

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 2, 2014 which found that the appellant was ineligible for disability assistance for her lifetime pursuant to section 14 of the *Employment and Assistance for Persons With Disabilities Act* as a consequence of being convicted of an offence under the *Criminal Code* in relation to obtaining money under the *Employment and Assistance for Persons With Disabilities Act* or *Employment and Assistance Act* by fraud or false and misleading representation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 14

PART E – Summary of Facts

A ministry representative did not attend the hearing. The panel confirmed that the ministry had been notified of the date, time and location of the hearing. Accordingly, under section 86(b) of the *Employment and Assistance Regulation*, the panel heard the appeal in the ministry's absence.

The evidence before the ministry at the time of the reconsideration decision included the appellant's Request for Reconsideration ("RFR") dated June 26, 2014 which had attached to it a two-page letter prepared by the appellant and dated June 25, 2014 ("the RFR Letter"), a letter dated December 15, 2013 addressed to the appellant and prepared by her former lawyer ("the Lawyer Letter") and the appellant's probation order dated February 12, 2014.

The appellant is a sole recipient of Persons with Disabilities ("PWD") benefits with no dependants. On February 12, 2014, the appellant was convicted in B.C. Provincial Court of the offence of Fraud Under \$5,000.00 contrary to section 380(1)(b) of the *Criminal Code*. That conviction was in relation to an allegation that the appellant had defrauded the Ministry between June 27, 2012 and July 2, 2012 of \$886.42 by stealing a BC Employment and Assistance cheque that was payable to another client of the ministry and having it cashed by another person who in turn provided her with the money.

The appellant was advised by a ministry investigator by letter dated April 28, 2014 that pursuant to section 15(1) and (5) of the EAA and as a result of her Fraud Under \$5,000.00 conviction, she was no longer eligible for PWD benefits and that this sanction remained in force for her lifetime.

On June 26, 2014, the appellant submitted the RFR and the RFR Letter. In the RFR Letter, the appellant stated as follows:

- that she had been on disability for years and was 8 ½ months pregnant;
- that she was convicted of fraud of the ministry of income assistance involving a cheque being cashed;
- that she pled guilty to that offence because she wanted to get it over with and because she was trying to do better;
- that the cheque in question was payable to a friend who at the material time was incarcerated and who instructed the appellant to cash it but that the friend later denied involvement;
- that she is prepared to pay back the amount in question;
- that she does not do fraud and that she thinks the punishment is unfair; and
- that she needs her PWD benefits as she is pregnant and needs to pay her rent.

At the hearing, the appellant stated that she "never does fraud" and that the offence occurred when her roommate was in prison. She stated that she was charged two years later and that she pleaded guilty to get it over with.

In response to questions from the panel, the appellant stated that she has not yet given birth to her child and that her former roommate, after being released from prison, denied being a party to the fraud. The appellant stated that she gave her former roommate's assistance cheque to another person who cashed it and gave her the money. The appellant further stated that her former lawyer advised her that she would not be permanently denied PWD benefits and that she offered to pay back the amount in question. She said that she left her previous community in British Columbia because she was led to believe that her PWD benefits, if discontinued there, would continue to be paid to her if she moved to a different city.

Admissibility of Oral Evidence

The appellant gave oral evidence at the hearing. The panel notes that the appellant gave evidence that was consistent with that in the RFR Letter and did not introduce any new evidence. Therefore, the panel is satisfied that the oral evidence of the appellant is admissible as oral testimony in support of the information and records

APPEAL #

that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision, which found that the appellant is ineligible for disability assistance for her lifetime as a consequence of her being convicted of an offence under the Criminal Code in relation to obtaining money under the EAPWDA or EAA by fraud or false and misleading representation is reasonable.

The relevant section of the *EAPWDA* is as follows:

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 for Persons with Disabilities 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.

(2) A family unit that includes a person who is convicted of an offence under this Act or the Employment and Assistance for Persons with Disabilities Act is subject to the consequence described in subsection (5) for a family unit that matches the person's family unit, beginning with the first calendar month following the date of conviction,

- (a) after a first conviction, for a period of 12 consecutive months,
- (b) after a second conviction, for a period of 24 consecutive months, and
- (c) after a third conviction, for the lifetime of the person.

(3) If

(a) [Repealed 2006-22-3.]

(b) a court has given judgment in favour of the government in an action for debt against a person for obtaining income assistance, hardship assistance or a supplement under this Act, or disability assistance, hardship assistance or a supplement under the Employment and Assistance for Persons with Disabilities Act, for which he or she was not eligible,

unless the income assistance, hardship assistance, disability assistance or supplement was provided to or for the person in error, the minister may declare that the person's family unit is subject to the consequence described in subsection (5) for a family unit that matches the person's family unit for the prescribed period, beginning with the first calendar month following the date of the judgment.

(4) The periods prescribed for the purpose of subsection (3) may vary with the number of applicable judgments.

(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 income 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 income assistance, hardship assistance or a supplement provided to or for the family unit must be reduced by the prescribed amount for the applicable period.

In her Notice of Appeal dated July 9, 2014, the appellant states that she was about to give birth, that she has been on disability for years, she notes her monthly benefit amount and states that she is willing to pay back the ministry. She states that she does not think that it is fair to deny her PWD benefits.

The ministry asserts in the Reconsideration Decision that the appellant has been denied disability assistance for her lifetime as a result of her conviction of an offence under the *Criminal Code* in relation to obtaining

money under the *EAPWDA* or the *EAA* by fraud or false or misleading representation.

On December 4, 2013, the appellant entered a guilty plea in B.C. Provincial Court to a charge of Fraud Under \$5,000.00 contrary to section 380(1)(b) of the *Criminal Code*. That charge arose as a result of the appellant giving her former roommate's BC Employment and Assistance benefit cheque to a third party who cashed the cheque and gave the proceeds to the appellant. The appellant's probation order dated February 12, 2014 reflects her guilty plea and notes her conviction of the offence.

At the hearing, while the appellant stated that she did not "do fraud," she admitted to having committed the offence and stated that she pled guilty as she wanted to "get it over with."

Section 14(1) of the *EAPWDA* provides that where a family unit includes a person convicted of an offence under the *Criminal Code* in relation to obtaining money under the *EAPWDA* or the *EAA*, either by fraud or false or misleading representation, that person is ineligible for disability assistance benefits for that person's lifetime. The language used in this section is mandatory in nature.

The evidence reflects that the appellant was convicted of fraud under the *Criminal Code* in relation to a B.C. Employment and Assistance benefit cheque. The panel finds that the ministry reasonably applied section 14(1) of the *EAPWDA* in determining that as a result of that conviction, the appellant is ineligible for disability assistance benefits for her lifetime.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for PWD benefits as a result of her fraud conviction was a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore confirms the decision.