



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated December 7, 2015 which found that the appellant was ineligible for hardship and disability assistance pursuant to section 14.2(b) of the *Employment and Assistance for Persons with Disabilities Act* on the basis that he had outstanding arrest warrants.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 14.2
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 34.1 and 70.3
Interpretation Act (Canada), section 34(1)

PART E – Summary of Facts

The appellant did not attend the hearing. The panel confirmed that the appellant had been notified of the date, time and location of the hearing and accordingly, under section 86(b) of the *Employment and Assistance Regulation*, the panel heard the appeal in the appellant's absence.

The evidence before the ministry at the time of the Reconsideration Decision included:

1. A copy of notes prepared by the appellant's advocate for the period of October 22, 2015 through November 4, 2015 including a fax cover sheet dated December 1, 2015 ("Advocate Notes");
2. A "Client Information" sheet with typed entries dated April 22, May 1, May 26 and June 8, 2015;
3. A letter from the appellant's advocate addressed to the ministry and dated May 28, 2015 ("Advocate Letter");
4. A fax letter from the appellant's advocate addressed to the ministry and dated November 18, 2014 ("Advocate Fax");
5. A ministry "Outstanding Warrants Check" form dated October 21, 2015 ("Warrants Check");
6. A Notice of Victim Surcharge dated October 23, 2015 and referencing the appellant ("Notice"); and
7. The appellant's Request for Reconsideration dated November 5, 2015 ("RFR").

Facts

The appellant's ministry file was opened in January 2009. It was temporarily closed in April 2009 before being reopened in May 2009. In October 2010 the appellant was designated as a Person With Disabilities ("PWD") and he received disability assistance through November 2014.

In November 2014, the ministry became aware that the appellant had outstanding warrants in another province and on that basis determined that the appellant was no longer eligible for continued disability assistance pursuant to section 14.2 of the *EAPWDA*. In December 2014, the ministry issued the appellant a supplement for 3 months as permitted by section 70.3 of the *EAPWDR* which was intended to assist the appellant in resolving the warrants. The appellant received a second 3 month supplement in March 2015. No further supplements were issued as the maximum duration of 6 months had been met.

By May 2015, the appellant had not resolved his outstanding warrants. However, the ministry mistakenly updated his file to reflect that the warrants had been resolved and he began receiving disability assistance again. On October 21, 2015, the ministry received confirmation by way of the Warrants Check that the appellant still had multiple warrants outstanding in British Columbia and another province. On October 23, 2015 the appellant pled guilty to an offence in British Columbia Provincial Court in relation to the outstanding British Columbia warrant. On November 3, 2015, the appellant was advised that he was no longer eligible for disability or hardship assistance as a result of his outstanding out of province arrest warrants.

Evidence On Appeal

Ministry's Evidence At Hearing

At the hearing, the ministry stated that it relied on the reconsideration decision and added that a recipient of disability assistance will not be eligible for continued benefits where they have outstanding arrest warrants. However, there is a provision in the regulations to allow for one 3 month supplement and another 3 month supplement with supervisor approval which provides the recipient with time to deal with the warrants. There is no legislative ability to provide additional supplements beyond the 6 month period.

In response to questions, the ministry stated that it was not clear whether the ministry had followed up with the other province's police agency to collect the information regarding the outstanding warrants. The ministry took the position that for the purpose of section 14.2 of the *EAPWDA* an "indictable offence" includes "any legal



accusation of an offence.” The ministry referenced the Advocate Notes and specifically, the October 27, 2015 entry, indicating that the appellant had 8 warrants in two different jurisdictions.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's Reconsideration Decision, which found that the appellant is not eligible for disability assistance or hardship assistance as a result of having outstanding arrest warrants, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation is as follows:

EAPWDA

Consequences in relation to outstanding arrest warrants

14.2 (1) No disability assistance, hardship assistance or supplement may be paid to or for a family unit on account of an applicant or recipient for whom a warrant for arrest has been issued under

- (a) the *Immigration and Refugee Protection Act* (Canada), or
- (b) any other enactment of Canada in relation to an indictable offence, and on whom the warrant has not been executed.

(2) Despite section 6 and subsection (1) of this section, and subject to the regulations, the minister may provide

- (a) disability assistance, hardship assistance or a supplement to or for the family unit on account of the person who is subject to the warrant, or
- (b) a supplement to
 - (i) the person who is the subject of the warrant, for the purpose of the person returning to the jurisdiction that issued the warrant, or
 - (ii) the family unit, for the purpose of the family unit returning to the jurisdiction that issued the warrant.

(3) If a family unit includes a person described in subsection (1), the person's income and assets must be included in the income and assets of the family unit for the purposes of determining whether the family unit is eligible for disability assistance, hardship assistance or a supplement, except as otherwise provided in the regulations.

(4) In this section, "indictable offence" includes an offence that is deemed under section 34 (1) of the [Interpretation Act](#) (Canada) to be an indictable offence.

EAPWDR

Consequences in relation to outstanding arrest warrants

34.1 Section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act does not apply to a family unit of an applicant or recipient for whom a warrant for arrest within the meaning of section 14.2 of the Act has been issued and who

- (a) is pregnant,
- (b) is in the end stage of a terminal illness, or
- (c) is under 18 years of age.

Supplement to prevent undue hardship while dealing with outstanding arrest warrant

70.3 (1) The minister may provide a supplement to or for a family unit of an applicant or recipient for whom a

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warrant for arrest within the meaning of section 14.2 [consequences in relation to outstanding arrest warrants] of the Act has been issued for the purposes of section 14.2 (2) (a) of the Act, if the minister considers that undue hardship will otherwise occur.

(2) A supplement under this section may be provided only for the calendar month in which the supplement is requested.

(3) A supplement under this section may be provided for only 3 consecutive calendar months unless the minister authorizes up to 3 more monthly payments.

(4) Despite any other section of this regulation, the maximum amount of a supplement provided under subsection (1) is the difference between

(a) the maximum amount of income assistance determined under Schedule A for the calendar month for a family unit that matches the family unit in size but does not include a person for whom a warrant for arrest within the meaning of section 14.2 of the Act has been issued, and

(b) the amount of income assistance provided for the calendar month to the family unit.

(5) A recipient of a supplement must agree in writing to repay the amount paid under this section.

Interpretation Act (Canada)

Indictable and summary conviction offences

34 (1) Where an enactment creates an offence,

(a) the offence is deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment;

(b) the offence is deemed to be one for which the offender is punishable on summary conviction if there is nothing in the context to indicate that the offence is an indictable offence; and

(c) if the offence is one for which the offender may be prosecuted by indictment or for which the offender is punishable on summary conviction, no person shall be considered to have been convicted of an indictable offence by reason only of having been convicted of the offence on summary conviction.

Positions of the Parties

The appellant did not attend the hearing. He completed a Notice of Appeal on December 16, 2015 but did not indicate the reasons for his appeal.

The ministry takes the position that the appellant is not eligible for disability benefits as he has outstanding arrest warrants in another province as provided by section 14.2 of the *EAPWDA*.

Discussion

Following his PWD designation in October 2010 the appellant received disability benefits from the ministry until November 2014 when they were discontinued by the ministry after it received confirmation that the appellant had outstanding arrest warrants. The ministry relied on section 14.2 of the *EAPWDA* which provides that no disability or hardship assistance may be paid to a family unit where the applicant or recipient is the subject of an arrest warrant under either the federal *Immigration and Refugee Protection Act* or “any other enactment of Canada in relation to an indictable offence.”

The Notice indicates that the outstanding warrant from British Columbia was dealt with by way of a guilty plea to the underlying offence on October 23, 2015 leaving the out of province arrest warrants unresolved.

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On November 3, 2015, having received a supplement for the maximum 6 month period as provided under section 70.3 of the *EAPWDR* and subsequently, additional disability assistance due to a ministry error, the appellant was advised that he was not eligible for disability or hardship assistance due to his out of province arrest warrants which were still unresolved.

The earliest evidence relating to the arrest warrants in question can be found in the Advocate Fax in which the advocate writes that the police detachment in the other province has refused to verify the charge exists over the phone.

The Advocate Letter is similarly unhelpful in determining the nature of the charges faced by the appellant or the enactment under which they were issued. In the letter, the advocate writes that she has attempted to contact two police agencies without success. The advocate further proposes to the ministry that “If you have the information regarding the charges and are willing to provide it to me I can go ahead and file the request for a waiver.” There ministry’s evidence at the hearing of this matter was that it was unaware whether efforts were ever made by it to obtain information regarding the charges in question.

Reviewing the Warrants Check, that document indicates that the appellant had outstanding warrants issued on three different dates in two different provinces. No further information as to the nature of the charges related to the warrants is provided in this document. The warrant in British Columbia was resolved on October 23, 2015.

Finally, the Advocate Notes (the latest entry is one day after the decision giving rise to this appeal) indicate that the advocate was “unable to get charge info” and “can’t waive until knows nature of charges.” Similarly, the RFR indicates that the appellant had been trying to waive his warrants since November 2014 but that the police from province where they were issued would not release particulars of the charges.

The common theme in the evidence discussed above is that the nature of the charges giving rise to the outstanding arrest warrants and the applicable enactment is not known. The language of section 14.2(b) of the *EAPWDA* provides that disability or hardship ineligibility will occur when an arrest warrant is issued under an enactment in relation to an indictable offence. However, in the present case the evidence indicates that the offences giving rise to the warrants and the enactment was not known by the ministry when the decision giving rise to this appeal was made on November 3, 2015.

Section 14.2(4) of the *EAPWDA* defines “indictable offence” as including an offence that is deemed under section 34(1) of the *Interpretation Act (Canada)*. However, to apply that provision it is necessary to know what the offence in question is and the enactment under which it arises. Section 34(1)(a) provides “where an enactment creates an offence the offence is deemed to be an indictable offence if the enactment provides that the offender may be prosecuted for the offence by indictment.”

In the present case, there is no evidence of what the offence or offences were and under what enactment they arose that gave rise to the outstanding out of province arrest warrants. Section 14.2(b) of the *EAPWDA* is clear that for disability or hardship assistance to be discontinued due to an outstanding arrest warrant, it must be in relation to an indictable offence. The ministry’s position that an indictable offence is defined as “any legal accusation of an offence” is contrary to and inconsistent with section 34(1) in the federal *Interpretation Act*.

The panel finds that given the evidence available at reconsideration, the ministry’s determination that the appellant was ineligible for disability and hardship assistance on the basis that he had outstanding arrest warrants was unreasonable.

Conclusion



Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's Reconsideration Decision that the appellant was ineligible for disability and hardship assistance pursuant to section 14.2 of the *EAPWDA* was not a reasonable application of the applicable enactment in the circumstances of the appellant, and therefore rescinds the decision.