

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry's) decision of December 16, 2013 in which the ministry determined it was unable to conduct a reconsideration.

- Regarding its decision on September 29, 2010 to apply a lifetime sanction to the appellant's file under Section 14(1) and 14(5) of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) as a result of her conviction for fraud: the ministry determined under section 17 of the EAPWDA that this decision is not open to reconsideration.
- Regarding its decision of August 16, 2011 to change the appellant's sanction under Section 14(5)(a) of the EAPWDA from a \$100 reduction to ineligibility for disability assistance: the ministry determined that it could not accept the appellant's request in December 2013 for reconsideration of this decision because the appellant was notified of this decision in August, 2011. Section 71(2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) stipulates that a request for reconsideration must be delivered within 20 business days after the date the person is notified of the ministry's decision.

## PART D – Relevant Legislation

Sections 14(1), 14(5) and 17 of the EAPWDA

Section 71(2) of the EAPWDR

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- The ministry's decision of December 16, 2013, in which the ministry states
  - the appellant is currently receiving hardship assistance as a sole recipient
  - on December 1, 2009 the appellant was convicted or found guilty of having committed an offence of fraud over \$5,000.
  - on January 20, 2011 (the panel finds that the ministry in error states this date as November 1, 2010) the Employment and Assistance Appeal Tribunal (EAAT) confirmed the ministry's decision that the appellant was subject to a lifetime sanction under section 14(1) and 14(5) of the EAPWDA.
  - on August 16, 2011 the appellant attended the ministry's local office with her advocate to have her daughter removed from her file. The ministry notified the appellant that as a result of her daughter being removed from her file, the appellant's lifetime sanction was changed from a \$100 reduction in her disability assistance to ineligibility for disability assistance, as specified in section 14(5)(a), EAPWDA.
  - on August 17, 2011, the appellant was approved for hardship assistance under section 42.1 of the EAPWDR, which allows the minister to issue hardship assistance to single persons who have been determined ineligible for disability assistance as a result of a conviction of fraud and would otherwise face undue hardship.
  - On December 4, 2013 the ministry received the appellant's signed Request for Reconsideration. The ministry states that the appellant requested a reconsideration of the ministry's decision that the appellant was ineligible for disability assistance because she had a lifetime sanction due to a conviction of fraud.
- The appellant's Request for Reconsideration signed by the appellant on December 3, 2013. A statement in the appellant's handwriting on the Reason for Request for Reconsideration reads "Called into ministry asking for extension due to needing time for doctors' letters, also spoke to [ministry worker] when he was in the office November 20 or 21 in regards to extension . . . ." With the Request for Reconsideration there is a 6-page handwritten document headed "Reconsideration from Hardship to PWD." In it the appellant discusses her medical conditions, disabilities and barriers she states she is "unable to effectively manage and treat on my own being on hardship." She states her medical conditions include degenerative disc disease and sciatica, chronic migraine headaches, an insomnia disorder, macular eye degeneration, abdominal pains, and restless leg syndrome that radiates up into her back. She states she also suffers from clinical depression, insomnia and panic attacks.

She states that the effect of living on hardship assistance has "made a devastating impact on my life." She has lost her independence and confidence and has had to move in with her parents, where she lacks privacy, has no kitchen and cannot cook her own meals or do her own laundry. She states she no longer has friends to confide in, her depression has worsened to "an all-time low," and her quality of life and health have declined. Because she is on hardship assistance, she is not eligible for the

benefits she needs. She suffers from panic attacks in public, is easily confused and has to get her mother or daughter to accompany her when she goes out because she cannot shop alone in busy stores. She writes: "I have become lonely and withdrawn, lost friendships and even family relationships." She states she needs to be back on disability assistance so that she can access benefits that will help her regain her health and some of her independence and life skills. In addition to the four doctors she states she sees, not including specialists, she is a patient at a pain clinic but cannot afford to swim regularly as her doctors have recommended to alleviate her pain. She also states she cannot afford get to all her weekly medical appointments. She states she will never be able to work full time again but if she gets some of her independence back she would like to have part-time work. She feels she has "paid heavily" for "mistakes in the past" which she will make sure will never happen again "even if I have to get someone to help me." She lists her current medications and cites a "change in circumstances since previous appeals – deterioration in health."

Attached to the appellant's Request for Reconsideration are four letters.

- a letter "To Whom It May Concern" dated November 21, 2013 from a psychiatrist who has worked with the appellant since July 2011. The writer discusses the appellant's psychological and physical conditions, which include major depressive and anxiety disorders, chronic back pain, abdominal pain and other conditions discussed by the appellant in her document above. The writer states that as a result of being excluded from disability assistance, the appellant does not receive a travel allowance she needs to attend medical appointments and does not get access to a dietary and vitamin allowance that would have helped her. She also has no access to crisis grants in case she runs into emergencies, which are likely because of her many medical conditions, and has dental coverage only for pain relief. He writes "She is a person who faces multiple barriers, and, for her to get her independence back, she will need to be reinstated onto her PWD." He lists her current medications and cites her low mood, poor levels of energy, lack of interest and motivation and "fleeting suicidal ideations." As well he describes several physiological symptoms of "high levels of arousal in the form of anxiety." He concludes she "should be reinstated onto her previous status of benefits which was her PWD instead of remaining on hardship and predisposing her to deteriorating in her mental state."

- a letter to the ministry dated November 13, 2013 from a doctor who has treated the appellant since 1996, citing her "long history of resistant, chronic depression" as well as the disorders discussed above by the appellant's psychiatrist. The writer states that working part time would be "therapeutic and medically important" to the appellant and living in poverty as he states she does now is "totally counter-therapeutic for her medical treatment." He states that he supports her access to a travel allowance because of her many medical appointments and that "she legitimately qualifies for a vitamins and supplements allowance." He states that it is his understanding she no longer qualifies for a monthly earning exemption. He writes "the additional earned income [from part-time work] will help to allow her to pay out-of-pocket expenses and necessary medical expenses, and pay for access to the public pool and gym for exercises."

- a letter "To Whom It May Concern" dated August 22, 2013, from an optometrist. The letter is headed "Oculovisual Assessment Report." The report states that the appellant has significant macular changes that require vitamin supplements, "the only known treatment for her condition."

- a letter "To Whom It May Concern" from a psychologist dated November 29, 2013 in support of the appellant's "application for disability benefits." The writer has met with the appellant since May, 2013.

He states; "she presented with symptoms of depression . . . , anxiety and chronic pain." He cites her feelings of isolation, her desire to manage her pain through exercise, make more social contacts and live independently. He writes: "she struggles to maintain motivation, but has been successful following through on some of her goals by challenging her thinking and using new skills through therapy."

- The appellant's Request for Reconsideration signed July 7, 2010 asking for a reconsideration of the ministry's decision to have a lifetime \$100 reduction to her assistance applied.
- The ministry's letter to the appellant of September 29, 2010 stating that on reconsideration, the ministry has denied the appellant's request.
- The EAAT's decision of January 20, 2011 which confirms the ministry's reconsideration decision of September 29, 2010 to impose a lifetime sanction on the appellant's file. The sanction imposed was a monthly reduction of \$100 from the appellant's benefits.

After the ministry's determination of December 16, 2013, the appellant completed a Notice of Appeal, signed January 31, 2014. In her Reasons for Appeal she writes: "Being told I did not submit my Reconsideration within the 20 day time limit is not sufficient reason to keep me . . . suffering without medical benefits." She states she contacted the ministry's [B.C city] office as well as the local office "multiple times requesting an extension on time." She states she was told to contact the local office if more time was needed and that she did so. She states she contacted the local office for an extension "before the 20 days were up." She states she explained to a worker at the local office that she was "awaiting doctors' appointments and letters so I could submit them with the Reconsideration."

The panel finds that the statements in the appellant's Notice of Appeal contain information in support of the information and records that were before the minister when the decision being appealed was made. As the statements provide clarification of the appellant's request for an extension, the panel finds that the item is admissible as evidence in accordance with the Employment and Assistance Act (EAA), Section 22 (4).

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that it was unable to conduct a reconsideration was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence.

- Regarding its decision on September 29, 2010 to apply a lifetime sanction to the appellant's file under Section 14(1) and 14(5) of the EAPWDA as a result of her conviction for fraud: the ministry determined under section 17 of the EAPWDA that this decision is not open to reconsideration.
- Regarding its decision of August 16, 2011 to change the appellant's sanction under Section 14(5)(a) of the EAPWDA from a \$100 reduction to ineligibility for disability assistance: the ministry determined that it could not accept the appellant's request in December 2013 for reconsideration of this decision because the appellant was notified of this decision in August, 2011. Section 71(2) of the EAPWDR stipulates that a request for reconsideration must be delivered within 20 business days after the date the person is notified of the ministry's decision.

### Employment and Assistance for Persons with Disabilities Act

#### 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.

#### No appeal from decision based on same circumstances

**17** If a person reapplies for disability assistance, hardship assistance or a supplement after

(a) the eligibility of the person's family unit for the disability assistance, hardship assistance or supplement has been determined under this Act,

(b) a right of appeal under section 16 (3) has been exercised in respect of the determination referred to in paragraph (a), and

(c) the decision of the tribunal in respect of the appeal referred to in paragraph (b) has been implemented

no right of reconsideration or appeal exists in respect of the second or a subsequent application unless there has been a change in circumstances relevant to the determination referred to in paragraph (a).

#### Employment and Assistance for Persons with Disabilities Regulation

##### How a request to reconsider a decision is made

**71** (1) A person who wishes the minister to reconsider a decision referred to in section 16 (1) *[reconsideration and appeal rights]* of the Act must deliver a request for reconsideration in the form specified by the minister to the ministry office where the person is applying for or receiving assistance.

(2) A request under subsection (1) must be delivered within 20 business days after the date the person is notified of the decision referred to in section 16 (1) of the Act and may be delivered by

(a) leaving it with an employee in the ministry office, or

(b) being received through the mail at that office.

Regarding section 17 of the EAPWDA the ministry's position is that under this section no right to reconsideration is available for a decision that has already been determined at appeal, i.e., by the EAAT. The ministry notes that the circumstances regarding the decision made under section 14(1) and 14(5) of the EAPWDA to apply a lifetime sanction, i.e., the conviction of fraud over \$5000, have not changed. Accordingly the ministry determined that the decision to apply a lifetime sanction to the appellant's file as a result of the appellant's conviction of fraud is not open to reconsideration.

The appellant's position is that her circumstances have changed since the lifetime sanction was applied. As a result of living on hardship assistance her mental and physical health have significantly deteriorated. She has lost her independence and her confidence, her depression has worsened and because she cannot afford travel to medical appointments, pay for some medications and access recreational facilities, she has not been able to regain her health. She provides letters from medical practitioners to back up her claim that she needs to be back on assistance. At the hearing, the appellant stated that her mental and physical health have declined significantly since she has been on hardship assistance. She reviewed the information provided in the document she wrote for her reconsideration request of December 3, 2013, as well as the contents of the supporting letters from medical practitioners.

With regard to section 17 of the EAPWDA, the panel notes that the evidence shows that on January 20, 2011 the EAAT confirmed the ministry's decision applying a lifetime sanction under sections 14(1) and 14(5) of the EAPWA. Under this section therefore the appellant has no right of reconsideration "unless there has been a change in circumstances relevant to the determination ...." The panel notes

that the circumstances relevant to the ministry's determination to sanction the appellant were that the appellant was convicted of having committed an offense of fraud over \$5,000. As the conviction still stands, the panel finds that the ministry's determination to be reasonable, i.e., its determination that its decision to apply a lifetime sanction to the appellant's file as a result of her conviction for fraud, is not open to reconsideration, and the panel confirms that decision.

With regard to section 71(2) of the EAPWDR, the panel for clarification wishes to draw attention to the appellant's request for reconsideration signed by the appellant on December 3, 2013 and which the ministry received on December 4, 2013. In the Summary of Facts section of the ministry's decision of December 16, 2013, the ministry describes the request as follows. "You requested a reconsideration of the decision that you were ineligible for disability assistance because you have a lifetime sanction due to a conviction of fraud." The ministry's position is that this decision was made by the ministry on August 16, 2011, when the appellant was advised that because the appellant's daughter had been removed from the appellant's file, her lifetime sanction was ineligibility for disability assistance. The ministry's position is that under section 17 of the EAPWDA the appellant is entitled to reconsideration for the August 16, 2011 decision because that decision was made due to a change in the appellant's circumstances, i.e., that her family unit no longer included her daughter. The ministry's position is that though entitled to reconsideration under section 17 of the EAPWDA, the appellant applied for the reconsideration years after she was informed of the decision in August, 2011, i.e., not until December 3, 2014, and that therefore she did not comply with section 71(2) of the EAPWDR and cannot be given a reconsideration.

The appellant's position, which she clarified at the hearing, is that on December 3, 2013 she was requesting a reconsideration not of the ministry's decision of August 16, 2011 but of its decision of September 2013 denying her request to convert hardship assistance to regular Persons with Disabilities assistance. She contends that she was informed by the ministry that she "could let the office know if I needed more time" and that she did so before the 20 days were up. At the hearing the ministry confirmed that the appellant had contacted the ministry several times in December, 2013 requesting an extension of the 20-day deadline for her request for reconsideration so that she could obtain letters from medical practitioners.

The panel finds that in requesting a reconsideration decision on December 3, 2014, the appellant was asking to be put back on disability assistance and that in doing so she was asking the ministry to reconsider the decision of August 16, 2011 which applied the sanction of ineligibility for disability assistance. The ministry indicated that the appellant was notified of that decision in August, 2011. In the same month the ministry determined that the appellant was eligible for hardship assistance, which she has received since that time. The panel finds that the appellant's request for a reconsideration decision was made on December 3, 2014, years after the appellant was notified of the ministry's August 16, 2011 decision which applied the sanction of ineligibility for disability assistance. The panel notes that under section 71(2) of the EAPWDR a person who wishes the minister to reconsider a decision must deliver a Request for Reconsideration to the ministry office 20 business days after the person is notified of the decision. The panel therefore finds to be reasonable the ministry's determination under section 71(2) of the EAPWDR that it cannot accept a request for reconsideration submitted in 2014 of a decision made by the ministry in 2011. The panel therefore confirms that ministry's decision that it is unable to conduct a reconsideration in this matter.