

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated July 19, 2013 which found that the appellant is not eligible for disability assistance for her lifetime, pursuant to Section 14 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA) as she is a sole recipient with no dependants and was convicted of an offence under the *Criminal Code* in relation to obtaining money under the EAPWDA or the Employment and Assistance Act (EAA) by fraud or false or misleading representation.

### PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 14

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 the reconsideration decision included:

- 1) Probation Order for the appellant dated February 9, 2005 indicating a suspended sentence for a conviction for uttering a forged document contrary to Section 368(1) of the *Criminal Code*;
- 2) Notice to End Tenancy for Cause dated July 1, 2013 to vacate the premises by July 31, 2013 as the tenant (appellant) is repeatedly late paying rent;
- 3) Note dated July 6, 2013 from a physician requesting in part that the appellant be kept on disability otherwise there is imminent danger to her health. Without disability she cannot afford heart meds and a place to live; and,
- 4) Request for Reconsideration- Reasons dated July 8, 2013.

In her Request for Reconsideration, the appellant wrote that she has been paying \$100 a month since 2005 for this sanction. She does not have a habit of getting into trouble and has learnt her lesson. The appellant wrote that she did not know that she could be "kicked off" assistance entirely once her child turned 19 years of age. The appellant wrote that it goes against her constitutional rights because she has done the crime and the time and that should be it. The appellant wrote that she has paid more than once. She wrote that her heart attack was caused by stress and her diabetes is "through the roof" because of this. Her son who has mental issues is "going to pieces" since they may not have a place to live and he cannot handle the stress. The appellant wrote that she was put on disability for a reason. She has gotten depressed and has considered suicide. The appellant wrote that she was told that there is only a lifetime ban if a person gets in trouble 3 times and she does not know what the other two instances are. The appellant wrote that the law is for people in and out of trouble with the law and she has not been in trouble. The appellant wrote that the imminent danger to her health is suicide at this point.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision. The appellant wrote that the decision goes against her constitutional rights. The appellant wrote that Section 14(2) of the Employment and Assistance for Persons With Disabilities Act (EAPWDA) says there is a sanction of lifetime ineligibility for a person after a third conviction for an offence, and she asks what the other two convictions were.

At the hearing, the appellant stated that she has been on assistance since she was 14 years old. Back in 2005 she was in receipt of regular income assistance and she provided a false doctor's note to get excused from school because she did not want to be considered non-compliant. At the time, the advice she got from everyone was to not fight the charge against her and she did not realize that there would be a lifetime sanction. The appellant stated that she did not have legal representation and she pleaded guilty to the charge under the *Criminal Code*. The appellant stated that she understood that there would only be a lifetime sanction if you had 3 convictions, that it was like "3 strikes and you are out," and she has only one conviction. The appellant stated that she remembers a charge back in 1983. The appellant asked what the other two strikes against her are because no one at the ministry has been able to tell her. She thought the law was for people that were repeatedly in trouble with the law. The appellant stated that her health has deteriorated with the stress of this, her sugar levels are "through the roof", and she has contemplated suicide. Her adult son has mental issues and she is not sure what she will do. The appellant stated that she was put on disability because of problems with her back and she wonders why the ministry would allow this if there was going to be a lifetime ban in any event as soon as her daughter finished school. The appellant stated that she is in receipt of hardship benefits for one year but is not sure what she will do when that runs out. The appellant stated that she will have to consider getting pregnant so that she will have a dependant in her family unit again. The appellant stated that she has been given a Notice to vacate her current residence and she has a hearing on September 16 that will not likely go in her favour, so they will have to leave their current residence by the end of September 2013.

The ministry relied on its reconsideration decision. At the hearing, the ministry stated that the appellant had 3 convictions that would have previously been explained to her, as well as her right to appeal.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reconsideration decision, which found that the appellant is not eligible for disability assistance for her lifetime, pursuant to Section 14 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA) as she is a sole recipient with no dependants and was convicted of an offence under the *Criminal Code* in relation to obtaining money under the EAPWDA or the Employment and Assistance Act (EAA) by fraud or false or misleading representation, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstance.

Section 14 of the Employment and Assistance for Persons With Disabilities Act (EAPWDA) provides:

### 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.
- (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.

Section 31 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) provides:

### 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 appellant's position is that the legislation sets out that a sanction of lifetime ineligibility for disability assistance can only be applied after a person has a third conviction for an offence, and no one has been able to tell her what the other two convictions were. The appellant argued that she only has one conviction and she has paid more than once for her crime as \$100 has been deducted from her assistance every month since 2009. The appellant argued that paying more than once for her crime goes against her constitutional rights. The appellant argued that she was put on disability for a reason, that she has problems with her back and she has diabetes and she does not know what she will do when her hardship assistance runs out at the end of one year.

The ministry's position is that the appellant is currently a sole recipient with Persons With Disabilities (PWD) designation, with no dependants. The ministry argued that in February 2005, the appellant was found guilty and convicted of an offence of uttering a forged document contrary to Section 368(1) of the *Criminal Code*, and the sanction imposed was \$100 per month reduction in assistance since, at that time, the appellant had a dependent child as part of her family unit. The ministry argued that on June 18, 2013 the appellant's dependent child was removed from her family unit because the appellant's daughter turned 19 years of age and completed her school year term. The ministry argued that the consequence set out in Section 14 of the EAPWDA for a sole recipient convicted of an offence under the *Criminal Code* is ineligibility for disability assistance for the lifetime of the recipient.

#### *Panel Decision*

The appellant does not dispute that she pleaded guilty and was convicted in 2005 for uttering a forged document contrary to Section 368(1) of the *Criminal Code*, but she denies being convicted of any other similar charges. Although the ministry stated at the hearing that the appellant has been convicted three times, there was no evidence provided to support this contention. Section 14 of the EAPWDA makes a clear distinction between convictions under provincial legislation, being the EAPWDA and the EAA, and convictions under federal legislation, being the *Criminal Code* of Canada, with respect to the consequences that apply. Whereas the consequences for convictions under the provincial legislation are stepped up depending on the number of convictions, as set out in Section 14(2) of the EAPWDA, the consequences for a single conviction under the *Criminal Code* are automatically for the lifetime of the person beginning with the first calendar month following the date of the conviction, as set out in Section 14(1) of the EAPWDA.

For those persons covered by Section 14(1) of the EAPWDA, or who have been convicted of an offence under the *Criminal Code* in relation of obtaining money by fraud or false or misleading representation, Section 14(5)(b) of the EAPWDA and Section 31 of the EAPWDR provide for lifetime consequences that are mitigated, or lessened, only for the time that the family unit includes one or more dependent children. While the appellant had a dependent child in her family unit, Section 14(5)(b) of the EAPWDA and Section 31(a) of the EAPWDR applied to her and her assistance was reduced by \$100 per month. The appellant does not dispute that her daughter turned 19 years of age and had completed her school term in June 2013 and that she is no longer the appellant's dependant. However, the appellant argued that she is being punished more than once for her crime and this goes against her constitutional rights. The panel does not have jurisdiction over constitutional questions, pursuant to Section 44 of the *Administrative Tribunals Act*, and must assume the constitutional validity of the legislative provisions. The panel finds that the ministry reasonably concluded that the appellant is currently a sole recipient with no dependants and, therefore, Section 14(5)(a) of the EAPWDA applies and her

family unit is not eligible for disability assistance for her lifetime.

*Conclusion*

Therefore, the panel finds that the ministry reasonably concluded that the appellant is currently not eligible for disability assistance for her lifetime, pursuant to Section 14 of the EAPWDA, as she is a sole recipient with no dependants and was convicted of an offence under the *Criminal Code*. The panel finds that the ministry's reconsideration decision was a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision.