

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated February 19, 2015 which held that the Appellant is not eligible for a crisis supplement for home electrical repairs pursuant to section 57 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because all three criteria in subsection 57(1) were not met. The Ministry accepted that failure to provide a crisis supplement to meet the expense will result in imminent danger to physical health, or the removal of a child as set out in subsection 57(1)(b)(ii). However, the Ministry found that two other criteria were not met:

1. The Appellant requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed [EAPWDR subsection 57(1)(a)]; and
2. He is unable to meet the expense because there are no resources available to the family unit [EAPWDR subsection 57(1)(a)].

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation– section 57

PART E – Summary of Facts

The evidence before the Ministry at reconsideration consisted of:

- A Request for Reconsideration signed by the Appellant on February 13, 2015 in which he stated that his residence failed inspection by the electrical inspector (the inspector) on December 14 or 15, 2014. He had two days to complete the work in order to avoid disconnection and an additional \$535 hook-up fee once the work was done. The electrician completed the work in time to avoid disconnection and bought baseboard heaters with his own money and didn't charge to install them.
- An invoice from the Appellant's electrician dated December 5, 2014 in the amount of \$963.90 for work done November 28, December 3 and 4, 2014, and marked as "paid".
- An invoice from the same electrician dated December 10, 2014 in the amount of \$560 for baseboard heaters and related materials, no charge for labour. Terms indicate payment is due in fifteen days.
- A note from a relative of the Appellant (the lender) dated December 14, 2014 indicating a loan of \$600 towards the electrician's bill "to help get the power turned on" and stating that repayment is required to cover the lender's own overdue bills.
- An Inspection Report from the provincial Safety Authority indicating an inspection date of January 2, 2015 and Inspection Result "passed". All items were marked as "compliant". The inspector noted that "electrical features appear safe as found" and non-compliance findings noted on the previous inspection report have been corrected. The report also notes that it is an "interim report" and a Certificate of Inspection will follow.

Appellant's additional submissions

At the hearing, the Appellant stated that he delivered three documents to the Ministry office on March 16, 2015 and that the Ministry said they would be forwarded to the Tribunal. However, neither the panel nor the Ministry representative had received them as of the hearing date so the panel asked the Appellant to read them into the record. The Ministry then indicated it had no objections to admitting them:

1. An undated note from the Appellant stating that the inspector claimed that the two day time limit for getting the work done was because the electrician was going away for the winter and required a safe electrical heating system or gas furnace to be made functional. The Appellant suffered a head injury in a past accident and this made him confuse the dates (for the failed inspection).
2. An Electrical Certificate of Inspection dated December 9, 2014 that indicated "space heating, gas, forced air not compliant". Appliances and all other components were compliant.

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3. A letter from the inspector dated March 17, 2015 stating that he performed an inspection at the Appellant's residence on December 9, 2014 as part of a re-approval process for the electrician. The hydro was not turned on and there were multiple electrical safety hazards on the site including extensive use of extension cords installed into general use receptacles to heat the residence. He failed the installation as found and required corrections to be completed before December 16, 2014. The corrections required were to either service or to put in use the existing central heating equipment (gas fired), or to install another acceptable form of heating (baseboard heaters). He stated that a failure to re-work the heating would result in no heat supply to the residence.

The panel finds that the first document is argument in support of the Appellant's position regarding an unexpected expense (addressed in Part F below). The panel finds that the Electrical Certificate of Inspection and letter from the inspector contain information regarding the electrical deficiencies in the home and the corrections required to ensure that the residence has a safe heat source. These corroborate the information in the Ministry's reconsideration decision which states that the Appellant had informed the Ministry that his residence had failed the safety inspection. The panel therefore admits them under section 22(4)(b) of the *Employment and Assistance Act* (EAA) as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made.

Oral testimony

At the hearing, in testifying that the electrical work was an unexpected expense, the Appellant stated that he moved into the home in July, 2014 and the hydro had not been turned on for five years. He was using extension cords connected to his neighbour's hydro and the neighbor was charging him \$135 per month for electricity. He expected to get the hydro hooked up at some point but the system with his neighbour's power source was working until the weather got cold. Then the cords caught fire a few times and he knew by the end of November that he needed to get the hydro hooked up as soon as possible. After getting electrical work done in late November and early December, the inspection still failed on December 9, 2014 and the inspector required additional work (to be completed before the electrician went away for the winter) in order for it to pass.

With regard to his financial resources, the Appellant stated that he was not receiving disability assistance at the time he requested the crisis supplement for electrical work. He was receiving hardship assistance of approximately \$500 per month, plus child tax credits of approximately \$600. He was not eligible for disability assistance because he owned two homes although one home is an "inaccessible asset" because he cannot evict the tenants and sell the residence without getting a lawyer. The Appellant added that the Ministry audited him and had all of his bank statements back to December 2014 as well as current bank statements and records of how much assistance he receives.

The panel finds that the Appellant's oral submissions expand upon the Ministry's information regarding the circumstances around the request for the crisis supplement and the Appellant's financial resources. Although the Appellant testified that his funds consisted of hardship assistance in a lower amount than what the Ministry reported he was receiving for disability assistance, the panel finds that the oral submissions corroborate information in the Ministry's reconsideration decision that the Appellant was in receipt of assistance. The panel admits them under section 22(4)(b) of the EAA

as testimony in support of the information and records that were before the Ministry at the time the decision being appealed was made.

At the hearing, the Ministry summarized its reconsideration decision and did not introduce any new evidence. In its decision, the Ministry noted that the Appellant had received a crisis supplement for home electrical repairs in November 2014. The Appellant stated that he failed the electrical inspection on December 14 or 15, 2014. The Ministry records also indicate that at the time he requested the crisis supplement on December 10, 2014, the Appellant was receiving \$2,169.56 per month (\$675 federal child tax credits + \$1,494.56 assistance, and his shelter costs are listed as \$860.08 (\$740.08 mortgage + \$120 utilities)).

The panel makes the following findings of fact:

1. The inspector performed an inspection at the Appellant's residence on December 9, 2014 and required the gas fired heater to be serviced or baseboard heaters installed by December 16, 2014.
2. At the time of the reconsideration, the Appellant had \$1,309.48 per month after shelter costs (disability assistance plus child tax credits).

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's reconsideration decision of February 19, 2015, which held that the Appellant is not eligible for a crisis supplement for home electrical repairs because his request did not meet all of the criteria in subsection 57(1) of the EAPWDR is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry found that the information provided did not establish that the crisis supplement was needed to meet an unexpected expense under EAPWDR subsection 57(1)(a). Further, the information did not establish that the Appellant was unable to meet the expense because there are no resources available to the family unit as set out in subsection 57(1)(a).

The following sections of the EAPWDR apply to crisis supplements:

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.

The panel notes that all of the criteria in section 57 must be met in order to be eligible for a crisis supplement. The two criteria in subsection 57(1)(a) that the Ministry found were not met are addressed as follows:

Unexpected expense or item unexpectedly needed, EAPWDR subsection 57(1)(a)

Appellant's position

In his Notice of Appeal dated February 27, 2015 the Appellant argued that he had a legitimate unexpected expense. He will drop his request to repay the lender having already made a repayment arrangement. However, he still requires a \$560 crisis supplement to pay the electrician for the required baseboard heaters (the December 10, 2014 invoice).

The Appellant explained that the work for the invoice of December 5, 2014 (\$963.94) took place before the inspection failed. The Appellant thought everything was alright by that point, and he did not expect that more work would be required for the residence to pass inspection. He argued that the \$560 invoice (for the baseboard heaters) is for the additional work required to pass inspection. The work had to be done right away (by December 16) before the electrician went away for the winter. He tried to get pre-approval from the Ministry but could not get through to them on the phone. Due to his brain injury, he can't remember which dates he called the Ministry or went to their office, and he gave the Ministry the wrong date for the failed inspection (December 14 or 15, 2014 when it was actually December 9, 2014).

Ministry's position

In the reconsideration decision, the Ministry argued that the invoices of December 5 and December 10, 2014 are for work that was done prior to the date the Appellant stated that he failed the inspection (December 14 or 15, 2014). The Ministry submitted:

"It is therefore the minister's position that your information shows your electrical expense is an expense resulting from work completed prior to failing the inspection and not as an unexpected expense resulting from failing the inspection. Accordingly, the minister determines you do not require a crisis supplement to meet an unexpected expenses for home repair (electrical) due to failing the inspection."

At the hearing, the Ministry argued that since the Appellant was living in a place with no hydro for five years, he would have known that there were issues with the electrical system and it is therefore not an unexpected expense.

Panel's decision

In the reconsideration decision, the Ministry based its determination that the electrical work was not unexpected on the Appellant's information that the residence failed the electrical inspection on December 14 or 15, 2014 but the electrician's work was done prior to the failed inspection. At the hearing, when the Appellant provided documents from the inspector confirming that the failed inspection actually occurred on December 9, 2014, the Ministry changed its rationale for finding that the repairs were not unexpected. The Ministry now based its finding on the Appellant's oral testimony

that the residence had not had hydro connected for five years. The Ministry argued that the electrical problems were therefore long standing and not unexpected.

With regard to the reconsideration decision, the panel finds that the Ministry's determination that the electrical repair expense was not unexpected is not reasonably supported by the evidence. The inspector provided two types of documents: a) the Electrical Certificate of Inspection dated December 9, 2014 which showed that three items were not compliant: space heating, gas, and forced air; and b) the interim Inspection Report of January 2, 2015 which indicates that the residence "passed" inspection and that a new Certificate of Inspection will follow. The inspector noted in his letter of March 17, 2015 that corrections identified on December 9 and required by December 16, 2014 were to either service the existing central heating equipment (gas fired) or to install another acceptable form of heating (baseboard heaters). Therefore, the evidence is that the baseboard work was done after the failed inspection and the inspector's letter of March 17, 2015 confirms that the installation of baseboard heaters was to correct deficiencies identified in the December 9 inspection.

With regard to the Ministry's argument that the Appellant's oral testimony (that the hydro wasn't connected for five years and the family did not experience a crisis until the weather got cold) confirms that the electrical work was not an unexpected expense, the panel notes that the Ministry did not argue that at the reconsideration even though it had the opportunity to do so. The record indicates that the Ministry knew there were problems with the residence's electrical system as it had provided a crisis supplement for electrical work in November 2014. The panel therefore finds that it would be unfair for the Ministry to base its determination that the expense is unexpected on a rationale it did not rely on at the reconsideration.

Given the preceding analysis, the panel finds that the Ministry was unreasonable in determining that the "unexpected expense" criterion under subsection 57(1)(a) of the EAPWDR was not met.

Unable to meet the expense or obtain the item because there are no resources available to the family unit, EAPWDR subsection 57(1)(a)

Appellant's position

At the hearing, the Appellant argued that he has no resources available because he receives hardship assistance of \$500 per month and child tax credits of approximately \$600, and not disability assistance (plus child tax credits) with \$1,309.48 remaining as reported by the Ministry. Further, the tenants in his other home are delinquent with the rent and the Appellant has two mortgages to pay. In addition, he has many bills including hydro for the entire winter, and he had to pay \$400 for a family member's stay in a lodge. His residence got so cold that the dishes froze in the sink and his relative could not remain in the home for health reasons.

Ministry's position

In its reconsideration decision, the Ministry argued that the Appellant has resources because he has \$1,309.48 of his assistance remaining and has not provided information (e.g., bank account statements) showing that he has no savings; or that he cannot make payment arrangements for amounts owed; or that he does not have available any portion of the \$1,309.48. At the hearing, the Ministry argued that the Appellant was able to borrow money from a family member (the lender).

Panel's decision

The panel notes that while subsection 57(1)(a) of the EAPWDR does not provide a definition for “no resources available”, the Ministry has interpreted it in the reconsideration decision, to include bank account statements that show no savings; attempts to make payment arrangements for amounts owed; and information showing that no portion of the Appellant’s disability assistance (\$1,309.48 remaining after shelter costs) is available. Further, the Ministry also considered the Appellant’s ability to borrow money from a family member as an available resource.

The panel acknowledges that the Appellant stated he has approximately \$200 less than the \$1,309.48 that was reported by Ministry and that he has other bills to pay including hydro for the entire winter. However, he also indicated in his oral testimony that the Ministry has all of his financial records including bank statements, and that the Ministry knows how much money he has and how much he receives for assistance. The panel notes that there is no evidence confirming a zero bank balance and there is no evidence confirming that the Appellant couldn’t have used a portion of his assistance to pay the electrician. Further, he borrowed money from the lender and stated that he made a payment plan to repay them. There is no evidence that he attempted to borrow money from any other source or that he could not also make a payment plan with the electrician.

The panel finds that the Ministry reasonably determined that the Appellant has not provided sufficient information that would allow it to determine that he has no resources available to meet the cost of his home electrical repairs. The panel therefore finds that the Ministry was reasonable in concluding that the criterion of no available resources under EAPWDR subsection 57(1)(a) was not met.

Conclusion

The panel finds that the Ministry’s reconsideration decision which held that the Appellant is not eligible for a crisis supplement for home electrical repairs pursuant to section 57 of the EAPWDR because all criteria were not met, was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the Appellant. The panel confirms the Ministry’s reconsideration decision.