

## 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 07 November 2013 that denied the appellant's request for a crisis supplement for home repairs to fix his well because his request did not meet the criteria set out in section 57 of the Employment and Assistance for Persons with Disabilities Regulation. Specifically, the ministry determined that while it was unexpected for the well pump to break down and an unexpected expense for the appellant to pay the costs to repair it, he had the resources available to pay for the repairs; and since the well has been repaired, the appellant's physical health was not in imminent danger as a result of a failure to provide him with the funds to pay for the repair costs.

The ministry also found that, as the appellant also receives the maximum monthly shelter allowance available for his size of family unit, the costs of repairs under section 5(1)(f) of Schedule A of the Regulation cannot be added onto his monthly shelter allowance.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 57 and Schedule A, sections 4 and 5.

## PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

1. From the ministry's files: the appellant is a sole recipient of disability assistance, including a shelter allowance of \$375/month.
2. The following chronology, as set out in the ministry-completed section of the appellant's Request for Reconsideration:
  - On 16 July 2013, the appellant requested a crisis supplement from the ministry, stating that he woke up in the morning and found that his well was broken and he had no water. The appellant stated that he contacted two plumbers and one had indicated they would do a service call to his home. The appellant estimated that the service call would cost around \$300, the pump \$900 and another \$80 if the controller needed to be replaced. The ministry advised the appellant to submit a quote from the plumber by fax. The ministry advised the appellant to call the ministry when the fax was sent to check that it was received in order to ensure that the request was processed immediately since water is an essential utility.
  - On 08 August 2013 the ministry received an invoice dated 16 July 2013 for a water pump replacement by a plumbing company at a total cost of \$1594.13 (attached to the Request for Reconsideration).
  - On 13 August 2013, the appellant contacted the ministry stating that the repair had been done by the plumbing company who repaired at the same date that he had originally called. The appellant stated that he had paid the plumber and had used funds that he had saved to pay for home insurance and firewood. The appellant stated that he could not use his trust fund to pay for the expense as he had purchased a scooter with his trust. The appellant was requesting reimbursement for the amount he paid for the repair.
  - The appellant was advised of the denial of his request on 09 September 2013.

In his notice of appeal, dated 21 November 2013, the appellant gave as reasons for appeal that the reconsideration decision was wrong, it causes severe hardship, it relied on information that is incorrect and that there is no accommodation for brain injury causing dysfunctional thinking.

After reconsideration but before the hearing the appellant made 2 submissions, dated 08 and 09 December 2013, containing numerous photographs of various locations in his home.

At the hearing, the appellant began by describing how his brain injury has put him into "some kind of twilight zone," with many symptoms that have an impact on his daily living, such as headaches, memory loss, fatigue, sleep disorder, environmental overload and difficulty with executive function.

The appellant then described the circumstances surrounding the 16 July 2013 repair of his well. He first noticed problems with his water supply in the fall of 2012 when he heard his pump cycle on and off when no tap had been turned on. He asked for and received assistance from the ministry and was provided \$200 for a plumber to replace a check-valve on the pump. This did not work, so he subsequently installed a one-way valve. Everything worked satisfactorily until he woke up on 16 July 2013 to find that he had no water supply. He phoned the ministry and was advised to get two quotes for the repair. He phoned the plumber who had come the previous fall, but he was busy and would not be able to do any work sooner than in a couple of weeks. He phoned another plumber, who

agreed to come that day. When that plumber arrived, he was determined to get the job done as quickly as possible in light of the emergency situation facing the appellant. The appellant asked the plumber several times for a quote, but the plumber just continued with his work. When the job was completed, the appellant paid the plumber in cash (\$1594.13), withdrawing money from his bank that day, leaving little left in his account.

The appellant went on to explain that he subsequently discovered the cause of the pump failure. Soon after the new pump was installed, he heard that pump cycling on and off and realized it might be something to do with a watering hydrant for his backyard garden. He and a friend dug up the hydrant and found that a plastic pipe connection with his main well line had failed. He replaced this with a metal fixture and has had no problems since.

When the plumber had finished installing the new pump, he advised the appellant that at some point soon he should have his pressure tank replaced and the electrical wiring also replaced. This would cost about \$630 plus the cost of new pressure tank. The new pressure tank would normally cost \$800, but the appellant was able recently to buy a used one for \$100, but cannot afford the \$630 installation cost at this time. The appellant also reviewed other financial stresses facing him: his new scooter, a massage chair and the stair assist to his basement are all broken and need repair. He is also facing a large bill from the gas company.

With respect to his home insurance, the appellant stated that his insurance company informed him in February 2013 that his insurance policy would not be renewed because his home was uninsurable. Despite efforts to tidy up his home, he has not been able to find any insurance company that will provide him with insurance coverage.

The appellant stated that he normally uses about 4 cords of wood to heat his home each winter, at a cost of about \$1000. He indicated he had bought a supply of wood a few weeks previous to the hearing.

The appellant also presented a copy of a 2011 submission to the Canada Pension Plan Appeal Tribunal. This submission contained 32 pages. Each page consists of a photo accompanied by a description of what the picture represents, along with a statement as to his medical condition at the time of the photo and how this affects his ability to secure permanent employment.

The appellant offered to submit about 50 pictures in digital format of him and his home, as evidence of his plumbing problems and his domestic circumstances. As these images had not been printed, and therefore would not have been available for review and comment by the ministry at the hearing, the panel ruled that these pictures would not be accepted. The ministry representative noted that there was sufficient evidence, in the form of the plumber's invoice, that the well pump needed to be replaced.

The ministry stood by its position at reconsideration. The ministry representative noted that the ministry had received a crisis supplement application from the appellant for home insurance, but it had not acted on it pending confirmation that an insurance company would issue such a policy.

The panel finds that the appellant's oral testimony at the hearing is in support of the evidence before the ministry at reconsideration, clarifying the events surrounding the well pump replacement and the

appellant's financial circumstances at the time. The panel therefore admits the appellant's oral testimony as evidence under section 22(4) of the *Employment and Assistance Act*. The panel finds that the photographs submitted before the hearing and the submission to the CPP Appeal Tribunal are not relevant to the issue under appeal, as they have no bearing on the well pump replacement and how the appellant paid for it, and are not in support of information and records regarding this appeal before the ministry at reconsideration. The panel therefore does not admit these materials as evidence.

## 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. Specifically, the issue is whether the ministry reasonably determined that while it was unexpected for the well pump to break down and an unexpected expense for the appellant to pay the costs to repair it, he had the resources available to pay for the repairs; and since the well has been repaired, the appellant's physical health was not in imminent danger as a result of a failure to provide him with the funds to pay for the repair costs.

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.

In EAPWDR Schedule A, section 4(2) states that the monthly shelter allowance for a family unit is the smaller amount of (a) the family unit's actual shelter costs and (b) the maximum set out in the table shown under section 4(2)(b). For a family unit size of 1 person, the maximum monthly shelter allowance is \$375.

Section 5 of Schedule A describes how actual shelter costs are calculated, including the following:

(2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:

(f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

The panel will consider each party's position on matters at issue in this appeal.

The position of the ministry, as explained by the ministry's representative at the hearing, is that the ministry is the "payer of last resort." Even if the appellant had been able to secure a quote from the plumber before work began and submitted it to the ministry, the ministry would have asked to see the appellant's bank balance when considering whether to provide a crisis supplement for the quoted cost. Under the actual circumstances, the appellant did have the funds available to pay the plumber and the imminent danger to the appellant's physical health was averted. The ministry noted that should the appellant seek a crisis supplement to cover the costs of firewood or a specific policy for home insurance, the ministry would look at the "big picture" and take into account his unexpected expenditure on the well pump replacement.

The appellant's position is that the ministry should have taken into account his brain injury and its negative impact on his ability to think and communicate clearly when under stress. When he talked to the ministry in August 2013 he was not able to put into words a complete picture of the situation facing him: that more work needed to be done on his water supply, that he would have to soon take in a supply of firewood for the winter and that it was very stressful for him not to have home insurance. If the ministry had taken the time and effort to understand his situation more fully, it would have realized that his crisis supplement request was reasonable.

### *Panel findings*

There is no dispute that, on 16 July 2013, the appellant's well pump broke down, was repaired that day by a plumber and the appellant paid the plumber the invoiced amount of \$1594.13 in cash out of his bank account. The panel notes that the basic requirement for eligibility for a crisis supplement under section 57 of the EAPWDR is that the supplement is required to meet an unexpected expense or obtain an item unexpectedly needed and the requestor is unable to meet the expense or obtain the

item because there are no resources available to the family unit. The ministry acknowledges that the need to replace the well pump was an "unexpected expense." The panel finds that the ministry was reasonable to conclude that, as the appellant was able to pay the plumber out of the funds available in his bank account, there were resources available to him. The appellant's position is that these funds resulted from savings to pay for home insurance and for firewood. The panel does not consider reasonable the proposition advanced by the appellant that, even if he had been able to articulate his situation more clearly, the ministry, in performing its due diligence on "resources available," should be expected to make assessments of future, rather than current, "resources available" by taking into account the possibility of future expenditures which may or may not arise. Indeed, in this case the appellant had been advised by his insurance company some months before that his home was uninsurable, and there was no certainty at the time of the request or now that some other insurance company will issue a policy. The panel also finds that the ministry was reasonable in determining that, as the well had been repaired in a timely way, the issue of "imminent danger to physical health" was not an issue.

As the appellant's monthly shelter allowance is at the maximum (\$375) for his family unit size, the panel finds that the ministry reasonably determined that the provisions of section 5(2)(f) of Schedule A do not apply.

On the basis of the foregoing, the panel finds that the ministry's decision to deny the appellant's request for a crisis supplement was a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.