

PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Social Innovation (the “Minister”) dated November 10, 2014, which held that the Appellant was ineligible for a crisis supplement for October 2014 because she was not a recipient of income assistance, hardship assistance or a supplement for that month.

PART D – Relevant Legislation

Employment and Assistance Act (the “Act”), sections 1, 4, and 5
Employment and Assistance Regulation (the “Regulation”), sections 39, 44, and 59

PART E – Summary of Facts

Based on the evidence contained in the Appeal Record, the relevant facts are as follows.

1. The Appellant has been receiving income assistance since September 2012. During the time material to this Appeal, her family unit consisted of herself and one dependent child.
2. The Appellant works part-time. She, her dependent child, and an adult child reside in premises that she rents. Before adjusting for income and supplements, the Appellant is eligible for income assistance of \$945.58 per month.
3. Between July and October 2014, the Appellant earned income as follows.

July - \$759.46
August - \$1,293.13
September - \$442.12
October - \$413.38
4. The Minister did not pay income assistance to the Appellant for October.
5. On October 3, the Appellant received a 10-Day Notice to End Tenancy due to her failure to pay rent on October 1 (the “Notice”).
6. Immediately on receiving the Notice, the Appellant applied to the Minister for a crisis supplement for shelter.
7. On October 3, the Minister denied the Appellant’s application for the crisis supplement.
8. After Reconsideration, on November 10, the Minister again denied the Appellant’s application for the crisis supplement.

PART F – Reasons for Panel Decision

Issue

The issue is whether the evidence reasonably supports the decision of the Minister that the Appellant is ineligible for a crisis supplement for shelter for October 2014 because she did not receive income assistance, hardship assistance, or a supplement in that month.

Relevant Law

Section 1 of the Act provides in part as follows.

Interpretation

"**dependant**", in relation to a person, means anyone who resides with the person and who . . . is a dependent child of the person . . . ;

"**family unit**" means an applicant or a recipient and his or her dependants;

"**hardship assistance**" means an amount for shelter and support provided under section 5 (1);

"**income assistance**" means an amount for shelter and support provided under section 4;

"**recipient**" means the person in a family unit to or for whom income assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit . . . ;

"**supplement**" means any form of assistance specified by regulation, other than income assistance [or] hardship assistance

Sections 4 and 5 of the Act state:

Income assistance and supplements

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

Hardship assistance

5. (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that
 (a) is eligible for it, and
 (b) is not eligible for income assistance.

(2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

Sections 39, 44, and 59 of the Regulation provide:

Hardship assistance — eligibility and limitations

39. (1) For a family unit to be eligible for hardship assistance, the family unit

- (a) must be ineligible for income assistance for one or more reasons set out in sections 41 to 47.2, and
- (b) must not be ineligible for income assistance for any other reason.

. . . .

Family units that have excess income

44. The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the income of the family unit exceeds the limit under section 10 [*limits on income*] if

- (a) the minister considers that undue hardship will otherwise occur,

- (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
- (c) the family unit includes one or more dependent children, and
- (d) the income that causes the family unit to be ineligible for income assistance could not, in the minister's opinion, reasonably be expected to be used to meet the family unit's basic needs.

Crisis supplement

59. (1) The minister may provide a crisis supplement to or for a family unit that is eligible for income 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*.

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Analysis

The Appellant submits that eviction “would qualify as undue hardship” and that the Appellant would have been eligible for hardship assistance. She further submits that since her earnings of \$442.12 in September and \$413.38 in October are not enough for her to pay her rent, she meets the criteria for a crisis supplement.

The Minister relies on the Act, the Regulation, and the reasoning expressed in the Reconsideration Decision.

The Notice created both a crisis and hardship in the sense that the Appellant and her dependent child faced the threat of eviction and homelessness. The Minister, however, is bound by the provisions of the Act and the Regulation. These enactments provide two distinct forms of relief in urgent situations: hardship assistance on the one hand and a crisis supplement on the other. Section 44 of the Regulation sets out the prerequisites for eligibility for hardship assistance while section 59 sets out the conditions a family unit must satisfy to be eligible for a crisis supplement.

The panel can only confirm or rescind the Reconsideration Decision on the basis that it was either reasonably supported by the evidence or a reasonable application of the Act and the Regulation in the circumstances of the Appellant. It cannot substitute its own decision. Although it may well be that the Appellant would have been eligible for hardship assistance, the issue before the panel is limited to, as stated above, whether, in the circumstances the Appellant was entitled to a crisis supplement.

In accordance with section 59 of the Regulation, an applicant for a crisis supplement must satisfy three criteria:

1. The applicant must be eligible for income assistance or hardship assistance.
2. The applicant requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed.
3. The applicant is unable to meet the expense or obtain the item because there are no resources available to the family unit.

Once the applicant has satisfied those criteria, if the Minister considers that failure to meet the expense or obtain the item will result in imminent danger to the physical health of any person in the family unit or removal of a child under the *Child, Family and Community Service Act*, the applicant is eligible for the crisis supplement.

Section 5 of the Act and sections 39 and 44 of the Regulation set out the criteria for eligibility for hardship assistance. To be eligible for hardship assistance, an applicant must be ineligible for income assistance because, among other things, the income of the family unit exceeds the limit set under the Regulation. Further criteria are that:

1. the family unit must include one or more dependent children;
2. the Minister must consider that, without the hardship assistance, undue hardship will occur; and
3. the income that causes the family unit to be ineligible for income assistance could not, in the minister's opinion, reasonably be expected to be used to meet the family unit's basic needs.

An applicant for a crisis supplement must be eligible for income assistance or hardship assistance.

An applicant for income assistance applies for it in the month preceding the month for which it is paid. Income disclosed in the application is income for the month preceding the month in which the application is made. When applying in September for income assistance for October, the Appellant disclosed her August earnings. Although the Minister incorrectly stated the reason for denying the Appellant's application for a crisis supplement as "you are not a recipient of income assistance for October", the Minister reasonably concluded that the Appellant was not eligible for income assistance for October because her net earnings in August 2014 exceeded her income assistance rate. The Appellant does not submit that she was eligible for income assistance for October 2014.

Since the Appellant was ineligible for income assistance for October because of excess income, she may have been eligible for hardship assistance even though she did not apply for it. The Reconsideration Decision provides that "You did not receive . . . hardship assistance . . . in October." Although that statement is true, section 59 of the Regulation establishes as a criterion for provision of a crisis supplement that a family unit be eligible for hardship assistance, not that it receive it. By failing to determine the Appellant's eligibility for hardship assistance, the Minister failed to consider relevant evidence and did not apply relevant criteria set out in the Act and the Regulation.

Whether or not the Appellant was a "recipient" as defined in the Act and whether or not she received a supplement for October are irrelevant to the Reconsideration Decision.

Conclusion

Based on the foregoing analysis, the panel finds that the Reconsideration Decision that the Appellant was ineligible for a crisis supplement for October 2014 because she was not a recipient of income assistance, hardship assistance or a supplement for that month, was not reasonably supported by the evidence and was not a reasonable application of the Regulation in the circumstances of the Appellant. The panel rescinds the decision.