

PART C – Decision under Appeal

The decision under appeal is the August 12, 2014 decision of the Ministry of Social Development and Social Innovation (the “ministry”) wherein the ministry determined that the appellant is ineligible for disability assistance for his lifetime. The basis for the ministry’s decision was that the appellant had been convicted of an offence under the *Criminal Code* as per section 14(1) and 14(5)(a) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”).

PART D – Relevant Legislation

EAPWDA section 14

PART E – Summary of Facts

Preliminary Matter

The appellant sought to argue that section 14(1) of the EAPWDA violates section 7 of the Charter of Rights and Freedoms. The panel advised the appellant that we would not be able to deal with this argument as constitutional questions are outside our jurisdiction by operation of section 19.1 of the *Employment and Assistance Act* (“EAA”) and section 44 of the *Administrative Tribunals Act*.

Evidence and Facts

The information before the minister at the time of reconsideration included the following:

- A Restitution Order stating that on May 2014 the appellant was convicted or found guilty of having committed the offence of fraud over \$5,000.
- The appellant's Request for Reconsideration, dated July 21, 2014, including his written reconsideration submission.

The panel assessed the evidence as follows:

The appellant was a sole recipient of disability assistance with no dependants. On May 2014 the appellant was convicted of fraud over \$5,000. The basis for the fraud was that the appellant had been collecting disability assistance while he was incarcerated, which made him ineligible for assistance.

In his reconsideration submission the appellant wrote that:

- at the time he pleaded guilty to the *Criminal Code* offence, he did not realize that he would be subject to a lifetime ban.
- he regretted not seeking further advice from legal counsel.
- he felt regret and shame for collecting assistance while in jail.
- on sentencing, he had asked for a longer sentence so he could get professional help to overcome his drug addiction and become a positive member of society.
- due to his disability he will never be able to work, and disability assistance is his sole source of financial support.

In his oral testimony on appeal the appellant stated that:

- when charged with fraud he had pleaded guilty right away. Crown counsel had been seeking a sentence of 6 months but the appellant asked for 2 years in order to get help with his substance abuse issues.
- he recognized that he'd made a mistake by collecting disability assistance while in jail, but felt there are mitigating circumstances.
- he'd been collecting assistance while incarcerated in order to maintain a residence outside of jail. He'd felt that maintaining his own residence would provide a sense of “normalcy” that would help him overcome his addictions.

- with his disabilities he will never be able to work again.

The panel assessed the appellant's oral testimony as substantially reiterating the information in his written reconsideration submission. Accordingly, the panel accepted this information as oral testimony in support, in accordance with section 22(4) of the EAA.

The ministry relied on its reconsideration decision and provided no additional information.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the August 12, 2014 decision wherein the ministry determined that the appellant is ineligible for disability assistance for his lifetime. The basis for the ministry's decision was that the appellant had been convicted of an offence under the *Criminal Code* as per section 14(1) and 14(5)(a) of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA").

The relevant legislation is as follows:

EAA

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 appellant's position is that the EAPWDA allows the ministry and the panel to make exceptions from its operation where there are case-specific mitigating circumstances. He argued that he hadn't realized that he was not eligible to collect disability assistance while he was in jail, and that his reason for doing so was to assist in his efforts to become a productive member of society. He said that he accepted full responsibility for his mistake but that without disability assistance he would end up homeless after release from jail, and that he would need disability assistance in order to turn his life around. The appellant argued that in his circumstances, the lifetime ban amounts to an abuse of authority. The appellant also argued that section 14(1) of the EAPWDA is the wrong legislation to apply in his circumstances, making the lifetime ban invalid. He stated that section 14(1) refers to a family unit, while he is a sole recipient, so section 14(1) does not apply to him.

The ministry's position is that the legislation is clear that in the appellant's circumstances – where he has been convicted under the *Criminal Code* of obtaining disability assistance through fraud - he is subject to a lifetime ban against collecting disability assistance. The ministry pointed out that the appellant may apply for hardship assistance after his release from jail.

Panel Decision

Section 14(1) of the EAPWDA provides that a family unit that includes a person who has been convicted under the *Criminal Code* for fraudulently obtaining money under the EAPWDA is subject to the applicable sanction set out in section 14(5) for the lifetime of the person. The sanction set out in section 14(5)(a) is ineligibility for disability assistance for “the applicable period”. The term “the applicable period” refers to “the lifetime of the person” specified in section 14(1).

The appellant has argued that because he was a sole recipient of disability assistance and has no dependants, he is not a “family unit” and that accordingly section 14(1) doesn’t apply to him. The term “family unit” is defined in section 1(1) of the EAPWDA as “an applicant or a recipient and his or her dependants”. Based on the plain meaning of the words, and reading the term in context where it is used throughout the legislation, it is clear that the legislative intent is that a family unit can consist of an individual applicant or recipient who does not have any dependants. In particular, section 14(5) provides that a family unit may include “only persons described in subsection (1)...” – that is, a person or persons convicted under the *Criminal Code*.

Sections 14(1) and (5) do not provide for discretion as to whether or not the sanction applies. The legislation provides that upon conviction, a family unit “is not eligible for disability assistance for the applicable period.” In applying the lifetime sanction, the ministry has appropriately exercised its authority under the EAPWDA. Its actions do not amount to an “abuse of authority” as argued by the appellant.

For the foregoing reasons, the panel finds that the ministry’s decision is a reasonable application of the legislation in the appellant’s circumstances, and accordingly confirms the ministry’s decision.