

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 9, 2012 which denied the appellant a Crisis Supplement to purchase food. The ministry determined that the appellant was not eligible to receive a Crisis Supplement under section 57 (1) of the Employment and Assistance for Persons with Disabilities (EAPD) Regulation. Specially, the ministry determined that the appellant had been newly diagnosed as a diabetic and required new prescription medications which were not available to him as the special approval required to have them covered by PharmaCare took longer than expected, therefore the appellant had to obtain an item unexpectedly. However, the ministry also determined that alternative resources were available to the appellant to purchase the item and that failure to provide the appellant with a crisis supplement for the purchase of food would not result in imminent danger to his physical health.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPD) Regulation section 57.

## PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

- Signed copy of the appellant's Request for Reconsideration dated February 3, 2012.

Ministry records indicate that:

- The appellant's file was opened September 11, 2007 and that he is a single recipient with disability status.
- On January 20, 2012 the appellant called the ministry and requested a crisis supplement for food. The appellant stated that he spent his funds on medication that were not covered by PharmaCare. The appellant reported that his doctor had submitted a request for coverage but it took longer than expected. The appellant stated that he brought a prescription around January 12, 2012 and it cost \$60.00. The ministry advised the appellant that he could have budgeted for the balance of the month.
- January 24, 2012 a Request for Reconsideration was prepared by the ministry for the appellant.
- February 5 the appellant submitted his signed Request for Reconsideration.
- February 21, 2012 the appellant requested an update on his Request for Reconsideration.
- March 7, 2012 the appellant requested an update on his Request for Reconsideration.
- March 8, 2012 the ministry advised the appellant of a system error on his Request for Reconsideration and told him that the ministry was working to resolve the issue.
- On March 9, 2012 the ministry completed its review

In part C of the appellant's Request for Reconsideration, he writes that on December 23, 2011 his physician, a diabetes specialist wrote out a special authority for an additional medication for him stating that it would be approved within two weeks and gave him samples to keep him going until then. The appellant was told by the worker that he was diabetic and should expect changes in medication even if he has to pay for it at any time it was authorized. On January 18, 2012 after intervention from another doctor the appellant had his prescription filled with a cost to PharmaCare of over a hundred dollars for 30 tablets. The appellant states that he did not save money for an unexpected medication that was to be covered within the timeline that he was given samples for. He states that he could not afford to pay for this nor did he expect it. He states that "I got a few tablets to hold me over and needed the hospital and my doctor to intervene to get it authorized. I have a bad heart (aortic stenosis) and my diabetes needs to be kept in check. There was never any indication or doubt that I would have to pay for this medication."

In the appellant's Notice of Appeal to the Tribunal he provides arguments as to why he believes the ministry's decision was not reasonable.

Additional information accompanying the Notice of Appeal includes the following:

- A copy of a letter of from the appellant dated May 21, 2012 in which he states that he has not been newly diagnosed as a diabetic, he was diagnosed in 2001. He goes on to state that he saw his diabetes specialist on December 19, 2011, at a hospital diabetes clinic. The specialist was going to give him 28 days supply of Januvia, but the appellant was only given two weeks supply as that is all the specialist had. The appellant states that he did return to the diabetes clinic and request more samples; however he was told that he had already received two weeks worth of supply and that he couldn't have endless samples as other people need them. In any event, there were no more samples available. The appellant asked the diabetes clinic if his diabetes specialist could speed up the special authorization, and when this failed he called his GP. The appellant states that his GP can confirm this and provides contact information stating that "he got it done January 18, 2012".

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- A letter of reference from an agency where the appellant had volunteered since July 2011. The letter was addressed To Whom It May Concern, dated March 15, 2012, and states that the appellant has worked as a games host helping others to socialize in a relaxed safe and friendly atmosphere. It also states that he has worked at their Information and Services desk greeting and registering all visitors, compiling and registering statistics, providing appropriate control over distribution of cheques, tickets and vouchers, distributing relevant forms and providing information on their completion, managing couriers and handling the telephones.
  - A copy of a Certificate of Appreciation from the same agency where the appellant volunteers in recognition of 6 months of service dated April 26, 2012.
  - A copy of a Community Volunteer Supplement Eligibility Review form for the period July 2011 to February 2012.
  - A copy of letter form a hospital diabetic clinic verifying the appellant was seen December 19, 2012 for follow-up necessary in the management of diabetes. The letter provides a contact number for any inquiries.
  - A copy to two prescription receipts for the appellant, the first of which was written by the appellant's diabetes specialist and dated January 18, 2012 for 30 tabs of Januvia 100 mg. The bill shows a total cost of \$106.42 and notes patient pays \$0.00. The second prescription was written by the same physician and is dated February 13, 2012 for 90 tabs of Januvia 100 mg. The bill shows a total cost of \$294.56 and notes patient pays \$0.00.

An e-mail was sent by the ministry to the Tribunal Office May 28, 2012 states that the ministry's submission in this matter will be the Reconsideration Summary provided in the sealed package.

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 panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

The panel made the following findings of fact

- The appellant has persons with a disability (PWD) status and is eligible to apply for a crisis supplement.
- The appellant is a diabetic.
- The ministry accepted that the appellant had to obtain an item unexpectedly.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible to receive a Crisis Supplement to purchase food. Specially, the ministry determined that the appellant had been newly diagnosed as a diabetic and required new prescription medications which were not available to him as the special approval required to have them covered by PharmaCare took longer than expected, therefore the appellant had to obtain an item unexpectedly. However, the ministry also determined that alternative resources were available to the appellant to purchase the item and that failure to provide the appellant with a crisis supplement for the purchase of food would not result in imminent danger to his physical health. In arriving at its decision the ministry relied upon the following legislation

### Crisis supplement

- 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.
- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
  - (b) any other health care goods or services.
- (4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:
- (a) if for food, the maximum amount that may be provided in a calendar month is \$20 for each person in the family unit;
  - (b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of
    - (i) the family unit's actual shelter cost, and
    - (ii) the maximum set out in section 4 of Schedule A or Table 2 of Schedule D, as applicable, for a family unit that matches the family unit;
  - (c) if for clothing, the amount that may be provided must not exceed the smaller of
    - (i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and
    - (ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.
- (5) The cumulative amount of crisis supplements that may be provided to or for a family unit in a year must not exceed the amount calculated under subsection (6).
- (6) In the calendar month in which the application or request for the supplement is made, the amount under subsection (5) is calculated by multiplying by 2 the maximum amount of disability assistance or hardship assistance that may be provided for the month under Schedule A or Schedule D to a family unit that matches

the family unit.

(7) Despite subsection (4) (b) or (5) or both, 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.

There is no dispute that the appellant has PWD status and is eligible to apply for a Crisis Supplement as set out in section 57 of the EAPWD Regulation.

The ministry's position is that that the appellant had been newly diagnosed as a diabetic and had to have new prescription medications not available to him as the special approval required for them covered by PharmaCare took longer than expected. Therefore, the ministry does not dispute the fact that the appellant had to obtain the item unexpectedly. However, the ministry is not satisfied that alternative resources were not available to the appellant to purchase food, or that failure to provide a Crisis Supplement to him to purchase the item would result in imminent danger to his physical health.

The appellant's position as written in the Reason for Appeal section of his Notice of Appeal is "the office has maliciously reported false information to the department.

1. I told them that I returned to get more samples and there was no more available to me.
2. I do not work at a food bank. My food bank occurs during my volunteer job hours etc. To be explained during tribunal."

The appellant therefore believes he is entitled to receive the benefit.

As to the requirements set out above in section 57 (1)(a), in its Reconsideration Decision the ministry argued that as the appellant has PWD designation and he receives a higher monthly support allowance, \$531.42 versus \$235.00 if he was receiving income assistance. The higher support allowance for persons with PWD status has been provided for exactly the reason that there may be additional costs associated with the appellant's disability. The ministry therefore argued that the appellant had other resources available to meet the need. The ministry also argued that the appellant could have returned to the clinic and obtained more free samples which the appellant did not explore. As a result, the ministry argues that the appellant has not met the regulatory criteria set out in section 57 (1)(a)

In the appellant's letter dated May 21, 2012, he argued that the reason he has PWD status is because he has a lot of medical problems with many being interrelated and very serious. Diabetes and a heart condition are two of them. The appellant argues that he is now being penalized for this, and was unduly kept waiting as a punishment for filing a reconsideration request.

The panel finds there is considerable discrepancy between the information that the ministry and the appellant have presented in their written submissions. For example, the ministry states the appellant was recently diagnosed with diabetes, while the appellant states this occurred in 2001. In the ministry's Reconsideration Summary they state that the appellant said "he spent \$100.00 of his food money to buy a prescription that cost \$60.00". In the appellant's letter of May 21, 2012, he argues that this "is an outright fabrication, how can I spend \$100.00 on \$60.00 worth of medication". The panel finds no documental evidence has been presented by either party which would allow it to make a finding of fact regarding these issues. The panel further finds that



no documental evidence has been presented by either party verifying the actual amount of money the appellant required to purchase his medications, the date the transaction took place, or exactly what was purchased. While the appellant has submitted copies of two prescription receipts, one dated January 18, 2012, and the other dated February 13, 2012, both of these receipts indicate that the patient/appellant paid \$0.00. The panel also finds no evidence has been presented showing however much he spent on his medication impacted his ability to provide himself with appropriate nourishment. The panel is mindful of the general rule that the burden rests with the appellant/recipient of public benefits to provide the information necessary to qualify for, or continue to receive such a benefit. In the absence of such information the panel therefore finds, based on the evidence presented, that the ministry reasonably determined that the appellant does not meet the regulatory requirements set out in EAPWD Regulation 57 (1)(a).

As to the requirements set out above in EAPWD Regulation 57 (1)(b)(i) the ministry is not satisfied that failure to provide the item would result in immanent danger to the appellant's health. In its Reconsideration Decision the ministry provides the following definitions:

The Merriam – Webster's Dictionary definition of "imminent": ready to take place; especially : hanging threateningly over one's head ` < was in immanent danger of being run over >

"danger" exposure or liability to injury, pain, harm, or loss

The Cambridge International Dictionary definition of

"imminent": coming or likely to happen very soon; immanent disaster/danger; A strike is immanent."

The ministry then argued that the appellant has "spent \$100.00 of his food money to buy a prescription for the cost of \$60.00." The ministry also argued that as the appellant volunteers at a food bank, he would have had the means to access the food bank if he were short of funds to purchase food. The ministry therefore concluded that the appellant did not satisfy the criteria set out under EAPWD Regulation 57 (1)(b)(i).

In the appellant's letter May 21, 2012, he argues that he is a serious diabetic who needs three full meals, plus three snacks a day to maintain his blood sugar. He states that "this is common knowledge at the Diabetes Center. Trouble is that they don't provide letters to tribunals and refuse to give me one".

The appellant further argues that "I can not go to the food bank. Food banks want you to go to the location in your area on the same day it is operating. Mine is on X Street on Thursday. I work my volunteer job on Thursday. They don't want you to go to another food bank outside your area as you are taking food away from needy people in the other area". The appellant states that he does not work in a food bank and references letters from his volunteer placement to support his position. The appellant argued that there is "a detailed letter of my diabetes in these letters. How this reconsideration panel got all these fabrications I do not know; however I feel this was "intentionally" done – in my opinion to ensure I was denied the \$20.00".

The panel finds considerable discrepancy exists between the information provided by the appellant and the ministry. For example, the panel found no evidence supporting the ministry's contention that the appellant works in a food bank. The appellant submitted a copy of a letter of reference from an agency where he had volunteered since July 2011, a copy of a Certificate of Appreciation from the same agency in recognition of his completing 6 months of service dated April 26, 2012, and a copy of a Community Volunteer Supplement Eligibility Review form for the period July 2011 to February 2012. The panel found no evidence in these documents which supports the ministry's statement that the appellant works in a food bank. The panel also found no evidence supporting the ministry's statement that the appellant would have had easier than normal access to such services. While the appellant states in his letter of May 21, 2012, that there is a detailed letter regarding his diabetes included in his submission, the panel did not find this to be so. The only letter regarding

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the appellant's medical condition included in his submission was an unsigned letter from the Diabetes Center which states that the appellant attended the Diabetes Center on December 19, 2011, for ongoing follow-up necessary in the management of diabetes. In the absence of any other documental medical evidence describing the severity of the appellant's diabetic condition, its current treatment, any special dietary requirements and possible complications or risks to the appellant's immediate physical health if not followed, the panel finds the ministry reasonably determined that the appellant did not meet the regulatory requirements set out in EAPWD Regulation 57 (1)(b)(i).

As to the appellant's argument that the ministry intentionally delayed completing its Reconsideration Decision, the panel finds that the EAPWD Regulation 72 states:

The minister must reconsider a decision referred to in section 16 (1) of the Act, and mail a written determination on the reconsideration to the person who delivered the request under section 71 (1) [*how a request to reconsider a decision is made*],

- (a) within 10 business days after receiving the request, or
- (b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request.

The panel finds that ministry records indicate that they received the appellant's signed Request for Reconsideration February 5, 2012. On February 21, 2012, more than 19 business days later, the appellant requested an update on his Request for Reconsideration. On March 7, 2012, after 23 business days had passed, the appellant again contacted the ministry requesting an update, and on March 8, 2012, the ministry advised the appellant of a system error with his Request for Reconsideration, and told him the ministry was working on it to resolve the issue. On March 9, the ministry completed its review. The panel finds given the nature of the appellants request, a Crisis Supplement for food, the fact that the ministry was aware he was diabetic and the fact that he contacted them twice over a four week period prior to the ministry discovering a system error, the appellant may well have good reasons for his belief. However, as there is no prescribed relief for the appellant in the Regulation for this kind of delay, the panel has no jurisdiction to make any further finding on this matter.

As such, the panel finds the evidence reasonably supports the ministry's decision, and that there has been a reasonable application of the EAPWD Regulation section 57 (1) in the circumstances of the appellant, and confirms the ministry's decision that the appellant is not eligible to receive a Crisis Supplement for food.