

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated December 16, 2015 in which the ministry determined that the appellant is not eligible for a crisis supplement for space heaters pursuant to section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because she had failed to meet the eligibility criteria set out in subsection 57(1), namely that:

1. the items were unexpectedly needed;
2. there were no alternate resources available; and
3. failure to obtain the item or expense will result in imminent danger to the appellant's physical health.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 57 (1)

## PART E – Summary of Facts

The appellant is single recipient of disability assistance with no dependents.

The evidence before the ministry at the time of reconsideration consisted of the following:

- Request for Reconsideration received by the ministry December 4, 2015 to which was appended the following attachments:
  - one page statement authored by the appellant in which she stated that:
    - both of her space heaters stopped working in late November 2015;
    - her monthly electrical bill has increased from \$99 to \$155;
    - she has no money to buy new heaters, and no family or friends who can lend her the money;
    - she has tried to purchase heaters at thrift shops;
    - what extra income she has is spent on vitamins, a gluten-free diet, and other medical expenses;
    - she has a tendency to suffer from bronchitis, pneumonia, costochondritis (chest wall pain) and cold weather asthma;
    - the temperature in her home is in the fifties Fahrenheit.
  - printout of regional climate statistics;
  - handwritten note of temperatures recorded by the appellant in various parts of her residence during the period November 26 – November 30, 2015, with temperatures ranging between 48 – 56 degrees Fahrenheit;
  - handwritten list of vitamins and non-prescriptions medications taken by the appellant;
  - electrical bill dated May 15, 2015 stating that the appellant's equal monthly payments will increase from \$99 to \$155 based on the amount of power consumed over the past 12 months;
  - handwritten note containing price quotes for heaters.

In her Notice of Appeal dated December 22, 2015 the appellant acknowledged that she believes the heater in her apartment to be unsafe, and she doesn't have enough [money] after paying bills, rent and a little food to pay for gas, etc, necessitating the use of space heaters for heat.

At the hearing the appellant stated that she has been using a space heater to heat her bathroom since approximately 2006 and a second space heater since approximately 2012. One heater was 9 years old, the other 2 years old. The heater supplied by the landlord is for her apartment only and is an older model gas heater that makes loud noises and has a non-working fan. She last used the gas heater in the spring of 2011 or 2012.

The panel determined that this additional oral evidence was admissible under Section 22 (4) of the Employment and Assistance Act as evidence in support of the records before the ministry at reconsideration because it clarified the age and usage of the space heaters and the nature of the alternative heating system referred to in the reconsideration decision.

The ministry relied on the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is the Ministry of Social Development and Social Innovation (the Ministry) reconsideration decision dated December 16, 2015 in which the ministry determined that the appellant is not eligible for a crisis supplement for space heaters pursuant to section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because she had failed to meet the eligibility criteria set out in subsection 57(1), namely that:

1. the items were unexpectedly needed;
2. there were no alternate resources available; and
3. failure to obtain the item or expense will result in imminent danger to the appellant's physical health.

The applicable legislation is set out in Section 57 (1) of the EAPWDR:

### **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*.

The appellant argues that her need for new space heaters was unexpected because the heaters both broke down within two days of each other. She has relied on the space heaters to heat her apartment because the installed gas heater does not work properly and is unsafe. Despite numerous requests her landlord has not repaired or replaced the heater. The appellant argues further that she does not have additional resources to purchase the space heaters because her electrical bill rose dramatically in June 2015 and because she needs to spend her available income on vitamin supplements and other specialized food products. She adds that her apartment without the space heaters is too cold, which endangers her health due to her tendency to suffer from bronchitis, pneumonia, costochondritis and asthma.

The ministry argues that because the appellant has access to an alternate heating system that she chooses not to use, she has not experienced an unexpected need for space heaters, and because the landlord has provided a heating system the appellant has not demonstrated that she has no alternative resources available. Although the ministry accepts that lack of heat during winter will result in imminent danger to a person's health, the ministry is not satisfied that the appellant has no access to a heating system.

## Panel Decision

EAPWDR Section 57 (1) sets out the eligibility criteria for receipt of a crisis supplement. To be eligible for a crisis supplement a recipient must satisfy the ministry that:

- 1 the item or expense is unexpectedly needed;
2. there are no alternate resources available; and
3. failure to obtain the item or expense will result in imminent danger to the person's physical health.

All of these criteria must be met before a crisis supplement can be provided.

### 1. Unexpectedly Needed

The appellant has heated her home exclusively by electric space heaters since 2011 or 2012. Both of her space heaters both broke down within a two-day period in November 2015. The loss of both heaters at the same time was sudden and unpredictable. The panel therefore finds that the ministry's determination that the appellant had not met Criterion 1 because she had not established that she required the crisis supplement to meet an unexpected need was not reasonably supported by the evidence.

### 2. No Alternate Resources Available

Although the appellant believes her gas heating system to be broken and unsafe she has not provided evidence that there is no alternative heating system available. The panel therefore finds that the ministry's determination that the appellant had not met Criterion 2 because she had alternate resources available was reasonably supported by the evidence.

### 3. Imminent Danger to Physical Health

The appellant did not provide evidence that her apartment could not be heated by the installed gas heating system provided by her landlord. The panel therefore finds that the ministry's determination that the appellant had not met Criterion 3 because she had not established that failure to obtain the space heaters would result in imminent danger to her physical health was reasonably supported by the evidence.

In conclusion the panel finds that the ministry's determination that the appellant's need for a crisis supplement for space heaters was not unexpected was not reasonably supported by the evidence. However, the panel finds that the ministry reasonably determined that the appellant's request for a crisis supplement failed to meet the remaining mandatory eligibility criteria set out in EAPWDR Section 57 (1), namely that there were no alternate resources available and that failure to obtain the items would result in imminent danger to physical safety, and confirms the decision.