

## PART C – Decision under Appeal

The appellant appeals the Reconsideration Decision of the Ministry of Social Development and Social Innovation (ministry) dated April 15, 2015, in which the ministry denied his request for a crisis supplement to purchase a new bed on the basis that the appellant did not meet each of the required criteria set out in section 57(1) of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*. Specifically, the ministry determined that:

- (a) the appellant did not require the supplement to meet an unexpected expense or obtain an item unexpectedly needed;
- (b) the appellant did not establish that there were no resources available to him to meet the expense or obtain the item; and
- (c) the appellant did not establish that failure to meet the expense or obtain the item would result in imminent danger to his physical health.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, section 57

## PART E – Summary of Facts

The appellant has been designated by the ministry as a person with disabilities and he receives monthly disability assistance. The information before the ministry at reconsideration included the appellant's Request for Reconsideration dated April 14, 2015 ("the RFR") which was accompanied by a one-page consultation report prepared by his family physician and dated April 13, 2015 ("the Report").

The facts as set out in the Reconsideration Decision are as follows:

- In August 2012 the appellant was issued a crisis supplement to purchase a bed ("Bed #2") as his previous bed ("Bed #1") was infested with bedbugs.
- In July 2014 the appellant was issued a crisis supplement to purchase a new bed ("Bed #3") as Bed #2 was not in good shape when received and was not holding up.
- On February 3, 2014 the appellant advised the ministry that Bed #3 (which consisted of a foam mattress and frame) was inadequate due to his back problems and the appellant requested another crisis supplement to purchase a new bed and that request was denied by the ministry.
- The appellant sought reconsideration of that decision which was confirmed by the ministry. The appellant did not appeal that decision to the Tribunal.
- On March 16, 2015, the appellant requested a crisis supplement to purchase a new bed. The appellant cited severe disc displacement and that his current foam mattress did not provide sufficient support. The appellant noted that he was unable to find a free mattress from two different providers and that he was awaiting back surgery. That request was initially denied by the ministry and again on reconsideration and is the subject of this appeal.

On review of the Reconsideration Decision, the Panel notes a discrepancy in the chronology in that it describes the appellant as having received a crisis supplement to purchase Bed #3 in July 2014 and that he advised the ministry in February 2014 that it was inadequate. On further review of the original decision, it appears that the crisis supplement for Bed #3 was in fact issued in January 2014 and not July 2014.

In the RFR the appellant writes that he has back pain, lumbar/spinal stenosis, a previous back surgery and disc disease, further back surgery pending and ongoing severe pain. The Report indicates that the appellant has lumbar spinal stenosis, ongoing severe back pain, further back surgery pending and previous back surgery for lumbo-sacral disc disease.

At the hearing, the appellant gave evidence that he has a number of health problems for which he takes medication. He stated that his current bed ("Bed #3"), which consists of a foam mattress and a thin base, is not appropriate for him given his back condition and that he initially received it from a community service organization. He said that the ministry is well aware of his medical condition and that his current bed is not a good one.

In response to questions, the appellant stated that he has had back problems for more than 15 years, that he previously had back surgery 10 years ago and that he will be having another back surgery in either June or August 2015. He confirmed that he has had Bed #3 for more than one year and that he received it in response to his request for a new bed. The appellant stated when he received Bed #3, he knew right away that it was not appropriate for him given his back problems and he called the ministry immediately to let them know that. The appellant compared Bed #3 to something one might take camping. He says that the ministry told him that as that bed had already been delivered, the community service organization from whom it had been purchased would not take it back. The appellant stated that at the ministry's request he went to different service providers to research the cost of a new bed but when he provided that information to the ministry he was questioned as to why he had undertaken that task in the first place.

At the hearing, the ministry confirmed that it was relying on the Reconsideration Decision. It stated that on March 16, 2015, the appellant requested a crisis supplement for a new bed, specifically a queen size bed with

legs, due to his back condition. The ministry acknowledged that there were no free beds available at two community service organizations.

In response to questions, the ministry confirmed that the appellant contacted it immediately after receiving Bed #3 in 2014 to alert it to the fact that the bed was not appropriate for him. The ministry further confirmed that a previous doctor's note had been provided to it in 2014 and that Bed #3 was the first one available from the community service provider from whom it was purchased because the request from the appellant did not specify the type of bed he required such as a firm or soft mattress for example.

The appellant gave oral evidence at the hearing of the history leading up to the purchase of his current bed and the steps he has taken relating to his request for a crisis supplement. He further gave evidence of his medical condition consistent with the evidence in the Report. Therefore, the panel is satisfied that the oral evidence of the appellant is admissible as oral testimony in support of the information and records that were before the minister when the decision being appealed was made pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant's request for a crisis supplement to purchase a bed on the basis that he did not meet the criteria set out in section 57(1) of the *EAPWDR* was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The criteria to be applied by the ministry on a request for a crisis supplement are set out in section 57 of the *EAPWDR* as follows:

### **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.

### **Positions of the Parties**

In his Notice of Appeal, the appellant writes that the requested crisis supplement is for his health and his life and that the ministry's decision was not right. At the hearing, the appellant took the position that the ministry has known about his medical condition and that his current bed is not appropriate in the circumstances.

The ministry argues that for a crisis supplement to be issued, the appellant must satisfy each of the criteria as set out in section 57 of the *EAPWDR*. The ministry argues that the appellant has not done so. These criteria will be considered in greater detail below.

### **Analysis**

In order to receive a crisis supplement under the *EAPWDR*, an applicant must meet each of the criteria set out in section 57(1). If the applicant does not meet each of the criteria, the crisis supplement will not be provided.

### **Unexpected Expense or Item Unexpectedly Needed**

Section 57(1)(a) of the *EAPWDR* provides in part that the minister may provide a crisis supplement to a family unit that is eligible for disability or hardship assistance if the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed.

In the present case, the appellant received Bed #3 in 2014 to replace Bed #2 which had begun to break down after approximately 2 years use. Immediately after receiving Bed #3, the appellant determined that it was not suitable given his medical circumstances and he contacted the ministry to advise them of such. The appellant explained that the bed he received was not a proper bed but was a foam mattress with a thin base and he compared it to something one might take camping. In response, the ministry advised the appellant that as the bed had been delivered, the community service provider from whom it had been purchased would not take it back.

While the need for a bed in and of itself is not an unexpected expense or an item unexpectedly needed, the appellant's circumstances are that although the ministry replaced Bed #2 it did so with a bed that was not suitable for the appellant's needs. The appellant notified the ministry immediately after receiving Bed #3 but the ministry told him it could not remedy the situation citing the return policy of the community service provider from whom the bed was purchased. The Panel notes that the ministry did not provide evidence of that return policy. Given the inadequacy of the replacement bed provided and the evidence of the appellant's efforts to notify the ministry of the situation and further considering the ministry's refusal to replace Bed #3, the Panel finds the ministry's determination that the bed requested by the appellant is not an unexpected expense or an item unexpectedly needed was not reasonable.

**No Resources Available to Meet the Expense or Obtain the Item**

Section 57(1)(a) of the *EAPWDR* further provides that an applicant must satisfy the minister that when requesting a crisis supplement, he or she is unable to meet the expense or obtain the item because there are no resources available to the family unit.

The ministry argued that the appellant had more than a year after delivery of Bed #3 to budget for the purchase of another out of his monthly support allowance. The appellant did not provide evidence of a lack of resources available from his support allowance to meet the expense or obtain the item. He did indicate that he had attempted to obtain a bed from two community service organizations but was unsuccessful.

Given that there is no indication that the appellant was unable to budget his support allowance, the panel finds that the ministry's decision that the appellant failed to demonstrate that he had no resources available to purchase a new bed was reasonable.

**Imminent Danger to Physical Health**

Section 57(1)(b)(i) of the *EAPWDR* provides that the minister must consider 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.

While the Report sets out the appellant's past and current medical condition and need for future surgery, the Panel finds that it does not address the impact, imminent or otherwise, that failure to purchase a new bed would have on his physical health. The panel finds that the ministry's determination that failure by the appellant to meet the expense or obtain the item would not result in imminent danger to the appellant's physical health was reasonable.

**Conclusion**

The panel finds that the ministry's determination that the appellant did not meet the requirements of section 57(1) of the *EAPWDR* was a reasonable application of the applicable enactment in the circumstances of the appellant and the panel therefore confirms the ministry's Reconsideration Decision.