

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated February 20, 2014 which found the appellant ineligible for disability assistance due to lifetime sanctions.

The ministry's reconsideration decision 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* 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 decision states that as a single person with no dependants, the applicable consequence under Section 14(5) is ineligibility for disability assistance 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 November 27, 2012 the appellant's lifetime ineligibility began December 2012.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 14(1) and (5)

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 February 7, 2014 (RFR) in which the appellant states that she was not aware that she was not entitled to her pension while she was incarcerated. The appellant states that she always gets her mail at her mother's address and did not know she needed to change her address when she moved. The appellant states that the only way she can repay the ministry is if she is in receipt of benefits;
- 2) Letter from the ministry to the appellant dated December 18, 2012 advising the appellant that as a result of her criminal conviction she is ineligible for assistance. The letter also advises the appellant that she must repay the benefits which she was not eligible to receive. The letter also advises the appellant that if she is ineligible for assistance due to the applicable sanction she may be eligible to receive hardship assistance;
- 3) Probation Order dated November 27, 2012 stating that the appellant was convicted or found guilty of fraud \$5,000 or under contrary to section 380(1)(b) of the Criminal Code; and
- 4) Restitution Order dated November 27, 2012 stating that the appellant is to pay restitution of \$5,000 to the ministry.

In her Notice of Appeal the appellant states that she has serious medical issues and no support.

At the hearing the appellant, through her representative, submitted copies of various sections of legislation from the EAPWDR. She also submitted a note from her psychiatrist dated March 5, 2014 indicating that she has chronic physical and mental health issues including spina bifida, bladder infection requiring a catheter that needs attention multiple times per day, she is an alcoholic and polysubstance abuser, has anger issues, incontinence, leg spasms and weakness. The appellant also submitted a note from her psychiatrist dated March 5, 2014 with a list of her medications and medical equipment requirements.

The appellant's representative also provided oral evidence that the appellant received income assistance cheques for a three month period during which the appellant was incarcerated. The appellant's representative stated that the appellant spent 57 days in custody and was advised by her lawyer that if she plead guilty she would receive a sentence of time served and be able to get out of jail that day. When pleading guilty the appellant did not understand the financial consequences of her guilty plea and the applicable sanctions that would be imposed by the ministry as a result of her conviction.

The appellant's representative stated that the appellant has nowhere to live and is living a very high-risk lifestyle. He states that in the last seven months, two other women living a similar lifestyle in the same area as the appellant have gone missing and that the appellant faces imminent danger to her health if she is not provided with disability assistance.

The ministry did not object to the appellant's new evidence. The panel has accepted the psychiatrist notes and the oral testimony into evidence as it is in support of information and records before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*, as it relates to the appellant's criminal conviction and living circumstances.

APPEAL #

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.

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's position is that on November 27, 2012 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's position is that as the appellant is a single person with no dependants, she is ineligible for disability assistance for her lifetime. The ministry's position is that as the appellant was convicted on November 27, 2012 her lifetime sanction of ineligibility began December 1, 2012.

At the hearing the ministry representative stated that although the ministry provided the appellant with disability assistance cheques during a time in which she was incarcerated, the ministry was not aware that she was incarcerated at the time so it was not an error on the ministry's part to send the appellant those cheques. The ministry representative clarified that a disability assistance recipient is not required to provide a written report or declaration every month but is required to do so if there is a change in her circumstances. The ministry confirmed that if there is some reason to check a

recipient's file they can tell quite quickly if cheques are cashed but there was no reason for the ministry to check the appellant's file prior to being provided with knowledge that she was convicted of fraud in November 2012. The ministry's position is that the cheques that the appellant was sent while she was incarcerated, which she subsequently cashed, are an overpayment that must be repaid to the ministry.

The appellant's position is that she has numerous physical and mental health issues, has nowhere to live, is living a high-risk lifestyle, and needs disability assistance, particularly as she has a catheter that needs attention multiple times per day. The appellant's position is that she only plead guilty to the criminal charge because after spending 57 days in jail waiting for a hearing, her lawyer told her that she could get out that day if she plead guilty. The appellant's position is that she did not understand the consequences of her guilty plea. The appellant's position is that without disability assistance her physical health is in imminent danger and that she cannot repay the ministry if she is not in receipt of disability assistance benefits.

The appellant's position is that as per EAPWDR section 42.1 (2)(b), there is an imminent danger to her life, as without disability assistance she is unable to afford housing, food, clothing, medications or medical equipment she requires for her numerous health conditions. The appellant states that she applied for hardship assistance but the ministry denied her request and she understands, that as per EAPWDR section 73 that a request for hardship assistance is not appealable.

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 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)(b), beginning with the first calendar month following the date of the conviction as per section. 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 November 27, 2012, the ministry's decision that she was ineligible for disability assistance due to a lifetime sanction was reasonable.

The issue of overpayment raised by the appellant is not the subject of the appeal.

Although the appellant states that she only plead guilty to the fraud charge based on the advice of her lawyer that she would be released from jail that day for "time served", the appellant has not provided any evidence that she subsequently appealed the conviction or that it should be set aside on the basis that her guilty plea was made on the basis of a misunderstanding. However, even if the appellant had provided evidence that she had appealed her conviction or applied to have the conviction set aside, the legislation does not provide for a stay of the ineligibility pending the outcome of an appeal.

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.