

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the Ministry") Reconsideration Decision dated November 26, 2013 which determined that the Appellant was ineligible for income assistance on the basis that there were outstanding warrants for the Appellant's arrest pursuant to section 15.2(1)(b) of the *Employment Assistance Act*.

PART D – Relevant Legislation

Employment Assistance Act ("EAA") sections 2, 4 and 15.2
Employment Assistance Regulation ("EAR") section 38.1

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included:

1. The Appellant's Request for Reconsideration dated November 1, 2013;
2. A fax cover sheet and Application for Waiver of Charges dated November 13, 2013 requesting that the Court of Province "X" waive all charges and warrants against the Appellant to the BC Provincial Court,
3. A fax cover sheet and Request for Transfer of Charges dated November 13, 2013 requesting that the Province of "Y" waive a criminal charge against the Appellant to the BC Provincial Court;
4. A fax cover sheet and Request for Waiver dated November 13, 2013 requesting that the Crown Prosecutor's office in Province "Z" waive all warrants against the Appellant to the BC Provincial Court;
5. A Ministry Outstanding Warrants Check report ("the Warrant Check Report") dated October 18, 2013 indicating that the Appellant had four outstanding arrest warrants in Provinces "X", "Y" and "Z";
6. A copy of the Ministry's Service Request Notes reflecting the Warrant Check Report; and
7. The Appellant's Application for Income Assistance (Parts 1 and 2) dated October 16, 2013.

The Appellant applied for income assistance on August 27, 2013 and he underwent an intake interview with the Ministry on October 15, 2013 at which time he disclosed that he had outstanding arrest warrants in other provinces. As a result, a warrant check was undertaken by the Ministry on October 18, 2013 which confirmed that the Appellant had outstanding arrest warrants from Provinces "X", "Y" and "Z" and as a result, the Appellant's application for income assistance was denied by the Ministry.

The Appellant requested a reconsideration of the Ministry denial on November 1, 2013 and on November 13, 2013 the Appellant sent fax requests to the Provinces "X", "Y" and "Z" asking that his warrants and/or charges there be waived or transferred to British Columbia in order that he may dispose of them in the British Columbia Provincial Court. The request to Province "X" indicates that the Appellant's charges and/or warrants include assault and attempted break and enter. The request to Province "Y" indicates that the Appellant's charges and/or warrants include fail to comply with a probation order. The request to Province "Z" indicates that the Appellant's charges and/or warrants include theft under.

The Appellant provided copies of these three fax requests to the Ministry at which time it undertook a second warrant check on November 19, 2013 which, as indicated in the Reconsideration Decision, confirmed that the Appellant still had outstanding arrest warrants in Provinces "X" and "Z".

The ministry relied on the Reconsideration Decision and submitted no new information.

In the Request for Reconsideration, the Appellant states that he does not have indictable, immigration or hybrid warrants and that all are summary and very old warrants.

In the Notice of Appeal dated December 18, 2013, the Appellant states that he has provided the forms even though the charges were already waived. The Appellant states further that he gave the forms to the welfare office with a court date indicated of January 29, 2014 for all waived charges.

APPEAL #:

The Appellant submitted no new information or written submissions in support of his appeal.

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry reasonably determined that the Appellant was ineligible for income assistance on the basis that there were outstanding warrants for the Appellant's arrest pursuant to section 15.2(1)(b) of the *Employment Assistance Act*.

The relevant legislation, sections 2, 4 and 15.2 of the EAA, and section 38.1 of the EAR provide as follows:

Employment Assistance Act**Eligibility of family unit**

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the income assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the income assistance, hardship assistance or supplement under this Act.

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

Consequences in relation to outstanding arrest warrants

15.2 (1) No income 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 5 and subsection (1) of this section, and subject to the regulations, the minister may provide

(a) income 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 income 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.

Employment Assistance Regulation

Consequences in relation to outstanding arrest warrants

38.1 Section 15.2 [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 15.2 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.

The Appellant's position is that his outstanding arrest warrants are not for immigration, indictable or hybrid matters but rather are for summary matters and are very old. In the Notice of Appeal, the Appellant maintains that he provided the forms to the welfare office despite the fact that his charges had already been waived.

The Ministry's position as set out in the Reconsideration Decision is that as the Appellant has outstanding warrants for his arrest he is ineligible for income assistance as provided for in section 15.2(1)(b) of the EAA.

Section 15.2(1) of the EAA provides that no income 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 offense, and on whom the warrant has not been executed.

Panel Finding

The Panel finds that subsequent to the Appellant applying for income assistance, the Ministry

undertook an outstanding warrant check. The Warrant Check Report indicates that the Appellant had four outstanding arrest warrants and provides the date and jurisdiction for each. The report does not indicate however, the enactment under which the arrest warrants were issued or the offences from which the warrants arise and further does not indicate whether the offences are in relation to an indictable offence. The Ministry states in the Reconsideration Decision that a second warrant check was completed on November 19, 2013 and confirmed that the Appellant had outstanding arrest warrants in Provinces "X" and "Z" but the Panel notes that a copy of the Outstanding Warrants Check Report for that second check was not provided as evidence in this matter.

For the Ministry to deny an application for income assistance on the basis that an applicant has an outstanding arrest warrant as provided for in section 15.2(1) of the EAA, the Act provides that the warrant or warrants in question must have been issued either under the *Immigration and Refugee Protection Act (Canada)* or any other enactment of Canada in relation to an indictable offense. In the present case, the Panel finds that while there is evidence that the Appellant did have outstanding warrants for his arrest at the time of his application for income assistance, there is nothing to indicate the enactment under which the arrest warrants were issued or the offences from which the warrants arose.

The Panel notes that the Appellant has himself listed the criminal charges that he faces in the three waiver requests but the Panel is unable to determine from those forms whether they are indictable in nature. On review of the Reconsideration Decision the Panel notes that the Ministry appears to have made its determination of the Appellant's eligibility for income assistance solely on the existence of the four arrest warrants as set out in the Warrant Check Report and did not make a determination whether the warrants satisfied section 15.2(1) of the EAA as being in relation to an indictable offence.

The Panel therefore finds that the Ministry's decision to deny the Appellant's application for income assistance was not a reasonable application of the applicable legislation in the circumstances of the Appellant and the Panel therefore rescinds the Reconsideration Decision.