

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 April 21, 2015 that determined that the appellant was not eligible for a crisis supplement to purchase a bed because the appellant did not meet the criteria required under section 57 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, the ministry found that:

1. The need for the bed was not unexpected;
2. There is insufficient evidence to support a probability of immediacy that failure to obtain the bed will place the appellant’s health in danger; and
3. Support funds are expected to be budgeted over time to cover items needed day to day such as furniture. Accordingly, alternate resources are available to obtain the bed.

PART D – Relevant Legislation

EAPWDR section 57

PART E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming that the ministry was properly notified, the hearing proceeded pursuant to Section 86(b) of the Employment and Assistance Regulation.

The documentary evidence before the ministry at reconsideration included the following:

1. A letter from a doctor (doctor #1) dated March 3, 2015 that states: *“Due to chronic medical conditions this gentleman would benefit greatly from a new bed mattress.”*
2. A quote from a furniture store dated March 12, 2015 for \$ 1006.88 for a new bed.
3. A 2-page handwritten note from the appellant dated March 18, 2015 in support of his request for reconsideration. He reports that he suffers from type 2 onset diabetes and has diabetes nerve damage, severe osteoarthritis from his neck to his toes and is allergic to anti-inflammatories so is unable to use them to stop the swelling and pain. His left knee has been replaced but it has deteriorated to the point of instability, and he will have to have his right knee and right hip replaced. He has suffered from these problems since he was 5 years old when he contracted osteomyelitis. The appellant states that every joint in his body has deteriorated by 50% or more which causes extreme pain whether he is sitting or lying down. He takes a total of 110 mg of morphine over the course of each day as well as a sleeping pill and still can hardly sleep on his old bed. He suffers from depression, congestive heart failure, an enlarged heart, and has a heart murmur, and reports that with his limited income covering the costs of rent, car, insurance, utilities and Shaw cable, he is left with very minimal funds for food.
4. A letter from a doctor (doctor #2) dated March 25, 2015 that states: *“Patient reports his current bed and mattress (sic) is aggravating his medical conditions and making his pain unbearable – His current medical issues he is concerned about is his diabetic neuropathy, Osteoarthritis of his back. Patient might benefit from a better mattress (sic) and bed.”*
5. The appellant’s *Request for Reconsideration* signed and dated by the appellant on April 2, 2015. The appellant states that he has been suffering debilitating pain from arthritis since 1955 when he lost his left knee which was replaced 1991 but has since failed. Since 1955 all his joints from his neck to his torso have deteriorated by 50%. He believes that a new bed would greatly improve his health. His current bed has gotten lumpy from wear and tear over the past 15 years and it makes it almost impossible for the appellant to get a good night’s sleep even with the sleeping pills and morphine that he takes throughout the day.
6. An undated quote from a second furniture store for \$1049.99 for a new bed.
7. An undated quote from a third furniture store for \$1118.88 for a new bed.

Ministry records indicate that on March 12, 2015 the appellant stated that his bed was 15 years old and had worn out. The appellant’s Notice of Appeal was signed and dated on April 29, 2015 and lists the following as the reason for the appeal *“I believe I should qualify for a crisis benefit for a new mattress.”*

Prior to the hearing, the appellant submitted the following additional documents:

1. A letter from doctor #2 dated May 12, 2015 that states: *“Above mentioned patient (the appellant) is suffering from cervical radiculopathy and ongoing lower back pain. A new mattress with sufficient support would be extremely beneficial to the patient and in the long term as well as improve some of his ongoing chronic pain. Patient will also benefit with improved sleep which has a direct impact on the amount of the medication he uses for his*

chronic pain.”

2. An Ultrasound diagnostic imaging report for an examination done on May 5, 2015.

At the hearing, the appellant's advocate provided arguments that are outlined in Part F. The appellant reported that he has been notified that his rent will increase by \$30 monthly as of September 2015. In addition, the appellant stated that he was scheduled to have surgery upon his right knee but the doctor decided against performing the surgery due to concerns about the appellant's heart. Instead of surgery the doctor has recommended an injection treatment.

In response to a question from the panel, the appellant reported that he had checked with a community service organization about whether they could supply him with a replacement bed. He was advised that they did not have anything for him.

In response to another question from the panel, the appellant stated that his current bed has been unsatisfactory for the past four years.

Additional evidence

The panel reviewed the documents submitted by the appellant prior to the hearing and noted that both documents address the appellant's medical condition. Since these documents provide support for the information that was before the ministry at reconsideration, the panel admitted this evidence, in accordance with section 22(4) of the Employment Assistance Act (EAA). Similarly, the panel admitted the appellant's verbal testimony regarding the seriousness of his heart condition while noting that there was no medical documentation corroborating this information. Finally, the panel admitted the appellant's testimony that he had checked with the community service organization regarding the availability of a replacement bed as the ministry had raised the issue in the reconsideration decision about whether the appellant had explored community resources.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision that determined that the appellant was not eligible for a crisis supplement for a new bed because the appellant did not meet the requirements of sections 57 of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that:

1. The need for the bed was not unexpected;
2. There is insufficient evidence to support a probability of immediacy that failure to obtain the bed will place the appellant's health in danger; and
3. Support funds are expected to be budgeted over time to cover items needed day to day such as furniture. Accordingly, alternate resources are available to obtain the bed.

The relevant legislation is as follows:

From the 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.

Appellant's Position

The appellant argues that while the need for a replacement bed may not be unexpected, that due to the appellant's deteriorating medical condition, the need for a replacement bed has become more critical of late. The appellant reviewed his financial situation – total monthly income of \$943 and monthly expenses of \$756.76 (not including groceries and gas) and stated that there was not sufficient money remaining to save for a new bed. The increase in rent will only make this problem greater. Additionally, the appellant argued that he suffers from pain and fatigue due to sleeping poorly and his doctor has indicated that a new bed would greatly assist him to obtain more restful sleep. Finally, the appellant's advocate cited section 8 of the Interpretation Act which states: "*Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.*"

Ministry's Position

In the *Reconsideration Decision* the ministry argued that the appellant has failed to satisfy the requirement that the item be unexpected because the need to replace a bed after 15 years of use cannot be unexpected. In addition, the ministry argued that the appellant has provided insufficient evidence of an imminent danger to his health if not provided with a replacement bed. Finally, the ministry argued that the appellant should have had alternate resources to obtain a replacement bed since the condition of his current bed would have deteriorated over many years providing the opportunity for the appellant to budget for a new bed. Additionally, the ministry stated that the appellant had confirmed that he had not attempted to access local community resources to obtain a replacement bed.

Panel Decision

The panel noted that the appellant had indicated that his bed was 15 years old and has not been satisfactory for the past four years so the need for a replacement bed has been evident to him for that length of time. Accordingly, the panel concluded that the ministry reasonably determined that the need for a replacement bed was not an unexpected expense.

The panel reviewed the documentation provided by the appellant's doctor(s) and noted that while they indicated that the appellant would benefit from a replacement bed that none of them suggested that the appellant was in imminent danger to health without a new bed. In addition, the appellant made no such claim. Accordingly, the panel concluded that the ministry reasonably determined that the appellant had not provided sufficient evidence to support a probability of immediacy that failure to obtain the new bed would place his health in immediate danger.

Finally, the panel considered whether the appellant had alternate resources to obtain the bed. The panel reviewed the appellant's monthly expenses and noted that the satellite TV and car insurance/gas expenses are discretionary costs. While the assistance received by the appellant is

limited, the panel concludes that the ministry reasonably determined that the appellant could have set aside funds to cover the cost of a replacement bed from the assistance that he receives.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's determination that the appellant has not met the requirements of section 57 of the EAPWDR for the provision of a crisis supplement was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry decision.