

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated March 31, 2015 which found that the appellant is not eligible for hardship assistance under Section 42.1 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), because the ministry was not satisfied that the appellant will otherwise experience undue hardship and her physical health will be in imminent danger.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Sections 6 and 14

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 42.1

PART E – Summary of Facts

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

- 1) Conditional Sentence and Restitution Orders dated July 5, 2011 indicating that the appellant was convicted of the offence of fraud of \$5,000 or under, contrary to Section 380(1)(b) of the *Criminal Code* and received a conditional sentence of 6 months, victim surcharge exempt, and restitution of \$2,276.04;
- 2) Letter dated July 6, 2011 from the ministry to the appellant advising her that due to her conviction of an offence under the *Criminal Code*, she is subject to sanctions for her lifetime which include: ineligibility for assistance if she has no dependent children and is a single recipient or if she has a spouse who has also been convicted, or a reduction in assistance if she has a dependent child and/or a spouse who has not been convicted;
- 3) Copy of the appellant's Request for Reconsideration dated August 9, 2011 in which an advocate wrote that the decision was unreasonable in all the circumstances. The appellant was incarcerated and therefore unable to provide more detail, which will be submitted by her in due course. The July 6, 2011 sanction letter was provided to the advocate by the appellant's son;
- 4) Letter dated September 23, 2011 from the Tribunal to the appellant advising that her Notice of Appeal was not received within the legislative time limit (within 7 business days after the date the ministry's reconsideration decision was received) and, therefore, the appeal was not accepted and her file was closed; and,
- 5) Request for Reconsideration- Reasons dated March 30, 2015.

In her Request for Reconsideration dated March 30, 2015, the appellant wrote that:

- She is homeless and has no resources.
- She has no money for food and is sleeping in her van.
- Her medical condition is deteriorating.
- She is able to get limited amounts of food at the food bank.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- She went to jail for this.
- Her health is not very good.

At the hearing, the appellant and her advocate stated that:

- The appellant has been through many medical problems and she did jail time for the fraud. She also paid back the money but she is still being sanctioned.
- The appellant is not being supported by the band because she has been living off the reserve for a year and she is no longer getting support for medical travel and has to hitch-hike. She will have a hard time supporting herself until she is 65 years old.
- With any other crime, if a person 'does the time' and pays back the money, that would be the end of it.
- The appellant understood the conditions of her sentence, which included house arrest but then she ended up going to jail. She was incarcerated when the decision was made about the sanction and that is why she did not appeal on time.
- The appellant was on disability when she was sanctioned and her doctor has written many letters regarding her medical issues that she thought the ministry would have. Her doctor

wrote a letter when she applied for hardship assistance and she does not know why the ministry does not have that information.

- Since she applied for hardship assistance, the appellant's health is getting worse. She met with her doctor last week and has been told it will be a wait of 6 to 18 months for a needed hip replacement. She has kidney and bladder problems and has suffered 3 strokes. She has had 2 knee replacements.
- She has been homeless, sleeping in her van, and she has had no vehicle insurance since January 2015. She was stopped by the RCMP last week and her van is now parked.
- The appellant has been "couch surfing" between family and friend's places. Her friends help her a bit and she has been going to the food bank for food.
- Her situation is really stressful and she is getting depressed.

The ministry relied on its reconsideration decision, which included information that:

- The appellant is the only person in her family unit. She is a Person With Disabilities (PWD).
- During her application interview on February 26, 2015, the appellant confirmed that she was not experiencing hardship and her health was not at risk.
- The appellant initially confirmed that family and friends were providing shelter and food.
- The appellant confirmed that her health was not in imminent danger.
- The need to provide verification of the appellant's circumstances was explained to her.
- The appellant has not provided verification to the ministry that her circumstances have changed since the application interview.

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 hardship assistance under Section 42.1 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), because the ministry was not satisfied that otherwise the appellant will experience undue hardship, and her physical health will be in imminent danger, was reasonably supported by the evidence or is a reasonable application of the applicable enactment in the appellant's circumstance.

Sections 6 and 14 of the EAPWDA provide:

Hardship assistance

- 6 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that
- (a) is eligible for it, and
 - (b) is not eligible for disability assistance.
- (2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

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.

Section 42.1 of the EAPWDR provides:

Family units ineligible or declared ineligible in relation to convictions or judgments

- 42.1 (1) In the circumstances described in subsection (2), the minister may provide hardship assistance to a family unit that under section 14 (5) (a) [consequences for conviction or judgment in relation to Act] of the Act is not eligible for disability assistance because it includes only
- (a) persons convicted of an offence under the Criminal Code, this Act or the Employment and Assistance Act in relation to obtaining money under this Act or the Employment and Assistance Act by fraud or false or misleading representation,
 - (b) persons convicted of an offence under this Act or the Employment and Assistance Act, or
 - (c) persons in respect of whom
 - (i) a court has given judgment in favour of the government in an action for debt 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, and
 - (ii) the minister has made a declaration under section 14 (3) of the Act.
- (2) The minister may provide hardship assistance to a family unit described in subsection (1) if the minister considers that otherwise
- (a) the family unit will experience undue hardship, and
 - (b) the physical health of a person in the family unit will be in imminent danger.

Ministry's Position

The ministry's position is that the appellant was convicted of an offence of fraud under \$5,000 contrary to Section 380(1)(b) of the *Criminal Code* in July 2011, and the consequence set out in Section 14(1) and 14(5)(a) 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. The ministry argued that since the appellant is not eligible for disability assistance, she was entitled to apply for hardship assistance under Section 6 of the EAPWDA and Section 42.1 of the EAPWDR but the ministry was not satisfied that the applicable criteria were met. The ministry argued that the appellant initially confirmed that her family and friends were providing shelter and food and that her health was not in imminent danger and she did not provide verification to the ministry that her circumstances had changed, including a deterioration in her health.

Appellant's Position

The appellant's position is that she went to jail for the crime and "did the time" and she also paid back the money and she should not be subject to further, ongoing sanctions. The appellant argued that she has many medical problems, that she was on disability assistance as a PWD, and her doctor has written several letters that she thought would be available to the ministry to verify that her health is deteriorating. The appellant argued that she has been living in her van and "couch surfing" at her family and friend's places as well as receiving some help from her friends and going to the food bank for food.

Panel Decision

The appellant does not dispute that she was convicted in 2011 for fraud under \$5,000 contrary to Section 380(1)(b) of the *Criminal Code*, but she argued that she went to jail for that crime and also paid back the money and she should not be subject to further, ongoing sanctions. However, the consequences for a conviction under the *Criminal Code* 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)

and 14(5)(a) of the EAPWDA, and the appellant was advised of this sanction in the letter from the ministry dated July 6, 2011. The advocate stated that the appellant was incarcerated at the time that the decision about the sanction was made; however, the appellant was advised by the Tribunal by letter dated September 23, 2011 that her appeal was filed outside the time limits and there was, therefore, no valid appeal of the ministry's decision. While the appellant is not eligible for disability assistance, she is entitled to apply for hardship assistance under Section 6 of the EAPWDA and Section 42.1 of the EAPWDR.

Section 42.1 of the EAPWDR provides that the ministry may provide hardship assistance if the ministry considers that without hardship assistance the appellant will experience undue hardship and, also, that the appellant's physical health will be in imminent danger. Regarding "undue hardship", the appellant stated at the hearing that she has been living in her van and "couch surfing" at her family and friend's places as well as receiving some help from her friends and going to the food bank for food. While the appellant does not have her own residence, living in her van at the residences of family and friends, she has been able to find shelter, with occasional help from her friends. The appellant argued that she is a PWD with many medical problems, including "kidney and bladder problems" and having suffered 3 strokes, and the recent deterioration in her health is causing undue hardship with her living circumstances since it is very stressful and she has become depressed. Although the appellant stated that her doctor wrote a letter at the time of her request for hardship assistance, the ministry did not have any information from the appellant's doctor to confirm that without hardship assistance the appellant's physical health will be in imminent danger, and no detailed information or confirmation from a medical professional was provided on the appeal. Therefore, the panel finds that the ministry reasonably concluded that there is not sufficient information to establish that, without hardship assistance, the appellant will experience undue hardship and that her physical health will be in imminent danger, as required by Section 42.1 of the EAPWDR.

Conclusion

The panel finds that the ministry reasonably concluded that the appellant is currently not eligible for hardship assistance under Section 42.1 of the EAPWDR. 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.