

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision dated 12 February 2012 which determined that the appellant was not eligible for a crisis supplement under section 59 of the Employment and Assistance Regulation to cover the cost of refilling his heating oil tank because he did not meet all the criteria set out in the legislation. Specifically, the ministry determined that he had other resources available to him in the form of an electric fireplace, and that failure to provide the oil would not result in imminent danger to his physical health.

The ministry did accept that the appellant's heating oil was stolen and therefore he had to obtain an item unexpectedly needed.

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 relevant to this appeal before the ministry at reconsideration included the following:

- An invoice from a fuel supplier for stove oil dated 12 December 2011 in the amount of \$400.96
- The appellant's letter to the ministry dated 13 December 2011. He describes the circumstances surrounding the discovery of the theft (by siphoning off) of his fuel oil from his recently filled tank, his reporting the theft to the police and how one of his neighbours got wind of his dilemma and offered to put some oil in his tank, paying \$404.11 to the fuel supplier. In his letter, the appellant states that "I also have an electric fireplace to help heat the trailer and also keep the oil costs down."
- A letter from the appellant's neighbour dated 2 February 2011. She writes:
"I [name] loaned [the appellant] \$404 to put oil in his tank. This was to be a short term loan. I am also on fixed income and expected to receive reimbursement from the welfare dept. shortly after. I felt that [the appellant] needed heat as he had a bad cold and was not feeling well due to his Type 1 diabetes."
- The appellant's Request for Reconsideration dated 2 February 2012, attached to which is a Submission prepared by his advocate. The Submission states that the appellant struggles with Type 1 diabetes and was also ill with a cold at the time of the oil theft. The balance of the Submission goes to argument.

In his Notice of Appeal dated 20 February 2012 the appellant states:

"I can't heat my trailer with my little heater. If I did not have oil my water pipes would have frozen up. The ministry's decision was unreasonable."

At the hearing, the appellant's advocate read from a Submission. In it, she stated that the electric fireplace is a decorative one located in the living room of his 1400 square foot trailer. The appellant states that his fireplace is insufficient to heat the living room, let alone the other rooms in the home, such as his bedroom, which is located 60 feet from the living room. She submitted photographs of the unit and the fireplace unit relative to the hallway to the bedroom. She states that the plumbing lines for the trailer run underneath the home. If the trailer is insufficiently heated, there is a risk of the pipes freezing and bursting. There was a real risk of this occurring as the temperature range between 10 and 16 December ranged between -0.2°C and 7.5°C , confirmed with weather records provided.

The advocate referred to the appellant having Type 1 diabetes. She states that the muscle loss associated with this condition has left him particularly sensitive to cold weather.

The balance of the advocate's submission goes to argument.

The appellant described his medical condition: he had lost a third of his body mass before going on insulin. He then ballooned back up before coming back down again in weight to about 110 lb, leaving him without much insulation against the cold. He described the electric fireplace as decorative, with

the flame affect powered by two light bulbs, with a small heating coil inside producing some heat pushed out by a fan.

The appellant's neighbour, the one who lent him the money to fill his fuel tank, appeared as a witness. She described how she and others were concerned about him at the time of the theft. He was "in bad shape" at the time, suffering from a bad cold and congestion. She lent him the money to fill the tank because she was worried about his health.

The panel finds that the new information provided by the appellant, his advocate and his neighbour is in support of the information and records that were before the ministry at the time of reconsideration. The information about the electric fireplace and its location, the weather, the plumbing and the appellant's health clarify many points raised in the appellant's 13 December 2011 letter to the ministry. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

On reviewing the photographs, the panel finds as fact that the electric fireplace is not portable, as it is encased in a large entertainment unit.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant was not eligible under section 59 of the Employment and Assistance Regulation for a crisis supplement to cover the cost of refilling his heating oil tank, because he did not meet all the criteria set out in the legislation. Specifically the issue is whether the ministry determination that he had other resources available to him in the form of an electric fireplace and that the failure to provide the oil would not result in imminent danger to his physical health was reasonably supported by the evidence or was a reasonable application of the legislation.

The ministry did accept that the appellant's heating oil was stolen and therefore he had obtain an item unexpectedly needed.

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*.

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

(7) Despite subsection (4) (b) or (5) or both [*crisis supplement limits*], a crisis supplement may be provided to or for a family unit for the following:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro.

Alternative resources available

With respect to whether the appellant had alternate resources available, the position of the ministry is that he had an electric fireplace available to him as an alternative to oil heat.

The position of the appellant, as articulated in the advocate's submission, is that the electric fireplace is decorative and produces insufficient heat to keep his home adequately warm. Further, the advocate questions the reasonableness of the ministry's decision as the ministry had no evidentiary basis for concluding that the fireplace was a sufficient alternative. She also submits that there has been a denial of the appellant's right to procedural fairness, as the relevance of the presence of the fireplace was only referred to in the Reconsideration Decision, and not mentioned in the initial decision, so the appellant had no opportunity to address this key issue. She submits that by introducing a new reason for denial at the reconsideration stage, the appellant's ability to respond to the ministry's case had been compromised.

Turning first to the issues of procedural fairness raised by the appellant's advocate, the panel notes that the burden of supplying the evidence when applying for a benefit rests with the applicant. Further, a reconsideration decision is just that – a reconsideration – of the issue before the ministry, with or without new evidence. As such it is considered a new decision, and the reasons for the decision may differ from the original. The appellant's ability to respond has not been compromised, as the fact that he is entitled to the present appeal demonstrates.

The evidence shows that the electric fireplace is insufficient to adequately heat a 1400 square foot home in winter, and not portable, so it cannot be moved from room to room between day and night. The panel therefore finds that the ministry was not reasonable in determining that the appellant had alternative resources available to him in the form of the electric fireplace as an alternative to oil heat.

Imminent danger to health

As to the whether the failure to meet the expense or obtain the item will result in imminent danger to the physical health of any person in the family unit, the position of the ministry is that, as the appellant had electric heat available to, he does not meet this criterion.

The position of the appellant, as set out in his advocates Submission, is that he has type 1 diabetes. This has led to significant weight loss, muscle loss and severely compromised health. He was also ill with a cold at the time of the oil theft. Having to live without heat in winter weather until the ministry reopened on the following Monday, as well as the additional delay until the adjudication of his crisis supplement request would have posed a significant danger to health. She submits it is unreasonable to suggest that a decorative fireplace providing heat to one room is a sufficient alternative to actual heating, particularly in winter months.

The evidence is that at the time of the oil theft, the appellant's health was compromised both by his diabetes and by a bad cold. The panel has already found that that the ministry was not reasonable in determining that the appellant had alternative resources available to him in the form of the electric fireplace as an alternative to oil heat. Given the appellant's health circumstances, the panel finds that the ministry was not reasonable in determining that, without oil heat, the failure to meet the expense

or obtain the oil will result in imminent danger to the physical health of the appellant.

The panel therefore finds the ministry determining that the appellant was not eligible for a crisis supplement under section 59 of the EAR to replace the stolen oil was not reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. The panel thus rescinds or overturns the ministry decision in favour of the appellant.