

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated June 19, 2015 in which the Ministry determined that Appellant is not eligible for disability assistance due to a lifetime sanction under sections 14(1) and 14(5) of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”). The Ministry found that that the Appellant is subject to the sanction because he was convicted of fraud under the *Criminal Code* in relation to obtaining assistance under the EAPWDA.

PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* - EAPWDA -section 14

## PART E – Summary of Facts

The evidence before the Ministry at the reconsideration consisted of:

1. A Request for Reconsideration signed by the Appellant on June 15, 2015 in which he stated that since the reconsideration decision and up to now, he still has disabilities and no work. Things have been very bad for him for the last four months as he is without assistance and under house arrest. He stated that his brother has to pay for his rent and food.
2. A letter from a physician dated June 10, 2015 requesting "assistance with medication coverage and access" for the Appellant's medical conditions. The physician stated that the Appellant's conditions will "deteriorate and destabilize without access to his medications", and he is unable to afford his medications since the reduction in benefits.
3. A letter to the Appellant from a Ministry investigator dated February 26, 2015 [the Ministry noted that this letter was sent by registered mail]. The investigator explained that when a person is convicted of an offense under the *Criminal Code* in relation to obtaining money by fraud or false or misleading representation, sanctions are applied under the *Employment and Assistance Act* and Regulation [the Ministry clarified at the hearing that the applicable act is the EAPWDA].

The Investigator stated that as a result of the Appellant's fraud conviction in February 2015, he is subject to the applicable lifetime sanction with resulting ineligibility for assistance as a single person. If he has a dependent child, or a spouse who has not been convicted, he would be subject to a reduction in assistance instead. The investigator further stated that the Appellant must repay the amount of benefits he was not eligible for, and if he is ineligible for assistance due to this sanction, he "may be able to receive Hardship Assistance". The investigator attached a reconsideration/appeal brochure and a copy of the legislation.

4. A one page print-out showing that in February 2015 the Appellant was convicted of one count of "Fraud over \$5000" under the *Criminal Code* and sentenced to a twelve month conditional sentence and ordered to pay restitution of \$19,618.33 and a \$100 Victim Surcharge.
5. A copy of a Supreme Court of British Columbia Restitution Order with details of the Appellant's conviction and sentence:
  - Convicted or "found guilty of" committing fraud contrary to section 380(1)(a) of the *Criminal Code*.
  - Received a twelve month conditional sentence and is required to pay a \$100 Victim Surcharge.
  - In February 2015 a Provincial Court judge ordered the Appellant to pay Restitution in the amount of \$19,618.33 to the Province of British Columbia, payable in thirty days or immediately if the offender waives an appeal.
6. A Provincial Court of British Columbia Requisition dated March 2015 and signed by a Ministry investigator requiring Judgment in the amount of \$19,618.33 and registering the Restitution Order for enforcement purposes.

7. Information from the Ministry record indicating the Appellant is a single person family unit and the last disability assistance he received was for the month of March 2015. He called the Ministry on May 1, 2015 stating that he was unable to pay his rent. The Ministry advised of the sanction due to his fraud conviction and the Appellant stated he understood. On May 4, 2015, the Appellant called the Ministry again re-stating that he had no money for rent and requesting disability assistance. The Ministry advised that he is not eligible for disability assistance because he has been sanctioned due to his conviction. The Ministry provided him with a copy of the February 26, 2015 letter that explained the sanction.

*Oral testimony*

The Appellant did not attend the hearing and upon confirming that he was notified of the date and time for the teleconference, the panel proceeded in his absence under section 86(b) of the Employment and Assistance Regulation. The Ministry testified that the Appellant received a lifetime sanction because he pled guilty to the fraud charge and stated there are no other members in his family.

The panel finds that the oral testimony is evidence in support of the information and records that were before the Ministry at reconsideration corroborating that the Appellant is a single person family unit. Accordingly, the panel admits the oral testimony under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reconsideration decision of June 19, 2015 that determined the Appellant is not eligible for disability assistance because he has a lifetime sanction for a fraud conviction, was reasonably supported by the evidence or was a reasonable application of the applicable legislation [EAPWDA section 14] in the circumstances of the Appellant.

The following sections of the EAPWDA apply to the Appellant's circumstances in this appeal:

### **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*

In his Notice of Appeal dated August 20, 2015 the Appellant expressed his frustration with the Ministry reconsideration decision, wondering what they expect him to do with his life when he has no money to afford his medication, rent or food. In his Request for Reconsideration he asked the Ministry to contact his family doctor for more information about his health problem.

### *Ministry's Position*

In the reconsideration decision the Ministry noted that the Appellant does not dispute that he was convicted of fraud over \$5000 under the *Criminal Code* in relation to obtaining assistance under the EAPWDA, nor does he dispute that he is a single person family unit. The Ministry argued that there is no discretion in the legislation, and due to the sanction under EAPWDA sections 14(1) and (5), the Appellant is not eligible for assistance as a single person family unit, for his lifetime, commencing March 1, 2015. The Ministry noted that "if the Appellant's family composition changes, the type of sanction may change"; however, the Appellant "will be subject to a sanction for (his) lifetime."

The Ministry noted that although it "may" provide hardship assistance for clients with criminal convictions, a decision regarding eligibility for hardship assistance "will not be provided at this time" as a request for hardship assistance was not before the Ministry at the reconsideration. The Ministry invited the Appellant to contact the Ministry office if he wishes to discuss or apply for hardship assistance.

### *Panel's decision*

The panel finds that the Ministry reasonably determined that sections 14 (1) and 14(5) apply to the Appellant's circumstances. In particular, section 14(1) imposes a "consequence" for his lifetime because the evidence is that he was convicted of fraud contrary to section 380(1)(a) of the *Criminal Code* in relation to "benefits he was not eligible for" under the EAPWDA. Section 14(5) sets out that when the family unit includes only a person convicted of an offense under the *Criminal Code* as described in section 14(1), the consequence is that the family unit is not eligible for disability assistance for the applicable period ["lifetime" as prescribed by section 14(1)]. The evidence is that the Appellant did not dispute that he has the conviction for fraud under the *Criminal Code* as described in section 14(1); in fact he pled guilty to the charge and is currently serving his sentence. Further, the Appellant confirmed that he is a single person family unit and the Ministry noted that there is no evidence of any change in family unit size as of the date of the reconsideration decision. The panel therefore finds that as of the date of the reconsideration decision [June 19, 2015] the Ministry was reasonable to find the Appellant ineligible for disability assistance for his lifetime beginning with the first calendar month following the date of the conviction pursuant to EAPWDA section 14.

The panel notes that EAPWDA section 14 has now been repealed as of August 1, 2015. A transitional provision, EAPWDA section 36.1, states that on and after the date on which section 14 is repealed, a family unit to which consequences referred to in section 14 (1), (2) or (3) applied immediately before that date is not ineligible for disability assistance and is not subject to any consequence imposed under that section. However, a family unit is still liable to repay to the government an overpayment in respect of the conviction under the *Criminal Code*.

Regarding the Appellant's argument that he still has disabilities and needs money to pay for his medications and other expenses (and he would like the Ministry to contact his physician for more information on his condition), the panel acknowledges the letter from a physician outlining the Appellant's disabilities and need for medications. However, the panel notes the Ministry's position that there was no determination about hardship as of the date of the reconsideration decision as hardship assistance was not part of the Request for Reconsideration. Therefore, the issue of hardship is not a subject that the panel has any authority to make a decision on.

*Conclusion*

The panel finds that the Ministry's determination that the Appellant was not eligible for disability assistance for his lifetime was a reasonable application of the legislation that was in force as of the date of the reconsideration decision, EAPWDA section 14. Accordingly, the panel confirms the Ministry reconsideration decision.