

### PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated January 26, 2012, which determined that the appellant was not eligible for a crisis supplement to purchase clothing. The Ministry concluded that the appellant had not met all three criteria as set out in Section 59 of the Employment and Assistance Regulation (EAR): that the need for clothing be an unexpected expense, that failure to obtain the item would result in imminent danger to health, and that there were no alternate resources available to the appellant for the purchase of clothing.

### PART D – Relevant Legislation

Section 59 of the Employment and Assistance Regulation (EAR)

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration was:

- That the appellant is in continuous receipt of Income Assistance as a single employable person. The most recent file was opened in April, 2011.
- On January 20, 2012, the appellant stated he had been kicked out of his residence without his clothing.
- The appellant requested a crisis supplement to purchase replacement clothing.
- The ministry worker contacted the landlord who confirmed that the appellant could return to the residence and pick up his clothing.
- The Ministry denied the appellant's request for replacement clothing. (The date of the original denial for a crisis supplement is not in the appeal package, but it is likely January 23, 2012, as noted on the bottom of page 11 of the appeal package, in the box titled, Date Requestor Informed of Decision.)
- The appellant returned the completed and signed Request for Reconsideration on January 24, 2012.
- The appellant stated in the Request for Reconsideration that when he returned to his former residence he found that most of his clothing had been stolen.
- The ministry, in the January 26, 2012 Reconsideration Decision, denied the crisis supplement for clothing to the appellant.

In his January 24, 2012 Request for Reconsideration, the appellant stated:

- 1) Have no long johns, thermal pants, snow pants, gloves, jacket nor boots.
- 2) Homeless – need to stay warm.
- 3) Went to the house and most of my clothes were stolen and I only have summer gear.

At the hearing, the ministry relied upon the information before the ministry at the time of the reconsideration decision. The appellant did not attend the hearing. The panel chair checked with the Tribunal office, and confirmed that delivery of the Notice of Hearing had been confirmed. Therefore there was no presentation or clarification from the appellant related to the facts that were before the ministry at the time of reconsideration.

## PART F – Reasons for Panel Decision

The issue on appeal before the panel is whether or not the ministry was reasonable in its determination that the appellant was not eligible for a crisis supplement for clothing as set out in Section 59 of the EAR, specifically that:

- 1) the need for clothing be an unexpected expense,
- 2) that failure to obtain the item would result in imminent danger to health, and
- 3) that there were no alternate resources available to the appellant for the purchase of clothing.

The appellant did not attend the hearing. The panel chair notified the Tribunal of this before commencing the hearing, and based upon the confirmation of delivery notice, the hearing proceeded without the appellant in attendance in accordance with Section 86 (b) of the EAR. The ministry representative at the hearing, attending by telephone, was located in the ministry offices. Later in the hearing, the panel chair realized that the delivery address for the appellant was care of the ministry in the same office. The panel chair asked the ministry representative if it was possible to determine if the appellant had in fact picked up the appeal package, delivered five days earlier. The ministry representative found that the appellant's notice of the hearing was in fact still at the ministry office. The panel chair then contacted the Tribunal again, where it was determined that as the appellant had requested that he receive the notice at this location, it was his responsibility to ensure he checked for such notification. The panel therefore proceeded with only the ministry representative on hand.

The appellant's position was therefore just what was written in the January 24, 2012 Request for Reconsideration plus his statement dated February 2, 2012, in his notice of appeal. These points were as follows:

- 1) Have no long johns, thermal pants, snow pants, gloves, jacket nor boots.

The panel determined that this statement is ambiguous as to whether or not the appellant had such winter clothing and that these were in fact stolen. If this were the case, the need for such clothing could have been considered an unexpected expense, contrary to the ministry's position, but in the absence of the appellant at the hearing, this could not be determined.

- 2) Homeless – need to stay warm.
- 3) Went to the house and most of my clothes were stolen and I only have summer gear.

Again, this statement, by itself, is ambiguous and not clear whether the appellant had winter clothing that was stolen, or that other clothing was stolen. It was clear that the appellant did believe that he only had summer clothing which would not keep him warm as he was homeless.

In his Notice of Appeal, dated February 2, 2012, the appellant states: "It's not that I say I disagree with the ministry, I am in need of these clothing on my person. Don't have the right or proper Gear to keep and remain warm." Again, without the ability for the panel to question the appellant, it cannot be determined if the appellant did, or did not have, winter clothing before being kicked out of his residence.

The ministry's position at the hearing was a re-iteration of their findings from the Reconsideration Decision, dated January 26, 2012. In this they stated that the appellant contacted the ministry on

January 20, 2012, stating that he had been kicked out of his residence without his clothing. The appellant requested a crisis supplement for clothing. The worker contacted the landlord, who confirmed that the appellant was able to return to the residence to pick up his clothing. The appellant's request for a crisis supplement was therefore denied. The appellant returned a Request for Reconsideration application on January 24, 2012, in which the appellant stated he did not have winter clothing and when he returned to his former residence he found his clothing had been stolen.

The ministry's position, related to Section 59 of the EAR was as follows:

1. The need for clothing could not be considered an unexpected expense.

The ministry stated that the need for clothing cannot be considered an unexpected expense. The landlord confirmed that the appellant was able to return to the residence to obtain his belongings. The ministry noted there is a risk of losing belongings if left behind when moving. The ministry stated that the appellant did not provide any evidence explaining why he had not taken his belongings with him when he left his residence, nor had he submitted any evidence that his belongings had been stolen.

In the absence of the ability of the panel to question the appellant about the alleged theft of his clothing, the panel could only rely upon the evidence before it from the ministry's reconsideration decision. When the panel asked the ministry if the worker had attempted to confirm with the landlord about the alleged theft, the ministry stated there were no notes on the file that would suggest the ministry had done so.

Given the ambiguous nature of the statements, and the absence of the appellant at the hearing, the panel found that the ministry's position that the need for winter clothing was not an unexpected expense was reasonable and that the appellant did not meet this criterion.

2. That failure to obtain the item would result in imminent danger to physical health.

Interestingly, the ministry's analysis of this criterion in the Reconsideration Decision did not provide any analysis whatsoever. It just stated the above requirement. The ministry representative at the hearing did comment on this, however, and stated that in the location in the province where the appellant lives, being homeless and without winter clothing could in fact result in imminent danger to the appellant's health. It is the panel's responsibility to determine whether or not the ministry was reasonable or not reasonable in reaching its decision with respect to this criterion. In the absence of a ministry position on this criterion, the panel must rely upon the verbal testimony of the ministry representative at the hearing and concludes that the failure to obtain winter clothing could result in imminent danger to the appellant's physical health. Accordingly, the panel finds that the ministry was not reasonable in deciding that criterion 2 was not satisfied.

3. That there were no alternate resources available to the appellant for the purchase of clothing.

The ministry states that the appellant had alternate resources for the purchase of clothing. The ministry indicated that the appellant's support allowances are intended to be used for daily living

expenses such as clothing. The ministry representative at the hearing noted that the appellant had picked up his allowance check for February in the amount of \$215 on January 25, 2012. She also noted that the March allowance check of \$215 was available for pickup on February 22, 2012, the date of the hearing. The panel finds that the ministry's position that alternate resources for the purchase of clothing were available was reasonable, and that the appellant did not meet this criterion.

Section 59 of the EAR states that a crisis supplement may be provided if all three of the eligibility requirements are met. The panel has found that ministry was not reasonable with respect to criterion number two, but that the ministry was reasonable with respect to criteria one and three.

The panel finds that the ministry's decision was reasonably supported by the evidence and therefore confirms the ministry decision.