

PART C – Decision under Appeal

The decision being appealed is the reconsideration decision dated September 4, 2012 which held that the appellant is not eligible for a crisis supplement to purchase clothing under section 57 of the Employment and Assistance for Persons With Disabilities Regulation because he did not meet the criteria as set out in the legislation and specifically that he did not demonstrate: that the clothing supplement was needed to meet an unexpected expense or to obtain an item unexpectedly needed and that there were no alternate resources available to him. However; the minister was satisfied that the criterion such that that failure to receive a crisis grant for clothing will result in imminent danger to the appellant's physical health was established.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 5.

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 57.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration included a Request for Reconsideration dated August 27, 2012 with 2 attached letters as follows:

- A letter dated August 27, 2012 from a case manager supporting the appellant's request.
- A letter dated August 25, 2012 from a social worker supporting the appellant's request.

In the letter from the case manager, it is stated that the appellant's well being is directly impacted by the denial of the crisis grant as his health shall deteriorate if he does not successfully receive the required funds to purchase proper footwear and clothing to adequately keep him warm and prevent potential development of pneumonia.

In the letter from the social worker, it is indicated that the appellant is a hospital patient and is in urgent need of a clothing grant to prevent further physical damage to his health. As the appellant has a history of asthma and recently visited the emergency department, the social worker is concerned that the appellant's clothing is inadequate to keep him warm and prevent the development of pneumonia. "In addition, he is currently awaiting hip surgery. He has been advised to purchase proper footwear that will prevent damage to his hip while he awaits surgery and prevent falls. His current shoes are broken and put him at risk of falling."

With his Notice of Appeal dated September 12, 2012 the appellant includes 2 letters as follows:

- A letter dated September 12, 2012 from the appellant's case manager, (same as noted above) who provides additional supporting information.
- A letter dated September 12, 2012 from the appellant's physician with an additional signature from a different social worker which supports the appellant's request and provides additional medical information.

In the letter from the case manager, it is indicated that the appellant is approximately 6'5" tall, his foot size is 13 and that he has searched several community thrift shops and donation rooms for appropriate footwear. Due to his many health challenges and his physical size, it is further indicated that it is very difficult to secure items through free and or low cost shopping. The appellant is stated to have "unexpectedly" gained weight and "as a result of this weight gain is experiencing multitude of challenges to securing warm and essential items that will prevent him from becoming ill." The appellant has HIV and is vulnerable to opportunistic infections and his weight gain is a result of his impaired mobility, lack of appropriate footwear that impedes his ability to move and exercise, lack of whole and low sodium foods and impacts of medication regimes. The writer reiterates support for the appellant's access to a crisis grant due to his health which will continue to deteriorate if he does not successfully receive the required funds to purchase proper footwear and clothing to adequately keep him warm and prevent pneumonia.

In the letter jointly signed by the appellant's physician and another social worker, it is confirmed that the appellant is a hospital patient who has multiple chronic health conditions which are being followed closely at their program. It is reported that the appellant requires hip replacement surgery and is being followed by an orthopedic surgeon. It is further reported that the appellant experiences chronic pain as a result of this condition, which will not improve until his surgery, which has no set date due to "various medical conditions". It is noted that he needs proper footwear as his current footwear is insufficient in protecting his feet nor provide him support when he tries to walk and are clearly too

small for him. The appellant is noted to require proper footwear that actually fit his size 13 feet. The appellant is reported to be relying heavily on a cane for his mobility. "His mobility is likely to continue to deteriorate due to his need for surgery." The letter states that the physician is concerned that the appellant will injure himself through a fall or will develop sores as a result of improper footwear and that this is not helping his mobility. It is also indicated that the appellant has tried to find shoes through various charitable organizations without success. The physician states that in his opinion the appellant needs a new pair of shoes, and without proper shoes he will likely fall and injure himself or develop sores which will further complicate his already compromised health.

This new evidence submitted by the appellant in his Notice of Appeal is admitted by the panel under section 22(4) of the Employment and Assistance Act as written testimony in support of the information and records that were before the ministry at reconsideration.

Findings of Fact

- The appellant, subject to the regulations, is eligible for disability assistance and supplements.
- The appellant requested a crisis supplement for clothing on August 17, 2012 at which time the request was denied.
- The appellant has gained weight.
- The appellant has made significant efforts to find both clothing and footwear at various community thrift shops, donation rooms and through various community organizations without success.
- The appellant requires hip replacement surgery and is being followed by an orthopedic surgeon.
- The appellant experiences chronic hip pain which will not improve until his surgery, which has no set date due to "various medical conditions".
- The appellant has not received a crisis grant for clothing in the last year.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was ineligible for a crisis supplement for clothing because the ministry determined that the appellant did not meet the criteria for a crisis supplement as set out in section 57 (1) of the EAPWDR and specifically he did not demonstrate; that the clothing supplement was needed to meet an unexpected expense or to obtain an item unexpectedly needed and that there were no alternate resources available to him. However; the minister was satisfied that the criterion such that that failure to receive a crisis grant for clothing will result in imminent danger to the appellant's physical health was established.

The following sections of the EAPWDR apply to this appeal:

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.

The appellant argues that due to his size, health and mobility limitations; he meets all the criteria as required by the legislation for a clothing supplement.

The ministry argues the appellant did not meet all the legislated criteria for a crisis supplement for clothes. The minister could not establish that the appellant's need for clothing is due to an unexpected expense and clothing is not an item that is unexpectedly needed. Although, the appellant has indicated that he has gradually gained weight over the past 4 months; the ministry found that this gradual weight gain cannot be considered unexpected and there is no indication that it is due to a medical condition or extenuating circumstances. The ministry also argues the appellant presented no information to indicate that he has explored local community resources to obtain clothes and therefore the ministry could not establish that the appellant doesn't have resources available to meet his need.

With regard to the first criterion, the panel notes that the need for clothing/footwear is not generally something unexpected, but rather is a regular and expected occurrence, however; in the circumstances of the appellant who has a long standing health issue; he was unexpectedly advised to purchase proper fitting footwear that will prevent damage to his hip and prevent falls, while he awaits surgery. The panel finds that the information provided by the social worker on August 25, 2012 confirms the appellant's particular medical situation and is further supported by the letters received on appeal from his case worker, physician and another social worker. Although it is not clear as to who advised the appellant to obtain proper footwear, the panel finds it compelling that 4 individual professionals who know the appellant's medical condition and extenuating circumstances indicate their support and confirm that he has an immediate need for proper fitting footwear. "His mobility is likely to continue to deteriorate due to his need for surgery." The panel also finds that the request for a crisis supplement for clothes/footwear was an unintended consequence of the appellant's lack of mobility that it is due to a medical condition and extenuating circumstances and thus the panel finds that the ministry was not reasonable to determine that the clothing/footwear was not an unexpected expense and that the appellant has a need to purchase these items as a necessity.

With regard to the second criterion, the panel notes that while the legislation does not specify that the appellant must provide information to indicate that he has explored local community resources to obtain clothes, the appellant's size suggests that resources may not be readily available to meet his need to find proper clothing/footwear. The panel finds that the evidence does demonstrate alternate resources were not available to him by his significant efforts to find both clothing and footwear at various community thrift shops, donation rooms and through various community organizations, all without success. Additionally, the appellant did not have time to accumulate resources as he was unexpectedly advised to purchase proper footwear. Therefore, the panel finds that the ministry

unreasonably determined that the appellant had resources available to him.

As the appellant does meet all the legislated criteria to receive a crisis supplement to purchase new clothing/footwear, the panel finds that the ministry's decision is not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the decision.