

APPEAL #

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (the "Ministry's") Reconsideration Decision dated February 26, 2013 which denied the appellant's application for hardship assistance as the information did not establish that her physical health would be in imminent danger if hardship assistance was not provided, as required by Section 47.1 of the Employment and Assistance Regulation.

**PART D – Relevant Legislation**

*Employment and Assistance Regulation (EAR), Section 47.1*

## PART E – Summary of Facts

At reconsideration, the documents that were before the ministry included the following:

- The appellant's request for reconsideration dated February 13, 2013 indicating that she is very sick with her diabetes being out of control, that she is homeless and living in a shelter, and cannot control her blood glucose levels eating the over processed foods from free food places.
- Letter from the appellant's family doctor (the "GP") of three years dated February 7, 2013 indicating that the appellant suffers from severe form of diabetes affecting her eyes. The GP reports that the appellant is on a high dose of hypoglycemic medications and in the future may be switched to Insulin. The GP also reports that the appellant suffers from elevated cholesterol, has mobility issues due to degenerative disc disease and arthritis affecting multiple joints, lower back and neck. The GP also reports that the appellant suffers from depressed mood and anxiety.
- Note from a doctor dated January 10, 2013 indicating that the appellant is unable to work for one month due to personal stress and panic attacks.
- Letter from the Ministry to the appellant dated May 19, 2011 regarding the appellant's ineligibility for income assistance due to lifetime sanctions and restitution order.

In her Notice of Appeal, the appellant states that she disagrees with the Ministry decision because she is homeless, living on the street, sick and suffering with the complications of diabetes, arthritis and cranial dystonia. With her Notice of Appeal the appellant also provided a note from a doctor dated October 26, 2006 indicating that due to chronic anxiety and chronic cervical dystonia the appellant is unable to work. The doctor reports that the appellant's condition is chronic and unchanged for the past five years (the 2006 Doctor Letter).

### *Admissibility of New Information*

At the hearing the appellant provided a letter from the GP dated March 12, 2013 (the March 2013 Doctor Letter) stating that the appellant suffers from severe poorly controlled diabetes, multiple mental conditions and musculo/skeletal problems. The GP states that the appellant requires subsidy for additional nutritional items and failure to provide her with them will cause imminent danger to her life.

At the hearing, the appellant's advocate, provided the following oral evidence:

- The advocate stated that the appellant is still homeless and living in a shelter and that her health has deteriorated, especially her diabetes and vision, and that the appellant is waiting for further test results regarding her kidney function
- The advocate stated that the appellant's mental health conditions are aggravated and her depression is now quite severe
- That most of the community resources offering free foods provide foods such as coffee and donuts, white bread, and other processed foods
- That there are a few community resources that offer healthier food options but there is a small

fee for those meals and the appellant has no financial resources to pay for the healthier food options

At the hearing, the appellant provided the following oral evidence:

- That she was diagnosed with manic depressive disorder at age 17 and although it was stable for several years, it has become aggravated with the stress of being homeless and having deteriorating health conditions
- That she is allergic to many medications so she tries to control her mental health issues as best as she can and has recently seen a counselor
- That it is very difficult to be without a home and living in a shelter
- That all of the community resources that offer free food provide foods that are processed and turn into sugar so she has difficulty controlling her blood sugar levels

The Ministry did not object to the admissibility of the 2006 Doctor Letter, the March 2013 Doctor Letter or the oral evidence of the appellant or her advocate. The panel admitted the 2006 Doctor Letter, the March 2013 Doctor Letter, as well as the appellant and advocate's oral evidence, pursuant to Section 22(4) of the EAA, as providing further detail of the symptoms and impacts of the appellant's diagnosed conditions and treatment and being in support of information that was before the Ministry on reconsideration.

The Ministry did not provide any further submissions before the hearing and relied on the Reconsideration Decision.

Based on the documents, the panel's finding of facts are as follows:

- The appellant is homeless and living in a shelter;
- The appellant has been diagnosed with diabetes which is poorly controlled, degenerative disc disease, chronic cervical dystonia, arthritis, chronic anxiety and depressed mood; and
- The food available to the appellant does not meet her nutritional needs and exacerbates her diabetes-related problems.

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the Ministry's Reconsideration Decision denying the appellant's request for hardship assistance pursuant to Section 47.1 of the EAR on the basis that the information did not establish that the appellant's physical health would be in imminent danger if assistance was not provided.

The relevant section of the EAR is as follows:

**47.1** (1) In the circumstances described in subsection (2), the minister may provide hardship assistance to a family unit that under section 15 (5) (a) [*consequences for conviction or judgment in relation to Act*] of the Act is not eligible for income assistance because it includes only

(a) persons convicted of an offence under the Criminal Code, this Act or the *Employment and Assistance for Persons with Disabilities Act* in relation to obtaining money under this Act or the Employment and Assistance for Persons with Disabilities Act by fraud or false or misleading representation,

(b) persons convicted of an offence under this Act or the *Employment and Assistance for Persons with Disabilities Act*,  
or

(c) persons in respect of whom

(i) a court has given judgment in favour of the government in an action for debt for obtaining income assistance, hardship assistance or a supplement under this Act or disability assistance, hardship assistance or a supplement under the Employment and Assistance for Persons with Disabilities Act, for which he or she was not eligible, and

(ii) the minister has made a declaration under section 15 (3) of the Act.

(2) The minister may provide hardship assistance to a family unit described in subsection (1) if the minister considers that otherwise

(a) the family unit will experience undue hardship, and

(b) the physical health of a person in the family unit will be in imminent danger.

### **Imminent Danger**

The Ministry's position is that the appellant is not eligible for hardship assistance as the information provided did not establish that she would be in imminent danger if assistance is not provided as required by EAR Section 47.1. While the Ministry acknowledges that the appellant is homeless and has current medical conditions from which she may face danger to her health in the future if untreated, they were not satisfied that she is unable to obtain currently required medical treatment through the Province's medical system and Fair Pharmacare, and adequate nourishment from other resources.

In response to a question, the Ministry admitted that they are not aware of community resources that could provide the nourishment that the appellant may need and were only aware that there are a

variety of community resources that provide free food. The Ministry was not satisfied that the information established that the appellant would face imminent danger if hardship assistance is not provided.

The appellant's position is that her health conditions are worsening and that because the free food she can obtain is all over-processed, she is unable to properly control her blood sugar levels so her diabetes is worsening. The appellant also states that because of the stress of being homeless, her mental health conditions are worsening and she is having more and more trouble dealing with her situation. The appellant states that the Ministry is wrong in that the community resources which she can access without funds cannot provide free adequate nutritional resources for her required diet. For example, the appellant states that all of the community resources that she has found that offer free food all provide over processed foods as opposed to the whole grains, proteins, fruits and vegetables that she requires.

The appellant's position is that she does face imminent danger if hardship assistance is not provided because if she continues on the diet she is on now, she could lose her vision permanently, her kidney and liver could shut down and because of high cholesterol she could have a heart attack.

The advocate stated that although there is one community resource that tries to provide balanced meals, there is a cost for those meals and although the cost is minimal, the appellant has no financial resources to even pay that minimal cost to obtain those meals.

#### *Panel Decision*

The panel finds that although the appellant's health conditions are worsening and she is having trouble controlling her blood sugar levels due to her inability to obtain free food that provides adequate nourishment (i.e. a balance of whole grains, protein, fruits and vegetables as opposed to processed foods), the medical information does not establish that her physical health will be in imminent danger if hardship assistance is not provided.

In the March 2013 Letter, the GP states that the appellant "...requires subsidy for additional nutritional items and failure to provide her with them will cause imminent danger to her life". However, the GP does not provide any information as to what nutritional items are required or how failure to provide them will cause imminent danger to the appellant's life. The term "imminent" requires a degree of immediacy and the GP does not provide any indication of how quickly the appellant's health could deteriorate or any information as to what the imminent danger will be. The panel finds that the statement that the appellant will face imminent danger to her health if the assistance is not provided, without further explanation, is not sufficient to satisfy the legislative criteria.

The panel finds that the appellant's evidence that her organs could shut down, that she could lose her vision permanently or that she could have a heart attack, without supporting medical evidence as to the likelihood of that happening in the immediate future, is also not sufficient to establish the degree of immediacy required to establish that she faces imminent danger to her health if the hardship assistance is not provided.

In closing submissions, the advocate also stated that in a recent conversation with a specialist, she

was advised that diabetes is just another word for heart disease, but the panel notes that there was no information from the specialist to support this statement or that this is a generally accepted medical statement. In addition, there was no medical evidence provided to indicate that even if accepted, this statement means that the appellant faces imminent danger of heart disease, stroke, or a heart attack.

Based on the foregoing, the panel finds that the Ministry reasonably concluded that the appellant did not satisfy the legislative criteria of Section 47.1 of the EAR.

### **Conclusion**

In conclusion, the panel finds that the Ministry's Reconsideration Decision to deny the appellant's request for hardship assistance as she did not meet the legislative requirements of EAR Section 47.1 was reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances. Therefore, the panel confirms the Ministry's Reconsideration Decision.