

PART C – Decision under Appeal

This is an appeal of a reconsideration decision of the Ministry of Social Development (“the ministry”), dated August 20, 2012, in which the ministry denied the appellant a crisis supplement for clothing. The ministry relied on section 59 of the *Employment and Assistance Regulation* (“EAR”), finding that there were resources available to him and that his physical health was not in danger.

PART D – Relevant Legislation

EAR Section 59

PART E – Summary of Facts

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

- A doctor's note dated August 1, 2012, which states:
"Due to excessive weight gain secondary to medical therapy [the appellant's] clothes are too small and he requires some larger clothes."

The following evidence was introduced at the hearing:

Appellant

- The appellant stated that he has gained weight suddenly. He has gone to most of the used clothing stores in his city but he cannot find clothing that fits him. They are either too large or too small for him. There are sweat pants but he doesn't want to wear them.
- Under questioning as to whether his health was at risk he stated that he can only wear shorts.
- He listed the clothing stores he had attended in his search for new clothing.

The ministry

- The ministry stated there was no verification of a lack of resources.

Under section 22(4)(b) of the *Employment and Assistance Act*, the Panel admitted the new evidence as it is in support of information and records which were before the Ministry at the time of its decision.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision to deny a crisis supplement for clothing for the appellant was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The applicable portion of section 59 of the EAR states:

- 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*.

Appellant's submission

The appellant argues that his weight gain requires him to obtain new clothing, which is not available in the used clothing stores and which his income assistance payments do not enable him to afford.

In his request for reconsideration he stated that his clothes are too small because he gained a lot of weight. They are worn out and he can't afford new clothes on what he receives from welfare. He can't find what he needs in the used clothing stores.

In his notice of appeal, the appellant states that he disagrees with the ministry's interpretation of section 59(1)(a). He disagrees with the ministry's interpretation that he must be in imminent physical danger to receive a crisis supplement. He argues that the legislation says "or," not that all three criteria must be met.

Ministry's submission

In its decision, the ministry agreed that the need for clothing was unexpected, however, it argued that resources are available to the appellant in the form of his income assistance payment, which is designed to provide for daily living costs.

The ministry also disagreed with the appellant's assertion that there was no appropriate clothing available to him in the second-hand clothing stores in his city. The appellant listed the stores he attended and said there were sizes too large or too small for him, as well as sweat pants, which he did not want to wear. The ministry stated that the evidence was insufficient regarding the lack of appropriate clothing. It argued that there was a variety of sizes at these stores. It would have accepted notes from the used clothing store managers stating they did not have the items sought by the appellant. Nor was there evidence of an imminent physical danger to the appellant if he did not obtain the clothing.

Reasoning

Examining the first criterion, the panel finds the ministry was reasonable in its conclusion, as the

regular income assistance payment is designed to include an amount for daily living costs, which includes clothing.

The panel also finds the ministry was reasonable in requiring evidence beyond what the appellant presented in terms of available clothing at the used clothing stores. The inventory of such stores often changes and the appellant was able to find clothing both too small and large for him, as well as sweat pants. Although he has gained weight, the fact that he could find clothing too large for him indicates that he is not of a size that most of the clothing is too small for him.

The third test relates to "imminent danger to the physical health of any person in the family unit."

The appellant disagrees with the ministry's interpretation of this section, arguing that the "imminent danger" test is not applicable.

Despite this, the panel finds that in addition to the criteria set out in section 59 (1)(a), one of the criteria in 59(1)(b) must also be met.

- (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*.

The second criterion is not applicable to the appellant in that he is not facing the removal of a child by the government. This leaves the first criterion, which was referenced by the ministry: whether the failure to provide the crisis supplement would result in "imminent danger to the physical health of any person in the family unit." The appellant states he only has shorts to wear and submitted a doctor's note which stated:

"Due to excessive weight gain secondary to medical therapy [the appellant's] clothes are too small and he requires some larger clothes."

While there is evidence of a need, the panel agrees that the ministry was reasonable in not finding it sufficient to meet the standard of imminent danger to the physical health of the appellant.

In conclusion, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

The decision is confirmed.