

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision dated January 28, 2015, 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 ministry at the time of reconsideration included the following:

- the appellant's Request for Reconsideration, dated January 27, 2015, and included the appellant's brief written submission;
- the appellant's hydro bill dated January 7, 2015 in the amount of \$221.56, with a bank stamp indicating full payment on January 15, 2015.
- a bill for unidentified goods or services dated January 14, 2015 in the amount of \$59.00, with a bank stamp indicating payment in full on January 23, 2015.
- a receipt for January rent in the amount of \$525, dated December 18, 2014.

Admissibility of Additional Documentary Information

At the appeal hearing, the appellant (through her advocate) submitted a two-page statement which the advocate read aloud at the hearing. The appellant also submitted a photo-copy of a statement from the regional health authority dated December 19, 2014, and a note from a psychiatrist dated February 19, 2015. The ministry representative advised that he had no objection to the admissibility of the documents.

The panel accepted the appellant's two-page statement as written argument.

With respect to the other two documents, the appellant stated that she moved from her previous community to her current community in October, 2014. While she was in her previous community she received a monthly housing subsidy of \$186.50 from the regional health authority under its Supported Independent Living ("SIL") program. At the time the appellant was preparing to move to her current community she was advised by the health authority in her former community that she would have to reapply for the SIL subsidy. The appellant told the panel that the December 19, 2014 statement (the "SIL Statement") documented her last SIL cheque. She said that she'd had to go on a waiting list to see a psychiatrist before being able to reapply for the SIL supplement, only to be advised by the psychiatrist in his note of February 19, 2015, that her "request for a seal (*sic*) cheque is not within my remit to help".

The appellant argued, through her advocate, that the SIL Statement and the psychiatrist's note are admissible as evidence that she'd had an unexpected financial setback.

This panel is not a decision-maker of first instance. Section 22(4) of the *Employment and Assistance Act* limits the information that the panel may admit as evidence to "only...the information and records that were before the minister when the decision being appealed was made", and "oral or written testimony in support of the information and records" that had been before the minister. Information that is "in support" tends to corroborate information and records that were before the ministry at the time of reconsideration. The panel can find no reference in the appeal record to the SIL, the appellant's previous receipt of the SIL subsidy, or her need to reapply for the SIL subsidy. Accordingly, the panel has not admitted the SIL Statement or psychiatrist's note as evidence, as they do not "support" information and records that were before the ministry at reconsideration.

Prior to the appeal hearing the appellant had made some submissions in her Notice of Appeal. As these submissions substantially reiterate and corroborate information that had been before the

ministry at reconsideration, the panel as accepted them as written testimony in support in accordance with section 22(4) of the *Employment and Assistance Act*.

Assessment of the Evidence

Information in the Request for Reconsideration and the reconsideration decision indicated that:

- The appellant is a recipient of disability assistance. She receives \$906.42 monthly for support and shelter.
- A monthly deduction of \$168.66 is made from the appellant's disability assistance in respect of the Ministry of Forests, Lands and Natural Resource Operations ("FLNRO").
- On January 20, 2015 the appellant told her ministry worker that she did not receive enough funds for support and shelter, and she requested a crisis supplement for food.
- The appellant told the ministry worker that all of her next disability assistance cheque – to be issued the next day – would go to rent and hydro and she would not have funds to purchase food.
- The ministry suggested the appellant contact BC Hydro about paying only part of her hydro bill in January and part in February. The appellant did not want to do that.
- The appellant advised the ministry worker that she was aware of local resources such as the food bank and soup kitchens.
- The appellant volunteers at a seniors home taking an elderly lady for a two-hour walk, three times a week, for a total of six hours a week.

In her reconsideration submission the appellant wrote that:

- She can't make it on \$730 per month.
- Her rent is \$525 per month and hydro is \$220.
- No food or gas is available to her.
- She volunteers at the seniors home six hours a week, or 24 hours a month.
- She is applying to do more volunteer work.

In her Notice of Appeal the appellant wrote that:

- Her volunteer work is walking with an elderly woman.
- She goes to the food bank every Thursday.
- She needs fresh vegetables and fruit but she has no money.
- She needs nutrition to avoid getting sick.

In her oral testimony on appeal the appellant, supported by her advocate, stated that:

- She suffers from a severe mental impairment characterized by anxiety and stress.
- She had lived in an apartment in her previous community for many years but had to move to her current community at the end of September 2014 due, in part, to the lack of affordable housing in the previous community.
- The place she was to move to in her current community turned out to be uninhabitable, so the appellant lived in her car and a transition house for a month because no other suitable accommodation could be found.
- Her belongings were put in storage by the homelessness program and some of her belongings were stolen there including food.
- She moved into her current residence at the end of October, 2014.

- Her home is heated by electric baseboards and the electrical bill was so high she had to turn off the heat at times. She wants nothing to do with BC Hydro's equal payment plan – she wants to know exactly what she is being charged for electricity over the winter. She would prefer to turn off the heat rather than to go on the equal payment plan.
- The appellant is only allowed to attend the food bank once a week. The food bank has a process whereby a client takes a “ticket” for a food hamper and another “ticket” for fruits/vegetables. The food bank has mostly canned food, cakes and white rice available but the appellant has a special diet and she doesn't like too much cake or sugar, so she usually foregoes the food hamper and just chooses fruits/vegetables. She said there is “a lot of crappy food” at the food bank.
- She goes to dumpsters behind grocery stores and sometimes finds vegetables there.
- The soup kitchen is only open on Tuesdays and Thursdays. She cannot attend on Tuesdays because it conflicts with the time when she wants to go swimming. In response to a question from the panel she said that she does not want to change the time when she goes swimming.
- In response to a question from the panel as to why she doesn't attend the soup kitchen on Thursdays, the appellant said that there might be other things she needs to do on Thursdays. She also said she wasn't really sure if it was open on Thursdays and that she would have to check. She said that she'd gone by on a couple of Thursdays but wasn't sure if the soup kitchen was open. She also said that the soup kitchen generally provides sandwiches but she only likes one piece of bread so she doesn't want sandwiches; although she acknowledged that she could perhaps have some soup. The appellant said that the soup kitchen only serves lunch at noon, but the appellant's preference is to eat breakfast at 11:00 a.m. and she gets hungry again at 3:00 p.m. so she isn't ready to eat lunch at noon.
- The appellant attended the health authority at the earliest possible appointment and was advised on February 19, 2015 that the SIL program was not available.
- The appellant's mental condition made it impossible for her to articulate to the ministry on January 20, 2014 all the unexpected additional costs such as utility hookup fees she has had in the last few months that resulted in her need for a crisis supplement for food.
- Her ministry worker told her that there is a \$100 community volunteer supplement for which she might be eligible, but when she applied for the supplement she was told it was no longer available. In her former community she was paid \$20 for volunteering.
- In response to a question from the panel, the appellant said that the \$168.66 monthly deduction from her disability assistance for FLNRO was in respect of property taxes for a “float home” that she maintains in her former community. She also variously described it as a “boat” and a “barge”. The appellant said she uses it for storage, and she doesn't want to sell it because it is “a work of art” that she “built with my own hands”, and on which she has done extensive carving. She is disputing FLNRO's characterization of it as a “float home” and said that it is registered as a boat.
- In response to a question from the panel the appellant said that she “has always” gone to the food bank, and that she has never stopped.

In his oral testimony the ministry representative stated that:

- The local soup kitchen serves breakfast and lunch five days a week.
- The ministry has no control over the FLNRO deductions.
- The community volunteer supplement is grandfathered for those who have been on the program since before it was discontinued in October 2011 or 2012. This supplement is no longer available to new applicants such as the appellant.

- The ministry offered the appellant several options for managing her spending, such as advising her that BC Hydro has an equal payment program that is available to the appellant. Each bill shows the current monthly usage compared to the same month last year, and a person can adjust the monthly payments to ensure there is no unexpected lump sum payment at the end of the year.
- The SIL subsidy is available in the appellant's current community and the ministry representative believes the SIL subsidy is exempt from being deducted from disability assistance.

Admissibility of Additional Oral Information

The oral statements of both the appellant and the ministry representative substantially tended to reiterate or corroborate information that had been before the ministry at reconsideration. The panel accepted these statements as being oral testimony in support, in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision dated January 28, 2015, 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

The appellant's position is that she experienced a number of unexpected expenses when she moved to her current community. She had a period of homelessness, had to replace stolen items, paid hook-up fees for hydro and phone, and lost her SIL subsidy. She argued that she is a very private person, and that her mental impairment – including the lack of privacy at the ministry's counter on January 20, 2014 - prevented her from being able to articulate all the unexpected costs she'd had to pay.

The ministry's position is that food is not considered an unexpected expense or an item that is unexpectedly needed. The ministry argued that the appellant's rent and her payment to FLNRO are ongoing expenses and her utility bills are based on usage, therefore the amount would not be unforeseen.

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 insufficient evidence as to why her need for food is "unexpected". As discussed above in Part E, the panel did not admit evidence of the appellant's reliance on the SIL program in her previous community as evidence of an unexpected need. However, even if that information had been admitted as evidence, the costs the appellant experienced in moving to her current community last October and loss of the SIL subsidy do not convert her need for food items into an "unexpected expense" or items "unexpectedly needed".

Section 57(4)(a) of the EAPWDR does contemplate that food can in appropriate circumstances be an

unexpected expense suitable for a crisis supplement. Presumably, such a circumstance would include a situation where the appellant's food supplies had been stolen or lost to some disaster. The appellant said that some of her property, including food, had been stolen from a storage locker. She provided no supporting evidence that such a loss had occurred (such as a police file number) or any information about how much food was lost. Further, the loss appears to have occurred more than two months before the appellant requested the crisis supplement on January 20, 2015, since according to her testimony she had been in her new apartment since the end of October, 2014. In the panel's view, a loss that occurred that long ago isn't relevant to the assessment of an unexpected need more than two months later.

In the circumstances of the appellant's case as detailed herein, and for the foregoing reasons, the panel finds that the ministry was reasonable in concluding that the appellant has not satisfied the legislative criterion that her need for food was "unexpected".

No Resources

The appellant's position is that she has no alternate resources with which to purchase food. She argued that virtually all of her monthly disability assistance is needed for rent, utilities, and her payment to FLNRO. She argued that her mental disability and anxiety prevent her from taking advantage of options such as BC Hydro's equal payment plan. She also argued that she was making use of the food bank at the time she requested the crisis supplement. Finally, the appellant argued that - regardless of the surrounding circumstances - on the day she attended the ministry's office to request the crisis supplement she was hungry and had no food, and the ministry should have given her the allowable \$20 crisis supplement.

The ministry's position is that, while it acknowledges the appellant does not have the funds for food, she has not exhausted the resources available in her community such as the food bank or soup kitchen. The ministry argued that it presented several options to the appellant, such as the equal payment program for hydro, that would allow her to better manage her expenses so as to have funds available, but it is the appellant's choice as to whether she adopts any of those options.

Panel Decision

Despite the appellant's argument that surrounding circumstances should not be considered, the legislative criterion regarding resources requires the ministry to consider the appellant's circumstances and her use of the resources that are available to her. The evidence indicates that the appellant has not made good use of the options that are available to her. Even if her mental disability prevents her from taking advantage of the equal payment plan for hydro (and there is no supporting medical evidence to indicate that this is so), the appellant is not making appropriate use of the food bank and soup kitchen. She has provided no supporting medical evidence as to why she cannot take advantage of the food hampers available from the food bank, and she provided no compelling reason as to why she does not utilize the soup kitchen.

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

Imminent Danger to Physical Health

The appellant's position is that the ministry's failure to provide the crisis supplement will result in imminent danger to her physical health. She argued that she requires nutrition to avoid getting sick.

The ministry's position is that there is no evidence to confirm that failure to meet the expense 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. There is insufficient 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.