

### PART C – Decision under Appeal

The Decision under Appeal is the Ministry of Social Development, (ministry) Reconsideration Decision, dated April 12, 2013, which denied the appellant a crisis supplement for shelter. The ministry determined that the Appellant was not eligible for a crisis supplement under sec. 59 of the Employment and Assistance Regulation as the shelter supplement requested was not unexpected, resources were available to the appellant and there was no evidence of imminent or immediate danger to the appellant's physical health if she did not get the supplement.

### PART D – Relevant Legislation

EAA	Employment and Assistance Act – Definitions and Sec. 4
EAR	Employment and Assistance Regulation – Sec. 59

## PART E – Summary of Facts

The evidence before the ministry at reconsideration was as follows:

- 1- One page document entitled "Shelter Information." This document dated Feb. 6, 2012 indicated there were three adults at the address, total shared rent was \$1250.00 per month, the appellant's portion of rent was \$417.00 and her share of security deposit was \$250.00. The document named the property owner and another person as manager.
- 2- One page document, purporting to be a 10 day Notice to End Tenancy, dated Mar. 7 2013. It is addressed to the appellant and two others, a male and female, and the reasons given are failure to pay rent in the amount of \$375 for Feb. 2013 and for utilities and damage of \$505.00. The Notice is signed by the male tenant on behalf of the Landlord.
- 3- An "Employment and Assistance Request for Reconsideration," dated Mar. 14, 2013, including the original reasons of the ministry for denial of the supplement and the appellant's reasons for the reconsideration request. The decision notes that on Mar. 7 the appellant called the ministry stating that because the ministry had placed a stop payment on a Feb. rent/damage deposit cheque, for a room-mate who had moved out, the three remaining roommates owe additional rent. On Mar. 11 the appellant attended the ministry with the above eviction notice and indicated the ministry stopped a previous tenant's cheques when the tenant moved out; they were then given an eviction notice on Mar. 8. An Employment and Assistance Worker, (EAW), noted the male tenant on the Notice, was also the person who signed on behalf of the Landlord, and then contacted the property owner. The EAW was advised by the property owner that the home had been rented to the appellant and the male tenant and that they represented themselves as a couple. The owner advised she did not empower the male tenant to act for the property owner and was aware they had been subletting to help with the rent. The owner had given an eviction notice in Feb. but had agreed to let them stay until the home sells provided they caught up with the arrears. The owner stated that March rent was short \$150.00 in addition to the outstanding rent for Feb. and the \$505.00 for utilities and damage. The decision determined that the only legislated criteria not met for the supplement was that of unexpected expense. The appellant had entered into a tenancy with high rent and made arrangements to find others to share the rent. When a room-mate moved out she was unable to pay that portion of the rent. In the ministry's view this was not an unexpected set of circumstances. In her request for reconsideration the appellant stated: 1-the person who requested the stop payment on the landlords cheques had no reason to do so as he was living there; 2-this put three other people on the street, all of who are on assistance; 3-this person was in the home until Mar. 8 when he left without notice; 4-he damaged the property when leaving; 5-the three others are left to pay what he owed; 6-the person who left had been at the residence since he was released from jail and he owed money from that time forward; 7- everyone in the house had paid extra so this person could live there; 8-this person was caught using needles in the house and was asked to leave by months end and he agreed; 9- they did already get a notice to move but are allowed to stay until the house is sold, and maybe longer if the new owners agree; 10- the roommate who left, putting stop payments on two cheques to the landlord, has totally disrupted the other three tenants and given them bad credit in the landlord's eyes; and, 11- her male co-tenant had been in the property since Aug. 2011, the

appellant since Feb 2012 and the third co-tenant since Nov. 2012; it is difficult to find roommates and this matter could put them on the street.

The reconsideration decision, dated April 12, 2013, reviewed and summarized the facts as described above. The decision states that to qualify for a crisis supplement the appellant must meet all three criteria in Sec. 59(1). First, an unexpected expense or an item unexpectedly needed, secondly, no resources available to the appellant, and thirdly, failing to provide the item would result in imminent danger to the physical health of the appellant.

In relation to an unexpected expense, the ministry found that as the appellant had stated she and the other roommates had been paying for the 4<sup>th</sup> roommate's portion of the rent since he moved in; it was not unexpected they would have to pay again for March. In relation to resources available to the appellant, the ministry noted that the appellant moved into the accommodation with two others initially in Feb. 2012 and her rent portion was \$417.00. Since three are living in the accommodation presently, the resources were available to pay the rent. In relation to imminent danger to the appellant's physical health the ministry found that the owner had confirmed the person who signed the eviction notice had no authority to do so and there was no evidence to confirm the appellant was actually being evicted. As such, the ministry was not satisfied the appellant was in imminent danger to her physical health. As a result, the ministry denied the reconsideration application.

The appellant appealed to the Tribunal. Her Notice of Appeal, 8 pages, set out extensive reasons for the appeal. Among other things the appellant stated;

- the appeal was for all of the roommates;
- they owed money for Feb., March and now April rent, as well as for damages;
- the 4<sup>th</sup> roommate got out of jail at the end of Jan. and stayed until March;
- the other roommates put extra money in for food and utilities;
- more than \$725 is owing to the landlord;
- it was \$375 for rent and a portion for security, utilities and damage and any other monies owed to the landlord because of the stop payment;
- they did not find out about the stop payment until March;
- they are only allowed to stay if they pay up all the arrears;
- the ministry, by stopping payment, has put a burden on them by not paying the rent of the 4<sup>th</sup> roommate.
- the landlord rented the house to the male roommate and the appellant lived at a different address after the male roommate moved in;
- in her view the male roommate is the manager of the rental unit as he collects the rent and gives to the landlord;
- in relation to an unexpected expense she states that the roommates now have to pick up the extra rent even though they already paid their share and it is unjust that they have to pay for his damage deposit; and,
- she is not in danger but states the male roommate would not survive being homeless because of medical issues.

At the hearing the appellant produced copies of two cheques from BC Employment and Assistance dated Feb. 7 2013, payable to the Landlord. One was for \$350 and the other for \$375. These copies appear to be from a bank showing that cheques were returned on Mar. 1 2013 because payment was

stopped. The appellant advised these were the cheques given to the landlord on behalf of the roommate who left. The ministry took the position they should not be admitted citing privacy concerns for the 4<sup>th</sup> roommate.

The panel determined that the cheques were admissible. Section 22(4)(b) of the *Employment and Assistance Act* states that the panel may admit as evidence only the information and records that were before the minister when the decision being appealed was made, and oral or written testimony in support of the information and records that were before the minister when the decision being appealed was made. These documents are evidence in support of the appellants claim throughout this matter that the ministry had issued a stop payment on the cheques provided on behalf of the roommate who left. In relation to the ministry's concern the cheques in no way identify the 4<sup>th</sup> roommate.

At the hearing the appellant gave evidence that on Mar. 8,<sup>th</sup> when she first attended the ministry office in regard to this matter, she was making this claim on behalf of herself and her other two roommates who are also on Income Assistance, (IA). Her male roommate suffers from COPD and she must assist him in many ways because of his COPD. The other roommate has mental health issues and could not even do any paperwork for this matter. The 4<sup>th</sup> roommate arranged for stop payments to be made on the two cheques above for a total of \$725. He had been released from jail at the end of Jan. and left early March. He owed monies for part of Jan., Feb. and March. He left causing damage to the property and put stop payments on the cheques. The ministry thinks this money is just for rent but it also covers utilities, food and other bills. The ministry decision is wrong in saying this was for March rent, it is for Feb and also some for March. The appellant did not become aware until March that a stop payment had been put on the cheques. The landlord didn't cash them until late and the two cheques were returned on March 1<sup>st</sup>. This was totally unexpected. She thought the 4<sup>th</sup> roommate was a good guy and did not expect him to sneak out the window and leave. He wrecked the room he was in as well as a door and a lock, which they have had to fix. They are short \$725 for the month of Feb.

Upon being questioned by the ministry the appellant agreed she was with the male roommate when he first rented the property and the landlord must have thought they were a couple. She was living elsewhere at the time. Three people lived there for some time and then the 4<sup>th</sup> roommate came in November and December of 2012. He went to jail at the beginning of Jan. and was out near the end of Jan. When the number of roommates changed she did not tell the ministry. The 4<sup>th</sup> roommate was supposed to pay an equal share of rent and expenses. These monies were collected and pooled by the male roommate who paid the rent. Monies left over were used to pay utilities and other common expenses. She agreed that the 4<sup>th</sup> roommate did pay his share of Jan. rent in kind. This was the first time there had been a problem with the landlord.

Upon being questioned by the panel the appellant stated she had been given a three month notice to vacate by the landlord but was told she could stay until the property was sold as long as the arrears were caught up. She advised that this eviction notice was an informal one by way of a note and also verbally that the landlord was tired of the problems with late payments. When asked to provide a breakdown of the \$725 that was owed for Feb. she could not do so. She believed that one cheque was for rent and the other covered some rent and a damage deposit. She stated that the 4<sup>th</sup> roommate paid his fair share of Nov./Dec. rent by contributing to other expenses in the home. At this

time, Nov./Dec., the 4<sup>th</sup> roommate had another address. He did not pay rent for Jan. as he was in jail by Jan. 3rd or 4<sup>th</sup>. The other three had to pay more for Jan. because of this. The 4<sup>th</sup> roommate had assured them he would be able to pay his expenses when he received his Feb. benefits. The three remaining roommates had already paid for repairs to the window and door. The panel was also advised by the appellant that the 4<sup>th</sup> roommate had assured the other roommates that he would be able to pay his share of the expenses upon receiving his benefit from ministry. The expectation was that by Feb. he would be contributing equally to his share of the household expenses. The 4<sup>th</sup> roommate was caught using drugs in mid Feb. and it was decided he would be given one month's notice to leave at the end of Feb.

At the hearing the ministry argued the Appellant was not eligible for a crisis supplement under sec. 59 of the EAR. The ministry adopted the reasons from the Reconsideration Decision. The ministry advised that they had looked at the 4<sup>th</sup> roommates file and cheques had been issued on his behalf to the landlord. The ministry did not know what the cheques were specifically for and could not shed any light on what the amounts were for.

## PART F – Reasons for Panel Decision

The issue to be determined is whether the ministry reasonably determined the Appellant was not eligible for the crisis supplement for shelter.

***Employment and Assistance Act***

**Interpretation**

1 (1) In this Act:

**"applicant"** means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

**"dependant"**, in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child;

**Income assistance and supplements**

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

***Employment and Assistance Regulation***

**Crisis supplement**

S 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.

(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.
- (5) The cumulative amount of crisis supplements that may be provided to or for a family unit in a year must not exceed the amount calculated under subsection (6).
- (6) In the calendar month in which the application or request for the supplement is made, the amount under subsection (5) is calculated by multiplying by 2 the maximum amount of income assistance or hardship assistance that may be provided for the month under Schedule A or Schedule D to a family unit that matches the family unit.
- (7) Despite subsection (4) (b) or (5) or both, a crisis supplement may be provided to or for a family unit for the following:
- (a) fuel for heating;
  - (b) fuel for cooking meals;
  - (c) water;
  - (d) hydro.
- [am. B.C. Reg. 12/2003.]

The issue is whether the ministry reasonably determined the Appellant was not entitled to the crisis supplement as per sec. 59(1). The section states the minister may provide a crisis supplement to an eligible person on IA, if the person requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed, is unable to meet the expense or obtain the item because there are no resources available to the family unit, and, the minister considers that failure to meet the expense or obtain the item will result in imminent danger to the physical health of the person.

The ministry argues the Appellant has not shown this is an unexpected expense, as the appellant and her roommates had been paying for the 4<sup>th</sup> roommates portion of the rent since he moved in, it was not unexpected they would have to pay again for March. In relation to resources available to the appellant, the ministry argues that since the appellant's initial rent was \$417 and there are three living in the accommodation presently, resources are available to pay the rent. In relation to imminent danger to the appellant's physical health the ministry argues there is no evidence to confirm the appellant is actually being evicted, and as such the appellant is not in imminent danger her physical health.

The appellant argues that it was totally unexpected that the 4<sup>th</sup> roommate would put a stop payment on the two cheques, and further, as the landlord tried to cash the cheques so late they did not know until March that this portion of the Feb. rent had not been paid. They do not have the funds to pay for this and have already had to pay for some repairs caused by the damage down by the 4<sup>th</sup> roommate. She argues that her male roommate is in imminent danger to his health if he is evicted and they have no other resources available to pay for this expense.

There is no question the Appellant is eligible to claim the supplement as she is currently a single recipient on IA. However, the appellant is not entitled to apply on behalf of the other two roommates who are affected by this matter. Under the EAA an applicant means the person in a family unit who applies under this Act for a supplement on behalf of the family unit, and includes the person's spouse, if the spouse is a dependent, and the person's adult dependents. Dependant, in relation to a person, means anyone who resides with the person and who (a) is the spouse of the person, (b) is a dependent child of the person, or indicates a parental role for the person's dependent child. This does not include the appellant's adult roommates, and as such the panel cannot consider the roommates as also applying for the supplement. The appellant argues that her male roommate has COPD and if he is evicted he will be in imminent danger to his physical health. This may be correct and may be relevant if the male roommate was to apply for the supplement. However, he has not applied and the appellant does not have standing to apply for the supplement on his behalf, or the other roommate's behalf, without an appropriate authority in law to do so. No such authority was provided by the appellant in this matter.

In relation to the issue of other resources available to the appellant to pay for the expense. It is completely unclear on all the evidence what the actual amount is that is owed to the landlord. According to the information the ministry obtained from the landlord this was at least \$505. The Mar. 14 decision confirms the landlord stated the Feb. rent and a further \$505 was outstanding. It is not stated what the amount outstanding was for Feb. The appellant in her materials talks about rent, utilities and damage but could not itemize those things or produce receipts. Further, she confirmed that some of the damage has been repaired by the tenants so this would not be outstanding to the landlord. It is also noted that the landlord would have some funds already available from the tenants as damage deposits. In any event, it is a significant amount of money that is outstanding, at least \$505 as confirmed by the landlord.

The ministry argues that as there were three tenants previously paying rent they have the resources available to them to continue paying as they did before. The reconsideration decision found that as the appellant and the other roommates had been paying for the 4<sup>th</sup> roommate's portion of the rent since he moved in, it was not unexpected they would have to pay again for March. What this argument fails to recognize is that it was mainly the issue of the outstanding rent for Feb. that caused the problem with the landlord. Only \$150 dollars was outstanding for March. Further, it is not until March that the appellant found out that the cheque(s) had not been honoured. At basically the same time as her March rent was due she would now have money to pay for Feb. as well. The appellant is on assistance. The amount of money coming in each month would not allow any extra funds to pay for the amount outstanding to the landlord; she does not have the wherewithal to pay the money owed. The assistance that she received for Feb. would be gone and she would have no money to pay for the Feb. arrears. If the matter had been discovered early on, before that appellant had spent her assistance, the situation may have been different. But several weeks went by until the matter



was discovered. The panel finds that there were no other resources available to the appellant to pay the monies owing to the landlord for Feb. The panel finds based on all the evidence that the ministry determination that there were other resources available to the appellant to pay the outstanding amount for Feb. was unreasonable.

In relation to the issue of an unexpected expense the ministry found the appellant and her roommates had been paying the 4<sup>th</sup> roommate's portion of his rent since he moved in and as such the situation could not be unexpected. The appellant has maintained since day one that the main problem had been the stop payments made on the Feb. rent. This is set out in the first paragraph of the March 14 decision and confirmed by the copies of the cheques entered as evidence at the hearing. That cheques had been issued to the 4<sup>th</sup> roommate was confirmed by the ministry, although the ministry could, or would not, provide any details surrounding those cheques. The appellant did not know until early March that the Feb. cheque(s) had not been honoured at the bank. In no way could this have been expected by the appellant.

The panel finds that the 4<sup>th</sup> roommate had been staying at the home since Nov./Dec. and had been contributing to general household expenses. However, as the appellant testified, he had another address at the time. The three tenants wanted the 4<sup>th</sup> roommate to move in to share the expenses. They expected that in Jan. he would move in and start paying his share of the expenses, but by Jan. 3rd or 4th he ended up in jail. The other three covered his rent for Jan. so that he could move in still and he did so the last week of Jan., when he was released from jail. He then provided a cheque, or cheques, in Feb. It is clear that the roommates were pooling their expenses and they thought a large portion of the rent had been covered by the cheque(s). The 4<sup>th</sup> roommate had made assurances to the other roommates that he would be able to pay his share of the expenses upon receiving his benefit from the ministry. The expectation was that he would be contributing to his share of the household expenses. The appellant thought that the rent had been paid and it was not until March that she was informed of the problem. By then the 4<sup>th</sup> roommate had left. If this had all occurred within days of the rent being paid it may have been quite different. But several weeks went by without the rent being an issue. The panel finds that it was therefore unreasonable, based on all the evidence, for the ministry to find that the outstanding rent for Feb. was something that could reasonably be expected by the appellant.

In relation to the March rent, of which \$150 was outstanding, the panel finds that this was something that could reasonably be expected. Based on the history of the 4<sup>th</sup> roommate in Nov. and Dec. of paying for rent in kind, having another place of residence, being in jail in January, and being given notice to leave in Feb. for intravenous drug use, it could be reasonably expected that he would leave and not pay his March rent.

In relation to the issue of imminent danger the ministry found there was no evidence to support that the appellant was being evicted and as such there was no imminent danger to her physical health. The ministry relied on the evidence that the male tenant did not have authority to act for the landlord in providing an eviction notice. The panel agrees with this finding. The landlord confirmed that the male tenant, who apparently signed the notice, was not acting on her behalf so there is no validity to this notice.

However, the ministry was informed by the landlord that an eviction notice was issued in February,

with the owner agreeing they could stay until the property is sold as long as they caught up with the arrears. There is no evidence as to how long the landlord is prepared to wait for the arrears to be caught up. The appellant advised that this eviction notice was an informal one by way of a note and that the landlord told them she was tired of the problems with late payments. As such it does not appear she has received a proper or legal Notice to End Tenancy. Based on all of this evidence it is unlikely that the appellant is in danger of being put out on the street on short notice. The landlord appears to be willing to wait for the tenants to catch up on the arrears.

Further, and most importantly, the appellant acknowledged in her appeal notice that she is not in physical danger to her health, her male roommate is. The appellant cannot rely on the potential danger to the health of her male roommate. As such, the panel finds that the ministry determination that there was no imminent danger to her physical health was reasonable based on all of the evidence.

Under the legislation, to be eligible for a crisis supplement the appellant must need the supplement for an unexpected expense, or to 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, the minister considers that failure to meet the expense or obtain the item will result in imminent danger to the physical health of the appellant. All three of these criteria must be met. As the panel has found that the imminent danger criterion was not met by the appellant, the panel finds that the ministry decision was reasonable based on all of the evidence and confirms the decision.