

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated October 15, 2015 which denied the appellant's request for a crisis supplement to cover clothing costs. The ministry held that the requirements of Section 57 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were not met as the ministry found that:

- clothing costs are not an unexpected expense;
- there was insufficient information to show that alternate resources are unavailable to the family unit to secure clothing; and,
- there was insufficient information to establish that failure to meet the expense will result in imminent danger to the physical health of any person in the appellant's family unit.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 57

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Prescription from a medical practitioner dated September 21, 2015 for use of a wheelchair “for longer distances until the Achilles tendon is healed;”
- 2) Note dated October 5, 2015 in which the medical practitioner indicated that the appellant is being seen for breast reduction, she has gained weight due to a recent injury and inability to exercise and meds. “She would benefit from a special bra for support [type], undergarments and socks, as well as pants, shirts and coat. Please accommodate as possible. The patient also needs extra wide shoes/boots for the winter;”
- 3) Print-out dated October 6, 2015 from a footwear company for E-width women’s athletic shoes for the prices of \$59.99 and \$50, with a handwritten note: “lowest price (not including taxes) on E-width shoes more expensive not bought online;”
- 4) Print-out dated October 6, 2015 for a sports bra for \$64-\$66 with a handwritten note: “support bra for DDD width;”
- 5) Request for Reconsideration- Reasons dated September 25, 2015.

In her Request for Reconsideration, the appellant wrote that:

- She is devastated by the little she has to live on and how she is beholden to the charity of neighbors.
- Wrongly, the ministry looked at the denial for the proper injury boot she needed and thought shoes had “already been denied.” Now the ministry must pay for a wheelchair and surgeries because the ministry failed her.
- After her injury in June, she was on corticosteroid and living on rice, a simple starch, the combination of which means weight gain, especially on the breasts. She is already on hold for breast reduction surgery (due to other injury) so now only bra, shirt and coat from an XL shop will fit. She has none of these. She also does not have shoes.
- She ended up with a hole in her Achilles tendon by wearing too big, borrowed shoes.
- She has found out how unsafe and impractical it can be to use borrowed men’s clothes from her neighbor’s late husband.

In her Notice of Appeal, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that:

- In the last couple of months the neighbor who provides meals for her has gone away so she has just been eating the cheapest food which for her equals weight gain.
- In the last few months, her body has digressed to a point of not being able to find or afford footwear that is suitable for winter yet will not further injure the hole in her Achilles tendon. As the effect of the injury worsens, this fact becomes more evident.
- In the last month, the swelling foot and width of her calf has increased (see doctor’s letter). She needs different hormone meds (what is stalling it is the cost) and so her breasts and abdomen are swelling, continuing in the last 30 days to swell, increasing her breasts by 3 sizes. This has caused her swimming suit to burst open at the seam, which means she can no longer go to the pool, which she needs for injury rehab as she cannot walk properly or exercise on land.
- The sudden lack of any exercise now that she cannot go to the pool, coupled with diet

changes has also increased her girth size.

- She needs to go to pool rehab for mental and physical survival.

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

- 1) Letter dated October 21, 2015 in which a medical practitioner wrote that in the last month the appellant has experienced ankle and foot swelling, making it difficult to find footwear that will fit her. She has not been able to go to the pool for rehab because her swimsuit has been ripped due to swollen abdomen and breasts which is likely due to a change in hormones as she changed her hormone meds. As a result of this swelling she cannot either get her coat to fit on the upper body. Hence she needs a swimsuit and a coat. Please accommodate as soon as possible;
- 2) Reconsideration Decision with handwritten notes that it will be at least a year until any breast reduction surgery and she has had severe changes in her hormones and physiology. Special Authority was denied for the new medication she needs to help reduce weight gain and swelling. There is no hope in sight for the worsening situation. There is pretty much zero affordable housing. One is always left feeling desperate and so anxious and depressed, both of which increase inflammation and swelling. As rents go up and medical issues arise causing bodily changes, the desperation levels increase.
- 3) Appellant's Written Submission to the Tribunal dated November 24, 2015 with documents attached, specifically:
 - Page from a Report from May 2014 of the Auditor General of B.C. with a sample of the measures the ministry uses to determine whether clients' basic needs are being met; and,
 - Note dated November 9, 2015 in which a medical practitioner wrote that the appellant has very symptomatic breast hypertrophy which requires a more supportive [type] bra.

The ministry relied on its reconsideration decision as its submission on the appeal.

Admissibility of New Information

The ministry did not file an objection to the admissibility of the additional documents. The information in the letter, notes and submission related to swelling in the appellant's body and the consequent need for clothing as well as the cost of rent, both of which were before the ministry at reconsideration. Therefore, the panel admitted the additional documents pursuant to Section 22(4) of the *Employment and Assistance Act*, as being in support of information and records that were before the ministry on reconsideration.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision which denied the appellant's request for a crisis supplement to cover clothing costs, as the requirements of Section 57 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were not met, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the appellant's circumstances.

Section 57(1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the crisis supplement, 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. . . .

Unexpected expense

The ministry's position is that the provisions of Section 57 of the EAPWDR allow for the ministry to provide a crisis supplement when all of the legislative criteria are met, including that the supplement is required to meet an unexpected expense or to obtain an item unexpectedly needed. The ministry argued that the need for clothing is not unexpected as the need to replace clothing after weight gain is not an unexpected expense. The ministry argued that the appellant made a request for a crisis supplement in 2013 and in 2014 to purchase clothing due to weight gain.

The appellant's position is that larger clothing is an item unexpectedly needed since the appellant has sustained injuries over the past few months which have led to foot and ankle swelling and changes in hormones and medications that caused her breasts and abdomen to swell. The appellant argued, through her advocate, that the appellant's medical situation has been confirmed in letters from her doctor, and these changes in her health, swelling, and weight gain were not predictable or expected. The appellant argued that regardless of what may have happened in previous years, it is unreasonable to assume that because she has had some weight gain in the past she can anticipate and plan for changes in her size and weight now and in the future, especially in light of her modest income. The appellant argued that she urgently requires a larger, supportive bra, wider shoes, underwear and a larger coat as a direct result of significant changes in her health and body that are happening now.

Panel Decision

Section 57 of the EAPWDR stipulates that a crisis supplement may be provided when all of the legislative criteria are met, including that the supplement is required to meet an unexpected expense or to obtain an item unexpectedly needed. Although the ministry pointed out that the need to replace clothing after weight gain is not an unexpected expense, since weight gain normally occurs over a period of time, the appellant stated that her weight gain occurred at the rate of 50 lbs. over a period of 3 months and the panel finds that this is a rapid weight gain that most people would not expect. In

the Note dated October 5, 2015, the medical practitioner indicated that appellant has gained weight due to a recent injury and inability to exercise and her medications. In the letter dated October 21, 2015, the medical practitioner wrote that in the last month the appellant has experienced ankle and foot swelling as well as swollen abdomen and breasts, likely due to a change in hormones as her hormone medications were changed. The panel finds that the appellant's need for general clothing items, as a result of rapid weight gain, is an unexpected expense for items that were unexpectedly needed. Therefore, the panel finds that the ministry's determination that the clothing expense was not an unexpected expense, under Section 57(1)(a) of the EAPWDR, was not reasonable.

Resources Available

The ministry's position is that information has not been provided to establish that the appellant has no resources available to meet her need for clothing. The ministry argued that the appellant is provided with monthly assistance including funds designated for support that is intended as a resource to help meet daily living expenses such as clothing. The ministry argued that the fact that the appellant has chosen to divert some of her support allowance to pay rent that is significantly higher than her shelter allowance does not change the fact that she was provided with assistance for this purpose.

The appellant's position is that she does not have the resources available to meet the expense. The appellant argued, through her advocate, that she is like many people on disability assistance who are facing serious challenges regarding the high cost of housing and it is unreasonable for the ministry to justify the denial on the grounds that the appellant is "choosing" to pay high rent. The appellant argued that according to the recent Auditor General's report, 69% of people on disability are spending more than their shelter allowance (\$375) on rent. The appellant argued that she has her name on the list for subsidized housing and one of the reasons she lives where she does is that she gets regular help from her neighbors.

Panel Decision

Section 57 of the EAPWDR sets out that a crisis supplement may be provided when all of the legislative criteria are met, including that the family unit or a person in the family unit is unable to meet the expense or obtain the item because there are no resources available to the family unit. The panel finds that the ministry reasonably concluded that the monthly disability assistance amount is intended as a resource to help meet basic needs such as clothing. While the need for additional clothing items due to rapid weight gain is unexpected, making it difficult to budget for these items, there was little information of the other resources explored for obtaining these items. The appellant wrote in her Request for Reconsideration that she has found out how unsafe and impractical it can be to use borrowed men's clothes from her neighbor's late husband and the medical practitioner wrote in the October 21, 2015 letter that in the last month the appellant has experienced ankle and foot swelling, making it difficult to find footwear that will fit her. However, there was not sufficient information to demonstrate that the appellant had exhausted potential resources by checking with the organizations in her community that may offer low-cost or free used clothing and footwear, and the results of these efforts. The panel finds that the ministry's conclusion that there was not sufficient information to show that alternate resources are unavailable to the appellant to secure clothing, under Section 57(1)(a) of the EAPWDR, was reasonable.

Imminent Danger to Physical Health

The ministry's position is that the appellant has not provided sufficient information to establish that failure to obtain the requested item of clothing will result in an imminent danger to the appellant's physical health. The ministry argued that there is insufficient evidence to support a probability of

immediacy that failure to obtain new clothing will place the appellant's physical health in imminent/immediate danger. The ministry argued that while the physician indicated that the appellant would benefit from obtaining a supportive bra, clothing in general, and shoes, the physician did not indicate that failure to obtain new clothing will directly and immediately result in danger to her health.

The appellant's position is that sufficient evidence has been provided to establish that failure to obtain the larger clothing will result in imminent danger to her physical health since the appellant is facing a number of serious health problems that have been confirmed by her doctors. The appellant argued, through her advocate, that it is clear from the doctors' correspondence that the appellant urgently requires the specified clothing items. The appellant argued that it is apparent that someone without suitable footwear, underwear, and outerwear is facing an imminent danger to their health during the winter.

Panel Decision

Section 57 of the EAPWDR sets out that a crisis supplement may be provided when all of the legislative criteria are met, including 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. In the Note dated October 5, 2015, the medical practitioner indicated that the appellant "...would benefit from a special bra for support [type], undergarments and socks, as well as pants, shirts and coat" and, in the Note dated November 9, 2015, wrote that the appellant has very symptomatic breast hypertrophy which requires a more supportive [type] bra. In her Notice of Appeal, the appellant wrote that her swimming suit burst open at the seam, which means she can no longer go to the pool, and she needs pool rehab "for mental and physical survival." However, the medical practitioner did not indicate that the appellant faces imminent danger to her physical health without obtaining these clothing items.

In the October 5, 2015 Note the medical practitioner wrote as well that the appellant "...needs extra wide shoes/boots for the winter" and the appellant wrote in her Request for Reconsideration that she does not have shoes as she ended up with a hole in her Achilles tendon by wearing too big, borrowed shoes. However, the appellant requested the crisis supplement in September 2015 and the panel finds that the ministry reasonably required evidence that the failure to meet the clothing expense places the appellant at "imminent" danger to her physical health at the time of her request. The panel finds that the ministry's conclusion that there is not sufficient information to establish that failure to meet the cost of clothing will result in imminent danger to the appellant's physical health, pursuant to Section 57(1)(b) of the EAPWDR, was reasonable.

Conclusion

Section 57 of the EAPWDR stipulates that all of the requirements of the section must be met in order for a person to be provided with a crisis supplement. The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a crisis supplement for the cost of clothing because all of the requirements of Section 57 of the EAPWDR were not met, was reasonably supported by the evidence. Therefore, the panel confirms the ministry's reconsideration decision.