

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated July 29, 2015 which held that the Appellant is not eligible for a crisis supplement for clothing pursuant to the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The Ministry determined that the Appellant’s request for the crisis supplement does not meet three criteria in EAPWDR section 57:

1. The Appellant requires the crisis supplement to meet an unexpected need or obtain an item unexpectedly needed [subsection 57(1)(a)]; and
2. She is unable to meet the expense or obtain the item because there are no resources available [subsection 57(1)(a)]; and
3. Failure to meet the expense or obtain the clothing items will result in imminent danger to her physical health [subsection 57(1)(b)].

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 57

PART E – Summary of Facts

The evidence before the Ministry at reconsideration consisted of:

1. A Request for Reconsideration signed by the Appellant on July 17, 2015 in which she stated:
 - She has infected sores and no clothing due to bites from fleas in her apartment. The bites are not healing well with just her doctor's prescription for medication and she requires breathable replacement clothing for sensitive skin.
 - A relative purchased bug spray but does not have the receipt.
 - She will be applying to the residential tenancy office to get the carpets replaced and other emergency repairs done but the process takes time and she has not yet completed the application because she still needs to get estimates from contractors.
 - The Ministry told her to provide a doctor's note, receipts for bug spray, and confirmation of the residential tenancy complaint against her landlord.
2. An undated letter from the Appellant's doctor [the Appellant indicated in her appeal submission that the doctor wrote the letter on July 2, 2015] indicating the Appellant has a skin condition that is sensitive to sweating leading to excoriations. She requires clothing made of materials for sensitive skin and conducive to the weather.
3. A receipt dated June 25, 2015 for antibiotic cream prescribed by the Appellant's doctor.
4. Information from the Ministry's record indicating that:
 - The Appellant stated she had a bug infestation in her current residence because the landlord did not clean the carpets properly before she moved in. The Appellant reported that the landlord would not fumigate the residence so she purchased bug spray and had to throw away all of her clothing as it was bug infested. She stated that she had contacted the residential tenancy office about filing an appeal but had not pursued resolution as of her July 2, 2015 request for a crisis supplement for clothing.
 - The Appellant advised that laundromats would not accept her bug infested clothing. She further advised that she had accessed all community resources but could not find clothing that fit; she was out of funds; and her doctor confirmed that she had bug bites.
 - The Ministry requested confirmation of the bug infestation (such as receipts for bug spray and a note from the Appellant's doctor) and explained the legislative criteria for a crisis supplement.
 - The Appellant receives disability assistance and she also had employment earnings in June 2015.

Additional Submissions

With the consent of both parties, the appeal proceeded by way of a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act*. In an email to the tribunal, the Ministry stated that its submission for the appeal will be the reconsideration summary.

[Redacted]

Subsequent to her Request for Reconsideration, the Appellant submitted the following documents:

- A Notice of Appeal dated August 4, 2015 in which she summarized her discussions with the Ministry regarding her request for a crisis supplement for clothing and outlined her argument for the appeal [which the panel will address in Part F – Reasons for Panel Decision].
- A fax from the Appellant dated September 8, 2015 in which she stated she would be providing “an updated more specific doctor’s note” and copies of bank financial statements for July 2, 2015. [The panel notes that these were not submitted for the hearing].

The fax included the following attachments:

- (a) A letter from a community service agency dated September 8, 2015 that stated the Appellant was admitted to their residence in September 2015 and is currently residing on site.
- (b) A four page submission from the Appellant in which she outlined her argument on appeal and provided the following evidence:
 - The “incident” occurred on June 24, 2015 and she saw her doctor on June 25 and was prescribed antibiotics.
 - She fumigated the carpets but forgot to save the receipts for the bug spray.
 - Her doctor told her not to subject her clothing to the chemical processes of a laundromat or noxious chemicals used in the dry cleaning process as these would be dangerous to her medical conditions.
 - She used her June 2015 employment income to catch up on debts and stock up on food, and the clothing and personal items she had purchased had to be disposed of as they were affected by the infestation. She used her disability allowance to purchase food and bedding.

Excepting the Appellant’s move to a new residence which was not before the Ministry at reconsideration, the panel admits the above statements under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the Ministry at the time the decision being appealed was made. The panel finds that the statements substantiate the information in the Ministry record regarding the insect infestation and Appellant’s financial and medical reasons for requesting the crisis supplement. The panel further accepts the submissions as argument, in particular, substantiating the Appellant’s position regarding her discussions with the Ministry, her medical need for clothing, and providing further information about how she allocated her resources.

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry's reconsideration decision of July 29, 2015 which held that the Appellant is not eligible for a crisis supplement for clothing because her request does not meet all of the criteria in EAPWDR section 57 was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry determined that the Appellant's request did not meet the criteria for an unexpected need and a lack of resources to meet the need as required by subsection 57(1)(a) and that the criterion of imminent danger to physical health was also not met pursuant to subsection 57(1)(b).

The legislation sets out the following eligibility criteria::

EAPWDR Crisis supplement:

Pursuant to section 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*.

The panel notes that all criteria must be met in order for the Ministry to authorize a crisis supplement. The Ministry noted that the Appellant is a recipient of disability benefits. She therefore meets the criterion of being eligible for assistance pursuant to section 57(1). The panel provides the following analysis for the criteria the Ministry determined were not met:

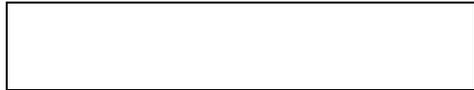
Subsection 57(1)(a): Crisis supplement required to meet an unexpected expense or obtain an item unexpectedly needed:

Appellant's position

In her appeal submissions, the Appellant argued that "waking up bloody and covered in bites and sores that rapidly became infected" was definitely unexpected. She could not take her clothing to a laundromat or drycleaner due to the chemical processes that aggravate her medical conditions. She had to "start over from zero" due to the unexpected crisis as the clothing and personal items she had bought with her employment earnings had to be thrown out.

Ministry's position

The Ministry argued that the Appellant knew she would have to replace her clothing when she threw it out and, therefore, her need for clothing was not unexpected. Further, she did not provide evidence to support her statement that the laundromat refused to accept her clothing.



Panel decision

The panel finds that the Ministry reasonably determined that the “unexpected need” criterion was not met. While an insect infestation that the Appellant did not know about when she moved into her residence can be characterized as an unexpected event, the evidence regarding her need for a crisis clothing supplement is that she threw her clothes away upon discovering the infestation. It is therefore expected that she would require replacement garments.

While she argued that she could not take her clothing to a laundromat or drycleaner either because these services would not accept infested clothing, or because they employ cleaning agents that aggravate her insect bites and other medical conditions, there was no confirmation of the refusal as noted by the Ministry and there is also no indication that she attempted to launder her clothing with products for sensitive skin or under high heat conditions that would potentially destroy the insects. The panel is not convinced that the Appellant had no other option but to throw away her clothing and finds that the Ministry therefore reasonably determined that her need for a crisis clothing supplement was not unexpected as required under EAPWDR subsection 57(1)(a).

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

Appellant's position

The Appellant argued that she had no resources available to purchase clothing because she uses her disability allowance to pay her rent and utilities, and has only a small amount left for food and clothing, hardly adequate in the circumstances of an unexpected crisis. She used her support funds to purchase food and replacement bedding and her employment earnings were used to catch up on debts and stock up on food and toiletries; moreover, the clothing and personal items that she purchased with her earnings had to be thrown out. She is still in need of clothing assistance as she has only been able to replace the bare minimum. She contacted the Ministry on July 2, 2015 after an exhaustive and unhelpful search of community resources. She was unable to accept further work assignments due to the infection from the bites and having no appropriate work clothing or breathable, natural fibre clothing to assist in the healing process.

Ministry's position

The Ministry argued that the Appellant has resources in the form of her monthly support allowance which is to be used for day to day items such as clothing or disinfectant and she has not provided sufficient evidence to demonstrate that she could not meet her clothing needs by gradually budgeting for clothing. The Ministry noted that the Appellant has chosen to divert a portion of her support allowance to pay rent that is significantly higher than her shelter allowance, arguing that if a recipient chooses to divert their disability assistance for purposes other than necessary monthly expenses such as food and clothing, it does not change the fact that the assistance was provided for those needs. The Ministry further noted that the Appellant had employment earnings in June 2015.

Panel decision

The panel finds that the Ministry reasonably determined the Appellant did not demonstrate a lack of resources to obtain clothing. The evidence is that the Appellant received disability assistance intended to cover living expenses including the cost of clothing. Further, her employment income for June 2015 was more than double her reported support allowance after rent and utilities. While the record indicates the Appellant tried to find clothing through community resources, there is no information as to why community outlets did not have clothing that fit her or why natural fibre, breathable clothing is not readily available or would cost more than her budget allows.

While the Appellant argued that she used her support allowance and employment earnings for expenses including food, the evidence is that she also budgeted some funds for clothing [as she indicated that she replaced “some items”]. There is no indication that she could not continue to replace her clothing on a gradual basis with the funds she receives as argued by the Ministry. The panel therefore finds that the Ministry reasonably determined that the “no resources” criterion in EAPWDR subsection 57(1)(a) was not met.

Subsection 57(1)(b): Failure to meet the expense or obtain the item will result in imminent danger to physical health:

Appellant’s position

The Appellant submitted that her doctor told her it was imperative to her speedy recovery to obtain new clothing that would breathe and not stick to sores or cause itching, or cause the infection to spread or worsen, as that could lead to the worsening of her other medical conditions and threaten her life. She argued that her infected bites are not healing with just the medication prescribed and without breathable replacement clothing, her infection “will worsen and require hospitalization”.

Ministry’s position

The Ministry argued there is insufficient evidence to support a probability of immediacy that failure to obtain new clothing will place the Appellant’s health in imminent danger. The Ministry noted that while the Appellant’s doctor confirmed that the Appellant has a skin condition, there is no mention of infection due to insect bites or any indication that the Appellant’s health is in immediate danger without clothing made of skin-sensitive material.

Panel decision

The panel finds that the Ministry reasonably determined that there is insufficient information to establish that failure to obtain clothing will result in imminent danger to the Appellant’s physical health. While the Appellant’s doctor’s note confirmed that she has a skin condition that is “sensitive to sweating” and that she needs appropriate clothing fabrics for sensitive skin and hot weather, there is no information about any infection from bites or aggravation of other medical conditions as reported by the Appellant. Further, the Appellant’s statements that her infection will worsen requiring hospitalization as her bites are not healing with just the medication, are not supported by any additional information from her doctor. The Appellant’s concerns are therefore speculative events,

and not “imminent danger” for which the dictionary definition is, “impending/ soon to happen”. The panel therefore finds that the Ministry reasonably determined the criterion of “imminent danger to physical health” under EAPWDR subsection 57(1)(b) was not met.

Appellant’s position regarding Ministry communication

The panel acknowledges that the Appellant’s “number one reason” for disagreeing with the Ministry’s reconsideration decision is her concern that the Ministry was not sensitive or professional in communicating what they required as “acceptable proof” of her need for a crisis clothing supplement. She submitted that the Ministry worker belligerently repeated that she needed a doctor’s note and other documents without answering her questions or taking into account her concerns about her ability to provide information in a timely fashion considering her infection and other health issues amidst the stress of her bug infestation crisis. She argued that the Ministry told her that she did meet the three criteria and then denied her the crisis supplement and closed her service request before she could furnish the “proof” they had requested.

While sympathetic to the Appellant’ concerns, the panel’s authority is to assess the reasonableness of the Ministry’s findings in determining that the Appellant’s request for a crisis clothing supplement does not meet all of the legislative criteria. The panel notes that the reconsideration record confirms that the Appellant was informed of the reconsideration and appeal processes which invite her to provide information in support of each of the legislative criteria. There is no indication in the record that the Ministry failed to assess the information the Appellant provided – her written submissions regarding the circumstances of her need for clothing, what resources she has, as well as the content of her doctor’s note, were addressed in the Ministry reconsideration decision. As set out above, the panel also considered all of this information, finding that the Ministry was reasonable in determining that the EAPWDR criteria for a crisis clothing supplement were not met.

Conclusion

The panel confirms the Ministry’s reconsideration decision that denied the Appellant’s request for a crisis supplement for clothing, finding that the Ministry determination that all of the criteria in EAPWDR section 57 were not met, was reasonably supported by the evidence.