

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated May 30, 2013 which found the appellant ineligible for disability assistance due to lifetime sanctions.

In the reconsideration decision, the ministry states that under Section 14(1) of the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)*, a person who is convicted of an offence under the *Criminal Code of Canada (Criminal Code)* in relation to obtaining money, under the EAPWDA by fraud or false or misleading representation, is not eligible for disability assistance for the applicable period. The decision states that as a single person with no dependants, the applicable period under Section 14(1) is for the lifetime of the person, beginning with the first calendar month following the date of the conviction.

The ministry further states that as the appellant was convicted of fraud of \$5,000 or under pursuant to section 380(1)(b) of the *Criminal Code* on April 11, 2013, the appellant's lifetime ineligibility began May 1, 2013.

In the reconsideration decision, the ministry notes that the minister may provide hardship assistance for family units with criminal code convictions but that a decision regarding the appellant's eligibility for hardship assistance would not be provided as a request for hardship assistance was not part of the original decision being reviewed. The ministry advised the appellant to contact the ministry if he wished to discuss his eligibility for hardship assistance.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act (EAPWDA)* sections 14(1) and (5)  
*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, Section 31

## PART E – Summary of Facts

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

- 1) The appellant's Request for Reconsideration dated May 2, 2013 (RFR) requesting a reconsideration on the basis that finding him ineligible for income assistance will result in an imminent danger to his life as he would be unable to afford clothing, medication, food, a place to live or other necessities of life;
- 2) Letter from the appellant dated May 10, 2013 in which he asks the ministry to consider the medical documentation he submitted and requests an additional ten days to ensure that the letters from his other treating physicians are considered. The appellant states that the reconsideration legislation states that he must receive the entirety of his monthly benefit including his nutritional and vitamin allowance and his transportation allowance. The appellant also states that he requires the following information and documentation: T5's for all tax years on social assistance, dates his 3<sup>rd</sup> party was reconsidered and denied, the date he will be reconsidered again, letter from the ministry on ministry letterhead explaining his denial of benefits, the shelter portion of his rent, nutritional, vitamin and transportation allowance and confirmation that the ministry is aware that the fraud charge is under appeal. The appellant states that as his fraud charge is under appeal the reconsideration decision should be stayed until the appeal is rejected;
- 3) Letter from the appellant's physician dated May 21, 2013 stating that the appellant has anemia and an extraordinarily low white blood cell count. The physician also reports that the appellant suffers from severe myoclonic jerks (seizures), has been prescribed medication, and will be referred to a neurologist for testing;
- 4) Letter from the appellant dated May 1, 2013 advising that he will submit further documentation necessary for reconsideration, and that until then the lifetime ban should be set aside as he is unable to afford medications, transportation, housing, food, clothing, medical supplies, BC Care Card monthly premium and vitamins. The appellant also indicates that he requires various medical equipment and supplies including a pressure relief mattress, custom made orthotics, custom made footwear, ankle brace and torso spine brace;
- 5) Certified True Copy of Provincial Court Record of Proceedings and Endorsement of Information dated April 15, 2013 indicating that the appellant was found guilty of fraud contrary to the Criminal Code section 380(1)(b) and sentenced to 30 days jail;
- 6) Letter from the ministry to the appellant dated April 15, 2013 advising that the ministry determined that the appellant was ineligible for disability assistance due to the criminal conviction and that the applicable sanction is for the appellant's lifetime; and
- 7) Letter from the appellant's physician dated March 22, 2013 indicating that the appellant requires a pressure relief mattress, custom made orthotics, custom made footwear, ankle brace, torso or spine brace, acupuncture, chiropractic services, massage therapy, naturopathy, non surgical podiatry and physiotherapy.

In his Notice of Appeal the appellant states that the ministry failed to take into account the judge's reasoning.

APPEAL #

With the consent of both parties, the appeal proceeded by way of a written hearing.

The ministry relied on the reconsideration decision and submitted no new information.

## PART F – Reasons for Panel Decision

The issue to be determined at appeal is whether the ministry's reconsideration decision which found the appellant ineligible for disability assistance due to lifetime sanctions pursuant to Section 14(1) and (5) of the EAPWDA was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

The relevant legislation is as follows:

### EAPWDA

#### Consequences for conviction or judgment in relation to Act

**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.

(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.

### EAPWDR

#### Criminal Code convictions

**31** For the purposes of section 14 (5) (b) [consequences for conviction or judgment] of the Act, assistance provided for a calendar month to or for a family unit that includes one or more persons who have been convicted under the *Criminal Code* in relation to obtaining money under the Act or the *Employment and Assistance Act* by fraud or false or misleading representation must be reduced

- (a) if the family unit includes a sole applicant, or a sole recipient, who has been convicted as described, and one or more dependent children, by \$100,
- (b) if the family unit includes two applicants or recipients, only one of whom has been convicted as described, and no dependent children, by \$300,
- (c) if the family unit includes two applicants or recipients, only one of whom has been convicted as described, and one or more dependent children, by \$100, and
- (d) if the family unit includes two applicants or recipients both of whom have been convicted as described, and one or

more dependent children, by \$200.

The ministry's reconsideration decision states that under section 14(1) of the EAPWDA, a person who is convicted of an offence under the *Criminal Code* in relation to obtaining money under the EAPWDA by fraud or false or misleading representation is subject to a lifetime consequence as outlined in EAPWDA section 14(5), beginning with the first calendar month following the date of the conviction.

The ministry states that on April 11, 2013 the appellant was convicted of fraud of \$5,000 or under, contrary to section 380(1)(b) of the *Criminal Code* in relation to obtaining assistance under the EAPWDA. The ministry states that although the appellant is appealing the conviction, that is an issue between him and the court, and as he has been convicted of this offence, the legislation applies. The ministry's position is that as the appellant is a single person with no dependants, he is ineligible for disability assistance for his lifetime. The ministry's position is that as the appellant was convicted in April 2013 his lifetime sanction of ineligibility began May 1, 2013.

The ministry states that if the appellant's family unit composition changes, the specific consequences may change, but the sanction period is for his lifetime. The ministry also states that although the appellant made various requests for information including T5's for his tax years on assistance, information regarding his third-party administration of assistance, an explanation of reconsideration benefits and information regarding his shelter and nutritional supplements, these issues are not directly related to the reconsideration decision so the minister is unable to assist with these matters. The appellant was directed to contact his local Employment and Assistance Office to discuss those requests.

The ministry also states that the minister may provide hardship assistance for family units with criminal code convictions, but that a decision regarding eligibility for hardship assistance was not provided as the appellant had not made a request for hardship assistance. The ministry advised the appellant to contact the ministry if he wished to discuss hardship assistance.

The appellant's position is that without disability assistance there is an imminent danger to his life, as he would be unable to afford housing, food, clothing, nutritional and vitamin supplements, transportation expenses or other necessities of life. In addition, the appellant's position is that he requires various medical equipment and therapies due to his medical conditions reported by his physicians. The appellant also states that the ministry failed to take into account the judge's reasoning in relation to the *Criminal Code* conviction.

#### *Panel Decision*

The panel notes that its jurisdiction is limited to a determination of whether the reconsideration decision was reasonable. As the reconsideration decision only relates to a finding that the appellant is ineligible for disability assistance due to a lifetime sanction arising from a criminal conviction of fraud, the panel does not have jurisdiction to address the appellant's requests for further information from the ministry, namely his request for T5's for all tax years on social assistance, dates his 3<sup>rd</sup> party was reconsidered and denied, the date he will be reconsidered again, letter from the ministry on ministry letterhead explaining his denial of benefits, the shelter portion of his rent, and nutritional, vitamin and transportation allowances.

In addition, the panel does not have jurisdiction to make a determination as to the appellant's requests for various medical equipment and supplies including a pressure relief mattress, custom made orthotics, custom made footwear, ankle brace and torso spine brace, or the various therapies such as acupuncture, chiropractic services, massage therapy, naturopathy, non surgical podiatry and physiotherapy.

The panel also notes that while the ministry stated that the minister may provide hardship assistance for family units with criminal code convictions, a decision regarding eligibility for hardship assistance was not provided as the appellant had not made a request for hardship assistance. As no decision was made regarding hardship assistance the panel does not have jurisdiction to consider the issue of hardship assistance.

Under section 14(1) of the EAPWDA, a person who is convicted of an offence under the *Criminal Code* in relation to obtaining money under the EAPWDA by fraud or false or misleading representation is subject to a lifetime consequence as outlined in EAPWDA section 14(5), beginning with the first calendar month following the date of the conviction. The panel finds that as the appellant was convicted of fraud of \$5,000 or under, contrary to section 380(1)(b) of the *Criminal Code* in relation to obtaining assistance under the EAPWDA on April 11, 2013, the ministry's decision that he was ineligible for disability assistance due to a lifetime sanction was reasonable.

As the appellant's conviction was in April 2013 and as EAPWDA section 14(2) states that the ineligibility begins the month following the conviction, the panel finds that the ministry's determination that the appellant's lifetime sanction of ineligibility began May 1, 2013 was also reasonable.

Although the appellant states that the ministry failed to take the judge's reasoning into account the appellant has not provided a transcript or other information containing the reasons for judgment. In addition, although the appellant states that the ministry's reconsideration decision should be stayed pending the outcome of his appeal, the appellant has not provided any information confirming that the conviction has been appealed or the date of the appeal. More importantly however, the legislation does not provide for a stay of the ineligibility pending the outcome of an appeal.

Accordingly, the panel finds the ministry's reconsideration decision that the appellant is not eligible for disability assistance due to a lifetime sanction pursuant to EAPWDA section 14 was reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances.

The panel therefore confirms the ministry's reconsideration decision.