

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated July 19, 2013 which denied the appellant's request for a crisis supplement to cover clothing costs. The Ministry held that the requirements of Section 59 of the Employment and Assistance Regulation (EAR) were not met as the ministry found that:

- clothing costs are not an unexpected expense;
- there are alternate resources available to the family unit to pay for clothing costs; and,
- there was not sufficient information to establish that failure to meet the expense will result in imminent danger to the physical health of any person in the appellant's family unit.

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 59

Employment and Assistance Act (EAA), Section 4

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included the Request for Reconsideration- Reasons dated July 8, 2013.

At the hearing, the appellant provided a one page "Prescription Order" page dated May 29, 2013 which listed four different medications which the appellant described as psychiatric treatment for bipolar and mood disorder as well as for problems sleeping. The appellant attributed her sudden weight gain as being a side effect of these medications. The ministry objected to the admissibility of this document as it was not information included in the appellant's original request. The panel reviewed the Prescription Order as confirmation that the appellant is taking several medications that could potentially have contributed to her weight gain. The panel considered that the appellant had raised the issue of weight gain before the ministry on reconsideration. The panel admitted the document pursuant to Section 22(4) of the Employment and Assistance Act as being in support of information and records that were before the ministry on reconsideration.

In her Request for Reconsideration, the appellant wrote that she is having problems with her bladder and she has already seen a specialist. An appointment will be made for a small operation so, in the meantime, she is in need of Depends, an adult diaper. The appellant wrote that she has gained weight and needs clothes, especially underclothes, and proper walking shoes due to her back problems.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that she is in dire need of clothes due to weight gain from pills she takes for bipolar, depression, mood disorder, and problems sleeping. She needs proper walking shoes due to sciatic nerve problems. With her bladder problems, she needs grown-up diapers and she is seeing a gynecologist for this. The Notice of Appeal has a physician's unsigned rubber stamp applied in the corner of the document.

At the hearing, the appellant stated that she has been having problems because she is on medications for her medical conditions, including bipolar disorder, and the medications are causing her to gain a lot of weight. The appellant stated that she has been taking medications for about 6 months and she has gained approximately 40 lbs. in the last 3 months. The appellant stated that she does not have any clothes that fit her. The appellant stated that she receive income assistance of \$637.92 per month as a single person, of which \$375 is paid directly to the facility in which she resides and \$20 is deducted for a damage deposit. The appellant explained that she has gone to second-hand stores but is concerned about the hygiene with getting second-hand shoes. She stated it is difficult to find proper fitting undergarments in the local thrift stores. She is seeing a gynecologist for a "weak bladder" that she has had for many years for which she was also given medications but they did not help. She will be having a small operation that they are hopeful will fix the problem, but the appellant is not sure when that will be scheduled. The appellant stated that, in the meantime, she is incontinent and needs to buy Depends, which are very expensive. The appellant stated that she receives GST rebate cheques of around \$92 every 3 months and that she has used some of these funds to buy Depends. The appellant stated that she has sciatic pain in her back and needs special walking shoes that she cannot find at the thrift stores to help with this problem.

The appellant stated that she showed her Notice of Appeal to her family doctor who read it and commented that there was no room to write anything and then applied his stamp to the document. The appellant stated that her family doctor told her that the medications she is taking can cause weight gain as one of the side effects. The appellant stated that she is currently a Person with Persistent Multiple Barriers to Employment (PPMB), but she is in the process of applying for Persons With Disabilities (PWD) designation. She was going to provide this paperwork on the appeal but ran out of time for submitting it in advance. In response to a question, the appellant stated that when the ministry called her back about her request for the crisis supplement, it was a male worker and she felt reluctant to discuss her issues in detail because of the personal nature of them. The appellant said she tends to get nervous and she felt she needed to whisper to the ministry worker about her request when she went to the ministry office in person.

APPEAL #

The ministry relied on its reconsideration decision. At the hearing, the ministry representative pointed out that items such as incontinence supplies and custom footwear or orthotics fall under Schedule C of the Employment and Assistance Regulation (EAR), and Section 59(3)(a) specifically states that a crisis supplement may not be provided for the purpose of obtaining a supplement in Schedule C. The ministry stated that failure to meet a need for clothing that will result in imminent danger to the person's physical health is typically found in the winter when the weather is unusually cold.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision which denied the appellant's request for a crisis supplement to cover clothing costs, as the requirements of Section 59 of the Employment and Assistance Regulation (EAR) were not met, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the appellant's circumstances.

Section 59(1) of the EAR sets out the eligibility requirements which are at issue on this appeal for providing the crisis supplement, as follows:

### **Crisis supplement**

- 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. . . .

### *Unexpected expense*

The ministry's position is that the provisions of Section 59 of the EAR allow for the ministry to provide a crisis supplement when all of the legislative criteria are met, including that the supplement is required to meet an unexpected expense, there are no alternate resources available to the family unit to meet the expense, and failure to meet the expense will result in imminent danger to the physical health of any person in the family unit. The ministry argued that the need for clothing is not unexpected. The ministry argued that weight gain normally occurs over a period of time and the appellant has not provided any information to indicate that her weight gain occurred suddenly and made her need for clothing unexpected. The ministry argued that the appellant has not provided any information to confirm that her bladder problems or her back problems are new conditions that created unexpected needs.

The appellant's position is that the need for additional clothing items was an unexpected expense since she gained 40 lbs. in 3 months and does not have clothes that fit her. The appellant argued that she has started taking several medications which are causing the weight gain as one of the side effects and she did not know that she would gain as much weight. The appellant argued that she needs proper walking shoes due to sciatic nerve problems and she needs Depends due to incontinence from her bladder problems.

### *Panel Decision*

The appellant requested a crisis supplement for a number of listed items of clothing, including undergarments, Depends adult diapers and proper walking shoes. The appellant agreed that her bladder problems are as a result of a "weak bladder" that she has had for many years and that the issue with her sciatic nerve is also not new. As the ministry pointed out at the hearing, both incontinence supplies and custom footwear or orthotics are items that may be requested under Schedule C of the EAR and that Section 59 specifically states that a crisis supplement may not be provided for the purpose of obtaining a supplement in Schedule C. Although the ministry pointed out that weight gain normally occurs over a period of time, the panel finds that the appellant's weight gain of 40 lbs. over 3 months is a rapid weight gain that most people would not expect. The appellant provided a list of the medications that she is currently taking and stated that her family doctor had told her the

medications can cause weight gain. The panel finds that the appellant's need for general clothing items, including undergarments, as a result of rapid weight gain are items that were unexpectedly needed. Therefore, the panel finds that the ministry's determination that the clothing expense was not an "unexpected expense", under Section 59(1)(a) of the EAR, was not reasonable.

#### *Resources Available*

The ministry's position is that information has not been provided to establish that the appellant has no resources available to meet her need for clothing on her own. The ministry argued that the appellant is provided with monthly assistance that is intended as a resource to help meet basic needs such as clothing. The ministry argued that the appellant has not provided any detailed information about her current financial situation that would allow the ministry to conclude that she has no resources to purchase the requested items. The ministry argued that the appellant did not indicate that she attempted to access friends, family or community resources in order to meet her need.

The appellant's position is that she has been using her resources, including at least part of her GST rebate cheques, to pay for Depends adult diapers which are very expensive and she does not have money left over for other items. The appellant argued that she has gone to second-hand stores but is concerned about the hygiene with getting second-hand underwear and shoes.

#### *Panel Decision*

The appellant highlighted her need for Depends and for proper walking shoes as the more costly of the clothing items that she requested, and the panel finds that these are items that may be requested under Schedule C of the EAR as incontinence supplies and custom footwear or orthotics and are, therefore, excluded from consideration for the purposes of a crisis supplement, pursuant to Section 59(3)(a) of the EAR. The appellant agreed that she was able to get some clothing items at second-hand stores but she does not want to get second-hand underwear. The panel finds that the ministry reasonably concluded that the appellant's monthly assistance is intended as a resource to help meet basic needs such as clothing, including underwear, and that she is able to access other resources to obtain the remaining items of clothing required. The panel finds that the ministry's conclusion that it cannot be determined that there are no resources available to the family unit to meet the expense, under Section 59(1)(a) of the EAR, was reasonable.

#### *Imminent Danger to Physical Health*

The ministry's position is that the appellant has not provided sufficient information to establish that failure to obtain the requested items will result in an imminent danger to the appellant's physical health. The ministry argued that although the appellant indicated that she has bladder and back issues, she has not provided any information to confirm this, or to indicate that either condition would place her in a situation of imminent physical danger that would be averted by obtaining the requested items.

The appellant's position is that sufficient evidence has been provided to establish that failure to obtain the required clothing items will result in imminent danger to her physical health.

#### *Panel Decision*

The appellant's need for Depends and for proper walking shoes are both related to long-term medical conditions and, as set out above, the panel finds that these are items that may be requested under Schedule C of the EAR as incontinence supplies and custom footwear or orthotics and are, therefore, excluded from consideration for the purposes of a crisis supplement, pursuant to Section 59(3)(a) of the EAR. For the remaining items of clothing required, namely undergarments, the appellant did not provide evidence that going without these items poses a serious threat to hygiene or some other issue that will result in imminent danger to her physical health. The panel finds that the ministry's conclusion that there is not sufficient information to establish that failure to meet the cost of clothing will result in imminent danger to the physical health of any person in the appellant's family unit, pursuant to Section 59(1)(b) of the EAR, was reasonable.

*Conclusion*

Section 59 of the EAR stipulates that all of the requirements of the section must be met in order for a person to be provided with a crisis supplement. The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a crisis supplement for the cost of clothing because all of the requirements of Section 59 of the EAR were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision.