

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated July 15, 2014 which found that the appellant is not eligible for disability assistance for his lifetime, pursuant to Section 14 of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA) as he is a sole recipient with no dependants and was convicted of an offence under the *Criminal Code* in relation to obtaining money under the EAPWDA by fraud or false or misleading representation.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 14

PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Restitution Order for the appellant dated April 23, 2014 indicating a conditional sentence and restitution of \$20,939.22 to the Ministry of Finance for a conviction for fraud over \$5,000 contrary to Section 380(1)(a) of the *Criminal Code*; and,
- 2) Request for Reconsideration- Reasons dated July 3, 2014 with attached list of medications which include antidepressant, antibiotic, anti-anxiety, anti-inflammatory, anti-spasmodic, and analgesic medications as well as treatment for allergic rhinitis.

In his Request for Reconsideration, the appellant wrote that:

- He is in chronic pain almost all the time.
- At the time period when he was receiving the benefits he had to attend physiotherapy for 4 to 6 months and later on attend the pain clinic in his community
- He was not supplied a taxi service that he had requested so he had to pay for all his taxi fares
- He could not cook or clean so he had to order out and pay people to do laundry, clean his place and walk his dog, etc.
- He was on many pain killers, both prescription medications and illegal substances.
- He had a construction accident and broke his neck in two places, hurt his back and had 3 pins in his ring finger and had to wear a neck brace for 3 months.
- He thought he would be receiving benefits from workers' compensation and would be able to pay the money back. He did not get long term disability.
- He cannot work.
- His father was also having health problems so he had to travel back and forth to another province many times.
- He thought he only worked twice and collected benefits, not three times.
- He is living in B.C. Housing and could not afford to live anywhere else and he is on a special food diet because he has so many allergies.
- The two years he collected benefits he was "not thinking straight" and it all seems "very blurry."
- He does not know how he will pay the benefits back unless the payment comes off his disability cheques.
- He is on 10 different medications and could not afford to pay for them

In his Notice of Appeal dated July 23, 2014, the appellant expressed his disagreement with the ministry's reconsideration decision. The appellant wrote that:

- He is in chronic pain and cannot work.
- He is on a special food diet and has 10 prescriptions that he needs to live.

Attached to the Notice of Appeal was a letter dated July 17, 2014 from the appellant's physician who wrote:

- The appellant has been his patient since 2000.
- The appellant suffers from COPD, depression, anxiety, gastroesophageal reflux disease, hypertension, hyperlipidemia, irritable colon, allergic rhinitis, migraines and chronic pain due to degenerative intervertebral disc disease and recurrent shoulder dislocation and is prescribed

several medications to be used on a regular basis in order to control the symptoms associated with his medical conditions.

- He has been using strong analgesics for the past decade in order to manage his chronic pain. Without his medications, he will not be able to function at his usual levels. Stopping some of the medications suddenly could precipitate severe withdrawal reactions.
- His inhalers used for managing his COPD are necessary to prevent shortness of breath and wheezing.
- He needs funds to purchase these medications and to access transportation to attend his medical appointments.
- He will also need stable housing. Without funds to pay rent, he would be forced to become homeless and evicted onto the streets, which would further compromise his health both mentally and physically.

At the hearing, the appellant stated that:

- He is sorry for collecting both types of benefits when he should not have. He had a bad construction accident and became addicted to morphine and began taking illegal drugs to cope with the pain. He was not “thinking straight” at the time at all. He was spending money “really stupidly” at the time.
- He had broken his neck in two places and was in incredible pain. It was an awful time in his life. He could not clean or cook for himself and had to go to the pain clinic.
- Asked to clarify, the appellant stated that he was collecting assistance and WCB benefits at the same time. He received WCB benefits from his workplace accident and was hoping to receive long-term disability. He thought he would be able to pay back the assistance he received if he got long-term disability. He reported the income on his taxes and he knew that it would be discovered but he thought he would be able to pay the money back.
- A trial was scheduled for this charge about 5 months ago but he pleaded guilty.
- He has now been without alcohol for 5 months and he realizes what he did. However, he is still in pain and cannot work. He is living in BC Housing and still has dental work that he needs done.

Admissibility of New Information

The panel reviewed the letter dated July 17, 2014 from the appellant’s physician, which described the appellant’s medical conditions and his need for medications and treatment, and the panel admitted this additional information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry reconsideration decision, which found that the appellant is not eligible for disability assistance for his lifetime, pursuant to Section 14 of the *Employment and Assistance for Persons With Disabilities Act* (EAPWDA) as he is a sole recipient with no dependants and was convicted of an offence under the *Criminal Code* in relation to obtaining money under the EAPWDA by fraud or false or misleading representation, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstance.

Section 14 of the EAPWDA provides:

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.
- (2) A family unit that includes a person who is convicted of an offence under this Act or the Employment and Assistance 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 2006-22-10.]
 - (b) a court has given judgment in favour of the government in an action for debt against a person for obtaining disability assistance, hardship assistance or a supplement under this Act, or income assistance, hardship assistance or a supplement under the Employment and Assistance Act, for which he or she was not eligible, unless the disability assistance, hardship assistance, income 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 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.

Appellant's position

The appellant's position is that the time that he collected disability assistance at the same time as WCB benefits was a terrible time in his life as he had incredible pain from a workplace accident and had become addicted to potent medications and illegal substances so that he was not thinking clearly at the time. The appellant argued that he declared the income on his taxes and knew that it would be discovered but he was hoping to receive long-term disability through WCB and had planned all along

to pay the money back. The appellant pointed to his doctor's letter which confirmed that he suffers from several medical conditions, including COPD, depression, anxiety, gastroesophageal reflux disease, hypertension, hyperlipidemia, irritable colon, allergic rhinitis, migraines and chronic pain due to degenerative intervertebral disc disease and recurrent shoulder dislocation and he is prescribed several medications to be used on a regular basis in order to control the symptoms associated with his medical conditions. The appellant argued that he is still in chronic pain and cannot work and he cannot afford all of his medications if he is not in receipt of disability assistance. The appellant pointed to his doctor's letter which reported that he has been using strong analgesics for the past decade in order to manage his chronic pain and stopping some of the medications suddenly could precipitate severe withdrawal reactions.

Ministry's position

The ministry's position as set out in the reconsideration decision is that the appellant is not eligible for disability assistance for his lifetime, pursuant to Section 14 of the EAPWDA, as he is a sole recipient with no dependants and was convicted of an offence under the *Criminal Code* in relation to obtaining money under the EAPWDA by fraud or false or misleading representation. The ministry argued that the appellant is currently a single recipient of disability assistance, with no dependants. The ministry argued that on April 23, 2014, the appellant was convicted of fraud over \$5,000 contrary to Section 380(1)(a) of the *Criminal Code*, in relation to obtaining assistance under the EAPWDA. The ministry argued that the consequence set out in Section 14 of the EAPWDA for a sole recipient convicted of an offence under the *Criminal Code* is ineligibility for disability assistance for the lifetime of the recipient, beginning with the first calendar month following the date of the conviction. The ministry argued that since the appellant was convicted on April 23, 2014, the lifetime sanction of ineligibility began on May 1, 2014.

Panel Decision

The appellant acknowledged that he pleaded guilty and was convicted on April 23, 2014 of fraud over \$5,000 contrary to Section 380(1)(a) of the *Criminal Code*, and that this charge was in relation to receiving disability assistance at the same time as collecting WCB benefits, or obtaining money by fraud or misleading representation. The appellant also did not dispute that he is a single recipient of disability assistance with no dependants. The consequences for a conviction under the *Criminal Code* in relation to obtaining money under the EAPWDA by fraud or misleading representation are automatically for the lifetime of the person beginning with the first calendar month following the date of the conviction, as set out in Section 14(1) of the EAPWDA. Section 14(5)(a) of the EAPWDA further defines the consequences for a family unit that includes only a person convicted of an offence and specifies that the family unit is not eligible for disability assistance for the applicable period, that is for the lifetime of the person. Although the appellant pointed out that he cannot work due to his medical conditions and he requires several medications to control the symptoms that he will not be able to afford without disability assistance, the ministry stated that there may be hardship assistance available but a request had not yet been made and was not the subject of this appeal. The panel finds that the ministry reasonably concluded that the appellant is currently a sole recipient with no dependants and, therefore, Section 14(5)(a) of the EAPWDA applies and he is not eligible for disability assistance for his lifetime commencing May 1, 2014, or the first calendar month following the date of conviction.

Conclusion

Therefore, the panel finds that the ministry's reconsideration decision was a reasonable application of the applicable enactment in the appellant's circumstances and confirms the decision.