

## PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision of 09 February 2012 which determined that the appellant was not eligible for a crisis supplement, under section 59 of the Employment and Assistance Regulation, for shelter with respect to his January 2012 income assistance respecting a stay at a hostel for the period 17-31 January 2012 because his request did not meet the three criteria under the Regulation.

Specifically, the ministry found that the following criteria had not been met:

1. "To meet an unexpected expense, or obtain an item unexpectedly needed" – because his "immediate and forced" relocation from his former residence due to a residential tenancy dispute had not been confirmed by an eviction notice, evictions normally require at least 10 days notice at a minimum under the *Residential Tenancy Act* except under serious circumstances where the safety, rights or interests of others are jeopardized; and because the hostel was not eligible for monthly rent payments as it is not zoned residential but only for transients.
2. "No resources are available" – the ministry believes there are other community resources available to him, apart from the one to which he applied and was denied, citing two other possibilities; further, the appellant was issued full benefits for January, including \$375 for rent and \$235 for support; moreover, as the appellant was evicted in the middle of the month, he would have been entitled to some of his rent back.
3. "Failure to provide the item will result in imminent danger to his physical health" – because the appellant provided receipts confirming payment for his stay at the hostel, thus he had made arrangements for payment of his stay; further, while staying at the hostel, he had access to cooking and shower facilities.

## PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 59

## PART E – Summary of Facts

The ministry failed to appear at the hearing at the scheduled time and date. After verifying that the ministry had received notification of the hearing at least 2 business days before the hearing date by examining the Notice of Hearing fax transmit confirmation report, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration relevant to this appeal consists of the following:

- Two receipts from the hostel dated 17 and 25 January 2012 for \$120 each, for the period 17-31 January 2012.
- A Note to [ministry] Worker from the appellant dated 20 January 2012, in which he refers to a request made the day before for an emergency amount due to a residential tenancy dispute and the immediate and forced relocation to a hostel. He states he had sought assistance from a charitable organization but was denied.
- The appellant's Request for Reconsideration dated 31 January 2012, in which he refers to the above Note to Worker.

In his Notice of Appeal dated 22 February, 2012 the appellant submitted four separate reconsideration decisions for appeal, with accompanying documentation. Though the appellant argues in his Notice of Appeal that these deal with the "exact same issue", the panel's mandate applies strictly to only one of those reconsideration decisions, the one described above in Part C, and only the evidence and argument pertinent thereto. However, the panel notes there is some overlap in subject matter: the ministry's concern that the hostel mentioned above is not zoned for residential tenancy, in this appeal for the two week period at issue, and in the other case on an ongoing month-to-month basis.

After reconsideration but prior to the hearing, the appellant submitted a package of documents to the panel. The following is relevant:

- A Submission dated 08 March 2012. The appellant stated that he had had additional communication with the hostel and with representative of the city's by-law force enforcement and had been informed that no by-law or other "enactment" existed that would prevent him from renting at the hostel. He had also spoken with the owner of the hostel in relation to renting at the hostel and being on ministry assistance. The owner said that she had no problem with people being on income assistance and staying at the hostel and that the ministry had provided funds on a weekly basis to several individuals staying at the hostel, and have done so recently, within that week in February. He referred to his request to the community organization that managed a fund to prevent homelessness and stated that the organization had refused to provide an application to access that fund.

At the hearing, the appellant gave some general background to the tenancy dispute leading to his eviction on the morning of 17 January 2012. He stated that it was due in part to his filing in November 2011 of a complaint with the Residential Tenancy Branch over the state of repair of the apartment and in part due to monies owing to a former owner of the building. The dispute became increasingly acrimonious and a bailiff appeared that morning and evicted him without notice or the opportunity to

challenge the eviction notice. He stated that at the time of the eviction, the bailiff gave him an eviction notice, but the ministry never asked for a copy and he did not bring it to the hearing. He stated that at no time during the course of this dispute was violence or the threat of violence involved. The dispute is ongoing, the subject of judicial proceedings and before the Residential Tenancy Branch.

The appellant stated that the day he was evicted was in the middle of a snow-storm. He was able to pay for the rent for the first week at the hostel from his own funds and drew on his February support benefits to pay the second week. He now lives in another facility, and received his shelter portion for February, after some delay, after filing an "Intent to Rent" form for that facility with the ministry.

The appellant referred to alleged "ridiculous and outrageous" personal treatment he had encountered from ministry staff through the course of his dealing with the ministry over the issue under appeal and related issues. The panel advised the appellant that these complaints were not relevant to this appeal and he indicated he would be pursuing the matter through other channels.

The panel finds that the new information provided by the appellant is in support of the information and records that were before the ministry at the time of reconsideration. The information about the nature of the tenancy dispute and his payment of the rent at the hostel clarify many points raised in his Note to Worker dated 20 January 2012 and subsequent submissions. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

The panel finds as fact that the appellant's eviction from his apartment on 17 January 2012 was sudden and unexpected.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant was not eligible for a crisis supplement, under section 59 of the EAR, for shelter with respect to his January 2012 income assistance for a stay at a hostel for the period 17-31 January 2012, because his request did not meet the three criteria under section 59.

Specifically the issue is whether the ministry decision under the following criteria was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant:

- To meet an unexpected expense, or obtain an item unexpectedly needed
- No resources are available.
- Failure to provide the item will result in imminent danger to his physical health.

The relevant legislation is section 59 of the EAR, the applicable subsections of which are set out below:

### Crisis supplement

**59 (1)** The minister may provide a crisis supplement to or for a family unit that is eligible for income assistance or hardship assistance if

(a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and

(b) the minister considers that failure to meet the expense or obtain the item will result in

- (i) imminent danger to the physical health of any person in the family unit, or
- (ii) removal of a child under the *Child, Family and Community Service Act*.

### Unexpected expense

With respect to whether the crisis supplement is required to meet an unexpected expense, the position of the ministry is that the "immediate and forced" relocation from the appellant's former residence due to a residential tenancy dispute had not been confirmed by an eviction notice; that evictions normally require at least 10 days notice at a minimum under the *Residential Tenancy Act* except under serious circumstances where the safety, rights or interests of others are jeopardized; and because the hostel was not eligible for monthly rent payments as it is not zoned residential but only for transients.

The position of the appellant is that the eviction, which gave rise to his having to find other lodgings, was unexpected, as the eviction notice was executed without warning and without him being given time or an opportunity to challenge it. Further, he disputes the ministry's position that the hostel was not eligible for monthly rent payments because of its zoning.

The panel finds the evidence of the appellant credible and has found as fact that his eviction from the apartment was sudden and unexpected. The panel is mindful that the legality of the eviction is being challenged elsewhere and this finding is not to be construed as a finding regarding the legality or otherwise of the eviction. The panel fails to understand the relevance of the ministry argument that the hostel was not eligible for monthly rent payments due to zoning considerations, as the issue under appeal relates to a short term, two week stay appropriate to a hostel (though the appellant may have wished to stay there longer on an ongoing on a month-to-month basis). The panel therefore finds that the ministry was not reasonable in determining that the appellant was not eligible for a crisis supplement under this criterion.

#### No resources available

As to whether the appellant met the criterion that he was unable to meet the expense of his stay at the hostel because he had no resources available to him, the position of the ministry is that it believes there were other community resources available to him, apart from the one the one to which he applied and was denied, citing two other possibilities; further, the appellant was issued full benefits for January, including \$375 for rent and \$235 for support; moreover, as the appellant was evicted in the middle of the month, he would have been entitled to some of his rent back.

The position of the appellant is that he tried very diligently to obtain a grant from community organization that managed a fund to prevent homelessness and was denied.

The evidence of the appellant was that he had funds on hand to pay for the rent for the first week at the hostel and drew on his ministry support benefit for the second week. The panel therefore finds the ministry reasonably determined that the appellant did not meet this criterion.

#### Imminent danger to health

With regard to whether the appellant's crisis supplement application met the criterion that failure to meet the expense of his stay at the hostel would result imminent danger to his physical health, the position of the ministry is that because the appellant provided receipts confirming payment for his stay at the hostel, thus he had made arrangements for payment of his stay; further, while staying at the hostel, he had access to cooking and shower facilities.

The position of the appellant is that he was evicted on the day of a heavy snowstorm: without lodging, his health would have been at risk in such conditions.

As the appellant had resources available to him to afford a stay at the hostel pending taking up lodging at a ministry approved facility, and as the hostel provided adequate facilities, the panel finds that the ministry reasonably determined that the appellant did not meet this criterion.

Therefore the panel finds the ministry decision that determined that the appellant did not meet all the criteria for a crisis supplement under section 59 of the EAR for the appellant's two week stay at a hostel was reasonably supported by the evidence and was a reasonable application of the legislation under the circumstances of the appellant. The panel thus confirms the ministry's decision.