

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated December 3, 2014 in which the ministry determined that the appellant was ineligible for income assistance, pursuant to a lifetime sanction under sections 15(1) and (5) of the Employment and Assistance Act (EAA) as the appellant had been convicted of fraud under the Criminal Code in relation to obtaining assistance under the EAA.

**PART D – Relevant Legislation**

*Employment and Assistance Act (EAA), Sections 15(1) and (5)*

## PART E – Summary of Facts

The ministry did not attend the hearing. The ministry was notified and the hearing proceeded pursuant to section 86(b) of the Employment and Assistance Regulation.

The appellant did not attend the hearing. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the hearing pursuant to EAR section 86(b).

The appellant was a sole recipient of income assistance with no dependants. On November 4, 2014 the appellant was advised by the ministry that as a result of a conviction on August 18, 2014 of an offense under the criminal code, in relation to obtaining money by fraud, he was ineligible for income assistance due to a lifetime sanction, and on November 24, 2014 the appellant requested reconsideration of that decision.

The evidence before the Ministry at the time of the reconsideration decision consisted of:

- 1) A copy of the Restitution Order of the Province of British Columbia, dated August 18, 2014, stating the appellant's sentence of Probation, Restitution, Victim Surcharge and Conditional Sentence for the offense of fraud \$5000 or under, contrary to section 380(1)(b) of the Criminal Code. The document outlines the Provincial Court Order for the appellant to pay the restitution amount of \$610.00 to the Ministry of Social Development. A copy of Payment instructions are attached.
- 2) A copy of the Probation Order of the Province of British Columbia, dated August 18, 2014, stating the appellant's sentence of Probation, Restitution, Victim Surcharge and Conditional Sentence for the offense of fraud \$5000 or under, contrary to section 380(1)(b) of the Criminal Code. The document outlines the seven conditions of the appellant's Probation. This document was signed by the appellant, indicating his understanding of the terms of the Probation Order and associated terms.
- 3) A copy of the Conditional Sentence Order of the Province of British Columbia, dated August 18, 2014, stating the appellant's sentence of Probation, Restitution, Victim Surcharge and Conditional Sentence for the offense of fraud \$5000 or under, contrary to section 380(1)(b) of the Criminal Code. The document outlines the eight conditions of the appellant's Conditional Sentence. This document was signed by the appellant, indicating his understanding of the terms of the Conditional Sentence and associated terms.
- 4) A copy of a letter to the appellant from a ministry investigator, dated November 5, 2014 which states that as a result of the appellant's August 18, 2014 conviction under the Criminal Code in relation to obtaining money by fraud, he is subject to the applicable sanction of ineligibility assistance for his lifetime. The letter further states that the appellant must repay the benefits he was not eligible to receive. It concludes that the appellant may be eligible for Hardship Assistance.
- 5) The appellant's Request for Reconsideration (RFR) signed and dated November 25, 2014 in which the appellant states that he is trying to better his life so that he does not end up in jail.

He states that he needs income assistance to pay the per diem at a treatment facility and if he is denied he will, "end up back on the streets back into addiction."

In the appellant's Notice of Appeal, dated December 8, 2014, he states that he has been in recovery and is 4 months "clean". He adds that if he does not get income assistance he will be removed from the recovery home and be homeless because he has nowhere to go and no family to stay with. He states that he has been on probation and, "done the time for my offense and am willing to pay back the \$610 by deducting money off every cheque please I don't want to be homeless and back into crime and drugs. I NEED THIS!!!"

Attached to the Notice of Appeal was a letter to "Whom it May Concern" dated December 9, 2014 from the Program Director of the appellant's recovery home. He states that the appellant has been a resident since September, 2014 and will complete the initial three month program soon and is, "solidly entrenched in his recovery and his transformation has been remarkable." The letter explains that residents can stay in the facility for up to two years as they rebuild their lives and prepare to re-enter the community. He states that the appellant appears to be intent on completing the rebuilding process and that income assistance would be crucial to this. The Program Director concludes that the appellant, "is a tremendous asset to our house, and his behavior has been exemplary during his stay."

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision, which found that the appellant was not eligible for income assistance, pursuant to a lifetime sanction under sections 15(1) and (5) of the Employment and Assistance Act as the appellant had been convicted of fraud under the Criminal Code in relation to obtaining assistance under the EAA, was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

The relevant sections of the legislation are as follows:

### ***Employment and Assistance Act*** **Section 15(1)**

#### **Consequences for conviction or judgment in relation to Act**

15. (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 (B.C. Reg. 193/2006)
- (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. (B.C. Reg. 193/2006)

(4) The periods prescribed for the purpose of subsection (3) may vary with the number of applicable judgments. (B.C. Reg. 193/2006)

(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.

The position of the ministry, as set out in the reconsideration decision, is that on August 18, 2014 the appellant was convicted of an offense of committing fraud of \$5000 or under in relation to obtaining assistance under the EAA, contrary to Section 380 (1)(b) of the Criminal Code. Pursuant to EAA, Section 15(1), this conviction results in a lifetime sanction which, pursuant to (5), makes the appellant ineligible for income assistance and begins with the first calendar month following the date of the conviction.

The appellant's position was that without the ability to collect further income assistance he will not be able to stay at his recovery home, resulting in homelessness and likely a return to crime and drugs. He is willing to pay back the \$610 owed as restitution of his conviction through deductions from future assistance payments.

The panel finds that pursuant to EAA, Section 15(1) the appellant is subject to a lifetime sanction due to his conviction of fraud under \$5000, contrary to Section 380(1)(b) of the Criminal Code. The panel finds that pursuant to EAA, Section 15(5), as the appellant is a single person with no dependants, the applicable lifetime sanction is ineligibility for income assistance.

In conclusion, the panel finds that the ministry's reconsideration decision which states that the appellant is not eligible for income assistance pursuant to EAA, Sections 15(1) and (5), as a lifetime sanction due to his conviction of fraud under \$5000, contrary to Section 380(1)(b) of the Criminal Code was reasonably supported by the evidence and is a reasonable application of the legislation in the appellant's circumstances. The panel therefore confirms the ministry's reconsideration decision.