

PART C – Decision under Appeal

The decision being appealed is the reconsideration decision dated November 6, 2012 which held that the appellant is not eligible for a crisis supplement to purchase furniture (bed) 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. Specifically; he did not demonstrate that the need for a furniture supplement was required to meet an unexpected expense or to obtain an item unexpectedly needed, that there were no alternate resources available to him and that failure to obtain these items will result in imminent danger to the appellant's physical health.

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 Note to Worker dated September 10, 2012;
- a Note to Worker dated October 4, 2012;
- a note dated October 15, 2012 from a front desk support worker at the appellant's residence;
- a 2nd note dated November 1, 2012 from the front desk support worker at the appellant's residence; and
- a File # from the local police department.

In the Note to Worker dated September 10, 2012, the appellant indicates that he is looking for some money for a bed and new bedding as he had to throw out his bed due to bed bugs and his bedding was stolen from the laundry room in his building. The appellant adds that he has also called a bed furniture store and was advised that there is a wait list of 6 months for a bed.

In the Note to Worker dated October 4, 2012, the appellant makes a 2nd request for money to purchase a bed indicating that he had to get rid of his other one after getting bed bugs, 4 times. The appellant indicates that he has found a few beds on line for \$200-\$300 and has also called a bed furniture store and was advised that there is a wait of at least 6 months.

In the note dated October 15, 2012 from the front desk support worker at the appellant's residence, it indicates that the sauna was not working, the appellant had bed bugs and they were taken care of and that he had to get rid of his bed.

In the 2nd note dated November 1, 2012 from the same front desk support worker at the appellant's residence, it states that the appellant had bed bugs but no longer has that issue. It indicates that because the building is new, it is harder for bed bugs to travel between suites through the walls. Also, it indicates that the new bed bug sauna has not been working and that the appellant was unable to use this resource to help de-bug his larger furniture items.

On appeal, the appellant submitted the following:

- a letter dated October 31, 2012 from the appellant's registered clinical counselor;
- a letter dated December 6, 2012 from a community support worker at the appellant's residence;
- an e-mail dated December 7, 2012 regarding a bed for sale; and
- a letter dated December 13, 2012 from the appellant's physician.

In the letter from the clinical counselor, it indicates that the appellant has been his referral from the appellant's physician since 2008 and that the appellant is confirmed to be treated for Post Trauma Stress Disorder (PTSD).

In the letter from the community support worker at the appellant's residence, it indicates that the sauna used to treat bed bug infested furniture was malfunctioning so that was not an option to treat the appellant's bed. Also, it indicates that bed bug covers are not a means of treating beds which

have been infested with bugs rather they are a measure of preventing infestation. The letter also states that the staff at the residence have bed bug covers which will be provided to the appellant so that his next bed does not become infested.

In the e-mail regarding a bed for sale, it indicates that she has been holding a double bed complete with mattress, box spring and frame for \$350 and needs to know if he is still able to buy the bed and to let her know as soon as possible.

In the letter from the appellant's physician of 9 years, it reports that he sees the appellant regularly for PTSD, diabetes, neuropathy and chronic musculoskeletal issues. It states that the appellant is not employable. The physician indicates that due to the appellant's physical and emotional problems, he is in dire need of a bed and requests that the ministry address this issue at its earliest opportunity, on an emergency basis.

The appellant testified that this is the 4th time that he has had bed bugs since moving into this residence in April, 2010. At the time of his request for a supplement from the ministry for a bed and bedding, the bed bug issue had not yet been resolved and knowing that he could not have a new bed until it was resolved, would sleep on a couch. The appellant approached a local charity to apply for the bed donation program from a bed furniture store and was told that there was a 6 month minimum waiting period. Once the bed bug infestation was dealt with and the bed bug sauna working, the appellant returned to the ministry with his request. As requested by the ministry, the appellant submitted letters from his landlord which did not meet the criteria therefore, he returned to the landlord in order to obtain further information about the infestation. He was not aware of encasements or bed covers at that time.

The appellant indicates that he lives on \$448.37 a month after his rent is paid and utilizes that money for food, daily living expenses and transportation. He regularly uses the food bank and collects bottles to supplement his income. He doesn't have family or friends who are able to loan him money to purchase a bed although, his cousin who is referred to in the e-mail is willing to sell him a bed for \$350.

The appellant indicates that he has been sleeping on a couch for 5 months that has a significant dip in the middle due to continuous use and is narrow. Due to sleeping on the couch, he indicates that he has discomfort in his back; it hurts, particularly since he suffers from chronic back pain and he sleeps less than before.

The ministry had no objection to the acceptance of the new information.

No additional evidence was provided by the ministry on appeal.

The 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.

The advocate's submission is accepted as argument.

Findings of Fact

- The appellant, subject to the regulations, is eligible for disability assistance and supplements.
- The appellant is a single person receiving the following monthly benefits: \$531.42 support, \$375 shelter, \$35 diet supplement, \$ 100 Community Volunteer supplement minus his CPP income \$463.05 and \$30 repayment.
- On October 19, 2012, the appellant told a ministry worker on the phone that he had thrown out his bed 4 months prior.
- On December 6, 2012, the community support worker at the appellant's residence writes that the sauna used to treat bed bug infested furniture was malfunctioning so that was not an option to treat the appellant's bed.
- The appellant's physician of 9 years reports in a letter dated December 13, 2012 that he sees the appellant regularly for PTSD, diabetes, neuropathy and chronic musculoskeletal issues.

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 furniture (bed) 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 furniture supplement was needed to meet an unexpected expense or to obtain an item unexpectedly needed, that there were no alternate resources available to him and that failure to obtain these items will result in imminent danger to the appellant's physical health.

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 an unexpected bed bug infestation and because the bed bug sauna was not working in his building, he had no choice but to get rid of his bed. Also, prior to getting a clean bed before the bed bug sauna was working would not be reasonable, so in the interim he would sleep on his couch. Once the bed bug issue was resolved, the appellant returned to the ministry to request a furniture supplement and provided the additional information that they had required. At no time did he think he was not eligible for a supplement while he continued to search for new bed options. The appellant testifies that he has no alternate resources available to him and his monthly support does not meet his basic needs and due to his physical and mental disabilities as confirmed by his physician, he needs a new bed as soon as possible.

The ministry argues the appellant did not meet the legislated criteria for a crisis supplement for furniture (bed). The minister could not establish that the appellant's need for a bed is due to an unexpected expense or an item that is unexpectedly needed because the appellant made a decision to get rid of his bed rather than attempt treatment with a mattress encasement and has not created an expense which is unexpected, but could have been reasonably anticipated. The ministry notes that the appellant had stated on October 19, 2012 that he had thrown out the bed 4 months ago which means that he had been aware of a need for a new bed since June 2012.

The ministry also argues the appellant presented no information to establish that he has no resources available to obtain a bed on his own. Although, the ministry acknowledges that the onsite debugging equipment at the appellant's building was not working and the appellant could not use it to preserve his bed, the ministry has not been provided with information as to why a mattress encasement for this purpose was not used. The ministry states that the appellant receives monthly disability assistance which is intended as a resource to obtain items of need including furniture and while the appellant had been aware of his need for a bed for 4 months, he has not provided any details as to why he was unable to use these funds to help meet his need.

The ministry has found that the appellant has not provided information to establish that failure to obtain a bed will result in imminent danger to his physical health. The ministry notes that bed bugs are no longer in the appellant's residence and the appellant has indicated that his couch is an adequate sleeping surface.

With regard to the first criterion, the panel notes that the need for furniture (bed) is not generally something unexpected, but rather is a regular and expected occurrence over time, however; in the circumstances of the appellant; he was unexpectedly faced with a bed bug infestation for the 4th time in 2 years and the bed bug sauna was not functioning. The panel finds that the information provided by the appellant confirms that he needed to dispose of his bed as there were no other options available at the time which is supported by the notes from his building support workers. The panel finds that while the need for the bed was therefore no longer an item unexpectedly needed,

the appellant could not be expected to replace the bed before the bed bug issue was resolved. Therefore, the panel finds that the ministry unreasonably determined that the need for a bed cannot be considered an unexpected expense pursuant to section 57(1)(a) of the EAPWDR.

With regard to the second criterion, the panel notes that the legislation does not specify that the appellant must provide information to indicate that he has taken appropriate measures to preserve his furniture (bed) however; the appellant has testified that he was not aware of a mattress encasement or cover until the ministry mentioned it and when his residence support worker indicated that he would be given one for his new bed as a prevention for bed bugs. The panel also relies on the appellant's testimony; that his monthly assistance does not adequately cover his basic needs, that he regularly uses the food bank, collects bottles to supplement his income and that he has no other resources available to him. The panel finds that the evidence does demonstrate that the appellant has made significant efforts to find another affordable bed. In view of this evidence the panel finds that the ministry unreasonably determined that the appellant had resources available to him and the panel therefore, finds that the ministry was unreasonable to conclude that there are resources available to the family unit based on the evidence pursuant to section 57(1)(a) of the EAPWDR.

With regard to the third criterion, the panel notes that the appellant's physician of 9 years has provided medical evidence to indicate that he sees the appellant regularly for PTSD, diabetes, neuropathy and chronic musculoskeletal issues and indicates that due to the appellant's physical and emotional problems, he is in dire need of a bed and requests that this issue be addressed on an emergency basis. The panel also finds that due to sleeping on the couch, the appellant has testified that he has increased discomfort in his back and he sleeps less than before. For these reasons, the panel finds that in the circumstances of the appellant, that sleeping on his sofa for a prolonged period would result in imminent danger to the physical health of the appellant. Therefore, the panel finds that the ministry unreasonably determined that the appellant did not meet the legislated requirement pursuant to section 57(1)(b) of the EAPWDR.

In applying the legislation to the facts of the case, the panel finds that the ministry unreasonably determined that the appellant does not meet the legislative criteria for receiving a crisis supplement for furniture (bed) and rescinds the ministry decision in favour of the appellant.