

PART C – Decision under Appeal

The decision at appeal is the decision of the ministry at reconsideration on March 5, 2012. The ministry at that time denied the appellant's request for regular Persons with Disabilities Income Assistance.

The ministry's denial was based on the appellant's conviction of an offence of obtaining money by fraud or false or misleading representation under the *Criminal Code* on December 17, 2009, and the legislation governing his situation at Sections 14 (1) and 14 (5) (a) of the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)*.

Based on the appellant's personal circumstances, the ministry approved temporary repayable Hardship Assistance for him under Section 42.1 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Sections 14 (1) and 14(5) (a).

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 42.1

PART E – Summary of Facts

Documents before the ministry at reconsideration included the following:

- Probation Order (Suspended Sentence) for the appellant dated December 17, 2009 (2 pages)
- Letter to the appellant from the ministry dated March 11, 2010, advising the appellant of the sanctions to be applied to him based on his conviction of an offence under the *Criminal Code* on December 17, 2009;
- Repayment Account Record (Query) dated March 5, 2012 in the appellant's name.
- The Employment and Assistance Request for Reconsideration completed by the appellant and signed by him on February 6, 2012.

The appellant and his advocate attended the hearing in person.

The representative from the ministry did not attend the hearing. The hearing was scheduled to start at 9:30 a.m. The panel waited until 9:40 a.m. at which time the representative from the ministry having not checked in to the teleconference the panel started the hearing. The panel's decision to hear the appeal in the absence of the ministry's representative was based on a document before us indicating that the Notice of Hearing had been faxed to the ministry on March 15, 2012 and in accordance with the *EAR* Section 86 (b).

At the hearing the appellant testified that he had indeed been convicted of welfare fraud in December 2009, and that he was currently on hardship benefits. He was asked by his advocate to tell how being on hardship benefits had affected him. The appellant said that it was worrying never knowing if approval for the hardship benefits would be renewed, but agreed that it had been approved for a six months period. He said that his parents had paid the \$6500 that was owing to the government following his conviction. He told of needing to have dental work done – namely a root canal – but said that he could not afford the cost of this dental work and that he could not go back to his parents to ask them to cover the cost.

Based on the documents before us, the panel's finding of facts is as follows:

1. The appellant has Persons with Disabilities status.
2. The appellant is in receipt of hardship Assistance.
3. On December 17, 2009 the appellant was convicted or found guilty, upon the following charge that between June 24, 2008 and May 28, 2009, at or near Vancouver B.C. he did commit an offence of Fraud over \$5000, contrary to section 360 (1)(a) *Criminal Code*.
4. On December 17, 2009 the appellant received a suspended sentence and was released on condition of a Probation Order for 2 years with the following conditions: (1) that he keep the peace and be of good behaviour; (2) Appear before the Court when required to do so by the court; (3) Notify the Court or the Probation Officer in advance of any change of name or address, and promptly notify the Court or the Probation officer of any change of employment or occupation; (4) that he pay the sum of \$6500 to Her Majesty the Queen in right of the Province of British Columbia on or before the expiration of his term of Probation; and (5) that all payments are to be made to the Clerk of the Court at a specified court in B.C. by certified cheque, cash or money order.

PART F – Reasons for Panel Decision

The decision to be determined at appeal is whether the ministry's decision at reconsideration was a reasonable application of the applicable enactment, namely the *EAPWDA* and the *EAPWDR*, in the circumstances of the appellant. At reconsideration the ministry denied the appellant's request for regular Persons with Disabilities Income Assistance.

The ministry's denial was based on the appellant's conviction of an offence of obtaining money by fraud or false or misleading representation under the *Criminal Code* on December 17, 2009, and the legislation governing his situation at Sections 14 (1) and 14 (5) (a) of the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)*.

Based on the appellant's personal circumstances, the ministry approved temporary repayable Hardship Assistance for him under Section 42.1 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*.

Section 14 of the *EAPWDA* states at (1) that, "A family unit that includes a person who is convicted of an offence under the *Criminal Code* in relation to obtaining money, under this Act or the *Employment and Assistance Act*, by fraud or false or misleading representation is subject to the consequence described in subsection (5) for a family unit that matches the person's family unit for the lifetime of the person beginning with the first calendar month following the date of the conviction.

Section 14 (5)(a) of the *EAPWDA* states that, "if the family unit includes only persons described in subsection (1) or (2), or subsection (3) if the minister has made a declaration under that subsection, the family unit is not eligible for disability assistance for the applicable period."

The *EAPWDR* at Section 42.1 states "In the circumstances described in subsection (2) the minister may provide hardship assistance to a family unit that under 14 (5) (a) [consequences for conviction or judgment in relation to Act] of the Act is not eligible for disability assistance because it includes only (a) persons convicted of an offence under the *Criminal Code*, this Act or the *Employment and Assistance Act* in relation to obtaining money under this Act of the *Employment and Assistance Act* by fraud or false or misleading representation." Section 42.1 (2) states that, "The minister may provide hardship assistance to a family unit described in subsection (1) if the minister considers that otherwise (a) the family unit will experience undue hardship, and (b) the physical health of a person in the family unit will be in imminent danger."

At reconsideration the ministry's argument against granting the appellant's request for regular Persons with Disabilities Income Assistance was as follows. The ministry pointed to section 14 (1) of the *EAPWDA*, mentioned above, which states that the consequence for a person convicted of an offence under the *Criminal Code* in relation to obtaining money through fraud is effective from the date of the conviction and lasts for the lifetime of the individual. They find that the appellant is such a person, having been convicted under the *Criminal Code* of obtaining money through Fraud on December 17, 2009.

In their argument, the ministry then refers to the situation of the appellant being a family unit that includes only himself. As such, the ministry applies section 14 (5) (a) of the *EAPWDA*, also mentioned above, which sets out that the consequence is ineligibility for disability assistance.

They conclude that a life time sanction has been imposed on the appellant by the legislation and state that there is no legislative ability to waive the ineligibility sanction as long as the appellant is a single person. They point out to the appellant that, "if a dependent spouse or dependent children are added to your file, the sanction is changed from ineligibility to a reduction of assistance." But, they point out, a sanction of either ineligibility or reduced assistance remains for the appellant's lifetime.

The ministry concludes their decision by stating that "Because of your personal circumstances, the minister has approved temporary repayable Hardship Assistance under Section 42.1 of the *EAPWDR* until April 2012."

At the hearing the appellant's advocate "reluctantly agreed" with the ministry's reconsideration decision, namely that the appellant is ineligible for his lifetime to receive the regular Persons with Disabilities Income Assistance that he had requested.

The panel finds that the ministry's decision at reconsideration that the appellant is ineligible for Persons with Disabilities Income Assistance was a reasonable application of the applicable legislation in the circumstances of the appellant. The clear evidence is that the appellant was convicted under the *Criminal Code* of an offence of obtaining money by fraud or false or misleading representation. This conviction makes him subject to the legislation relied on by the ministry when coming to their decision and quoted above. The legislation does not give the ministry any discretion in terms of its application.

It was the last paragraph of the ministry's decision at reconsideration that drew legal arguments from the appellant's advocate at the hearing. The advocate argued that as a matter of law the ministry cannot seek repayment from the appellant of the hardship assistance granted. He pointed out that Section 42.1 of the *EAPWDR*, relied on by the ministry when granting the hardship assistance, does not give the ministry powers to demand repayment of the hardship assistance.

The advocate led the panel through the legislation: The *EAPWDA* defines "hardship assistance as "an amount for shelter and support provided under section 6 (1)". Section 6 (1) of the *EAPWDA* states that "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." Section 6 (2) states, "If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment". The advocate laid stress on the "If" with which that section starts. The advocate then pointed to the powers granted to the government to make regulations, in particular section 26 (1) (j) which states that among the regulations that may be made are those, "specifying conditions on which [], hardship assistance [] may be provided, including a condition that the [], hardship assistance [] be provided on a repayable basis, and the consequences of failing to comply with those conditions."

When he looked at the *EAPWDR* in search of a regulation which would empower the ministry to seek repayment from the appellant of the hardship assistance granted, the advocate pointed out that such a regulation does exist in relation to persons who are declared ineligible for disability benefits under a former Act – Section 34 (1), namely *EAPWDR* Section 42 (1). However, continued the advocate, the basis on which the ministry at reconsideration stated they were approving Hardship Assistance to the

appellant is Section 42.1 of the *EAPWDR* and this section does not give the ministry the power to seek repayment.

The panel has looked at the *EAPWDA* and the *EAPWDR* and finds that the appellant's advocate is correct in his legal argument.

In their decision at reconsideration the ministry approved repayable Hardship Assistance for the appellant under Section 42.1 of the *EAPWDR*. The panel has found that this section of the legislation does not give the ministry powers to seek repayment.

As such the panel finds that the ministry's decision at reconsideration to characterize the hardship assistance as "repayable" is not a reasonable application of the applicable enactment, namely the *EAPWDA* and the *EAPWDR*, in the circumstances of the appellant.

Accordingly, the panel confirms the ministry's decision regarding the appellant's ineligibility to receive the requested Persons with Disabilities Income Assistance, but rescinds their decision to make repayable their grant of hardship assistance to the appellant.