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PART C – Decision under Appeal

The ministry's reconsideration decision dated 24 June 2013 determined that the appellant was not eligible for a crisis supplement to pay for her share of the building of a community water system or for a connection to the system, once it is established. The ministry found that this is not an unexpected expense, that the appellant had the option of paying the cost of the system over 30 years and failure to provide the crisis supplement will not result in imminent danger to the appellant's physical health under s. 57 of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), s. 57.

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PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant is a single recipient with Persons with Disabilities (PWD) designation.
- An excerpt of the BC Gazette dated 28 January 1960 stating under s. 4.11 that "in a residential zone where there is no community water-supply, not more than one dwelling unit for each fifteen thousand square feet of land is permitted."
- A one-page document titled Community Planning Area Number [X] – Zoning Regulations, dated 9 November 1967, replacing s. 4.10 of that zoning regulation that will, from then on, stipulate that "the minimum site area required for each dwelling unit is… fifteen thousand square feet for each dwelling unit where there is no community water system."
- A one-page document in respect of the appellant's regional district dated 19 March 1969 and titled "Letters Patent".
- A three-page supplementary Letters Patent dated 30 October 1969 for the appellant's regional district.
- A one-page document titled "Letters Patent" of the appellant's regional district published in the BC Gazette on 6 November 1969 reflecting the supplementary Letters Patent of 30 October 1969.
- A two-page letter dated 16 February 1970 to the Secretary of the Public Utilities Commission by the Director of the Municipal Administration Division of the BC government stating that the appellant's regional district was "not empowered to supply or distribute water for any of its member areas." It further stated "before the regional district could be granted the powers of water supply and distribution, a vote of the benefiting taxpayers would first be necessary."
- A two-page excerpt of a subdivision map indicating, according to the appellant, that her subdivision was approved on 18 August 1970.
- A two-page document dated 17 February 1971 in respect of the appellant's regional district and titled "A By-law to repeal the Subdivision Regulations".
- A two-page letter dated 7 November 1973 to a BC cabinet minister from a water authority indicating that the appellant subdivision "does not have a water system".
- A one-page Form A Freehold Transfer of the title to a property in favour of the appellant dated 1 August 2002.
- A one-page document titled "Building Inspection Permit" issued in 2002 for the appellant's property indicating:
    - Purpose of project: No provision for indoor plumbing – Health approval for pit privy.
    - Conditions of permit: Potable water to be hauled in potable containers.
- An excerpt of a one-page letter dated 5 February 2009 indicating the process to create a service area to design and construct a domestic water system with fire flows.
- A two-page document dated 14 May 2009 titled "Bylaw No. 1258" from the appellant's regional district indicating that the mandatory water tax can be waived by the person making a one time payment in cash.
- A three-page letter dated 24 September 2010 from a director with the BC government to the appellant providing information about water systems in the province. In particular it refers to a letter from 16 February 1970 stating that the appellant's regional district "had no authority or obligation to operate a community water system for any of its member areas".
- A one-page, signature missing, letter dated 18 October 2010 from what appears to be a BC government official responding to the appellant and in particular stating "It is possible that the size

of the lots in these developments did not require a community water system to be created in order to receive subdivision approval. That is, the lots were large enough that a purchaser could reasonably be expected to find their own water supply on the lot. Therefore a community water system was not a requirement for subdivision approval."

- A one page, unsigned, letter dated 20 October 2010 from the appellant's regional district stating, in particular that "all the subdivisions within the Regional District created prior to 1974, do not have water systems. In checking with the province of BC they could not locate any documents relating to the need for a water system in [the appellant's area].
- An undated one-page printout from the appellant's regional district with information about its water system indicating the fees for connection and the fact that the project was completed in June 2012.
- A one-page excerpt of Bylaw 1309, 2012 indicating the annual water rates flat fees for the appellant's area being $408.00 and Asset renewal $200.
- A 2013 Property Assessment Notice by BC Assessment for the appellant's property.
- An undated, five-page excerpt of the appellant's regional district schedule of terms and conditions for the use of the water service as well as fees and charges.
- A Utility Invoice from the appellant's regional district dated 31 March 2013 indicating a fee of $50.00 for "Water Asset Renewal" for the period of 1 January to 31 March 2013.
- A letter dated 8 April 2013 by the appellant to the ministry indicating she is submitting a third estimate to hook her house to the community water system. The costs to connect are quoted as:
    - Application fee: $200.
    - Building permit fee: $150. (with $50.00 refund when connection is approved)
    - Water meter: $440.
    - Removal of a land title notice: $200.
    - In this letter she also indicates the ministry has 3 estimates to hook up the community water system to her house. She also mentions her health issues and medical transportation.
    - Attached to this letter, a one-page quote dated 4 April 2013 to hook up the appellant's house to the community water system as a total price of $3320.
- A two-page document apparently made on 29 April 2013 indicating the medication taken by the appellant.
- Two documents from potential insurers that declined to provide insurance to the appellant's home:
    - A one-page email dated 26 April 2013 to the appellant from an insurance broker indicating that their insurance company declined the risk to insure her house.
    - A one-page email dated 30 April 2013 to the appellant from insurance services stating that they have not been able to find an insurance company that would insure her home as there are "too many liability issues, as well as water and fire hazards". They offer to try to find a policy if she were to complete her home and obtain an occupancy permit.
- An undated letter from a water distributing business stating that a load of potable water for the appellant's area cost $190.00 plus taxes.
- On 22 April 2013, the ministry wrote to the appellant indicating that she was not eligible for a crisis supplement to assist with the costs to install a new community water system and for the costs associated with removal of the land title notice nor for the building permit for the house.
- The appellant received the 22 April letter on 3 May 2013.
- The appellant sent a letter dated 7 May 2013 requesting a reconsideration of the decision. The

ministry received this letter on 13 May 2013. In this letter the appellant states the following:

- Since 1970 there was no community water system in her area and there was no plan to build it until a vote held in 2009, 7 years after she bought that property. She and her parents voted against the proposed community water system.
- The appellant had the intention to dig a surface well by hand as she felt water could be found at about 25 feet deep.
- She receives $140.00 per month from the ministry in the form of assistance to pay the $190.00 required for water delivery at her residence.
- She has to pay the water tax whether her residence is hooked to the new system or not and she cannot afford paying for both, water delivery and the new community water system and its connection to her home.
- The one-time cost for the new community water for her residence would be $20,000.00 or $52,000.00 with a 30 years amortization, while she only paid $6,000.00 when she bought that property in 2002 and that there had not been a water system for over 43 years.
- If she cannot pay the water tax, she fears that she will have to move out of her home and that she will not be able to afford another home as they are much more expensive than what she pays for her actual residence to her parents. Since she believes she won't be able to pay the rent for another home, she fears she will be homeless.
- She also cannot afford the costs of moving to a new residence.
- She owns a parcel of this property (1/3) while her parents own the balance and the latter do not want to sell the property and cannot afford to buy her portion of the property.
- In any event, she fears that no one will want to buy her property since her house is not finished, it has a title notice against it, the bank will not loan the money to buy as no mortgage would be possible and she cannot even insure the property.
- She still has to pay water taxes until the property is sold but she also cannot sell it without her parents' authorization, as joint owners.
- She has to buy a new building permit after the original permit expired while she had been evacuated in July 2009 as a result of forest fire and at that time a title notice was placed on her property.

- On 4 June 2013, the appellant received a communication from the ministry that seems to be dated 29 May 2013 but is not clear what it refers to. On that communication, the appellant notes that this should have been sent along with the 22 April letter and that she had already submitted her request for reconsideration two weeks before. She signs this message on 5 June 2013.
- The reconsideration decision is issued on 24 June 2013.

In the appellant's notice of appeal dated 28 June 2013, the appellant indicates that she is being forced to sell her home and rent somewhere else but that she cannot afford living alone while she cannot live with others, as she does not get along. She cannot afford to rent on her own. She cannot afford paying for water delivery and at the same time pay for the community water system connection and all the other costs. She states she will not pay for the water system and that she thinks the government will take her to court over that cost but she is determined not to leave her home where she has been living since 2003.

In support of her appeal, the appellant submitted a series of emails; only few new facts are raised, for instance expressing the difficulties the appellant has with the appeal process and with the ministry's decision. In one of the emails, dated 31 July 2013, to the Tribunal, she states that the risks to her

health would be significantly reduced if she were hooked to the community water system as she fears to be sick with water staying in a container for a month. She states that the denial of her crisis supplement and the 4 months it has taken to deal with the matter are detrimental to her health and that made her even more depressed. She attached two letters from her doctors to this email:

- A letter dated 5 July 2012 from a physician having treated the appellant for a dermatological condition stating she had a recent flare up of her condition. He states "I believe there is a connection with increased stress levels and a worsening of this particular dermatological condition."
- A letter dated 18 January 2013 by a physician who was asked to address the question of whether stress plays a role in the appellant's dermatological condition. She writes: "Tips for managing the disease are limiting stress, as stress can make [the condition] worse." She also mentions that the issue was caused by a neighbour's barking dog that inhibits her sleep at night.

In an email sent on 26 July 2013 to a named member of the legislative assembly, copy to the Tribunal on 31 July 2013, the appellant states she will not move from her house "over a water system when I don't need the water if I am hauling it."

The panel determined the additional documentary evidence was admissible under s. 22(4) of the Employment and Assistance Act as it was in support of the records before the minister at reconsideration as it completes that information.

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PART F – Reasons for Panel Decision

The issue under appeal in this case is whether the ministry's decision that the appellant was not eligible for a crisis supplement to pay for her share of the building of a community water system or for a connection to the system, once it is established, because this is not an unexpected expense, that the appellant had the option of paying the cost of the system over 30 years and that failure to provide the crisis supplement will not result in imminent danger to the appellant's physical health under s. 57 of the EAPWDR was either a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation in this matter is s. 57 of the EAPWDR:

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, and

(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 disability 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.

The ministry argued that the appellant was not eligible for crisis supplement because it was her choice to hook up to the community water system and that was not an unexpected expense since the decision to create a community water system in the appellant's area was made in May 2009. Further, the ministry argued that she is only responsible for 1/3 of the costs of the system, being her share in that property. Finally the ministry argued that the appellant has the choice of hooking up to the community water system or not and thus, there is no evidence that failure for the ministry to provide the crisis supplement by covering the cost of hooking her house to the community water system would result in imminent danger to her physical health.

The appellant argued that the creation of this community water system was completely unexpected as this area had been built without a water system for at least 40 years and the documentation, in particular the building permit then issued stipulated that her residence would be without indoor plumbing and that water would be hauled in containers. She argued that it did not make any sense for the ministry to pay for water delivery while at the same time she had to pay for the community water system and that it would be much better for her health to switch to that system and for the ministry to pay for hooking up her house and other associated costs and not for water delivery. She argued she does not have the means to afford any of those two options but fear that if she does not get this crisis supplement to hook her house to the community water system, she might lose her house and become homeless. In other words, she stated that if she fails to get the crisis supplement and becomes homeless, this would put her physical health in imminent danger.

Alternatively, she argued that if she has to pay out of her pocket for hooking up her house to the new community water system, she will not be able to pay her other bills, in particular hydro, and that her food will go to waste and she will have no water while this is being done as she won't be able to afford water delivery and, hence, a person cannot live long without food and water. She finally claimed she was the victim of economic discrimination because she lived in a rural area where services are often basic and people are poor and cannot afford living elsewhere.

While acknowledging the unusual and difficult circumstances faced by the appellant, the panel must review this matter under s. 57 of the EAPWDR. The ministry determined that this expense was not unexpected because the appellant had the option to hook up or not to the system. While the panel agrees that the connection costs are optional, the appellant and all the other residents in her area have no choice but to pay for the construction of the community water system as mandated by the regional district bylaw.

That being said, the panel finds the ministry reasonably determined this was not an unexpected expense because this issue of a community water system was raised over 4 years ago when the majority of the people in this area voted for the construction and operation of a community water system. Included in the documents provided is a letter sent to the affected residents dated 5 February 2009 indicating that a public meeting would be held at a specific date in March 2009 and that there would be capital costs to pay to the district in terms of the water system, assessed at approximately $17,500.00 per parcel plus connection costs that were at the charge of the owners. As well, the construction was completed in June 2012 and in July 2012, the appellant's regional district passed a bylaw making it mandatory for the area residents affected by the water system to pay its

fees and charges. Thus, when the appellant made her request on 17 April 2013, this issue had been expected for a number of years and the construction had been completed almost a year earlier.

The appellant stated repeatedly that she did not have the resources to pay for connecting her house to the community water system and to pay for the other associated costs. The panel finds the evidence provided by the appellant is reasonably persuasive to determine she does not have resources available in her family unit to meet this extraordinary expense. While it is not clear whether the appellant would be responsible for her full share of the costs of the system or 1/3 of it, the other 2/3 being her parents' responsibility, either of those costs are still significant and the panel finds it was unreasonable for the ministry to determine there were resources available to the appellant to meet that need.

In terms of the third criterion, the panel finds the ministry reasonably determined that failure to meet the expense would not result in imminent danger to the appellant's physical health. The appellant does have water delivered to her house, and connecting to the community water system is an option for her that might result in a better water supply. She can continue to have water delivered and there is no evidence that she would be entirely cut off of water imminently, with a corresponding danger to her physical health. While the panel accepts the evidence of the appellant that she could become homeless if her parents decide to evict her or if she loses her house for failing to pay her taxes, this would not per se mean that her physical health would be in imminent danger as this might or might not happen and it does not meet the test of s. 57 (1)(b)(i). Thus, since two of the three criteria under s. 57 (1) were not met, the ministry reasonably determined the appellant was not eligible for a crisis supplement.

In conclusion, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.