

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 12 September 2012 that denied the appellant's request for a crisis supplement under section 57 of the Employment and Assistance for Persons with Disabilities Regulation. The request was for a bed to replace one ruined by a sewage leak while being stored at the home of the appellant's daughter. The ministry found that the appellant had been maintaining a home (Road A residence) for the past eight months and the ministry had been paying her rent directly; therefore, there is no reason for her to store her bed in her daughter's basement. The request is for additional bedding as she has been sleeping on the couch at her sister's; however, she should have a bed at her Road A residence and therefore did not have a need for storage. Thus the ministry found that she has the resources available to fulfill her need for a bed. In addition the ministry found that there is no indication that failure to receive secondary bed at her sister's home will present imminent danger to her physical safety. As the legislative criteria have not been met, the ministry found that she was not eligible for the requested crisis supplement.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 57

## PART E – Summary of Facts

Shortly before the hearing was scheduled to begin, the appellant telephoned the Tribunal office, advising that she would not be able to attend the hearing in person as planned because her car would not start. The appellant was given the instructions for participating by teleconference and attended the hearing, with her advocate, by telephone.

The ministry failed to appear at the beginning of the hearing at the scheduled time and place. 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. After the hearing concluded, the ministry representative appeared at the conference room door, explaining that she had been waiting outside since 10 minutes before the scheduled start of the hearing. After investigating whether there had been a procedural error and determining that under the circumstances none had occurred, the Tribunal Chair instructed the panel to proceed with submitting its decision under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration consisted of the following:

- In her Request for Reconsideration dated 05 September 2012, the appellant states that: "I have no bed as my bed was stored at my daughter and there was a flood. My friend I was usen they needed it back [sic]. I am now sleeping on my couch."
- In the reconsideration decision, the ministry states that notes on the appellant's file indicate that she has been staying with her sister as the latter goes through cancer treatment; the appellant stated that her sister is now well enough and that the appellant would like to start gathering things for her home. The ministry contacted the appellant's landlord to confirm her presence in the apartment as the ministry had found that her rent was being paid directly to the Road A residence. The landlord confirmed to the ministry that two females live in the apartment and had been there since January 2012.

In her Notice of Appeal dated 11 October 2012 the appellant writes: "I disagree with this decision because it was a misunderstanding of communication. I will explain this to you at tribunal."

At the hearing, the appellant's advocate explained that the appellant and her roommate learned from a mutual friend that the mutual friend was leaving her Road A apartment. They jumped at the opportunity and rented the apartment in January 2012. The mutual friend left some things behind, including a bed, on the understanding that the bed would be returned if and when needed. On this basis, the appellant put her own bed into storage in her daughter's basement. Subsequently, the appellant stayed for three months at her sister's place, caring for her while she battled cancer. When she returned to her apartment, she learned that she had to return the bed because it was needed by someone in the friend's family. At about the same time, she also learned that her own bed had been ruined by a sewage leakage in her daughter's basement. As a result, since August she has been sleeping on the couch in her apartment. The advocate also stated that the appellant had canvassed numerous charitable organizations about getting a bed, with no success.

In answer to a question, the appellant stated, through her advocate, that the appellant's daughter lived in a rented house and did not have rental insurance for loss or damage to home contents. In answer to another question, the appellant stated that while she was attending to her sister, no one else, other than her roommate, was staying at the apartment in her place. The roommate has recently

left without notice, leaving outstanding bills. This has created additional financial problems for the appellant, who is also distraught over the death of her sister in October.

The panel finds that the new information provided by the appellant at the hearing regarding her bed is in support of the information and records that were before the ministry at the time of reconsideration, clarifying why the appellant's bed was put into storage at her daughter's. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act. The panel finds the additional information respecting the sudden departure of the roommate, and the appellant's subsequent financial stress, is not admissible as this situation was not before the ministry at reconsideration.

## 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 57 of the EAPWDR. The requested crisis supplement was for a bed to replace one ruined by a sewage leak while being stored at the home of the appellant's daughter. In particular, the issues are whether the ministry was reasonable in addressing the following: Was the need for a replacement bed unexpected? Are there other resources available to meet the need? And would the failure to meet the expense result in the imminent danger to the appellant's physical health?

The applicable legislation is from section 57 of the EAPWDR:

### 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*.

The position of the appellant is that her request for a crisis supplement to cover the cost of a replacement bed meets the legislative criteria. The need to replace the appellant's bed lost in the sewage leak in her daughter's basement is an unexpected expense. As she has to manage on disability benefits and has not been able to obtain a bed from charitable sources, it is clear that there are no resources available to her to meet this need. And as a person with disabilities in her fifties, a good bed is essential for her to retain her physical health.

The position of the ministry, as set out in the reconsideration decision, appears to the panel to be based on two alternative premises. Premise A is that the appellant unnecessarily moved her bed into storage at her daughter's house for the period during which she was providing care for her sister. As the ministry was paying the rent directly for the appellant's apartment, there was no need to put the bed into storage and therefore she should have had resources (i.e. the bed) available to her to meet her need for a bed. Premise B is that she was seeking an additional bed while staying with her sister, when she should already have had one at her apartment; there was no indication that failure to have another bed at her sister's would have resulted in imminent danger to the appellant's physical health.

The panel notes that the ministry did not seem to have an accurate or complete understanding of the background to the appellant's crisis supplement request. As an example, the ministry understood that the appellant's sister "is now well enough," when in fact she was terminally ill. Moreover, the ministry was unaware that the appellant's bed, the one damaged in the sewage leak in her daughter's basement, was put into storage there prior to the appellant moving into the Road A residence, and that the bed she had been using had been left there by the previous tenant (and mutual friend) on loan. The panel notes that in the reconsideration decision the ministry does not dispute that a bed is something the failure of which to obtain will result in imminent danger to the physical health of a person. The ministry also did not dispute the appellant's claim that her bed had been destroyed in the

sewage leakage in her daughter's basement.

The panel acknowledges that the need to return a borrowed item is usually not considered "unexpected," and would therefore not be grounds for approving a crisis supplement. However, in the present appeal, the "crisis" arose not because of the need to return the borrowed bed, but because the bed on standby in storage had been ruined, more or less at the same time. The panel therefore finds that the ministry was unreasonable in finding that the replacement of the appellant's bed was not unexpectedly needed. Though the ministry makes no determination in this respect, the panel further finds that the appellant, as a person on disability assistance, is unlikely to have the financial resources available to meet this need and has canvassed other charitable organizations for the item without success.

Accordingly, the panel finds that the ministry's decision denying the appellant a crisis supplement for a replacement bed was not reasonably supported by the evidence. Therefore the panel rescinds the ministry decision in favour of the appellant.