

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 September 2, 2014, in which the ministry denied the appellant's request for a crisis supplement of \$1299.65 to do 50 loads of laundry, dry cleaning, and 12 hours of professional cleaning, as he did not meet the criteria set out in section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry acknowledged that the fire in the appellant's apartment building was unexpected as there was no way to anticipate an apartment fire, and that the appellant did not have the financial resources available to cover the cost for the requested item. However, based on the information provided by the Supervisor of the Outreach Team and the building manager, the ministry determined that it was unable to establish that smoke damage to the appellant's apartment exists, necessitating such an extreme unexpected expense, as his apartment is located in a section of the building which was not deemed to be affected. Furthermore, the ministry determined that based on insufficient evidence to establish that an unexpected expense exists, and insufficient evidence, such as a doctor's letter confirming an effect on the appellant's health, failure to receive funding for the requested items will not result in imminent danger to the physical health of any person in the family unit.

PART D – Relevant Legislation

Section 5 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA)
Section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)

PART E – Summary of Facts

Evidence before the ministry at the time of Reconsideration includes the following:

- A fax transmission cover sheet from the appellant's advocate dated August 7, 2014, requesting an extension to prepare for the appellant's Request for Reconsideration.
- A Release of Information signed by the appellant June 26, 2014. The appellant gave the ministry permission to release any and all information concerning his appeal to the advocate. The appellant further agreed to release representatives of the ministry, the city fire department and the city permits and inspection department from any and all liabilities that may be occasioned by the release of such documents, records and information to the appellant's advocate. Also included was a copy of the appellant's Request of Reconsideration asking for a 20 day extension, signed by the appellant August 7, 2014.
- A fax transmission cover sheet from the appellant's advocate dated August 28, 2014, a copy of the appellant's previously submitted Release of Information dated June 26, 2014, a copy of the appellant's Request for Reconsideration signed by the appellant August 7, 2014, stating that this request is now ready for reconsideration
- A letter from the appellant's advocate dated August 27, 2014, which provides a summary of events as described by the advocate leading up to the appellant's Request for Reconsideration. This letter also contains argument as to why the advocate believes the appellant is entitled to receive the requested benefit which is addressed by the panel in Part F of this decision.

Ministry records include amongst other things the following:

- On July 10, 2014, the appellant contacted the ministry to request a crisis supplement. There was a fire in his apartment building in May 2014, which caused severe damage to many of the apartments in the building. The appellant requested funds for the cost of laundry and cleaning which he said were made necessary by the fire.
- July 10, 2014, the appellant's request was denied by the ministry.
- On August 28, 2014, the appellant submitted his Request for Reconsideration along with a letter dated August 27, 2014, from his advocate. This letter provided amongst other things the following information:
 - On May 15, 2014, a serious fire in the appellant's building caused major smoke and fire damage throughout the surrounding 9th floor apartments.
 - During the fire the elevator in the apartment building was disabled, and when the appellant checked smoke was already filling the hallway. The appellant went out on his deck to avoid the smoke as he relies on a wheelchair for mobility.
 - A fully geared firefighter wanted to remove the appellant from the apartment building but the appellant declined the offer for the following reasons:
 1. Concerns for the appellant's security, mobility and ability to access basic daily health and nutrition needs outside of his apartment.
 2. Lack of knowledge that Emergency Services would provide support to tenants, and assistance to recipients affected, who left their apartment during the fire.
 3. Belief that no adequate support would be offered beyond immediate needs by community or government agencies.
 4. Concern for the security of his tenancy.
- Affected tenants who left the building and were directly connected with the Outreach Team received 3 nights' accommodation as well as food and clothing vouchers, while the appellant did not.
- Air samples were taken of the appellant's suite as contracted by the landlord, results of the testing still pending.

- The damage of concern to the appellant is on the surfaces of soft materials and fabrics of the appellant's suite which includes odor, residues and discoloration.
- The appellant is requesting \$1299.65 to cover cleaning costs to prevent imminent harm to his physical health including \$187.50 for conventional laundry of clothing and linens, \$520.00 for professional cleaning of surfaces in the apartment and \$592.15 for dry cleaning of a comforter, 8 pillows, 10 sweaters, 4 pairs of pants and 4 coats.

The advocate's letter also contained arguments as to why she believes the appellant should receive the requested benefit which the panel will address in Part F of this decision

After the ministry Reconsideration Decision and prior to the hearing the appellant submitted the following:

- A faxed copy of the appellant's Consent for Release of Information allowing the ministry to share all information pertaining to his appeal with his advocate. This document was signed by the appellant on October 14, 2014.

A faxed copy of the appellant's Notice of Appeal, sent to the ministry by the appellant's advocate October 9, 2014, and signed by the appellant October 2, 2014.

A copy of the appellant's submission with respect to his Notice of Appeal was faxed to the Tribunal Office by the appellant's advocate November 12, 2014. This submission contained amongst other things, a chronology of events leading up to the appellant's submission of his Notice of Appeal, along with argument as to why the advocate believes the appellant is entitled to receive the requested benefit. These arguments will be addressed by the panel in Part F of this decision. Accompanying the submission was an undated letter from the appellant's physician written to the appellant and a copy of a letter dated October 24, 2014, from the Emergency Coordinator of the City Emergency Management Agency to the appellant's advocate.

The physician's letter reports that the appellant has Chronic Obstructive Pulmonary Disease (COPD) which has been exacerbated since the fire in his apartment building took place May 15, 2014. He has tripled his use of three different inhalants due to shortness of breath, increased sputum production, cough. These are symptoms he has had before but never for this long or this severe and it started after the fire. He also has been having daily headaches for this period of time. This is consistent with air contaminants such as dust, mould, smoke damage exacerbating his COPD. He does continue to smoke which complicates this but was smoking before and didn't have this collection of symptoms.

The letter from the Emergency Coordinator of the City's Emergency Management Agency dated October 24, 2014, reports that the letter was written in response to an inquiry from the appellant who lives down the hall from the fire chronicled below. The letter states on May 15, 2014, the appellant's apartment building experienced a damaging fire. The fire started in a suite on the 9th floor. Smoke damage occurred on the 9th, 10th, 11th and 12th floors and water damage occurred on all other floors below the fire. The halls in the common hallway on the 9th floor were covered in dark black smoke as a result of this fire. Many suites on the day of the fire were observed to have a haze of smoke linger in the air. In apartment fires it is very common for smoke from the fire to fill the common hallways and travel throughout that level of the building. Doors can offer some protection, or reduction in damage, though most of the doorways still allow smoke to pass. Smoke is often observed in other suites on the floor of the fire as well as some suites above the fire; in the appellant's building there was no fire door separation from one end of the hallway to the other, with the result that smoke could travel freely in the common area on that floor. Smoke can cause damage that is observable by sight or by touch. It can also cause damage that is not easily observable to sight and touch. Smoke settles and can leave

minute particles on surfaces. These particles can be impossible to see but can persist in the area until cleaned. In the absence of environmental testing it is good practice for people who experience the ingress of smoke into their home to clean their walls, surfaces and belongings.

At the hearing the appellant submitted pictures he had taken of the inside of his apartment and the hall way outside his door demonstrating the damage that occurred during the fire that occurred in his apartment building on May 15, 2014. The ministry was asked if they had a report from any one who had entered the appellant's suite to assess damage that may have resulted from the fire to which they responded no. The advocate presented arguments found in her submission as to why she believed the appellant was eligible to receive the requested benefit which the panel will address in Part F if its decision

The ministry stood by the record clarifying that neither the Supervisor of the Outreach Team or the building manager had inspected the appellant's apartment to evaluate its condition after the fire took place May 15, 2014. In response to a question from the panel the advocate acknowledged that air samples of the appellant's apartment had been taken but the results of the testing have yet to be made available to the appellant.

The panel admitted the advocates written submission which included an undated letter from the appellant's physician providing expert testimony regarding the appellant's health, a copy of a letter dated October 24, 2014, from the Emergency Coordinator of the City Emergency Management Agency as it provided additional information regarding the fire doors in the appellant's apartment building along with some general information about damage likely to occur after a serious fire, and the pictures showing the damage that resulted from the fire under s. 22(4) of the EAA as they were found to be in support of the records before the minister at reconsideration. The ministry did not object.

Findings of Fact

- The appellant is in receipt of disability assistance and is eligible to apply for a crisis supplement.
- The appellant uses a wheel chair for mobility and has been diagnosed by his physician with COPD.
- On May 15, 2014, the appellant's apartment building experienced a damaging fire on his floor of the building.
- The appellant did not leave his apartment during the fire and has remained living in his home since the day of the fire.
- Requested crisis supplement July 10, 2014.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's determination that the appellant is not eligible to receive a crisis supplement on the basis that he did not meet the criteria set out in section 57(1) of EAPWDR was a reasonable application of the legislation or reasonably supported by the evidence. In arriving at their decision the ministry relied upon the following:

Employment and Assistance for Persons with Disabilities Act

Disability assistance and supplements

- 5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance for Persons with Disabilities Regulation

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*.

The ministry's position is that the appellant is not eligible to receive a crisis supplement as set out in section 57(1) of EAPWDR, because insufficient evidence was provided to establish that smoke damage to the appellant's apartment exists, necessitating such an extreme unexpected expense, and evidence such as a doctor's letter confirming an effect, and demonstrating that failure to receive funding for the requested item will result in imminent danger to the physical health of any person in the family unit was not provided.

In its Reconsideration Decision the ministry argued that based on information provided to them by the Supervisor of the Outreach Team the fire occurred in an apartment located on the 9th floor in the middle of the east wing of the appellant's building. Once the fire was put out residents living in apartments that were located on the east wing of the building were not allowed to re-enter their homes as the damage was too severe. The ministry argued that the appellant's apartment is in the west wing of the building and that there are two fire doors located between the appellant's suite and where the fire took place. The ministry was informed by the Supervisor that suites in the west wing of the building were not severely affected by the fire and those tenants were allowed to re-enter and continue to live in their homes. The Supervisor also contacted the building manager and confirmed the aforementioned information. The ministry therefore argued that based on the information provided to them by the Supervisor and the building manager smoke damage did not exist necessitating such an extensive unexpected expense including 50 loads of laundry, dry cleaning and 12 hours of professional cleaning for a section of the building that is not deemed affected.

At the hearing the ministry acknowledged that until she received a copy of the letter from the Emergency Coordinator of the City Emergency Management Agency dated October 24, 2014, included with the advocate's submission, she had no way of knowing that there were no fire doors on the appellant's floor of the building or how extensive the smoke damage was in the west wing of building. The ministry argued that they had simply relied upon the information provided to them by the Supervisor and building manager when arriving at their

Reconsideration Decision and that based on the information provided there was insufficient evidence to demonstrate the existence of smoke damage to the appellant's apartment.

The ministry also argued that even though the information contained in the appellant's physician's letter does confirm an effect on his health he did not state that the appellant's increased symptoms were directly caused by contaminants resulting from the fire, but rather that they were consistent with contaminants such as dust, mould and smoke damage. The ministry further argued that nowhere in the physician's letter does he state that in his opinion failure to provide the requested item to the appellant would result in imminent danger to his physical health. The ministry also noted that the physician reports that the appellant continues to smoke which complicates this, a habit the appellant stated at the hearing he has had since the age of 14. For these reasons the ministry argued that based on the evidence presented the appellant has not met all of the requirements set out in s. 57(1) of the EAPWDR and is not eligible to receive a crisis supplement.

The appellant's position is that he should be eligible to receive a crisis supplement for the restoration of unanticipated smoke damage and residue on surfaces and soft materials in his apartment resulting from a serious fire that took place mere meters down the hall from his apartment on May 15, 2014. Due to his disabilities he is unable to perform these tasks independently and must pay for the services of a professional cleaner. Failure to meet the unexpected expense is currently threatening his physical health, aggravating his COPD and respiratory capacity.

At the hearing the advocate argued that the pictures provided to the panel by the appellant clearly demonstrate the degree to which the fire impacted both the hallways and the interior of the appellant's apartment. The advocate also argued that while the ministry's evidence in their Reconsideration Decision was that there were two fire doors between the apartment where the fire occurred and the appellant's apartment this evidence is contradicted by both the appellant's testimony and the information contained in the letter submitted by the Emergency Coordinator of the City Emergency Management Agency. The appellant did however acknowledge at the hearing that some confusion may have arisen as one temporary fire door had been installed after the fire to keep smoke and fire participants from traveling freely throughout the floor.

The advocate argued that as the ministry's evidence regarding fire doors and areas of the building which they claimed were not impacted by the fire was clearly refuted by the appellant's oral testimony, pictures taken after the fire and the information contained in the letter from the Coordinator of the City Emergency Management Agency, the appellant has clearly established that the smoke damage he has reported to his apartment does in fact exist. Furthermore, as neither the building manager nor the Supervisor of the Outreach Team inspected the appellant's apartment for smoke damage after the fire, it is unreasonable for the ministry to base their decision to deny the appellant's request for a crisis supplement on the basis of this unfounded assessment. The advocate argued that as the reasons used to deny the appellant a crisis supplement were not supported by substantive evidence, it demonstrates an unreasonable application of s. 57(1) of the EAPWDR.

In the appellant's Request for Reconsideration he argued that he has a respiratory illness that is aggravated by the smoke particulates in his apartment. The advocate argued that this is confirmed by a letter from the appellant's physician that states that the appellant's COPD has been exacerbated since the fire in his building took place on May 15, 2014. Specifically the physician states that the appellant has tripled his use of three different inhalants due to shortness of breath, increased sputum production, cough. The physician also reports that these symptoms are consistent with contaminants such as dust mould and smoke damage and clearly indicate a connection between the symptom increase and the fire. The physician also reports that the appellant has experienced daily headaches since the fire.

The advocate argued that the appellant's original evidence, combined with his supporting evidence; clearly indicate an imminent threat to his physical health. The appellant has already had to live with smoke particulates and smoke damaged clothing and other soft materials since the fire on May 15, 2014, and if he is unable to secure the assistance he requires he faces further deterioration of his health. For these reasons the advocate argued that the appellant should be eligible to receive the requested benefit as he meets all of the eligibility requirements set out in s. 57(1) of the EAPWDR.

In the advocate's submission reference was made to *Hudson v. Employment and Assistance Tribunal*, the Supreme Court of British Columbia (the Court) confirmed that the legislature had a benevolent purpose when drafting the Employment and Assistance for Persons with Disabilities Act and Regulations and that their interpretation must proceed with this benevolent purpose in mind. The court also confirmed that every enactment must be considered remedial in accordance with Section 8 of the Interpretation Act, as such it must be given "such fair, large, and liberal construction and interpretation as best ensures the attainment of its objects."

The advocate argued that the benevolent and remedial purpose of Section 57(1) of the Regulation is to support people like the appellant who find themselves in situations where they could not foresee required assistance because there is nowhere else to turn, and face threat to their physical being if they do not receive assistance. The regulation is part of a set of regulations which support the Employment and Assistance for Persons with Disabilities Act and are meant to support people with disabilities.

The advocate argued that the ministry's Reconsideration Decision was an unreasonable application of s. 57(1) of the EAPWDR as it did not adequately consider the benevolent purpose of the legislation. In addition the ministry went out of their way to try and find evidence to deny the crisis supplement request. In order to achieve the benevolent purpose s. 57(1) of the EAPWDR it must be interpreted so as to provide the appellant with a crisis supplement to remove any smoke particulates from his unit.

The panel finds there is no dispute by either party regarding the ministry's determination as reported in their Reconsideration Decision. The fire was unexpected, there is no way to anticipate an apartment fire, and the appellant does not have the resources available to cover the cost of \$1,299.65 for 50 loads of laundry, dry cleaning and 12 hours of professional cleaning. However, what the ministry disputes is the existence of evidence to demonstrate the need for the requested item. The ministry argued that there were two fire doors between the unit in the building where the fire started and the appellant's apartment, and that his apartment was in a part of the building that was not deemed as affected by the fire. At the hearing, as in the Reconsideration Decision, the ministry acknowledged their findings regarding the existence of smoke damage to the appellant's apartment were based entirely on information provided to them by the Supervisor of the Outreach Team and the building manager, neither of whom entered the appellant's apartment to inspect it for damage after the fire took place on May 15, 2014.

At the hearing the appellant and his advocate provided evidence which was in direct conflict with the ministry's evidence. This included the appellant's oral testimony that smoke damage occurred in his apartment, pictures taken by the appellant of his hallway and apartment unit after the fire, showing evidence of smoke and fire damage, and a letter written to the appellant's advocate from the Emergency Coordinator of the City Emergency Management Agency dated October 24, 2014. Amongst other things the letter reports that, "in the appellant's building there was no fire door separation from one end of the hallway to the other, with the result that smoke could travel freely in the common area on that floor." The letter goes on to describe the kind of damage one would typically expect to see in a serious building fire and concludes by stating that in the absence of environmental testing it is good practice for people who experience the ingress of smoke into their home to

clean their walls, surfaces and belongings. As the ministry did not refute any of the aforementioned evidence and did not object to the admissibility of the pictures submitted to the panel at the hearing, or the information provided in the Emergency Coordinator's letter from being admitted under s. 22(4) of the EAA. For these reasons the panel has placed greater weight on the appellant's evidence regarding smoke damage to his apartment than that provided to the ministry by the Supervisor of the Outreach Team, and the building manager. The panel therefore finds that the ministry's determination that there was insufficient evidence to establish the existence of need for the requested benefit is not supported by the evidence and is therefore not a reasonable application of s. 57(1)(a) of the EAPWDR.

As to the requirements set out above in s. 57(1)(b)(i), the appellant's undated letter from his physician reports that he has been diagnosed with COPD which has exacerbated since the fire took place in his apartment building May 15, 2014. He has tripled his use of three different inhalants due to shortness of breath, increased sputum production, cough. He has had these symptoms before but never for this long or this severe and it started after the fire. This is consistent with air contaminants such as dust, mould, smoke damage exacerbating his COPD. The appellant continues to smoke which complicates this, however he was smoking before the fire and didn't have this collection of symptoms.

The panel finds that as the appellant's physician's letter is undated it has no way to verify when the letter was written or when the physician first saw the appellant after the fire. When asked at the hearing the appellant did not know when he received the letter but thought it was sometime in October. The panel finds that while the physician's letter does confirm an effect on his health since the fire took place he does not state that the appellant's increased symptoms were solely or directly caused by contaminants resulting from the fire, but rather that they were consistent with contaminants such as dust, mould and smoke damage, and adds that the appellant does continue to smoke which complicates his condition. The panel also finds that the physician has provided no indication of what significance tripling the appellant's use of three different inhalants has had, how long ago the dosage was increased, or if there has been any change in his symptoms since that time. The physician has also not reported that in his opinion failure to provide the requested item to the appellant will result in imminent danger to his physical health.

The panel further finds that a reasonable interpretation of the meaning of the word "imminent" is immediate or right away and that this interpretation is consistent with the provision of a "crisis supplement". As the fire in the appellant's apartment building took place more than five months ago on May 15, 2014, and the appellant did not apply for a crisis supplement until July 10, 2014, during which time the appellant has continued to undertake his own house cleaning and laundry activities, and as he has not requested to be moved, even on an interim basis during this time, the panel finds that the ministry has reasonably determined that the failure to meet the expense or obtain the item will not result in imminent danger to the physical health of any person in the family unit. For these reasons the panel finds that the ministry reasonably determined that the appellant has not met the requirement set out above in s. 57(1)(b)(i) of the EAPWDR.

In conclusion the panel finds the ministry's determination that the appellant did not meet all of the requirements set out above in s. 57(1) to be eligible for a crisis supplement was reasonably supported by the evidence and is a reasonable application of the applicable Regulation. The panel therefore confirms the ministry's decision.