

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of March 31st, 2014 wherein the ministry determined the appellant, who is a sole recipient of disability assistance with no dependants, is not eligible for disability assistance as set out in section 14(5) Employment and Assistance for Persons with Disabilities Act (EAPWDA) because the appellant was convicted of an offence under the Criminal Code of Canada (CCC) in relation to obtaining money under this Act by fraud or false or misleading information which resulted in the ministry placing a lifetime sanction on her file as set out in section 14(1) EAPWDA.

PART D – Relevant Legislation

EAPWDA sections 5, 14

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Record of the appellant's conviction and sentence for Fraud under Section 380(1) CCC on 2014-01-29.
- Letter from the ministry to the appellant dated 2014-01-30 advising the appellant that a lifetime sanction has been placed on her file; that she is no longer eligible for disability assistance; that she must repay the amount of benefits which she was not entitled to receive; and that the government may collect these funds through a civil process.
- Request for Reconsideration dated March 13th, 2014.

The appellant has no dependants and is a sole recipient of assistance with a Persons with Disabilities (PWD) designation. The appellant was convicted of an offence under the CCC in relation to obtaining money from the ministry by fraud or false or misleading representation. On January 30th, 2014 the ministry sent the appellant a letter advising that as a result of her conviction she was no longer eligible for disability assistance if she had no dependent children and is a single recipient.

The following documents, which were faxed to the Employment and Assistance Appeal Tribunal on May 23rd, 2014, were attached to the appellants 2nd Appeal Adjournment Request dated May 22nd, 2014:

1. Letter from health authority advising the appellant is on a waiting list to see a specialist.
2. Note from appellant advising that her legal counsel is not available until the last week of May 2014.

The panel finds that the information contained in item #1 above, attached to the appellant's Appeal Adjournment Request, does not contain information in support of the information and records that were before the minister when the decision being appealed was made and therefore is not admissible as evidence under section 22(4) of the Employment and Assistance Act (EAA). The panel finds item #2, as above, does not contain evidence.

At the hearing the appellant stated that she is currently under house arrest – conditions of her sentence – having pled guilty to a criminal code offence of fraud. The appellant stated that at the time she pled guilty she was following the advice of her lawyer and thought that her disability assistance would not be at risk. The appellant testified that at the time she was receiving disability assistance as a sole recipient, and although she has a son, he is not on her disability file as a dependant. The appellant apologized for what she did and told the panel she intends to repay the funds she received. The appellant stated that when she was incarcerated she was in a terrible state, that following the advice of her lawyer, she would be in a safe environment; she would receive proper counselling to assist her with her disability(s); that her assistance would not be at risk and she felt that the ministry's decision to declare her ineligible for assistance was not a reasonable outcome given her circumstances.

The panel finds that the oral testimony provided by the appellant does contain information in support of the information and records that were before the minister when the decision being appealed and therefore is admissible as evidence in accordance with the section 22(4) EAA.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision wherein the ministry determined that the appellant, who is a sole recipient of disability assistance with no dependants, is not eligible for disability assistance as set out in section 14(5) of the EAPWDA because the appellant, was convicted of an offence under the CCC in relation to obtaining money under this Act, by fraud or false or misleading information which resulted in the ministry placing a lifetime sanction on her file as set out in section 14(1) EAPWDA.

The legislation considered: EAPWDA

Section 5

Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Consequences for conviction or judgment in relation to Act

Section 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 argued that on January 29th, 2014 the appellant was convicted of fraud under the CCC for obtaining money from the ministry by fraud or false or misleading representation and, in consequence of that conviction, the ministry placed a life time sanction on her file declaring that she was no longer eligible for disability assistance because she was a sole recipient of disability assistance with no dependent children. The ministry argued they have no discretion in this matter but to apply the legislation.

The appellant argued that she cannot afford to be without disability assistance and fears that without the assistance she will end up back on the street living in the same fear that she did before. The appellant argued that she tried to obtain assistance from community service groups but was advised that it was too late that she should not have followed the advice of her lawyer and pled guilty to the CCC offence.

In reference to section 14(1) EAPWDA – the legislation states that a family unit that includes a person who is convicted of an offence under the CCC 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.

The evidence is the appellant is a single recipient of disability assistance with no dependants who was convicted of a CCC offence for fraud. The evidence is the ministry sent a letter to the appellant advising her that a lifetime sanction was being placed on her file in accordance with section 14(1) EAPWDA and that she

was no longer eligible for disability assistance as set out in section 14(5) EAPWDA. In the appellant's evidence she states that she did not understand what the consequences of her actions would be and that she needs to disability assistance to survive and keep her off the streets.

The panel finds that the legislation set out in section 14 EAPWDA is quite clear in providing statutory requirements for the ministry to follow – that the consequence for a CCC conviction is a lifetime sanction - and if the family unit only includes a person described in section 14(1) EAPWDA, then the family unit is not eligible for disability assistance for the applicable period (lifetime) as set out in section 14(5) EAPWDA. The panel finds the ministry has no discretion to vary the sanction on this matter.

The panel finds the appellant was convicted of a CCC offence for fraud and that as a result of that conviction that the ministry's decision to apply this legislation is supported by the evidence and was reasonable.

Therefore, based on the evidence, the panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the EAA.