

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 26 May 2015 that determined that the appellant is subject to a sanction under section 14 of the *Employment and Assistance for Persons with Disabilities Act* as a consequence of a conviction under the *Act*. The ministry held that, as this was his first offence and the appellant is a sole recipient of disability assistance, the sanction is ineligibility for disability assistance for a period of 12 consecutive months, from 01 December 2014 to 30 November 2015.

PART D – Relevant Legislation

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

PART E – Summary of Facts

With the consent of parties, the hearing was conducted in writing pursuant to section 22(3) (b) of the *Employment and Assistance Act*.

The evidence before the ministry at reconsideration included the following:

- An Information, dated 20 January 2014, sworn for the Provincial Court of BC, by a ministry investigator pursuant to section 508.1(2) of the Criminal Code, setting out a one count indictment that the appellant, from 21 December 2010 to 23 October 2012 inclusive, did by deceit, falsehood or other fraudulent means defraud the Province of British Columbia and the Ministry of money, of a value in excess of \$5,000.00, contrary to section 308(1)(a) of the criminal code.
- A Conviction – Imposition of Fine record of a Provincial Court dated 14 November 2014 showing that the appellant plead not guilty to the one count indictment as charged, but plead or was found guilty of the lesser, included or other offense that, between 21 December 2010 and 23 October 2012, did commit an offense of supply false or misleading information, contrary to section 22(1) of the *EAPWDA*. The sentence was a fine of \$50, due date 14 January 2015 and restitution of \$11,330.63.
- A Variation Order made by a provincial court judge on 22 December 2014 showing the restitution amount of \$11,330.53 to be paid for the benefit of the Province of BC.
- A letter from the ministry to the appellant dated 24 November 2014 advising the appellant that as a result of his conviction of an offense on 14 November 2014 he is subject to the applicable sanction for a period of one year, from 01 December 2014 to 30 November 2015. The sanction is ineligibility for assistance. The letter states that if he is dissatisfied with this decision, the appellant can request reconsideration. He has 20 business days from the date he receives this letter to submit a completed Request for Reconsideration form. The letter further states that if he is ineligible for assistance due to the sanction, he may be eligible to receive hardship assistance, advising him that to apply he should contact his local ministry office.
- The appellant's Request for Reconsideration form, sent to the appellant on 05 March 2015 and showing that the requestor must submit the form by 01 April 2015. The section completed by the ministry noted that the 24 November 2014 letter to the appellant was sent by registered mail and on 05 January 2015 was returned to the ministry unopened. The appellant signed and returned the form on 27 April 2015, requesting an extension until 26 May 2015 to obtain verifications from doctors.

The appellant's Notice of Appeal is dated 06 June 2015. Under Reasons, the appellant writes:

“Because we were denied reconsideration due to the fact that we were waiting on Dr.’s appt’s and their support. We didn’t realize reconsideration could be made without documentation and that there was a time frame.”

Attached to the Notice of Appeal are the following:

- Another copy of the appellant’s Request for Reconsideration, with a note added by his mother stating that she and the appellant went to the ministry office before 26 May 2015 to request a two-week extension but this was denied. They did not know that the ministry would make a denial decision without documentation. She added that the appellant had also attended the ministry office to ask for an extension around the beginning of May 2015.
- A statement by the appellant, dated 01 May 2015, as dictated to his mother.

- A submission dated 29 April 2015 by the appellant's mother.
- A letter dated 14 May 2015 from the appellant's physician.
- A letter dated 04 June 2015 from the appellant's psychiatrist.

In his statement, the appellant states that during the period during which it was alleged he failed to report income, he did go to the ministry office and informed them of his jobs and the failure of these jobs; he was told by different ministry workers that he was doing a good job at getting a job and to keep trying. He assumed that he was doing the right thing and if there was a problem they would have told him. The appellant refers to his current medical condition: he is awaiting muscle transplant surgery and suffers from debilitating pain as well as severe depression and anxiety.

In her submission, the appellant's mother writes that her son has suffered with some form of mental illness, which has not allowed him to hold down a job, as well as with a learning disability with which he has struggled since early childhood. She writes that she knows her son and that what happened with his disability assistance was not done to deliberately try to defraud the ministry – he simply did not know or understand. The court case was scary for him because he thought he didn't do anything wrong. He has serious surgery pending, with months of rehabilitation, and she soon will not be able to support him.

The physician writes that the appellant sustained a serious injury to his left shoulder and neck area after a stabbing injury, resulting in nerve damage. He therefore has limited ability to enter the workforce in any manual labor capacity. He is also dealing with long-term depression, anxiety and PTSD secondary to the stabbing incident; despite regular psychiatric follow-up he has poor general functioning, poor decision-making ability and limited insight.

The psychiatrist writes that, while it might seem unlikely, the appellant insists, and the psychiatrist has no reason to doubt, that he was told by ministry staff that he didn't need to provide any additional documentation as to his income. The psychiatrist also states that the mother has some documentation suggesting that the ultimate ruling was that the appellant would pay restitution in the amount of \$20/month from his disability assistance and that he would otherwise continue to receive his cheque. This was either a misunderstanding or a reversal of that decision was made without their knowledge. The balance of the psychiatrist's letter goes to argument (see Part F, Reasons for Panel Decision, below)

The ministry did not provide a submission for the hearing.

Admissibility of information submitted on appeal

The panel finds that none of the information relating to his cognitive difficulties during the period when he was found to committed an offense and to his medical history and current medical condition and inability to work is in support of information and records before the ministry at reconsideration – there is no reference to any of these matters in the Record of the Ministry Decision as included in the Appeal Record. Therefore, pursuant to section 22(4) of the *Employment and Assistance Act*, the panel does not admit any of this information as evidence.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is subject to a sanction under section 14 of the *EAPWDA* as a consequence of a conviction under the Act. In particular, the ministry determined that, as this was his first offence and the appellant is a sole recipient of disability assistance, the sanction is ineligibility for disability assistance for a period of 12 consecutive months, from 01 December 2014 to 30 November 2015. More specifically, the issue is whether this decision by the ministry is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is from the *EAPWDA*:

Consequences for conviction or judgment in relation to Act

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(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.

The position of the ministry, as set out in the reconsideration decision, is that as the appellant was convicted on 14 November 2014 of committing an offense of supplying false or misleading information, contrary to section 22(1) of the *EAPWDA*, and as this is his first offense, he is subject to a 12 month sanction effective 01 December 2014 to 30 November 2015. As the appellant is currently a sole recipient, the consequence is full ineligibility of disability assistance. The legislation provides no discretion to approve disability assistance while he is ineligible due to the conviction. The ministry

notes that the appellant is welcome to submit a doctor's note and request hardship assistance. The ministry goes on to explain that the reconsideration decision is specific to the decision to apply the sanction and cannot include a new decision with respect to hardship assistance as it was not part of the original decision under review.

The position of the appellant is that he was not given an opportunity for a reconsideration that would have taken into account material from his physician and psychiatrist that was not available by the 26 May 2015 due date. Further, as explained in his statement, his mother's submission and the letters from his physician and psychiatrist attached to his Notice of Appeal, there are mitigating circumstances relating to his cognitive difficulties and to his current medical condition that demonstrate that the ministry's sanction decision is unreasonable.

Alternatively, as suggested by the psychiatrist, at the very least it would seem reasonable that consideration be given to the appellant, who is unable to support himself and work gainfully at this time, to provide him with hardship assistance for the time period that he is under sanction.

The psychiatrist also writes that: "it does appear as though some missteps have happened in this entire process and can only appeal to the ministry to reconsider opening their discussion and appeal process to look at the original judgment and how that was arrived at. I recognize that in the documentation I have seen that no such provision access but presumably this assumes that the process has been duly attended to, which would seem to be at least partially questionable in this case."

Panel Findings

Preliminary matters

The appellant bases his appeal in part on not having been provided the opportunity for a reconsideration that would have taken into account material from his physician and psychiatrist that was not available by the 26 May 2015 due date, even though a request for an extension beyond that date had been made. The panel notes that the appellant submitted his request for reconsideration on 27 April 2015, with an initial request for an extension until 26 May 2015. Section 72 of the EAPWDR states that the ministry "**must** reconsider a decision referred to in section 16(1) of the Act, and mail a written determination on the reconsideration to the person who delivered the request(a) within 10 business days after receiving the request, or (b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request." The ministry made its reconsideration decision on 26 May 2015, or 20 business days after receiving the Request for Reconsideration, the maximum timeframe set out on section 72 of the EAPWDR. The panel finds that the "must" language of section 72 of the EAPWDR is directive and that the ministry thus met its legislated obligations in making its reconsideration decision when it did.

The psychiatrist submits that the appellant be considered for hardship assistance during the period he is under sanction for disability assistance. The panel notes that both the original decision and the reconsideration decision stated that the appellant has the opportunity to make a separate application for hardship assistance, but that both decisions related only to the ineligibility for disability assistance sanction. Under section 16(3) of the *EAPWDA*, the jurisdiction of the panel is strictly limited to the outcome of the reconsideration decision under appeal. As eligibility for hardship assistance was not

an outcome of the reconsideration decision, the panel cannot make a determination in that respect.

The psychiatrist, citing “some missteps have happened in this entire process” also appealed to the ministry to reopen the case and reconsider the original judgment and how it was arrived at. Again, under section 16(3) of the *Act*, the panel does not have the jurisdiction to order the ministry to reopen the case and will not make a determination in that respect.

Panel decision

The appellant and his supporters, in the material submitted on appeal, argue that there are mitigating circumstances surrounding the appellant's failure to report income as required under section 22(1) of the *EAPWDA*, his subsequent conviction of an offense under the *Act*, and his medical conditions and consequent inability to obtain gainful employment, all pointing to the sanction being unreasonable. While having found that the information provided in this respect inadmissible, the panel notes that, even if it were to have been found admissible, the information would not be relevant, as section 14(2) of the *EAPWDA* states that a person in the appellant's circumstances is subject to the applicable sanction – there is no provision for the minister to take into account extenuating or mitigating circumstances. As the appellant was found guilty of the offense under the *Act* and since, under the legislation, the sanction is a direct consequence of the conviction, the panel finds that the ministry was reasonable in determining that there is no discretion in applying section 14(2) of the *Act*, and that, considering that this was his first offense and that he was a sole recipient of disability assistance, that he is ineligible for disability assistance for the 12 month period beginning 01 December 2014.

Accordingly, the panel finds that the ministry's decision, which held that under section 14 of the *EAPWDA* the appellant is ineligible for disability assistance for a period of 12 months beginning 01 December 2014, is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.