

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 25 October 2013 that denied the appellant's request for a crisis supplement for winter clothing because her request did not meet two of the three required criteria set out in section 57 of the Employment and Assistance for Persons with Disabilities Regulation. Specifically, the ministry determined that the information provided did not establish that her request was required to meet an unexpected expense, or obtain an item unexpectedly needed, and that failure to obtain the item will result in imminent danger to the physical health of anyone in her family unit.

The ministry determined that the other criterion had been met: that the information provided established that there are no resources available to the appellant to obtain the requested item.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

- From the ministry's files: the appellant is a recipient of disability assistance as a single person. The appellant had also applied for a crisis supplement for winter clothing in August 2013; this request was denied. The present appeal relates to a second request made on 04 October 2013.
- The appellant's Request for Reconsideration dated 16 October 2013. The appellant writes that she had no choice in having to move; this is why her rent has increased considerably. She has \$90 a month to feed herself, buy hygiene products and to pay for laundry facilities. She has no extra money for clothing. She attaches a note from her physician.
- A note from the appellant's physician dated 9 October 2013. The physician writes: [The appellant] has medical conditions such as osteoarthritis and fibromyalgia, which would be made worse by inadequate winter clothing. Help would be appreciated with funding to purchase adequate warm clothing."

In her Notice of Appeal dated 01 November 2013, the appellant writes that she had to move because her landlord wanted to renovate the building and therefore her rent went from \$421 up to \$750 per month. She also lost her winter clothing in the move. She writes that her doctor has written a note which explains why she needs proper clothing. She goes on to explain that rents in her community have doubled or tripled and there is inadequate low income housing.

At the hearing, the appellant reviewed the background to her move within the community in late May 2013 and the resulting impact on her financial situation. In answer to questions, the appellant stated that she had been living in the community for about 6 years. When she was forced to leave her former apartment due to a building renovation, her ex-sister-in-law helped her with the move as she could not do it herself because of her arthritis. A couple of weeks after the move she noticed that some boxes that had been kept in her basement storage locker were missing, including ones containing her winter clothing. She went back to the building to see if she could recover them, but by that time it was too late as the building renovation ("demolition") was underway. Because of her financial difficulties, in August 2013 she applied to the ministry for a crisis supplement to replace the lost clothing. At that time, her request was denied and she was told that she had four months to save up to buy the missing clothing. With winter approaching, she applied again in October 2013.

She does not believe the boxes of clothing were stolen, they just went missing accidentally.

She stated that she needs winter clothing to go out in what was described as at times "harsh" or "brutal" weather conditions that frequently occur in winter in her part of BC. In particular, she needs to go out 2 – 3 times per week to obtain food from the local food bank. Her advocate, on staff at a transition home that also provides help to those in need, confirmed that the appellant is one of the home's clients, but they have no winter clothing available.

The ministry stood by its position at reconsideration.

The panel finds that the new information provided by the appellant at the hearing is in support of the

information before the ministry at the time of the reconsideration decision. The Record of the Ministry's Decision contains no evidence respecting how her boxes of winter clothing went missing, except in the reconsideration decision itself. The decision asserts that "you have not provided any details to support your statement that your winter clothing was destroyed when you moved." The panel takes this to indicate that the ministry had before it a statement by the appellant on this matter at the time of reconsideration. The panel considers the new information provided by the appellant concerning the winter clothing being left behind/found to be missing/building renovation ("demolition") to be consistent with a statement that the clothing was "destroyed," and clarifying the circumstances under which the clothing went missing. The panel therefore admits the appellant's testimony pursuant to Section 22(4)(b) of the *Employment and Assistance Act*.



PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision to deny the appellant's request for a crisis supplement for winter clothing under section 57 of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. In particular, the issue is whether the ministry reasonably determined that the information provided did not establish that her request was required to meet an unexpected expense, or obtain an item unexpectedly needed and that failure to obtain the item will result in imminent danger to the physical health of anyone in her family unit.

The relevant legislation is set out in the EAPWDR:

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.
- (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 panel will consider each party's position on the criteria at issue in this appeal.

Unexpected expense

The position of the ministry, as set out in the reconsideration decision, is that information has not been provided to establish that the appellant requires a crisis supplement to meet an unexpected expense, or obtain an item unexpectedly needed. Clothing is not usually an unexpected need, and the appellant has not provided any details to support her statement that her winter clothing was destroyed when she moved. The reconsideration decision goes on to state that the appellant's rent is not an unexpected expense, but is the amount she agreed to pay monthly when she moved in. The amount of rent she pays does not make her need for winter clothing unexpected.

The appellant's position is that, while acknowledging that the need for winter clothing cannot be said to be unexpected, the loss of the clothing during her move was certainly unexpected.

Panel findings

The reconsideration decision states that "Clothing is not usually an unexpected need." However, the panel notes that in section 57(4)(c) the legislation specifically contemplates that a crisis supplement may be provided for clothing. The evidence is that, according to the testimony of the appellant, boxes of winter clothing kept in a basement storage locker were accidentally left behind during her move in May 2013 and subsequently could not be recovered. While there is no documentary evidence to substantiate this testimony, as might be the case if the boxes were destroyed by fire or were stolen and a police report filed, the panel finds the appellant's testimony credible, as it gave a plausible explanation of how her boxes went missing in the circumstances of a move known to the ministry, and sufficient to establish that the loss of her winter clothing was "unexpected." The legislation refers to a family unit requiring a crisis supplement "to meet an unexpected expense or obtain an item unexpectedly needed." The panel considers the cost of replacing her winter clothing, under the circumstances described by the appellant of her winter clothing going missing subsequent to her move within the community, to be "an unexpected expense." The panel therefore finds the ministry was not reasonable in determining that this criterion had not been met.

Imminent danger to the physical health

The position of the ministry is that information has not been provided to establish the failure to obtain winter clothing will result in imminent danger to the appellant's physical health. In the minister's opinion, "imminent physical danger" means a specific circumstance that will cause immediate physical harm if not averted. While the medical note provided states that inadequate winter clothing will make her chronic medical condition worse, the doctor does not specify whether such effects

would be immediate.

The appellant's position is that, given harsh winter conditions in her area, the physician's note clearly establishes that this criterion has been met.

Panel findings

The panel notes that subsection (2) of section 57 of the EAPWDR provides that a crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made. To the panel this means that there must be some urgency attached to the need for the requested item, while providing some guidance as to the timeframe – a month – for assessing “imminent danger.” The panel notes that the appellant requested a crisis supplement in August 2013 to replace her missing winter clothing. That request was denied, and although the reasons for that decision are not available to the panel, subsection (2) may have been a factor as winter was then some months in the future. Due to her adverse financial circumstances, the appellant made a second application on 04 October 2013; denial of this request ultimately led to the present appeal. The panel, in considering the reasonableness of the ministry's determination respecting the “imminent danger” criterion, will take into account that this second request was made with winter just around the corner and that the ministry did not invoke subsection (2) as a reason for denial.

The evidence is that the appellant's physician has provided a note dated 09 October 2013 that states that the appellant “has medical conditions such as osteoarthritis and fibromyalgia which would be made worse by inadequate winter clothing.” The panel considers “made worse by inadequate winter clothing” as the physician confirming that inadequate winter clothing would be a “danger to the appellant's physical health.” The issue is whether that danger would be “imminent.” The ministry in the reconsideration decision suggests that “imminent danger” means “a specific circumstance that will cause immediate physical harm if not averted” and that the physician, while stating that inadequate winter clothing will make the appellant's chronic medical conditions worse, does not specify whether such effects would be immediate. The panel infers from this that the ministry needs confirmation from the physician of what would be the appellant's immediate medical consequences if she went outside inadequately clothed in harsh winter weather conditions. The panel considers the need for such confirmation unreasonable given the available evidence: the appellant's medical conditions, the physician's note that her conditions would be made worse by inadequate winter clothing and the harsh winter weather conditions in her area. Considering also that winter was “imminent” when the application was made, the panel finds that the ministry was unreasonable in determining that this criterion had not been met.

Conclusion

Based on the foregoing, the panel finds that the ministry decision to deny the appellant crisis supplement for winter clothing was not reasonably supported by the evidence. The panel therefore rescinds the ministry's decision.