

PART C – Decision under Appeal

The decision under appeal is the decision made by the ministry at reconsideration on February 22, 2012 in which the ministry denied the appellant's request for a crisis supplement to cover costs that the appellant incurred from August to November 2011 for repairs to her motor home.

The ministry's decision states that the appellant's request does not meet the criteria set out in Section 57(1) of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation in that the requested item is not an unexpected expense or was needed to obtain an item unexpectedly, that the appellant did not demonstrate that she had no resources available to her to purchase the item on her own, or that failure to provide the requested item would result in imminent danger to the appellant's health. In addition, the ministry's decision states that the appellant does not meet the criteria set out in Section 57(2) of the EAPWD Regulation as the request for the crisis supplement was made in December 2011 for costs incurred from August through November 2011.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWD) Section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWD Regulation) Section 57

PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- A completed Request for Reconsideration Form signed by the appellant on January 25, 2012 stating that the ministry's decision is unreasonable
- Letter from the appellant's advocate dated February 10, 2012 including motor home repair expenses for 2011 and receipts (the "Advocate's Letter") (11 pages)

The Advocate's Letter states that the appellant is seeking a crisis supplement to cover her motor home expenses. Alternatively, the appellant seeks a crisis supplement to cover her support and shelter allowance for January 2012 as she will need to put her entire support and shelter allowance toward paying off the debt incurred repairing her motor home.

The Advocate's Letter states that the appellant lives in her motor home and that in late August 2011 a leak in the motor home developed into a serious problem including black mould that was infecting the wood interior, furnishings, and structure of the motor home. The Advocate's Letter states that the extent of damage to the motor home was unexpected and was only revealed to the appellant in September 2011 when she exposed portions of the motor home during the repair process.

The Advocate's Letter contains a list of the motor home repair expenses from August 6 to December 13, 2011 of \$1,748.24 including fuel expenses of \$231.41, towing charge of \$161.93 and mechanic repair costs of \$345.40.

The Advocate's Letter states that during the repair period, the appellant was overwhelmed by the unexpectedness of the crisis, the urgency of the need to deal with the repairs, and the scope of the problem as it revealed itself over time. The Advocate's Letter states that the appellant was unable to contemplate approaching the ministry for assistance in the midst of the crisis because of her fragile mental state and that she is now seeking assistance repaying this debt.

The Advocate's Letter states that the appellant does not have any other available resources to repay the debt incurred for the repair costs, and that the debt incurred does not represent a resource available to the appellant. The Advocate's Letter states that the debt needs to be repaid as soon as possible and that the appellant is experiencing significant, increasing stress and anxiety as a result of her current inability to repay the money she borrowed to deal with the repairs.

The Advocate's Letter states that the appellant already has a number of expenses related to the use of her motor home as a shelter that are not covered by the ministry shelter allowance and that she cannot budget more efficiently to repay the debt incurred for the motor home repairs. The Advocate's Letter also states that if the appellant is unable to meet her current monthly expenses, "...she will compromise the viability of the motor home functioning as her dwelling place, and will compromise her own health and wellbeing", and will be at risk of serious health complications, including death. The Advocate's Letter states that if the appellant is not able to maintain her motor home, she will be at risk of losing her home and becoming homeless which poses "...serious and obvious risks to health and safety".

At appeal the appellant submitted new evidence in the form of an unsigned letter from her psychiatrist dated August 5, 2010 (the "Doctor's Letter") which states that the appellant's mental status is severely adversely affected by the ministry's decisions made prior to the appellant's designation as a Person with Disabilities, in which the ministry denied the appellant funding for shelter costs associated with her motor home. In the Doctor's Letter, the psychiatrist recommends that the appellant be provided with the full extent of the monthly shelter allowance to allow her to maintain the integrity and function of her home.

The ministry confirmed that the Doctor's Letter was already part of the ministry file and did not object to the admissibility of this evidence at appeal. The panel finds that the Doctor's Letter is in support of the information and records that were before the minister when the decision being appealed was made and the panel admits the new evidence pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.

The advocate argued that as the appellant is a Person with Disabilities, her mental health disabilities including post traumatic stress disorder restrict her ability to cope with difficult circumstances. The appellant's advocate argued that the appellant could not avoid or put off the repairs because there was rot and mould in her sleeping area, that it took all of her available energy to cope with the problem at the time, and that her inability to contact the ministry at the time was reasonable and understandable.

The advocate argued that she has been the appellant's advocate for several years and the appellant was not even able to communicate with her during the crisis. The advocate argues that the strict manner in which the ministry has applied the legislation requiring the request for that assistance to have been at the time the repairs were made is not the intent of Section 57(2) of the EAPWD Regulation.

At appeal the appellant stated that the repairs to her motor home were much bigger than initially expected, included many setbacks and unforeseeable obstacles, and only became fully known as they progressed. She stated that the repairs had to be made during the summer months when it was dry and that because of the repairs, her need to move her motor home to different locations, and because of her previous experiences with the ministry, she was unable to cope and was not able to contact the ministry for assistance at the time the repairs were being made. The appellant states that during the course of the repairs her health declined, she lost 20 pounds, and collapsed for one week after the repairs were completed. The appellant states that only after she began recovering was she able to compile all of her receipts and approach the ministry for a crisis supplement request.

The appellant detailed her past experiences with the ministry when she had previously made crisis supplement requests and explained that because of her past experiences and her psychological disability, she was distrustful of the ministry and could not endure the escalation of stress had she attempted to approach the ministry through the fall of 2011 to request a crisis supplement at the time. The appellant also stated that in her experience, the ministry typically requests three estimates for any repairs and at the time of the crisis, given her stress and anxiety, she could not contemplate obtaining three estimates.

The appellant explained that she finally came forward to the ministry with the crisis supplement request when the debt had to be repaid, the motor home was repaired so the stress of the crisis was

alleviated, and she had time to compile the receipts. The appellant stated that she did not think there was any point contacting the ministry before the receipts were put together.

The appellant confirmed that as the ministry had provided funds to cover the towing charge and the mechanics repair invoice the total debt that she owes is \$1,240.91 which consists of \$1,009.40 for repairs and \$231.51 for fuel costs.

At appeal, the ministry relied on its reconsideration decision. The ministry's evidence is that the appellant has been in receipt of income assistance since May 2009 and has a designation of Persons with Disabilities since June 2010. She receives \$531.42 for support, \$375 for shelter and a \$40 dietary supplement for a monthly total of \$946.42.

The ministry's evidence is that on December 22, 2011, the appellant submitted receipts for various supplies, parts and labor, towing fees, and fuel/propane required for towing and unexpected repairs to her motor home caused from a leak in the motor home which caused mold and damage. The ministry states that they issued a crisis grant to the appellant on December 23, 2011 in the amount of \$161.93 for towing costs and \$345.46 for repair of the fuel pump/oil filter for the motor home. However, the ministry's decision states that the appellant's request for a crisis grant to cover the repair costs incurred between August and November 2011 was denied as a crisis grant can only be provided for the calendar month in which the application or request for the supplement is made.

The ministry's evidence is that a crisis supplement may have been assessed according to the legislation at the time the incident took place during August to November 2011 but as the appellant did not notify the ministry of the situation until December 2011, they are not able to provide a crisis supplement as the request was not made in the same month the need occurred.

The ministry's evidence is that the appellant's advocate argued that the appellant was unable to approach the ministry at the time of the crisis because of her medical and physical conditions, which may have been made worse due to the processes of the ministry to determine eligibility, but the ministry notes that there is no medical documentation to establish that claim.

The ministry stated that the appellant's request was denied because the repairs were already completed when the request was made in December, that the appellant was able to access other resources by borrowing money and that repayment is implied when funds are borrowed, so repayment cannot be considered unexpected.

The ministry stated that as the appellant lives in a motor home her situation is a bit different than some other income assistance recipients and that it can sometimes take the ministry a bit longer to respond to requests. However, the ministry stated that as the appellant chooses to live in a motor home and it is a home that requires upkeep and maintenance, just as all homes do, repairs cannot be considered to be unexpected.

The ministry stated that they are not able to pre-approve open-ended costs and the ministry's practice is to request three estimates for repair costs in order to ensure that any payments are made in a financially responsible manner. The ministry stated that had the appellant come to the ministry at the time, they might have been able to provide a crisis supplement but as the request was not made in the calendar month that the crisis supplement was required, it does not meet the criteria required of

the legislation. In addition, as there was no contact with the ministry by the appellant between August and November 2011, the ministry was not in a position to determine, after the fact, whether a crisis supplement was appropriate.

The ministry also stated that they recognize that the appellant has been left with a debt which assumes repayment at some point. However, the ministry also stated that as they provide as a last resort only, they expect people to avail themselves of any other resources and if a person is able to borrow money, as the appellant did, then that indicates that a resource is available.

The ministry's evidence is that the appellant had previously been found ineligible for gas expense as this is not an item which is included in the Employment and Assistance Act (PWD) Regulation, Schedule A, Section 5(1)(2) and was the subject of a decision made by the Employment and Assistance Appeal Tribunal in May 2011. The ministry's decision also states that no additional funds were provided for propane, because that resource is already a pre-approved expense which is part of the appellant's maximum shelter allowance which had already been provided to her.

The ministry's evidence is that the ministry provided the appellant with a crisis grant of \$60 on January 20, 2012 to purchase a new space heater.

The ministry also states that the appellant was previously provided with crisis supplements for home as follows:

- 1) December 2010 for \$312.84;
- 2) December 2010 for \$1,500; and
- 3) December 2011 for \$345.40.

Based on the documents, the panel's finding of facts are as follows:

- 1) The appellant is a Persons with Disabilities;
- 2) The appellant lives in her motor home;
- 3) The appellant incurred various expenses between August and November 2011 and applied for a crisis supplement for these expenses in December 2011;
- 4) The ministry provided the appellant with a crisis supplement of \$345.40 to cover the mechanical repair costs of \$345.40 requested in 2011; and
- 5) The appellant borrowed money to pay for the cost of the motor home repairs and incurred a debt of \$1,240.91 that must be repaid.

PART F – Reasons for Panel Decision

The issue to be determined at appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. The ministry's reconsideration decision states that the appellant's request for a crisis supplement does not meet the criteria set out in Section 57(1) of the EAPWD Regulation in that the requested item is not an unexpected expense or was needed to obtain an item unexpectedly, that the appellant did not demonstrate that she had no resources available to her to purchase the item on her own, or that failure to provide the requested item would result in imminent danger to the appellant's health.

The ministry's reconsideration decision also denied the appellant's request for a crisis supplement for repair costs to her motor home from August to November 2011 on the basis that the request was not made during the month in which the expense was incurred, as required by Section 57(2) of the EAPWD Regulation.

Section 57 of the EAPWD Regulation states as follows:

57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability 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.

In her Notice of Appeal, the appellant states that the ministry's decision is unreasonable as the ministry has refused to consider her circumstances and has blindly adhered to policy, and has effectively fettered its discretion to consider the appellant's application for a crisis supplement.

The Advocate's Letter refers to *Abrahams v Canada* (1983, 142 DLR (3rd) 1), in which the Supreme Court of Canada held that where social welfare benefits are concerned, ambiguities arising from difficulties in the legislative language should be resolved in favor of the claimant. The Advocate's Letter also refers to Section 8 of the *Interpretation Act* [RSC 1986, c. 238] which states that "(e)very enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensure the attainment of its object".

The Advocate's Letter states that as per Section 29 of the Interpretation Act, "may" is to be construed as permissive and empowering and that the use of the word "may" in Section 57(1) of the EAPWD Regulation is to be read as permissive and empowering. The Advocate's Letter argues that the ministry's decisions to issue a crisis supplement are to be made having regard to the intent and principles of the EAPWD Regulation and the guiding legal principles.

The Advocate's Letter argues that the ministry's interpretation of the legislation does not honor the intent and purposes of the Interpretation Act in that the ministry did not consider the appellant's psychological state and inability to approach the ministry for assistance at the time of the crisis.

Whether the expense is unexpected or whether the request is required to obtain an item unexpectedly needed

The appellant's position is that the motor home repairs were unexpected and of considerable magnitude that only revealed itself over time. Alternatively, the appellant's position is that the debt for the money that she borrowed to pay for the cost of the motor home repairs is unexpected as it must be repaid which would leave her without sufficient funds to cover her monthly shelter and food costs.

The ministry's position is that regular maintenance, including repairs to the motor home in which the appellant lives are a regular part of a home upkeep and is not an unexpected cost and that the need to repay the debt is also not an unexpected cost.

The panel finds that the ministry reasonably determined that the appellant did not meet this criterion.

Whether resources available

The appellant's position is that the ability to borrow money to cover the cost of the motor home repairs does not mean that resources were available to her as she has incurred a debt that must be repaid and she does not have the financial means to repay the debt.

The appellant's advocate argued that the need to repay the debt was unexpected and as the ministry stated that a crisis grant may have been awarded had it been requested at the time the repairs were made, the ministry's failure to consider the request to repay the debt is not a reasonable application of the legislation.

The appellant's advocate also argued that the appellant has no resources available to repay the debt and that the fact that she was able to borrow money does not mean that she had other available resources. The advocate argued that the appellant's health and home are in jeopardy if she cannot repay the debt, and there is no room to budget for debt repayment.

The ministry's position is that the ministry is the last resort and as the appellant was able to borrow money to pay for the repairs that the appellant had resources available to her.

The panel finds that as the appellant was able to borrow money for the cost of the repairs that she had resources available to her and the panel notes that there was no documentation from the lender confirming the amount of the debt or repayment terms. Therefore, the panel finds that the ministry reasonably determined that the appellant's request did not meet this criterion.

Imminent danger to health

The appellant's position is that if she had not incurred the motor home repairs when she had, she would have been homeless which would have resulted in imminent danger to her health.

Alternatively, the appellant argues that repayment of the debt will require all of her monthly shelter and food allowance, thereby compromising her own health and wellbeing as she will not be able to afford groceries and other essential items.

The appellant's advocate also argued that the reconsideration adjudicator failed to consider the medical evidence on the appellant's file including the detailed Persons with Disability application and letters from the appellant's psychiatrist regarding the impact that dealing with the ministry has had on the appellant. The appellant's advocate argues that the reconsideration adjudicator could have looked at the material on file to see that the appellant was prevented from contacting the ministry for a crisis supplement at the time the repairs were required.

The ministry's position is that there was no evidence that the appellant's physical safety was or will be in danger without the requested crisis supplement.

The panel finds that there is no evidence indicating that the appellant's physical health was in imminent danger. Further, as the repairs to the appellant's motor home are complete and the appellant has shelter, there is no evidence that she will be homeless. While the appellant states that the debt must be repaid which will require her entire monthly shelter and support allowance, the appellant did not provide any documentation from the lender confirming the amount of the debt or terms of repayment. There was no documentation from the lender indicating that the debt must be repaid all at once or that repayment was expected immediately.

The Doctor's Letter provided by the appellant is over one year old and does not provide any evidence indicating that the appellant's physical health was or will be in imminent danger. The panel finds that the ministry reasonably determined that the appellant's request did not meet this criterion.

Section 57(2) – timing of crisis supplement request

The appellant argues that the ministry interpreted this section of the legislation in a manner that was too restrictive given the appellant's circumstances. As noted above, the appellant's position is that as the ministry has medical evidence on file detailing her disabilities and given the extreme stress the appellant was under during the time the repairs were required, the ministry ought to interpret the legislation in a broad manner and allow the appellant's crisis supplement request.

The appellant argues that it was only after the repairs were completed and she was able to compile all of the receipts and determine the amount required that she was able to approach the ministry for the crisis supplement request. The appellant argues that given her fragile mental state and past experiences with the ministry, her delay in approaching the ministry was reasonable and should be taken into consideration in applying the legislation in a broad manner.

At appeal, the appellant's advocate reviewed the submissions set out in the Advocate's Letter. The advocate also stated that the appellant is not trying to get around the legislation that requires a crisis grant be provided in the month the crisis exists. Rather, the advocate argued that the total amount of the appellant's debt was not known until December 2011 as the extent of the repairs unfolded over time and that the crisis existed at the time of the request, as the appellant required a crisis supplement to repay the debt incurred to cover the cost of the motor home repairs.

The ministry's position is that a crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made and that as the application was made in January 2012 for costs incurred from August through November 2011, the appellant is ineligible for a crisis supplement for these repairs.

Although the panel acknowledges that the appellant found her motor home repair situation extremely stressful, there was no medical evidence indicating that the appellant's stress prevented her from approaching the ministry and applying for a crisis supplement at the time of the crisis between August and November 2011. The panel finds that as the appellant did not make the request for a crisis supplement during the calendar month in which the unexpected costs were required, the ministry reasonably determined that the appellant did not meet this criteria and that the ministry reasonably applied the legislation in the appellant's circumstances.

In conclusion, the panel finds that the ministry's decision to deny the appellant a crisis supplement for the cost of her motor home repairs because she did not meet all the criteria under Section 57(1) and 57(2) of the EAPWD Regulation was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel thus confirms the ministry's decision.