

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry") reconsideration decision dated November 20, 2013, which denied the appellant a crisis supplement for clothing (shoes). The ministry relied upon section 57 of the Employment Assistance for Persons with Disabilities Regulation (EAPWDR) and specifically determined that: (a) the crisis supplement was not required to meet an unexpected expense, or to obtain an item unexpectedly; (b) information was not provided to establish that the appellant had no resources available to him to obtain the clothing on his own; and (c) information had not been provided to establish that failure to obtain the clothing will result in imminent danger to the appellant's physical health.

PART D – Relevant Legislation

- Employment Assistance for Persons with Disabilities Act (EAPWDA) –section 4
- Employment Assistance for Persons with Disabilities Regulation (EAR) –section 57
- Interpretation Act -section 8 and 27

PART E – Summary of Facts

The following information and records were before the ministry at the time of the reconsideration:

1. Consent to Release Information (CRI) dated November 5, 2013 signed by the appellant authorizing release of information relating to him to an advocate designated by him;
2. A Request for Reconsideration dated November 5, 2013 signed by the appellant, which was accompanied by an undated written submission signed by the advocate (the "Submission") and a "statutory declaration" dated November 5, 2013 signed by the appellant (the "Declaration"). The Declaration has not been sworn or affirmed before a Commissioner for Oaths or a Notary Public in British Columbia;
3. The Submission (referred to in paragraph 2 above), among other matters, states that: (a) the appellant purchased a new pair of shoes in the Summer of 2013 and in less than three months thereafter the bottom of the sole came apart from the upper part of the shoe in the area of the toe box, which was unexpected; (b) the appellant took the shoes back to the store and was told that they will not take back the shoes; (c) unexpectedly, after only a few months, the appellant's shoes were no longer wearable and no longer able to protect his feet from the elements; (d) his feet were immediately at risk of getting wet with the possibility of fungus on the foot, risk of dirt or needles or glass cutting his foot, risk of blisters occurring and having wet feet and socks; and the appellant has no funds to replace the shoes with another pair; and (e) following sections 8 and 29 of the Interpretation Act, the ministry should interpret the legislation with its remedial purpose in mind and in a broad and liberal manner. Other arguments of the appellant in support of his appeal that are described in the Submission are dealt with in more detail by the panel in Part F of this decision; and
4. The Declaration of the appellant, among other matters, states that (a) his shoes came apart at the toe part after he had purchased the shoes in July 2013; (b) he informed the ministry on October 8 about his shoes and was informed that the ministry would not pay for the shoes as the issue with it was due to routine wear and tear and that the appellant should have known that he would have to replace them.

A Notice of Appeal dated November 27, 2013 filed by the appellant states that the ministry's decision is unreasonable based on the circumstances of his case. His shoes fell apart unexpectedly and he has met other criteria relating to risk to health and other resources

At the hearing the appellant stated that he had applied for a supplement (a coat) only once before in 2012. He produced the shoe that he had purchased in the summer of 2013 and showed to the panel where it had come apart from the upper part of the shoe in the area of the toe box. It had been held together with glue, but had become unstuck creating an entry point for water and other weather elements. The appellant further stated that: (a) he did not have a receipt for the purchase of the shoes; (b) the vendor of the shoes had refused to refund the purchase price of the shoes or to replace them and had instead recommended that the appellant contact the manufacturer of the shoes (which the appellant has not yet done); (c) before applying for the supplement, he read the relevant regulations and, following the requirements of the regulation, he had tried to obtain another pair of shoes from several community resource centers without any success; his efforts to obtain another pair of shoes through community resources was communicated on the phone to a ministry worker; (d) at the time of the unexpected damage to the shoe, he had an old pair of shoes, which needed repairs; he was able to borrow a pair of shoes in the interim from a friend, and subsequently was able to purchase a couple of pairs of secondhand shoes for approximately \$50.00 once he received his next income assistance Cheque from the ministry; (e) he had purchased the shoes last summer for approximately \$130.00 in the expectation that they would last for over three months; (f) he made the request for the supplement through a call center and was not given adequate opportunity to explain to the ministry the full circumstances of his case in detail; he even went to a ministry office to provide a detailed explanation, but was merely

provided documents to appeal the ministry's reconsideration decision; (f) because of the hole in his shoe, his feet were wet and he was sick as a result thereof, as he is particularly prone to respiratory infections; and (g) he explained his existing medical conditions, and the history thereof, in detail to the panel.

The panel finds that the foregoing oral testimony of the appellant and the physical condition of his shoe are "in support of" the information and records that were before the ministry at the time of the reconsideration decision and admits it as additional evidence under section 22(4)(b) of the Employment and Assistance Act.

The appellant's representative submitted that the word "may" in section 5 of the Employment and Assistance Act gives authority to the ministry a discretion to provide disability assistance or a supplemental benefit to a family unit; the discretion should be based on the facts and circumstances of each case; and the ministry's discretion was fettered and not fully exercised as the ministry applied its policy that "wear and tear" of clothing is not unexpected and failed to exercise its discretion to the fullest extent as envisaged under sections 8 and 29 of the Interpretation Act;

The ministry contended that: (a) according to the records of the ministry; (b) the appellant requested a crisis supplement stating that his sneakers had developed "a hole" unexpectedly; (c) the appellant was informed that development of "a hole" in the shoe is not an unexpected expense or an item that is unexpectedly needed; (d) there was no evidence that the pair of shoes in question were those of the appellant or that alternate sources were unavailable to the appellant; (e) as indicated at the hearing, the appellant had other resources in that he had a spare pair of shoes (albeit requiring repairs), was able to borrow a pair of shoes from a friend and eventually able to purchase a couple of secondhand pairs of shoes, thereby avoiding a need for a crisis supplement; and (f) there was insufficient information before the ministry that established that failure to obtain a replacement pair of shoes will result in imminent danger to the appellant's health.

Based on the foregoing, the panel makes the following findings of fact:

The appellant:

- acquired a pair of shoes in July 2013 and in October 2013 the bottom of the sole of one of the shoes unexpectedly came apart from the upper part of the shoe in the area of the toe box; and
- the appellant replaced the shoes through borrowing a pair from a friend and subsequently purchasing a couple of pairs of shoes.



PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request for a crisis supplement for clothing was reasonably supported by evidence, or a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry determined that the appellant was not eligible to receive a crisis supplement under section 57 of the Employment Assistance for Persons with Disability Regulation as: (a) it was not required to meet an unexpected expense, or to obtain an item unexpectedly; (b) information was not provided to establish that the appellant had no resources available to his to obtain the clothing on his own; and (c) information had not been provided to establish that failure to obtain the clothing will result in imminent danger to the appellant's physical health.

In arriving at its reconsideration decision, the ministry relied upon the following legislation:

Employment Assistance for Persons with Disabilities Act (EAPWDA)

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 Assistance for Persons with Disabilities Regulation (EAPWDR)

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.

- (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 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.

(B.C. Reg. 12/2003)

Section 8 and 29 of the Interpretation Act

8. Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives.

29. In an enactment: "may" is to be construed as permissive; "must" is to be construed as imperative;

The appellant's case is that shoes purchased by him three months earlier came apart unexpectedly at the sole from the upper part of the shoe in the area of the toe box and the vendor of the shoe has refused to take them back. The appellant has no resources to purchase a new pair of shoes and without shoes there is an imminent risk to his health and in actual fact he became very sick, as his feet were wet due to the problem with his shoe. The ministry's discretion was fettered when it denied him the supplement requested by him, as it did not give full consideration to the facts and circumstances of his case and merely applied ministry's policy in determining that "wear and tear" of the shoes is not an unexpected expense or an unexpected item of need. The ministry should interpret the relevant legislation in a broad and liberal manner with its remedial purpose in mind under section 8 and 29 of the Interpretation Act.

The ministry's case is that the appellant must meet all three criteria prescribed under section 57 of the EAPWDR to receive a crisis supplement for clothing. The ministry is not satisfied that development of a hole in the shoes is substantive evidence to meet the criterion that the appellant's need is unexpected expense or an unexpected item of need; Furthermore, there was no evidence on the ministry's record that the appellant had exhausted all community resources available to him find the type of clothing that he needed. On the contrary, he had a spare pair of shoes in need of repair, the appellant was able to borrow a pair of shoes from a friend and eventually purchased a couple of pairs of shoes with his own resources; and there was insufficient information available to the ministry at the time of the reconsideration decision that established that failure to obtain a replacement pair of shoes would result in imminent danger to the appellant's health.

Section 57(1)(a) and 57(1)(b)(i) collectively prescribe three criteria that the appellant must meet to be eligible for the new pair of shoes requested by him, all of which must be met by the appellant to be eligible for of the new pair of shoes requested by him. Each of these three criteria are discussed below by the panel in detail:

The first criterion, prescribed under the first part of section 57(1)(a), is whether the family unit requires the requested supplement to meet an "*unexpected expense*" or obtain an "*item unexpectedly needed*". The appellant's request is for a new pair of shoes to replace a pair of shoes purchased by him three months earlier (in July 2013), as the bottom of the sole of one of the shoe had come apart from the upper part of the shoe in the area of the toe box (in October 2013). It is not merely a "hole" in the shoe. The panel finds that it is reasonable to assume that soles of an expensive shoe do not come apart, as the shoe of the appellant has done, within three months of purchase. Such an incident could be a manufacturing defect but cannot be attributed to "wear and tear" of the shoe. The panel therefore finds that the need for a replacement pair of shoes was an "unexpected expense" or an item "unexpectedly needed". Therefore, the panel finds the ministry unreasonably determined that the criterion of "*unexpected expense*" or "*item unexpectedly needed*" prescribed under the first part of section 57(1)(a) has not been met.

The second criterion, prescribed under the second part of section 57(1)(a), is whether the appellant is unable to meet the expense or obtain the item because there are "*no resources available*" to the family unit. It is clear from the appellant's own evidence at the hearing that he already had a spare pair of shoes (albeit requiring repairs), was able to borrow a pair of shoes from a friend and eventually was able to purchase a couple of secondhand pairs of shoes for \$50.00. He therefore clearly had access to alternate resources to replace the item requested by him. In view of this evidence, the panel finds the ministry reasonably determined that the criterion of "*no resources available*" prescribed under the second part of section 57(1)(a) has not been met.

A third criterion, prescribed under section 57(1)(b)(i), requires that if both the criteria of sub-section 57(1)(a) are met, the minister must consider whether the failure to meet the unexpected expense would result in "*imminent danger to the physical health*" of any person in the family unit. The additional evidence presented by the appellant at the hearing indicates that: (a) he had an old pair of shoes that required repairs; (b) he was able to borrow a pair of shoes from a friend; (b) he purchased several second-hand pairs of shoes after the bottom of the sole of one of the shoe had come apart; and (d) he was able to temporarily fix the damaged shoe with glue. Having regard to this evidence, the panel finds that the appellant was able to obtain the item "unexpectedly needed" from other resources and consequently, there was no risk resulting from "*failure to meet the unexpected expense*" and there was also no "*imminent danger to the health of the appellant*" due to the lack of shoes. Therefore the ministry reasonably determined that the third criterion prescribed section 57(1)(b)(i) has not been met.

As stated earlier in this decision, the appellant has to meet all of the three criteria described above, which are clear prescribed requirements under Section 57 of EAPWDR, for the appellant to meet be eligible for a new pair of shoes requested by him. The panel finds that the appellant has met only one of the said three criteria and, therefore, the panel finds that the ministry's reconsideration was reasonably supported by evidence and a reasonable application of the relevant enactment in the circumstances of the appellant. The panel confirms the reconsideration decision of the ministry.

Panel members must have regard for the legislative objective, context and scheme of the relevant legislation, and as prescribed in section 8 of the Interpretation Act, every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objectives. It is also settled law that doubt or ambiguity involving social legislation should be resolved in favor of the applicant requesting the benefit. In the present appeal, the panel finds that there is no doubt or ambiguity in the legislation that requires invocation of section 8 of the Interpretation Act.