

## 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 30 May 2013 that held that the appellant is ineligible for disability assistance because of a lifetime sanction due to a conviction of fraud. The ministry determined that, pursuant to sections 14(1) and 14(5) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), as the appellant was convicted of fraud of \$5000 or under, contrary to section 380(1)(b) of the *Criminal Code*, in relation to obtaining assistance under the EAPWDA, on 11 April 2013, and as the appellant is a single person with no dependants, the appellant is ineligible for disability assistance for his lifetime beginning on 01 May 2014.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA), sections 14 and 16.

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), section 31.

*Employment and Assistance Act* (EAA), section 19.1

*Administrative Tribunals Act* (ATA), section 46.3

*Human Rights Code*, section 8.

## PART E – Summary of Facts

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

The information before the ministry at reconsideration included the following:

- From the ministry's files: the appellant is a single person with no dependants.
- A Record of Provincial Court Proceedings and Endorsement of Information, showing the appellant pleaded guilty on 11 April 2013 and the resulting jail term. The Information shows the Crown proceeded by indictment on a Count that the appellant did by deceit, falsehood or other fraudulent means defraud the ministry of money, of a value not in excess of \$5000, contrary to section 380(1)(b) of the *Criminal Code*.
- A letter dated 01 May 2013 acknowledging receipt of the ministry's original decision, and requesting an additional 10 days to provide more evidence for his reconsideration request. He also writes that a lifetime ban should not apply because of his severe mental illness and his inability to work – hence his PWD status. Without assistance it would not be able to afford medication (\$500 monthly), transportation, housing, food, clothing, medical supplies, MSP premiums and vitamins. He lists a number of medical equipment needs and associated costs.
- The appellant's Request for Reconsideration dated 02 May 2013. Under Reasons, the appellant writes that cutting off his assistance will result in an imminent danger to his life as he would not be able to afford clothing, medication, food and a place to live or any other necessities of life. He requests an extra 10 days before his file is reconsidered so that he may provide additional information.
- A letter from the appellant dated 10 May 2013 concerning "serious discrepancies, if not disparities" between what he had been told and what the ministry has advised him concerning the applicable legislation. He writes that he has provided medical documentation that the ministry must read in making its reconsideration decision and that he has requested an additional 10 days so as to ensure letters from other treating physicians are considered. He goes on to state that in accordance with the legislation he must receive the entirety of his monthly benefit, including nutritional, vitamin and transportation allowances and if this has been denied a reconsideration package must be provided. The appellant also lists information that he wishes the ministry to provide. He also asks that the ministry be aware that the fraud conviction is under appeal and should be stayed until the appeal is rejected.
- At reconsideration, the appellant also provided the following:
  - a) A letter from the appellant's physician dated 19 March 2013 stating that the appellant would benefit from physical therapy and massage therapy for ongoing back and groin pain.
  - b) A letter from the same physician dated 21 March 2013 stating that the appellant has anemia and an extraordinarily low white blood cell count. He also suffers from severe myoclonic jerks (seizures).
  - c) A letter from the same physician dated 22 March 2013 listing the appellant's medically necessary supplements: a pressure release mattress, custom-made orthotics, custom-made footwear, and ankle brace, a torso or spinal brace, acupuncture, chiropractic services,

massage therapy, naturopathy, nonsurgical podiatry, and physical therapy. The physician states that these items are medically required to improve physical functioning that has been impaired by a neuromusculoskeletal condition.

The appellant's Notice of Appeal is dated 28 June 2013. Under Reasons, the appellant writes "The ministry failed to take into account the judge's reasoning."

After reconsideration and before the hearing, the appellant provided a submission dated 26 March 2014. The submission provides notice of the appellant's intent to argue that there is a conflict between the EAPWDR and the *Human Rights Code*. The submission provides detailed notes as to the alleged conflict. (See Part F, Reasons for Panel Decision, below.)

In an email dated 02 April 2014, the ministry stated that the ministry position will be the reconsideration summary provided in the Record of Ministry Decision.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision that the appellant is ineligible for disability assistance because of a lifetime sanction due to a conviction of fraud is reasonably supported by the evidence or a reasonable application of the legislation. Specifically, the issue is whether the ministry was reasonable in determining that, pursuant to section 14(1) and 14(5) of EAPWDA, as the appellant was convicted of fraud of \$5000 or under, contrary to section 380(1)(b) of the *Criminal Code* in relation to obtaining assistance under the EAPWDA, on 11 April 2013, and as the appellant is a single person with no dependants, the appellant is ineligible for disability assistance for his lifetime beginning on 01 May 2014.

The relevant legislation is from the EAPWDA:

### 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.

(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.

### Positions of the parties

The position of the ministry, as set out in the reconsideration decision, is that under section 14(1) of the EAPWDA, a person who is convicted of an offense under the *Criminal Code* in relation to obtaining money under the EAPWDA by fraud or false or misleading representation is subject to a lifetime consequence as outlined in section 14(5), beginning with the first calendar month following the date of the conviction. On 11 April 2013 the appellant was convicted of fraud of under \$5000, contrary to section 380(1)(b) of the *Criminal Code*, in relation to obtaining assistance under the EAPWDA. As the appellant is a single person with no dependants, the consequence is in eligibility for assistance beginning 01 May 2013.

The ministry notes that the appellant stated that he is appealing the conviction. It is the ministry's position that this is an issue between the appellant and the court. As he has been convicted of the offense, the legislation applies.

The appellant's position, as set out in his Request for Reconsideration, is that, as a person with a mental disability, he is unable to work. As a result, denying him disability assistance is unreasonable as this would put him in a life threatening situation, as he would be unable to afford food, shelter and other living costs as well as his substantial medical expenses. He also submits that the decision regarding his ineligibility for assistance should be stayed until his appeal regarding his

conviction has been considered.

In his Notice of Appeal, the appellant also argued that the ministry's decision failed to take into account the judge's reasoning.

In his submission on appeal, the appellant argued that there is a conflict between the EAPWDA (and the EAPWDR) and the Human Rights Code. The appellant cites section 8 of the Human Rights Code, which provides that a person must not, without a bona fide and reasonable justification, deny to, or discriminate against, a person or class of persons any accommodation, service or facility customarily available to the public, because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons. The appellant submits that these grounds are not exclusive and another such ground is "conviction." The appellant notes that the sanctions under section 14(5) of the EAPWDA and section 31 of the EAPWDR differ based entirely on the family status/marital status of the convicted person. The appellant submits that this legislation is in direct violation of the *Human Rights Code* as it discriminates based on family status and/or marital status.

### ***Panel findings***

The panel will first address *the Human Rights Code* arguments raised by the appellant. The EAPWDA provides that an appeal of the outcome of a reconsideration decision is to be made to the Employment and Assistance Appeal Tribunal established under the *Employment and Assistance Act* (EAA): from the EAPWDA:

The EAA imports certain provisions from the *Administrative Tribunals Act* (ATA):

#### **Application of *Administrative Tribunals Act***

19.1 Sections 1 to 6, 7 (1) and (2), 8, 9, 30, 44, 46.3, 55, 56, 58 and 61 of the *Administrative Tribunals Act* apply to the tribunal.

The relevant section of the ATA imported into the EAA is:

#### **Tribunal without jurisdiction to apply the *Human Rights Code***

46.3 (1) The tribunal does not have jurisdiction to apply the *Human Rights Code*.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to the tribunal.

From the above, it is clear that the Tribunal, does not have the jurisdiction to apply the *Human Rights Code*.

The evidence is that the appellant was convicted for fraud under \$5000 under section 380(1)(b) of the *Criminal Code* in relation to obtaining assistance under the EAPWDA. Section 14(1) of the EAPWDA clearly states that a family unit that includes a person convicted of such an offense is subject to the lifetime consequence set out in subsection (5) of section 14. As the appellant has been convicted of the offence and as he is a single person with no dependants, the panel finds that the ministry reasonably determined that paragraph (a) of subsection (5) applies and that the appellant is ineligible for disability assistance as a lifetime consequence. As the appellant was convicted on 11 April 2013,

the panel finds that the ministry was reasonable in determining that under subsection 5(1) the sanction begins on 01 May 2013. The panel further finds that the ministry was reasonable in determining that although the appellant had indicated to the ministry that he is appealing the conviction, the conviction still currently stands.

**Conclusion**

Based on the foregoing, the panel finds that the ministry's decision that the appellant is ineligible for disability assistance, beginning on 01 May 2013, as a lifetime consequence of his conviction for fraud under the Criminal Code in relation to obtaining assistance under the EAPWDA, is a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's reconsideration decision.