

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated August 22, 2014, wherein the ministry denied the appellant a crisis supplement for food. The basis for the ministry’s decision was that the appellant did not satisfy three statutory criteria as set out in section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation. The ministry held that:

1. the expense was not unexpected,
2. there were alternate resources available to the family unit, and
3. failure to meet the expense would not result in imminent danger to physical health.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) section 57

## PART E – Summary of Facts

The information before the minister at the time of reconsideration included a Request for Reconsideration form signed by the appellant on August 13, 2014.

In the Request for Reconsideration form, the appellant stated that he required the \$20 crisis supplement in order to purchase Ensure liquid nutritional food supplement (or similar brand) and steam-distilled drinking water. The appellant contended that he had been advised by his naturopathic physician not to drink ordinary water because of the risk that potential germs and other contaminants could compromise his suppressed immune system. The appellant also stated that Ensure (and similar brands) are not available from the local Salvation Army or from the local food bank. The Request for Reconsideration form indicated that the appellant advised the ministry that his credit card bills had been higher than usual.

In his written appeal submission the appellant contended that:

- his file with the ministry contains documentation about his suppressed immune system and his requirement for bottled water and a high protein diet.
- his naturopath provided the ministry with medical confirmation about the appellant's suppressed immune system.
- the naturopath provided the ministry with medical documents for a high protein diet and bottled water.
- the Legal Services Society's booklet "Your Welfare Rights", revised January 2008 edition, indicates that "having no food left" is considered an unexpected need.
- no alternate resources were available to him since his credit card was declined when he tried to use it to purchase food, and neither the Salvation Army nor the local food bank provide Ensure or distilled water.

The appellant's written submission provides additional detail with respect to his medical need for the specified food items, and the panel has admitted this information as being in support of the information and records that were before the ministry at the time of reconsideration as provided by section 22(4) of the EAA. The panel considered that the appellant's reference to the Legal Services Society booklet goes to argument.

The ministry relied on its reconsideration decision and submitted no additional information.

## PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision dated August 22, 2014, wherein the ministry denied the appellant a crisis supplement for food. The basis for the ministry's decision was that the appellant did not satisfy three statutory criteria as set out in section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation. The ministry held that:

1. the expense was not unexpected,
2. there were alternate resources available to the family unit, and
3. failure to meet the expense would not result in imminent danger to physical health.

The relevant legislation is as follows:

### 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.

\* \* \*

### **Unexpected**

With respect to the expense being unexpected, the appellant's position is that "having no food left" is considered an unexpected need. He also argued that his "higher than usual" credit card bill was unexpected. At reconsideration the appellant had argued that section 57(1)(a) of the EAPWDR doesn't apply to his request for a crisis supplement because of the application of section 57(7) of the EAPWDR.

The ministry's position, as set out in its reconsideration decision, is that the appellant's request for a crisis supplement was to provide money for food, not for an unexpected credit card bill. The ministry argued that the appellant has provided no evidence as to why his need for Ensure and water is unexpected. With respect to section 57(7), the ministry contended that it does not affect the operation of section 57(1)(a).

### **Panel Decision**

Section 57(1)(a) specifies that the crisis supplement must be for an "unexpected expense" or to obtain an item "unexpectedly needed". The appellant has provided no evidence as to why his need for Ensure and bottled water are "unexpected". Despite the appellant's reference to the Legal Services Society publication, the panel does not interpret section 57 as establishing that any time an applicant runs short of food it constitutes "unexpected" circumstances. The appellant's receipt of a "higher than usual" credit card bill does not convert his need for Ensure and distilled water into an "unexpected expense" or items "unexpectedly needed".

Section 57(7) provides an exemption from the requirements of subsections 57(4)(b) and 57(5) for

crisis supplements related to fuel, water, and hydro. It does not provide an exemption from the requirements of section 57(1).

The panel finds that the ministry was reasonable in concluding that the appellant has not satisfied the legislative criterion that the appellant's need for Ensure and distilled water was "unexpected".

### **No Resources**

The appellant's position is that he has no alternate resources with which to purchase food. He argued that his credit card was declined when he tried to buy food and that the local Salvation Army and food bank do not provide Ensure or distilled water.

The ministry's position is that the appellant receives a support component of his disability assistance which is meant to cover expenses such as food and bottled water, and that accordingly he receives the necessary resources. The ministry also argued that the legislation makes provision for other financial resources for those who require nutritional supplements due to certain medical conditions.

### **Panel Decision**

Disability assistance, as defined in section 1 of the *Employment and Assistance for Persons with Disabilities Act*, consists of an amount for shelter and support. A recipient is intended to use the support portion for food, among other things. The appellant has linked his need for Ensure to his need for a high protein diet. Section 6(1)(d) of Schedule C of the EAPWDR makes provision for a diet supplement of \$40 monthly for "a person who requires a high protein diet." Section 57(3) of the EAPWDR provides that a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C. There is no evidence before the panel to indicate that the appellant has applied for a diet supplement.

Based on the foregoing, the panel finds that the ministry reasonably concluded that the appellant has not satisfied the legislative criterion that he has no resources available.

### **Imminent Danger to Physical Health**

The appellant's position is that failure to obtain the crisis supplement will put his physical health at risk because of his suppressed immune system and his need for a high protein diet. He argued that he has provided the ministry with documentation from his naturopath to confirm this.

The ministry's position is that there is insufficient supporting medical information to confirm that failure to obtain distilled water and Ensure would result in imminent danger to the appellant's health.

### **Panel Decision**

In the panel's view the word "imminent" connotes a degree of immediacy that has not been demonstrated in the appellant's circumstances. Despite the appellant's references to supporting medical documentation, none of that documentation is before the panel, and there is insufficient other evidence to prove on the balance of probabilities that failure to obtain the requested crisis supplement

will put the appellant's physical health in imminent danger. Accordingly, the panel finds that the ministry was reasonable in determining that the appellant has not satisfied the legislative criterion related to "imminent danger to physical health".

### **Conclusion**

Since the criteria in EAPWDR section 57 have not been satisfied, the panel finds that the ministry's decision to deny the appellant a crisis supplement for food was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry's decision is confirmed.