

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry)'s reconsideration decision dated May March 4, 2014, finding the Appellant is not eligible to receive a crisis supplement for clothes as her request does not meet the legislated criteria. Specifically, the ministry found that the crisis supplement is not required to meet an unexpected need or to avoid imminent danger to the physical health of the appellant as required by section 57 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

The relevant legislation is section 57 of the EAPWDR.

PART E – Summary of Facts

The Appellant is currently receiving disability assistance as a sole recipient.

The appellant suffers from a number of medical conditions including having suffered from two heart attacks, diabetes, chronic bronchitis and neuropathy. She has suffered from these conditions for a number of years. Her conditions mean that the appellant experiences weight fluctuations of between 20lbs-50lbs (the appellant currently weighs over 200lbs). At some point in 2013 the appellant resided in an apartment that was infested with bedbugs, and she disposed of all her clothes and began purchasing new ones. She has been slowly rebuilding her wardrobe since that time. As a full figured woman, the appellant finds it difficult to obtain clothes in her size at second-hand stores. She does not have a winter coat, which concerns her as lack of a coat may aggravate her bronchitis.

The appellant has made two previous applications for a crisis supplement for clothing for the same reasons in January and November 2013. The ministry denied both applications on the basis that the legislated criteria were not met.

The information provided by the appellant regarding the disposal of her clothes due to bedbug infestation is not information that was before the ministry at the time of the reconsideration decision. Therefore, in accordance with section 22(4)(b) of the *Employment and Assistance Act*, it is necessary for the panel to determine whether this information is admissible as information that is provided in support of the information that was before the ministry at the time of the reconsideration decision.

The panel finds that the information regarding the bedbug infestation is new evidence and is not in support on any of the information before the ministry at the time of the reconsideration decision. It is regarding a discreet circumstance unrelated to the information provided by the appellant to the Ministry at the time of the reconsideration decision, which dealt exclusively with her weight fluctuations. Accordingly, the panel finds it cannot take this information into consideration in making its determination at this appeal.

As the information regarding the bedbugs is not admissible, the issue before the panel, then, is the reasonableness of the ministry's decision to deny the appellant a crisis supplement for clothing on the basis of ongoing weight fluctuations.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's decision finding the Appellant is not eligible to receive a crisis supplement to purchase new clothes because she does not meet the legislated criteria.

The relevant legislation is 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.
- (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 Ministry's position at the time of the reconsideration decision was that the Appellant's request does not meet all of the three legislated criteria:

1. The need for the item is unexpected or there is an unexpected expense. As a pattern of weight fluctuations has been established for over a year, it is not unexpected that the appellant should need clothes of various sizes. The need for winter clothing is not unexpected. This criterion is not met.
2. There are no alternate resources available. The ministry has no confirmation that alternate resources are available. This criterion is met.
3. Failure to obtain the item or meet the expense will result in imminent danger to physical health of the Appellant. The ministry has no confirmation that the appellant does not have suitable winter weather clothing, so this criterion is not met.

The Ministry's position at the hearing was that only the first criterion was not met in this instance:

1. Clothes are an ongoing expense to be paid out of the Appellant's assistance payments. The Appellant's weight fluctuations have been going on for a number of years so they cannot be unexpected. The Appellant's decision to dispose of her clothes occurred many months ago and her claim is in regard to her weight fluctuations, not this incident. In addition, the appellant is responsible to ensure that she has season-appropriate clothing out of her income as it is not unexpected that she would need warmer clothes in the winter. This criterion is not met.
2. The ministry conceded that there are no other resources available to the appellant to purchase clothes. This criterion is met.
3. If the appellant does lack a winter coat, this could aggravate her bronchitis and so result in imminent danger to her health. This criterion is met.

Although the Ministry reversed its decision in regards to criterion #3 at the hearing, the panel must consider which decision it is reviewing. The panel's authority under section 24 of the Employment and Assistance Act is to determine whether a decision being appealed was reasonable. Therefore the panel considers that it is reviewing the position of the ministry at the time of the reconsideration decision, not at appeal. On this basis, the panel takes it as the ministry's position that criterion #3 is not met.

The appellant's position at the hearing was that:

1. The appellant's need for clothing is unexpected because she could not have foreseen that she would have to dispose of all her clothes due to bedbugs. As well, as her weight fluctuations are not predictable nor controlled, the appellant's need for clothes in various sizes cannot be anticipated and so is unexpected.
2. The appellant's advocate confirmed that there are no alternative resources for her to find new clothes as none of the sources they looked into had clothes in her size.
3. Not having a winter coat would result in imminent danger to her health as it would aggravate her bronchitis.

1. Was the Ministry reasonable in determining that the appellant's need for clothing in various sizes and for winter clothing is not an unexpected expense? The panel finds that, as the appellant has been experiencing weight fluctuations for more than one year and is aware that her weight will fluctuate over time, as well as the fact that the appellant has applied for a crisis supplement for the same reasons on two previous occasions, these fluctuations cannot be characterized as unexpected. The fact that the appellant cannot predict whether her weight will go up or down over any given period of time does not alter the fact that she is aware that she needs clothes in a number of different sizes. As she has been aware of this for a considerable period of time, it cannot be characterised as "unexpected".

The need for winter clothing is also an anticipated need and so cannot be characterised as an unexpected expense.

The panel finds that the ministry was reasonable in determining that the appellant's need for clothing in various sizes and for winter clothing was not an unexpected expense.

2. Was the Ministry reasonable in finding that the appellant has alternate resources available? As the ministry and the appellant agreed that this criteria on is meant the panel did not consider reasonableness of this decision.

3. Was the Ministry reasonable in finding that failure to obtain additional clothing (in this case, a winter coat) would not result in imminent danger to the health of the appellant? The panel finds that it has not been established that failure to obtain a winter coat would result in imminent danger to the health of the appellant. The appellant does not live in a location which experiences severe weather during the winter months, and, furthermore, there is no indication that the appellant does not have other clothes that would be suitable for winter weather.

The panel finds that the ministry was reasonable in determining that failure to obtain additional clothing would not result in imminent danger to the health of the appellant.

The ministry was reasonable in finding that the appellant did not meet all of the legislated criteria in section 57 of the EAPWDR and so does not qualify for a crisis supplement.

Accordingly, the panel finds that the Ministry's decision to deny the Appellant a crisis supplement to purchase clothing was a reasonable application of the relevant legislation and confirms the Ministry's reconsideration decision.