

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 08 January 2014 that denied the appellant's request for a crisis supplement for a portable automatic dishwasher. The ministry determined that her request did not meet the criteria set out in section 57 of the Employment and Assistance for Persons with Disabilities Regulation that the supplement was needed to meet an unexpected expense or obtain an item unexpectedly needed, and that failure to obtain the item would result in imminent danger to the physical health of the appellant. The ministry also found that a portable automatic dishwasher when prescribed by a medical professional is a health care good and thus an item for which a crisis supplement may not be provided.

The ministry was satisfied that the appellant met the criterion set out in the Regulation in that there are no resources available to meet the expense.

PART D – Relevant Legislation

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

PART E – Summary of Facts

Adjournment Request

1. On 22 January 2014, the appellant sent a note to the tribunal regarding scheduling the hearing. She indicated that she is not available Wednesdays or Fridays, her advocate is not available Mondays or Tuesdays, and is not available before 14 February 2014. The hearings cannot start before noon and must start by 1pm. She will require a total of three hours allocated for the appeal but the tribunal has a doctor's note regarding scheduling.
2. On 31 January 2014, the appellant submitted an Appeal Adjournment Request. She provided the following reasons for the request:
 - Her advocate will not be available before 14 February 2014.
 - She needs her advocate present because of her disabilities – when she is busy she doesn't register up to 70% of what has been said and because she can misunderstand things and not really something has been sent that she needs to respond. She has several doctors' letters informing the ministry of this problem.
 - Because she has a head "injury", her ability to organize thoughts and speak is impaired and she has short term memory problems.
 - Without her advocate to do most of participating it could double or more the length of the hearing if she had to do it alone.

As the ministry did not consent to this request, the Tribunal Chair did not approve the request. The appellant also made another request for adjournment on February 11, 2014, on substantially the same grounds as her previous request. It was also denied on the same grounds.

3. At the outset of the hearing, the appellant requested an adjournment for the following reasons:
 - She has not enough time to prepare: The ministry has documents about how she has severe chronic fatigue – when she is stressed out she can't function or sleep properly. It is taken all the time since her request was denied to prepare for the appeal. In the process the ministry included multiple copies of documents in the record of the ministry decision and going through them causes her brain to stop functioning and she can't understand. The documents are all out of order and it has taken her a month to sort them out. She is always falling asleep going through all the material.
 - The ministry has not provided her with the information she has requested: ministry decisions have failed to substantiate the reasons for the denial of her request. She has requested the ministry provide copies of e-mails between her and the ministry requesting such information and the lack of ministry response. As a result of the ministry failing to provide these e-mails, she has submitted an FOI request but the ministry is delaying responding to this request. She has information that the ministry could obtain these documents within an hour.
 - She has important evidence from Ombudsperson reports for the panel to consider, but as the hearing was being held by teleconference, she was not able to courier the material to the panel.
 - For the same reason, she is unable to provide a brief doctor's note dated 08 February 2014 stating that she is unable to work on the appeal any quicker than she has been able to.
 - She has not had enough time to discuss the appeal with her advocate: her advocate will not know if something stated by the ministry at the hearing needs a response.
 - She is exhausted, her brain is not working and she did not get any sleep the night before at least partly because she was involved in a hearing regarding another request for a crisis

supplement yesterday.

- The appellant's Advocate also indicated that she was tired and felt sore? and so could not properly assist the appellant.

After a recess to consider the matter, the panel did not grant the appellant's request for the following reasons:

- In the panel's view, the appellant needs minimal assistance in presenting her case and the advocate had already ably assisted the appellant in her request for an adjournment.
- In the panel's view, there is sufficient evidence on the record for the appellant to argue her case that the ministry did not substantiate its decisions. The panel agreed that the appellant could read into the record material from the Ombudsman's reports, court decisions and her doctor's note.
- The hearing is to consider the reasonableness of the ministry's reconsideration decision, not to make a judgment concerning the delivery of ministry services or the adequacy of its responses to the appellant's requests for information.
- As the appellant had ably presented her request for adjournment, much of which addressed substantive issues respecting her arguments on the issues under appeal, and given that the request was for a crisis supplement, with the urgency implied in the need to address the request, the panel found it both fair and expedient to proceed as scheduled.

Substantive Matters

The appellant is in receipt of disability assistance as a sole recipient.

On April 17, 2013, the appellant was prescribed a dishwasher by her physician. The prescription reads as follows:

"Need a new dishwasher to prevent risk of fractures and risk of falls from having to stand at sink. From his legs giving way suddenly. URGENT."

On May 9, 2013, a ministry decision set out in a Request for Reconsideration confirms the ministry's denial of her request for a crisis supplement to purchase a dishwasher on the basis that:

"[The appellant's] medical issues are not considered unexpected as [the appellant] has had the persons with disabilities designation since 2002, therefore prices supplement legislation could not be applied to her request."

On May 28, 2013, the appellant was again prescribed a portable automatic dishwasher. The prescription reads as follows:

"Please note the appellant requires a portable automatic dishwasher (unused) due to her decreased mobility, osteoporosis and risk of falls. This mobility problem is a new issue. She has begun experiencing "giving way" of her legs at the knee causing falls. Please note this pt. cannot use a chair to do her dishes because she cannot get close enough."

On June 10, 2013, a ministry reconsideration decision confirms the ministry's denial of her request for a crisis supplement to purchase a dishwasher on the basis that:

[Redacted]

"You do not meet the criteria under the crisis supplement legislation because although your need for a dishwasher may be unexpected and you may not have the resources available to purchase the item on your own, the ministry is not satisfied that failure to provide the money would result in imminent threat to your physical safety. Also, it is the Ministry opinion that having a dishwasher would not prevent your legs "giving way" and avoid the risk of you falling. Your risk of your legs "giving way" would still continue when loading and unloading a dishwasher or completing other daily activities in your household such as preparing and cooking your meals."

On October 1, 2013, a ministry decision set out in a Request for Reconsideration denies the appellant's new request for a crisis supplement to purchase the dishwasher on the basis that:

"failure to meet the expense of the dishwasher would not result in an imminent danger to the physical health of [the appellant]. A dishwasher may limit the standing time required to wash dishes, it does not prevent the risk of legs giving way and causing injury."

On October 16, 2013 the appellant's physician prepared a letter to the appellant's local ministry office describing in some detail why the appellant requires a dishwasher for medical reasons. In summary the issues identified by the aggravation of her existing medical conditions due to prolonged standing and the risk of injury due to her falling as a result of her medical issues.

On October 29, 2013 a ministry reconsideration decision confirms the ministry's denial of her request for a crisis supplement to purchase a dishwasher on substantially the same reasons as the reconsideration decision of October 1, 2013

On December 5, 2013 the appellant's physician prepared a letter to the appellant's local ministry office stating that the appellant needs to be provided with a dishwasher immediately to prevent "serious soft tissue injury, pain and functional impairment... Continued soft tissue injuries, Mal alignment problems and risk of fractures...".

On January 8, 2014, the ministry's reconsideration decision here under appeal confirms the ministry's denial of the appellant's request for a crisis supplement to purchase a dishwasher on the basis that since the original prescription for the dishwasher is dated April 17, 2013, "[the] Minister finds that your need for the dishwasher cannot reasonably be considered unexpected and that you do not have an unexpected expense," and "you have the option of placing a chair or other support behind or beside you to assist you should your legs give way while standing. The Minister is not satisfied that failure to obtain a dishwasher will result in imminent danger to your health."

The reconsideration decision goes on to state,

"Additionally, the Minister notes that you are requesting a dishwasher which has been prescribed by medical doctors and is to be used to assist you as a result of your multiple medical conditions. The Minister concludes that you are requested a health care are good. Accordingly, you are ineligible for a crisis supplement for this item under section 57(3) of the EAPWDR."



On the Notice of Appeal under the section reasons for appeal the appellant has written the following: " I meet criterion of legislation". There is a considerable amount of the appellant's writing over most of the Notice of Appeal, but it is not legible.

Subsequent to the appeal being filed but before the date of the hearing, the appellant also submitted five packages of material titled Appendix B, Appendix C, Appendix D, Appendix E and Appendix F. The panel reviewed these documents and concluded that they were simply reorganizations of existing documents that were included in the original package.

Accordingly, pursuant to section 22(4)(b), the panel agreed to admit these documents and considered them in making its decision.

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 a portable automatic dishwasher 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 the appellant requires a crisis supplement to meet an unexpected expense or obtain an item unexpectedly needed, that failure to obtain the item would result in imminent danger to the health of the appellant, and that a portable automatic dishwasher is a health care good and thus an item for which a crisis supplement may not be provided.

The ministry was satisfied that the appellant met the other criterion set out in the Regulation: there are no resources available to obtain the item.

The relevant legislation is from section 57 of 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.

The Appellant's Legal Arguments

In both her application for an adjournment and in her substantive arguments that the reconsideration decision was not reasonable, the appellant raised what the panel considers to be a number of technical legal arguments in support of which she cited both a report from the BC Ombudsman and case law. The panel notes that the appellant had time to present these arguments in that the hearing lasted three hours, with the appellant's submission lasting approximately 2-1/2 hours, at the conclusion of which she indicated that she was satisfied with her submission.

In this case the legal principles cited by the appellant are the following:

- 1) the ministry is required to give adequate and substantive reasons for its reconsideration decisions such that anyone impacted by the decision must be able to understand the grounds for that decision, even if they are cognitively impaired;
- 2) the ministry cannot rely on its own delay to support its argument that an item no longer meets the legislative criteria that it be unexpected;
- 3) it is a principle of statutory interpretation, as established by recent case law, that a decision-

maker must favour any plausible interpretation of a statutory provision by an individual over the interpretation proposed by the statute-maker.

While the panel accepts that it is the right of the appellant to make these submissions, it intends to make its determination in this hearing, as in all appeals under the relevant provisions of the *Employment and Assistance for Persons with Disabilities Act*, on the basis established by that legislation: that is, "whether the decision being appealed is, as applicable, reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision."

Substantive Matters

At the hearing the appellant argued that her request for a new automatic dishwasher meets the criteria set out in section 57(1). That is, the need for the item is unexpected, she has no alternate resources, and failure to obtain the item will result in imminent danger to her physical health.

The ministry's position is that the appellant meets only the second of these legislative requirements, in that she has no alternate resources. The Ministry maintained that the need for the item is not unexpected and the failure to obtain the item would not result in imminent danger to the appellant's physical health. The Ministry also argued that the dishwasher is a healthcare good because it is prescribed by a physician.

1. Unexpected Expense

The appellant argued that the need for a dishwasher was unexpected in that she could not have foreseen that need. The ministry argued that the need for the dishwasher was not unexpected since it was based on a prescription which was prepared for the appellant in April 2013.

The panel is not convinced by either of these arguments. The ministry's argument that since time has elapsed since becoming aware of the need for a dishwasher and ministry's decision, which is based at least partly on the determination that the item is not unexpected, is self-serving. The question is not only whether the item was unexpected at the time of the second request giving rise to the reconsideration decision under appeal, but also whether it was unexpected the time it was identified as a need.

On the other hand, the appellant's argument is too broad. Something more than a realization of a need is required in order for that need to be unexpected. We all become aware of a need and given point in time, where before that time we were not aware of the need and after that time we were aware of the need. This applies to even the most mundane of needs. In order for the need to be "unexpected" there must be an element of surprise or unpredictability, as would be the case with a sudden unforeseen change of circumstances or an unanticipated personal crisis. In this case the medical condition as well as the symptoms which led to the prescription of a dishwasher were well known to the appellant long before the prescription was written. So the need for the dishwasher was not the result of a sudden and unforeseen change of circumstances or unanticipated personal crisis, rather it was the result of long established medical conditions.

On this basis the panel finds that the ministry reasonably determined that this expense was not



unexpected.

2. Imminent Danger to Health

The appellant argued that not acquiring a dishwasher placed her physical health in imminent danger. Her position was that every time she stood at the sink to wash dishes there is a risk that due to her medical conditions she could fall and seriously injure herself.

The ministry chose not to argue this point at the hearing. However, the panel considers that it was an argument made in the reconsideration decision and so must be considered by the panel. The ministry's argument in the reconsideration decision is that the appellant's health is not in imminent danger because she can place a chair or other support behind or beside her to assist her should her legs give way. A subsequent letter from the appellant's physician submitted to the appeal indicated that this was not an adequate safeguard.

The panel finds that there does appear to be a threat to the physical health of the appellant. The evidence suggests that the appellant would be much more likely to fall and injure herself standing for a period of time to wash dishes by hand as opposed to loading the dishwasher. The panel also finds that this threat is imminent in that it could happen at any time, is impending or looming.

On this basis the panel finds that the ministry unreasonably determined that failure to obtain the dishwasher would not place the appellant health in imminent danger.

3. Healthcare Good

The ministry argued that the dishwasher should be classified as a healthcare good as it was prescribed by a physician and so is ineligible for a crisis supplement in accordance with section 57(3).

The appellant maintained that a dishwasher is not a healthcare good even when prescribed by a physician. In order to be a healthcare good, the purpose of the good must be to care for a person's health. A dishwasher is a kitchen appliance designed to automatically clean dishes, not something the purpose of which is to care for a person's health.

When asked by the panel whether a dishwasher would qualify as a healthcare good under the relevant legislation the ministry representatives response was no. Upon review of the sections of the legislation dealing with health supplements, it is clear that these types of devices are designed to positively impact the health of a person. A dishwasher is not designed to do this, but to clean dishes. A dishwasher cannot be characterized as a healthcare good.

On this basis the panel finds that the dishwasher is not a healthcare good and that the ministry unreasonably disqualified it from being the subject of a crisis supplement under section 57(3).

Conclusion

Based on the foregoing, the panel finds that the ministry's decision to deny the appellant's request for a crisis supplement for a portable automatic dishwasher was reasonably supported by the evidence because it was not unexpected expense. The panel therefore confirms the ministry's decision.