they lack sufficient income to support themselves and provide for their children. To establish their financial eligibility, the Board must determine if they have a bona fide separation agreement and has made every effort to obtain their share of assets and support. The Board must also determine if they have fully communicated this information to the Department.

The Board finds that the appellant provided insufficient evidence to demonstrate that they have made all reasonable efforts to access a fair share of assets and all available support. The separation agreement sets out an apparently one-sided distribution of assets in favour of their spouse. The separation agreement is unusual, in that many of the assets are allocated without an assigned value, and there is no accounting of the balance of asset values. The Board notes the high-value assets are assigned to <name removed>, who is in prison, while the low-value assets are assigned to the appellant, who applied for assistance.

It is also not clear why <name removed>, who was described as a farmer, was allocated the marital home, while the appellant, who apparently had no farming background prior to their marriage, was allocated the farm.

The Board understands the appellant's position that their spouse is unable to pay child support while in prison, although their spouse does seem able to pay the farm's property taxes. The Board does not understand why the appellant would waive claims to future child support, when <name removed>'s future income is unknown.

The Board also has concerns that the separation agreement submitted as evidence does not represent an irrevocable separation of the appellant and their spouse's affairs:

- The appellant told the Board the date of separation in the agreement was "made up". The Board notes the date in the agreement falls within the three-day period the police were executing search warrants and arresting people associated with <name removed>'s drug trade;
- The separation agreement was concluded almost two years after the separation occurred;
- The separation agreement was concluded shortly after the appellant's assistance file was closed, and by the appellant's own testimony was partly a response to their worker's request for proof of separation;
- While <name removed> kept the marital home, the appellant was allowed to stay there rent-free, and the appellant told the Board they had made no plans to move in anticipation of their spouse's parole;
- The child custody arrangements in the agreement are open-ended and generic, do not specify final decision-making rights, and lack specifics about start and end dates;

and

- Clause 56.0 of the separation agreement essentially nullifies the agreement if the appellant and their spouse live together for 90 consecutive days.

The Board notes that the appellant took the unusual step of attempting to sell a joint asset to fund their spouse's legal expenses during their separation negotiations.

After careful consideration of the written and verbal evidence submitted to it, the Board determines that the appellant did not provide sufficient information for the Department to assess their financial eligibility for assistance. The Board confirms the Director's decision to close the appellant's file.