

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated May 30, 2013 in which the ministry determined that the appellant was ineligible for disability assistance as of May 1, 2013, pursuant to a lifetime sanction under section 14(1) and 14 (5)(a) of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) as the appellant had been convicted of fraud under the Criminal Code in relation to obtaining assistance under the EAPWDA.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 14(1) and 14 (5)(a)

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The evidence before the Ministry at the time of the reconsideration decision consisted of:

- 1) The appellant's Request for Reconsideration (RFR) dated May 2, 2013 in which the appellant states that he is completing the RFR because cutting off his income assistance will result in imminent danger to his life and that he will be unable to afford clothing, medication, food, a place to live or any other necessities of life. He adds that he is requesting an extra ten days before the file is reconsidered so that he may bring in additional information.
- 2) Letter from the appellant, dated May 10, 2013, to his advocate stating that there are "serious discrepancies, if not disparities" between what the appellant was advised by the advocate and what the ministry had advised the appellant, regarding the pertinent legislation. He also states that he has provided the advocate with medical documentation that is relevant to determining his application and advises that he has requested an additional ten days to ensure that the letters from other treating physicians are considered. The appellant further states that in accordance to the legislation he must receive the entirety of the monthly benefit, including nutritional, vitamin and transportation allowance and if this has been denied a reconsideration package must be provided. The appellant also lists a number of requirements that he has for his advocate in this letter.
- 3) Letter from the appellant, dated May 1, 2013, in response to the original decision dated, April 15, 2013, in which the appellant requests an additional ten days in order to produce more evidence to support his case. He also states that a lifetime ban should not apply because he struggles with severe mental illness and is unable to work and therefore afford medication, transportation, housing, food, clothing, medical supplies, healthcare premiums or vitamins. The appellant also includes a list of medical supplies and associated cost of each item.
- 4) Letter from the appellant's physician, dated March 22, 2013, which includes a list of items and services that he advises are medically required to improve the physical functioning of the appellant who has been impaired by a neuromusculoskeletal condition. Items include: A pressure release mattress and bed frame; custom foot orthotics and footwear; ankle brace; torso or spine brace; acupuncture; chiropractic; massage therapy; naturopathy; non-surgical podiatry; and physical therapy.
- 5) Letter from the appellant's physician, dated May 21, 2013, which states that the appellant has anemia and an extraordinarily low white blood cell count. He adds that the appellant currently suffers from severe myoclonic jerks and will be referred to a neurologist for testing and has received a prescription in the interim.
- 6) Letter from the appellant to his advocate, dated May 22, 2013, following up on a discussion from the day prior and indicating that the letters from the appellant's physician, dated March

19, 2013 and March 22, 2013, relating to his appeal were attached.

- 7) Letter from the appellant's physician, dated March 19, 2013 stating that the appellant would benefit from physiotherapy and massage therapy for ongoing back and groin pain issues.
- 8) Sections 1 and 2 of the RFR dated May 2, 2013 completed by a ministry worker, stating the reason that the appellant is subject to the applicable lifetime sanction and ineligibility for assistance is because the appellant pleaded guilty to fraud under \$5000, contrary to Section 380(1)(b) of the Criminal Code and sentenced by a provincial court judge.
- 9) A record of Provincial Court Proceedings which lists the appellant's court appearance on April 11, 2013, guilty plea and resulting sentence.
- 10) A sworn information document, dated March 27, 2013, which alleges that the appellant defrauded the ministry pursuant to section 380 (1)(b) of the Criminal Code.
- 11) The original ministry decision, dated April 15, 2013, which states that pursuant to EAPWDA, Section 14(1) and 14 (5)(a) and EAPWDR, Section 31, the appellant is subject to a lifetime sanction due to his conviction of fraud under \$5000, contrary to Section 380(1)(b) of the Criminal Code. It further states that this sanction will be ineligibility for assistance if the appellant has no dependent children or is a single recipient, however he may be eligible to receive Hardship Assistance. The letter also states that under EAPWD Act Section 18, the appellant is required to repay the amount of the benefits that he was not eligible to receive.

In the appellant's Notice of Appeal, received June 28, 2013, he states that, "The ministry failed to take into account the judge's reasoning," otherwise, the appellant submitted no new information.

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

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision, which found that the appellant was not eligible for disability assistance, pursuant to a lifetime sanction under section 14(1) and 14 (5)(a) of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) as the appellant had been convicted of fraud under the Criminal Code in relation to obtaining assistance under the EAPWDA, was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

The relevant sections of the legislation are as follows:

***Employment and Assistance for Persons with Disabilities Act (EAPWDA),
Section 14(1) and 14 (5)(a)***

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.

The position of the ministry, as set out in the reconsideration decision, is that on April 11, 2013 the appellant plead guilty and was convicted of an offense of committing fraud of \$5000 or under in relation to obtaining assistance under the EAPWDA, contrary to Section 380 (1)(b) of the Criminal Code. Pursuant to EAPWDA, Section 14(1), this conviction results a lifetime sanction which makes the appellant ineligible for disability assistance and begins with the first calendar month following the date of the conviction. The ministry adds that although the appellant's conviction may be under appeal, it is an issue between the appellant and the court and therefore because the appellant has been convicted of the offense, the legislation applies.

The appellant's position was that the ministry failed to take into account the judge's reasoning and that his fraud charge is under appeal, therefore the decision regarding his eligibility for disability assistance should be stayed until his appeal has been rejected.

The panel finds that pursuant to EAPWDA, Section 14(1) the appellant is subject to a lifetime sanction due to his conviction of fraud under \$5000, contrary to Section 380(1)(b) of the Criminal Code and the lifetime sanction begins with the first calendar month following the date of the conviction. The conviction occurred in April 2013; therefore, the lifetime sanction became effective on May 1, 2013. The panel finds that pursuant to EAPWDA, Section 14 (5)(a), the applicable lifetime sanction is ineligibility for disability assistance as the appellant is a single person with no dependants. The panel finds that although the appellant indicated to the ministry that he is appealing his conviction, the conviction still currently stands.

In conclusion, the panel finds that the ministry's reconsideration decision which states that the appellant is not eligible for disability assistance pursuant to EAPWDA, Section 14(1) and 14 (5)(a), and is therefore subject to a lifetime sanction due to his conviction of fraud under \$5000, contrary to Section 380(1)(b) of the Criminal Code was reasonably supported by the evidence and is a reasonable application of the legislation in the appellant's circumstances. The panel therefore confirms the ministry's reconsideration decision.