

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) Reconsideration Decision dated October 3, 2014 which held that the appellant is not eligible for a crisis supplement for a bed, under section 57(1) of the Employment and Assistance for Person With Disabilities Regulation because he did not meet the criteria as set out in the legislation.

The ministry is satisfied that the appellant did not have alternative resources to purchase the item on his own and that failure to obtain a bed will result in imminent danger to the appellant's physical health; however, the ministry found that there is insufficient information to establish that that the requested item was required to meet an unexpected expense or to obtain an item unexpectedly needed.

PART D – Relevant Legislation

Employment And Assistance For Persons With Disabilities Regulation (EAPWDR), Section 57.
Employment And Assistance Act (EAA), Section 24(1)(a) & (b), 24(2)(b).

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of:

A Request For Reconsideration dated September 18, 2014 which included a submission from the appellant's advocate dated September 26, 2014 and a letter from the appellant's physician dated September 16, 2014.

A copy of an Invoice dated August 14, 2014 for a bed and accessories, no total indicated.

A copy of an undated invoice for a double mattress/box, mattress cover and frame totaling \$709.50 including tax.

A copy of an invoice dated March 10, 2014 for storage rental with a \$200 balance.

A copy of a prescription form indicating that the appellant has been discharged from the hospital on February 14, 2014.

The letter from the appellant's physician indicated that he had been the appellant's physician since 2010 and that the appellant is a quadriplegic, has lost sensation in his arms and legs as well as most of the ability to intentionally move them, and is diagnosed with severe PTSD. The physician reported that it is not uncommon for patients with severe PTSD or who have suffered severe trauma to dissociate from their emotions and/or the events unfolding around them. This lends itself to the appellant's reports that he could not cope with the eviction process and to his denial of the reality of the situation he was in. The appellant's mental and physical health has further unraveled since his eviction. He had to live in his van for two months following his eviction; he dropped down to 120 lbs., and was admitted for five months to the hospital for treatment of pneumonia. Since leaving hospital the appellant reported experiencing extreme suicidal ideations, a sense of hopelessness and helplessness and feeling overwhelmingly depressed. He is having severe difficulties carrying on from day to day. The physician noted that the crisis supplement is necessary and that without it, the appellant will face an imminent danger to his physical safety. The appellant will be unable to sleep, cannot sleep on a floor or foam cushion as he has little to no ability to move, is effectively confined to his wheelchair, and he cannot lower himself onto the ground nor raise himself back up. The physician stated that the appellant needs a proper bed so that he does not find himself stuck on the floor, unable to move or assist himself. The physician added that if the appellant doesn't receive a new bed his mental health will deteriorate further.

The appellant's advocate's submission for his Request For Reconsideration provided the following details. The appellant:

- got into a verbal altercation with the caretaker of his housing unit as he felt he was being harassed – the caretaker would show up on his property without notice at strange hours of the day and as a result he was evicted;
- is a quadriplegic who suffers from severe PTSD after witnessing 2 murders – one as a child and one as an adult;
- was being verbally and physically abused by his son who was living with him prior to eviction;
- was exceptionally vulnerable, his mental health fragile and emotionally overwhelmed and he began to separate himself from the world around him and shut down;
- experiences mood swings;
- could not cognitively process what was going on during the eviction process and plan for what

to do next or communicate effectively with other people and seek assistance;

- could not strategize how best to pack and move all of his possessions;
- was able to move some of the smaller possessions into storage and loss larger possessions;
- lived in his van for 2 months without resources until being admitted to the hospital for severe pneumonia where he was kept for 5 months; and
- upon leaving the hospital was able to borrow a bed from a community organization which was subject to return on September 30, 2014.

The appellant's advocate's submission dated November 12, 2014 has gone to argument.

The appellant testified that he had lived at the residence he was evicted from for 20 years and basically had one hour to move out. He stated that the landlord showed up with 2 guys who moved the appellant's things into a pre-arranged storage space which did not have enough room for large items including his bed. The appellant believed that that the items that were left behind were thrown out as he was never contacted by anyone about them. The appellant in response to a question stated that when he attended the ministry office to request a bed, he did not speak with a case worker.

The ministry representative testified that the ministry cannot apply individual circumstances to a decision for a crisis supplement as that would lead to inconsistencies in applying the Regulations and difficulties with training workers. The ministry representative testified that the same set of objective criteria must be applied to all applicants, and it cannot use a subjective test; that is it cannot assess each individual's need based on factors unique to that applicant. The ministry representative indicated that there are other supplements to cover Persons With Disabilities needs and that a crisis supplement is not intended to meet such situations. The ministry also has no discretion to take a word such as "unexpected" and make it fit in a situation. The common usage is about fairness and consistent application. The ministry representative also noted that that a crisis supplement may be provided only for the calendar month in which the request was made.

Chronology of Events

On July 11, 2013, the appellant advised the ministry that he was being evicted for violating the Residential Tenancy Act (RTA).

On August 12, 2013, the appellant requested a moving supplement and indicated that his belongings were in storage. He was determined ineligible.

On December 30, 2013, the ministry was advised that the appellant was residing in the hospital since September 12, 2013. An overpayment was then added to his file as he was only eligible for comforts.

On February 21, 2014, the hospital social worker advised the ministry that the appellant had discharged himself from the hospital and would request to collect full support funds. The appellant used those support payments to pay his outstanding storage locker fees so he wouldn't lose his belongings.

On March 6, 2014, the appellant requested a moving supplement which was denied along with coverage of his storage locker fees.

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On March 10, 2014, \$200 of the appellant's support was sent by the ministry to the storage company to pay for his outstanding storage fees and his items were moved out of storage into his new accommodation.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant a crisis supplement for a bed, on the basis that he did not meet all the legislated criteria pursuant to section 57(1) of the Employment and Assistance for Persons With Disabilities Regulation, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant Legislation

EAA

Decision of Panel

24 (1) After holding the hearing required under section 22 (3) [panels of the tribunal to conduct appeals], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
 - (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.
- (2) For a decision referred to in subsection (1), the panel must
- (b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

EAPWDR

Crisis Supplements

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 (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.

As the ministry is satisfied that the appellant has met the legislative criteria of section 57(1)(a,b); **not having alternate resources to purchase a bed and that failure to obtain a bed would result in imminent danger to the appellant's physical health**, the panel will consider the remaining criterion section 57(1)(a) **whether the item was unexpectedly needed**, which the ministry has concluded was not met by the appellant.

Meet an unexpected expense or obtain an item unexpectedly needed

The ministry's position is that the appellant left behind his bed when he left his residence in July 2013 and the bed he currently uses is borrowed from a community agency and was understood by the

appellant not to be a permanent solution. The minister is not satisfied that the information reported by the appellant's physician establishes that the appellant's need for a bed was unexpected. Therefore, since the appellant has not owned a bed since July 2013, a bed is no longer considered an unexpected need and the ministry has determined that the criterion has not been met.

The appellant's advocate argues that:

- the appellant's PTSD dissociates him from his emotions and/or events unfolding around him which is why the appellant could not cope with the eviction process and to the reality of the situation he was in;
- the appellant's trauma of being abused by his son caused him to lash out at the caretaker who he felt was harassing him and he felt emotionally overwhelmed and it felt like another person trying to bully him;
- the appellant was unexpectedly told to vacate the premises and was unable to physically pack his bed and mentally could not think what the consequences of not taking it right then and there would be;
- the appellant knew that borrowing a bed from the community agency was not a permanent solution; however, when he received a notice from the community agency that the bed was due back at the end of September, the appellant then asked the ministry for a bed and submitted quotes for beds at their request;
- the appellant's severe depression was exacerbated by his failure to get a bed and he attempted to commit suicide after finding out he was denied a Crisis Supplement;
- the legislature had a benevolent purpose in mind when drafting the EAPWDA;
- the legislation EAPWDR section 57(1)(a) is to support people like the appellant where they find themselves in a situation to face an expense that they could not foresee, require assistance because there is nowhere else to turn and face a threat to their physical being if they do not receive assistance;
- when determining whether a need is "unexpected", consideration must be given to the person's disabilities, and what is expected for them - there is no definition of "unexpected" in the Act or Regulations;
- the Court in Hudson accorded with the Interpretation Act, section 8 confirmed that every enactment must be considered remedial and given "such fair, large and liberal construction and interpretation as best ensures the attainment of its objects" ;
- the ministry unreasonably concluded that the length of time between the appellant's initial unexpected need and the present date changes the need's unexpectedness;
- the ministry failed to adequately consider the appellant's cognitive abilities and the specific context of the appellant - that his need for a bed was not one long, continuous unexpected need between July 2013 and September 2014 rather he faced an unexpected need each time he found himself without a bed and in need of one; and
- section 24(1) of the Employment and Assistance Act refers to the decision being appealed is, as applicable "a reasonable application of the applicable enactment in the circumstances of the person appealing the decision".

The panel finds that although the appellant testified that he understood that his borrowed bed from a community resource was not a permanent solution, it was only when he unexpectedly received their letter on August 15, 2014 advising that he had to return the bed by the end of September 2014 that he realized he needed a bed and immediately approached the ministry for help. While the panel acknowledges that the ministry must treat people consistently and does not have discretion to make a

word fit in a situation, the panel finds that the appellant who has been a recipient of disability assistance since 1991 and according to his medical practitioner has “effectively dissociated from the world around him and the predicament he was in” does not speak to the average person. The evidence establishes that the appellant was evicted with short notice, lived in his vehicle for 2 months until he presented at the hospital with pneumonia where he remained for 5 months. Upon discharge the appellant found accommodation and was lent a bed from a community agency. Only when the community agency formally notified him that they would require the return of the bed did the appellant find himself with an unexpected expense. The panel finds that in the circumstances of the appellant, with consideration for the medical evidence that implies his inability to plan for the future and understand consequences of not doing so, that the ministry unreasonably determined that the appellant did not meet the legislated requirement of meeting an unexpected expense. The panel finds that the ministry was unreasonable in the application of the legislation in the circumstances of the appellant pursuant to section 57 of the EAPWDR.

In denying the appellant his request for a crisis supplement, the reconsideration officer applied an objective test and did not take into account the unique factors applicable to this appellant. The reconsideration officer failed to consider that what may not be “unexpected” for an average person not having the disabilities of the appellant may be “unexpected” in the circumstances of this appellant and his particular disabilities.

Section 24(1)(b) of the Employment and Assistance Act directs the panel to determine if the ministry's decision was “a reasonable application of the applicable enactment in the circumstances of the person appealing the decision”.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for a crisis supplement for a bed was not a reasonable application of the applicable enactment in the circumstances of the person appealing the decision and therefore rescinds the ministry's decision in favour of the appellant.