

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated August 29, 2012 that denied the appellant's application to have her disability benefits reinstated after receiving a lifetime sanction of ineligibility for disability assistance in accordance with s14(1) and (5)(a) of the Employment and Assistance for Persons with Disabilities Act.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 14

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration was:

- A psychiatric assessment report completed by the appellant's psychiatrist dated Dec. 9, 2011. The assessment diagnoses her with multiple psychiatric conditions. These include PTSD, borderline personality disorder, and depression.
- A Provincial Court Record of Proceedings in the name of the appellant. It shows 8 court appearances by the appellant beginning Dec. 8, 2011 to Jul. 6, 2012. The record shows that she was ordered to pay \$13794.19 in restitution and was sentenced to 9 months in jail.
- A letter to the appellant from the ministry dated August 8, 2012. The letter informed the appellant that she was subject to a lifetime sanction of ineligibility for disability benefits because of her Criminal Code conviction for fraud as per EAPWDA section 14 (1) and (5) and the EAPWDR section 31.
- A letter from the appellant, un-dated, titled, "Reconsideration Letter." In the letter the appellant takes responsibility for her actions and explains the circumstances she was in that led to her committing the fraud. She writes that she has struggled with addiction for many years and has found treatment for her mental health condition. She writes that she was pressured to commit the fraud by people that were involved in the drug trade that to which she was indebted. She adds that she was assaulted and then left town for her safety. She writes that she returned 10 months later and found a psychiatrist to treat her mental health and she reconnected with her family. She adds that no one in her family can financially support her and she is too disabled to work. She requested her case be reconsidered so she does not end up on the streets.

Documents submitted by the appellant with the notice of appeal:

- A letter written by the appellant's boyfriend, un-dated, intended to be attached to the notice of appeal. The writer begins that since the appellant is in jail for the first time and due to her mental illness, she is not emotionally able to properly represent herself at the hearing. He goes on to write that the appellant has come out of a high-risk lifestyle and has now been clean and sober for 27 months. He adds that she suffered from many years of sexual abuse as a child that led to her being recently diagnosed with posttraumatic stress disorder. He adds that the appellant admits to committing fraud but she has since recovered from the addiction that created the conditions that led to her committing the crime. He writes that the appellant is in very poor health and cannot hold a job and she has no one that can financially support her which he fears will force her to live on the streets if she does not receive her PWD benefits.
- A letter written by the appellant, un-dated, titled "Reconsideration letter for PWD". The letter is the same as the letter noted above titled "Reconsideration letter". The letter was re-written but the content was the same.
- A letter written by the appellant dated October 4, 2012. She writes that she takes responsibility for her actions and she is serving a 9 month sentence in jail. She adds that she has been diagnosed with R. Arthritis and Lupus. In jail she has been attending programs to assist her with her addiction and attending counseling. She writes that she is concerned that without her PWD benefits when she is out of jail, she will have no way of buying her medications or paying rent.
- A letter dated October 9, 2012 written by the appellant's boyfriend addressed to the Employment and Assistance Appeal Tribunal. The letter reads that he hopes the tribunal has the ability to consider the appellant's personal circumstances when reviewing the appeal. He adds that her lawyer in the criminal case poorly represented the appellant and that she has made changes in her life that should be taken into consideration when applying the legislation.

The panel finds:

- The appellant was convicted of fraud in excess of \$5000 under section 380(1)(a) of the Criminal Code on May 10, 2012.
- The appellant has struggled with substance abuse for many years.
- The appellant has been diagnosed with PTSD, borderline personality disorder, and depression.
- The appellant has accepted responsibility for committing fraud.

PART F – Reasons for Panel Decision

The issue under appeal in this case is the reasonableness of the ministry's to enforce a lifetime sanction of ineligibility for disability assistance due to the appellant being convicted of fraud in excess of \$5000. Under section 380(1)(a) of the criminal code.

The relevant legislation states:

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 14

14 (1) 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.

(2) A family unit that includes a person who is convicted of an offence under this Act or the *Employment and Assistance Act* is subject to the consequence described in subsection (5) for a family unit that matches the person's family unit, beginning with the first calendar month following the date of conviction,

(a) after a first conviction, for a period of 12 consecutive months,

(b) after a second conviction, for a period of 24 consecutive months, and

(c) after a third conviction, for the lifetime of the person.

(3) If(a) [Repealed 2006-22-10.]

(b) a court has given judgment in favour of the government in an action for debt against a person for obtaining disability assistance, hardship assistance or a supplement under this Act, or income assistance, hardship assistance or a supplement under the *Employment and Assistance Act*, for which he or she was not eligible, unless the disability assistance, hardship assistance, income assistance or supplement was provided to or for the person in error, the minister may declare that the person's family unit is subject to the consequence described in subsection (5) for a family unit that matches the person's family unit for the prescribed period, beginning with the first calendar month following the date of the judgment.

(4) The periods prescribed for the purpose of subsection (3) may vary with the number of applicable judgments.

(5) If a family unit includes

(a) 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, and

(b) one or more persons described in subsection (1) or (2), or subsection (3) if the minister has made a declaration under that subsection, and at least one other person, the amount of disability assistance, hardship assistance or a supplement provided to or for the family unit must be reduced by the prescribed amount for the applicable period.

The argument of the appellant is that although she admits to the crime she was convicted of, she committed the fraud while she was suffering from a substance abuse condition and she is now clean and sober. She takes responsibility for her actions and she argues she has paid a high price for her crimes by serving 9 months in jail. The appellant argues that with the lifetime sanction of ineligibility for assistance will make it difficult for her to feed and house herself. She states that she is disabled and does not have the physical ability to go back to work.

The argument of the ministry is that the appellant was convicted of fraud in excess of \$5000 under section 380(1)(a) of the criminal code and therefore the appellant is subject to the sanction that is

stated in EAPWDA section 14. The legislation imposes a lifetime sanction of ineligibility of disability assistance in circumstances of the appellant's.

In coming to its decision the panel considered the appellant's argument that she was struggling with substance abuse at the time that she committed the fraud against the ministry. The panel reviewed the applicable legislation and found that it contains no allowance or discretion for circumstances, such as the appellant's, where substance abuse can be considered a mitigating factor. The panel also considered that the appellant has been subject to a penalty imposed by the criminal court of 9 months in jail but the panel found that the legislation contains no discretion for such factors. The panel finds that the ministry reasonably determined the appellant is subject to the sanction of lifetime ineligibility as described in the legislation s14(1) and (5)(a) EAPWDA.

The panel finds that the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.