

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of December 2, 2015 wherein the ministry denied the appellant a crisis supplement to cover to repair her roof because, in the ministry’s opinion, the expense was not unexpected and therefore the appellant did not meet all the criteria set out in section 57(1) Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”).

The ministry agreed that:

1. the appellant did not have the resources to meet the expense, and
2. that failure to meet the expense would result in imminent danger to physical health.

PART D – Relevant Legislation

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

PART E – Summary of Facts

Procedural matters:

- Matter is an Oral Hearing which was initially scheduled for January 29, 2016 and was adjourned by Tribunal Chair because the appellant was sick and still needs assistance to find a new Advocate. All parties consented to the adjournment.
- Oral Hearing was Re-scheduled for March 1, 2016 at 9:30 AM.
- On February 4, 2016 the ministry's request to attend the Oral hearing by phone was approved.
-

The ministry did not attend the hearing and the panel being satisfied that the ministry was advised of the date and time proceeded under section 86(b) Employment and Assistance Regulation.

The evidence before the ministry at the time of reconsideration:

- Roof repair estimate dated November 2, 2015 in amount of \$3,809.00 plus taxes;
- Roof inspection report dated November 4, 2015. The report states the house has four roofs on it. Upon inspection of attic I found wet insulation and wet drywall. To find the exact spot of the leak in this type of case is impossible. The only way to repair this roof is with a new roof. This is my professional opinion with 30 years experience;
- Roof repair estimate dated November 6, 2015 in amount of \$6,442 plus taxes;
- Request for Reconsideration dated November 24, 2015 with a four page attachment outlining the circumstances surrounding the appellant's request.

On October 27, 2015 the appellant contacted the ministry to request a crisis supplement to repair the leak(s) to her roof. The appellant indicated to the ministry worker ("EAW") that the situation was an emergency and there was water coming through several light fixtures in her home. At the time, the appellant advised the EAW she purchased the home approximately 25 years ago and at that time a new 15 year roof was installed. The EAW stated the appellant had indicated the roof is now 10 years past its life span. The appellant submitted two estimates for a new roof; \$3908.00 plus taxes and \$6,442.00 plus taxes respectively; and, a letter from one of the roofers stating the roof could not be repaired and needed to be replaced.

In the Request for Reconsideration the appellant stated that the failure of the roof was due to a severe weather storm with high winds and driving rain and that prior to the storm there was no indication that the roof needed replacing as it did not leak. The appellant advised water poured into the house through the light fixtures in several of the rooms and the electrical power had to be turned off in the back part of her home for fear of electrical shocks. The appellant stated she sustained facial injuries including cuts, bruising and blackened eyes from falling plaster and debris from the ceiling(s) while trying to mitigate the water damage.

The appellant stated her initial report about the replacement of her roof was incorrect. The appellant testified that her home was purchased 25 years ago and in late 1990's the roof was replaced with 30 year shingles and not 15 year shingles as reported by the ministry.

In the reconsideration decision the ministry agreed that the appellant did not have the financial resources to replace her roof and that living with a leaky roof poses a risk of injury from additional falling debris and that failure to replace the roof will result in imminent danger to anyone in the family unit. The ministry did not agree the replacement of the appellant's roof could be considered an

[]

unexpected expense “If it is correct that your 15 year roof was installed 14 years ago, then that would mean that it (roof) is currently in its 15th year and as such, it is expected to be reaching the end ...”.

At the hearing the appellant testified that the prior to the severe wind and rain storm her roof did not leak; that she was on her roof twice a year to clear and clean the chimney and, although the roof has four different levels, she did not see any evidence of any problems with the roof or the roof leaking.

The appellant testified that on that day there were high winds and a driving rain unlike she had ever seen in the area. She testified that she lives outside of town and in the fall the bad weather (wind and rain) comes from the north down the valley. On that day and evening the high winds and a driving rain were coming from the north and it was the north side of her home that was affected. She stated she first noticed the water pouring into the house and onto the kitchen floor through the light fixture. She cleaned up the mess and less than 2 hours later the one gallon bucket she put out was half full.

She stated she called the ministry and requested emergency assistance and was told to get at least two estimates and bring them to the office. She stated that initially she did tell the EAW the roof was replaced when she bought the home, 25 years ago, but quickly learned she was confused and mistaken. The day after her initial call, she called the ministry (general number) again to speak to the EAW again and to see if a decision had been made because water was now pouring into her home through the light fixtures in bathroom, tv room and back bedroom.

The appellant stated she also wanted to advise the EAW that the dates she had provided initially were incorrect but the EAW who took her call (not the same person who she spoke with originally) made several demeaning, disparaging and disrespectful remarks and she got into a very heated argument.

The next day she attended to her local ministry office to hand in the repair estimates for her roof and to advise the EAW about her earlier phone call and that the date the roof was replaced and the kind of shingles that were installed were wrong and, further, that the shingles that were installed were a 30 year shingle. The appellant testified that her and her family, including her mother, installed the roof. The appellant also testified that she cancelled her house insurance approximately three years ago due to its high cost.

The appellant stated that when the first roofer came to inspect the damage and to provide an estimate of repair he told her that the insulation in the ceiling was soaked, only the plastic vapor barrier was holding all the water back, there were no shingles missing and that he was unable determine the source of the water leak but thought it may be coming in from around the roof flashing. The appellant stated it was his opinion the roof could not be repaired and would need to be replaced. The appellant also stated that last summer she had removed a very old and very tall oak tree that had stood at the right rear corner of her home and that some of the branches reached out over 30 feet above her roof.

The panel finds that the oral evidence provides additional information regarding the condition of the roof, the weather, the water damage done by a leaking roof that lead to her application for a crisis supplement to repair/replace the roof on her home. The panel finds the appellant's testimony supports the information and record that was before the ministry at reconsideration is admissible as evidence under section 22(4) of the Employment and Assistance Act.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision which held that the appellant was not eligible for a crisis supplement to cover the cost to repair her roof because, in the ministry's opinion, the expense was not unexpected and therefore the appellant did not meet all the criteria set out in section 57(1) EAPWDR is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

The ministry agreed that:

1. the appellant did not have the resources to meet the expense, and
2. that failure to meet the expense would result in imminent danger to physical health.

The legislation considered: EAPWDR

Crisis supplement

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*.

(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.

Section 57(1) of the EAPWDR, as stated above, provides three criteria which must be met for a family unit to be eligible for a crisis supplement. The ministry agreed in the Reconsideration decision that the appellant met two of the three criteria set out in section 57(1)(a) and (b) EAPWR but did not meet the third; specifically, that the family unit requires the crisis supplement to meet an unexpected expense.

Ministry's Position

In the Reconsideration decision the ministry's position is that home repairs should be considered an ongoing expense as roof damage occurs over time. In the Reconsideration decision the ministry made two arguments; first that initially the appellant stated the roof had been replaced 25 years ago with shingles that had a 15 year warranty and the ministry determined the appellant's request was denied based on the fact that roof damage is not unexpected on a 25 year old roof. Then on the second point, the Reconsideration officer deducted that if the roof that was installed 14 years ago was a 15 year roof then it is to be expected the roof was nearing the end of its lifespan and denied the supplement based on that fact and that her repairs could not be considered unexpected.

Appellant's Position

The appellant's position is that the ministry did not have the facts correct, that her roof was re-done 14 years ago and at the time she installed a 30 year shingle. The appellant argued that she goes up on her roof at least twice a year to clean the chimney and at the same time looks around to see if anything is wrong and has not noticed any problems. The appellant argued that it was the severe weather conditions, the high winds and heavy driving rain that caused her roof to fail and allow the water (rain) to pour into her home through the lighting fixtures. The appellant argued that she thought her roof was in good shape as it was only 14 years old, only ½ way into its projected 30 year lifespan and so she had no reason to think the roof would leak. The appellant argued that the roof leaking was completely unexpected as the roof hadn't leaked previously and it was not until the storm hit that the roof failed.

Panel Decision

In the Reconsideration decision the ministry relied on the information that the appellant's 15 year (shingle life) roof was installed 14 years ago in denying the request for a crisis supplement to repair her roof. The evidence is the appellant had informed the ministry that was confused at the time of her initial request and gave the ministry the wrong dates on when the roof was done and the kind of shingle installed. The evidence from the appellant is consistent and the appellant informed the ministry her roof was installed 14 years ago and the shingles had a projected lifespan of 30 years, however, the reconsideration decision shows the ministry only referred to part of the information the appellant provided - the roof being installed 14 years ago - and didn't refer to the 30 year lifespan of the shingles that were installed in making its decision.

The panel gives significant weight to this evidence, the lifespan of the roof shingle, because the ministry relied on this fact in denying the appellant's crisis supplement. In the Reconsideration decision the ministry relies on the deduction that "If" the roof is a 15 year roof and was installed 14 years ago, the roof is reaching the end of its lifespan and therefore replacing the roof or repairs to the roof are not an unexpected expense. The evidence is that the appellant is on her roof twice yearly, inspects it, has not had any previous leaks supports that the appellant could not have anticipated her roof to fail as there were no indications her roof needed repairs and she would have some expected expenses. The evidence is that on the day the appellant's roof failed there were high winds and heavy driving rains. There is no evidence that the ministry considered the weather conditions of that day as a contributing and aggravating factor.

Therefore, the panel finds that the ministry was not reasonable in determining that because the appellant's roof was a 15 year roof installed 14 years ago, nearing the end of its lifespan that roof repairs are not unexpected.

Conclusion

Based on the foregoing, the panel finds that the ministry decision to deny the appellant a crisis supplement to replace her roof was not reasonably supported by the evidence.

Therefore, the panel rescinds the ministry's decision.