

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation's (the ministry) dated May 5, 2014 in which the ministry determined that the appellant is ineligible for disability assistance because he was convicted of fraud in excess of \$5,000 under section 380(1)(b) of the Criminal Code and as a result is subject to a lifetime ban on receiving disability assistance under section 14(1) and (5) of the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)*

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Sections 1 and 14
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 31

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of:

- 1) The appellant's Request for Reconsideration dated April 25, 2014 (RFR) in which the appellant states that he does not have any income and he has a child to support. He states that his brain injury makes it difficult at the moment to find work. His frontal lobe brain injury has affected his short term memory causing him to forget to hand in his paystubs from his former work place. He states that he is not abusing the system, "it was all just complications and memory problems";
- 2) Telecommunication dated July 16, 2013 from the Ministry Investigator (MI) stating that he/she "Has reasonable and probable grounds to believe and does believe that the appellant from the 1st day of August 2010 until the 30th day of September 2012 did by deceit, falsehood or other fraudulent means defraud the Ministry of Housing and Social Development of a value in excess of \$5,000.00 contrary to Section 380 (1)(a) of the Criminal Code";
- 3) Conditional Sentence Order dated March 17, 2014 stating that the appellant was convicted of Fraud in excess of \$5,000.00 contrary to Section 380 (1)(a) of the Criminal Code; and was granted a conditional sentence of 6 months to be served in the community as well as twelve other conditions including a restitution order of \$11,883.49;
- 4) The Provincial Court Record of Proceedings and Endorsement of Information from August 15, 2013 – March 17, 2014;
- 5) The Restitution Order dated March 17, 2014 stating that the appellant is to pay \$11,883.49 to the ministry; and
- 6) A letter from the ministry to the appellant dated April 1, 2014 advising the appellant that as a result of his criminal conviction he is ineligible for assistance. The letter also advises the appellant that he must repay the benefits which he was not eligible to receive and that if he is ineligible for assistance due to the applicable sanction he may be eligible to receive hardship assistance.

In his Notice of Appeal, dated May 30, 2014 the appellant states that he disagrees with the ministry's decision because all the facts were not looked at and he needs help to support himself and his son.

Prior to the hearing, dated June 12, 2014, the appellant submitted the additional information of the birth certificate of his child indicating the appellant is the father of the child.

The ministry stated that the appellant's son was recorded on his income assistance file from January 21, 2010 to May 27, 2010 but has not been included on the appellant's file since that time period; and the appellant received income assistance as a single recipient prior to his criminal conviction and at that time that there was no information showing he had a dependent child.

At the hearing the appellant stated that not declaring his income was a mistake and he pled guilty to the criminal fraud charge because he was told he would not serve jail time and he would still see his son.

At the hearing the appellant through his representative told the panel:

- 1) As a result of his brain injury he will need assistance forever;
- 2) He is currently working;
- 3) He sees his child on weekends only and when he is working he pays whatever he can for food and clothing for the child.

At the hearing the appellant's mother testified as a witness for the appellant and stated:

- 1) The mother of the appellant's child "does not go after" the appellant for money and there is no formal custody order;
- 2) When the appellant is working he gives gift certificates in the amount of \$100.00 – \$150.00 a month to the mother of his child;
- 3) The mother of the appellant's child works full time and looks after daycare arrangements for the child.

The ministry did not object to the appellant's new evidence. The panel has accepted the birth certificate and the oral testimony of the appellant and his mother into evidence as it is information in support of the 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.

The ministry relied on the reconsideration decision.

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 because he has a criminal conviction for fraud against the ministry in excess of \$5,000.00 under section 380(1)(a) of the Criminal Code and as a result is subject 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

1 (1) In this Act:

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

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.

EAPWDR

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 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 March 17, 2014 the appellant was convicted of fraud in excess of \$5,000 contrary to section 380(1)(a) 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, he is ineligible for disability assistance for his lifetime beginning on April 1, 2014.

At the hearing the ministry stated that from August 1, 2010 until September 30, 2012, the appellant earned an income working for a private company while receiving income assistance and did not report this earned income to the ministry as he was required to do by law.

The ministry stated that as a result of the March 17, 2014 guilty plea and conviction of fraud in excess of \$5,000.00 and in accordance with section 14(1) of the EAPWDA, a lifetime sanction was imposed on the appellant.

The ministry stated that there is a Conditional Sentence Order with twelve conditions and one of the conditions is the payment of restitution in the amount of \$11,883.49 to the Ministry.

The ministry stated that while the appellant does have a child, the child is not a dependent child as defined in section (1) of the EAPWDA. The child does not live with the appellant 50% of the time and the child does not rely on the appellant for the necessities of life.

The appellant's position is that he suffers from a brain injury that has affected executive functioning. This injury makes it difficult for him to hold down a job.

The appellant admits that he pled guilty to the charge of fraud in excess of \$5,000.00. He stated that he pled guilty because he was told that as a result of his guilty plea, he would "not serve jail time and would still see his son".

The appellant's position is that although he and the mother of his child do not have a formal written custody agreement, he has joint custody of the child and he provides his child's mother financial support to assist with the basic needs of his child. Because of this, the appellant, through is representative, stated that he should be considered under section 31(a) of the EAPWDR as the sole recipient, who has been convicted as described, and who has one dependent child thereby reducing the disability assistance by \$100.

The appellant states that he sees his child usually every weekend. The appellant and his mother stated that the mother of the appellant's child works full time and looks after the child.

Panel Decision

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 panel finds that as the appellant was convicted of fraud in excess of \$5,000, contrary to section 380(1)(b) of the *Criminal Code* in relation to obtaining assistance under the EAPWDA on March 17, 2014, the ministry's decision that he was ineligible for disability assistance as a life time sanction due to a criminal conviction was reasonable based on the evidence.

Although the appellant states that he has a child whom he supports and therefore he should be considered under section 31(a) of the EAPWDR, the panel finds that the appellant has not established that his child meets the definition of dependent child as set out in section (1) of the EAPWDA. The appellant admitted that he sees his child on weekends and occasionally for longer periods, but did not provide the evidence that his child lives with him 50% of each month. While the appellant may support his child "as much as he can", the appellant's mother testified that the appellant's child lives with the child's mother and she works full time. The panel finds that the evidence does not establish that the appellant's child relies on the appellant for the necessities of life.

Accordingly, the panel finds the ministry's reconsideration decision that the appellant is not eligible for disability assistance as 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.