

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 February 1, 2016 which held that the appellant was not eligible for a crisis supplement to repair her washing machine under section 57 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because:

- The minister was not satisfied that there were no resources available to meet the expense as required under subsection (1)(a); and
- The minister was not satisfied that failure to repair the washing machine would result in imminent danger to the appellant's health as required under subsection (1)(b).

Additionally, the ministry denied the appellant's request pursuant to section 23(5) of the EAPWDR, because a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1(1), 23(5), and 57

PART E – Summary of Facts

The appellant is a sole recipient of disability assistance. According to ministry records, on October 24, 2015, the appellant mentioned repair costs for her washing machine and submitted the invoice as part of her Request for Reconsideration submission respecting a different ministry decision. The ministry advised the appellant that she could request funding for the washing machine repairs as a separate matter. On December 17, 2015, the appellant requested ministry assistance with the cost of the washing machine repair. The repair invoice indicates that a call was received by the repair service provider on September 8, 2015, that the service was completed on September 10, 2015, and that the full amount of \$89.48 had been paid.

In her January 19, 2016 Request for Reconsideration submission, the appellant writes that when her washing machine broke down she phoned all over for the cheapest hourly rate and that the technician stated that he needed to examine the washer to diagnose the problem. One quote was for almost \$200, so the appellant found a cheaper repairman who only charged \$89.48. The repairs were necessary for health reasons. The appellant adds that the cheapest repairman was on holidays when she found him, so she had to wait 2 weeks for his return to have the work done.

On appeal, the following documents were submitted and reviewed by the panel.

- A 3-page typewritten letter dated February 10, 2016 from the appellant's mother, who acts as her daughter's advocate. The letter describes difficulties the appellant has encountered in her past dealings with the ministry and also questions the competency of the ministry personnel and the burdensome nature of the ministry and appeal processes for a disabled person. The letter also includes argument as to why the appellant is eligible for the requested repairs, as set out in Part F of the panel's decision. The appellant's mother writes that the appellant is \$300 overdrawn on her bank account, as she does not receive enough money from the ministry, and that a list of the appellant's monthly expenses was sent to the ministry. The appellant's family gives her \$200 every month for groceries and sometimes helps with gas money. The mother and her husband are pensioners and cannot afford to help their daughter with crises requests for funds. The mother also describes a number of medical conditions that from which the appellant suffers. She writes that the appellant needs the washer for health reasons and that the appellant could not speak to a ministry worker as she was under fear of bullying and harassment.
- A January 15, 2016 letter from the mother and copies of two email messages sent by the appellant to her mother. These documents primarily outline concerns about the ministry's handling of the appellant's current and past requests for assistance, and in her letter, the mother states that in addition to providing grocery gift cards, she has paid twice on the appellant's hydro bill.
- Copies of pages 1 and 3 of the 4-page Request for Reconsideration form and of the Reconsideration Decision under appeal, upon which the appellant's mother has added numerous handwritten notations. She writes that the invoice for the repairs was sent earlier but the ministry returned it and advised the appellant to call a specific phone number, but that the phone number was not provided. She adds that the repair money was taken from grocery money, and that due to bladder and bowel weakness, the appellant's clothes need to be washed frequently.

At the hearing, the appellant's mother provided a 13-page submission comprised of: argument, including a personal statement from the appellant; excerpts from ministry policy respecting hardship assistance and medical transportation; email correspondence from the appellant and her mother respecting the appellant's health; and, a copy of 5.2 of the Tribunal's Practices and Procedures which addresses the provision of additional documentation for an oral hearing.

Also included is 1 page of a November 9, 2015 reconsideration decision respecting the appellant's request for a crisis supplement to reimburse her propane expenses. At the end of the decision, the ministry states that if the appellant wishes to pursue the matters of washer repairs and chiropractor costs, she should contact the ministry at the number below. The panel notes that there is no telephone number provided on this page.

At the hearing, the advocate stated that the appellant requested assistance in October and that the repairs were completed in late September.

In her written statement, the appellant described the impact to her physical and mental health caused by carbon monoxide poisoning and subsequent diagnoses, including Trigeminal Neuralgia which is known as the "suicide disease." She feels like a thief stole her life and health. Due to bowel and bladder problems, she has incontinence and needs to wash her clothes frequently. She lives below the poverty level and has no savings, so she has been forced to ask family and friends for assistance.

The oral and written appeal submissions from the appellant and her mother were largely comprised of argument, which is reflected in Part F of the decision. The additional evidence provided was comprised of additional details consistent with, and therefore in support of, the information before the ministry at reconsideration and was admitted pursuant to section 22(4) of the Employment and Assistance Act.

The ministry responded to arguments raised by the appellant, including explaining that hardship assistance was not applicable to the appellant's circumstances as she is a recipient of disability assistance, and suggested that the appellant may wish to contact the Ombudsperson and her MLA to address some of her concerns. The ministry also explained that it does consider financial assistance from friends and family when determining if resources are available to meet a need. The ministry did not provide additional evidence at the hearing and relied on its reconsideration decision.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision that the appellant was not eligible for a crisis supplement under the EAPWDR for washing machine repairs was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. That is, was the ministry reasonable when determining that:

- it was not satisfied that there were no resources available to meet the expense as required under section 57(1)(a);
- it was not satisfied that failure to repair the washing machine would result in imminent danger to the appellant's health as required under section 57(1)(b); and
- pursuant to section 23(5) of the EAPWDR, a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested?

Relevant Legislation

Definitions

1 (1) In this regulation:

"**assistance**" means disability assistance, hardship assistance or a supplement;

Effective date of eligibility

23 (5) A family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

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.

Preliminary Matters

The appellant and her mother have raised numerous objections about ministry personnel, including their qualifications, and, in particular, the ability to ascertain imminent danger, and argue that the ministry's treatment of the disabled is criminal and that the ministry's decisions are based on false presumptions and inhumane conclusions. They also argue that there are contradictions between various ministry and tribunal decisions, as reflected in past tribunal crisis supplement decisions posted on the tribunal's website, and that other people have received crisis supplements despite not meeting the three criteria of section 57 of the EAPWDR. Citing one particular decision, the appellant's mother argues that the appellant's washer should be considered a part of the physical structure of her home and the repair funded on that basis.

They also argue that based on the results of the posted tribunal decisions, the tribunal is not independent of the ministry, and that tribunal members have been trained to say "no" to ministry clients. Furthermore, the amount of information in the appeal record is overwhelming and intimidating to a disabled person.

Citing 5.2 of the Tribunal Practices and Procedures respecting the ability to provide additional information for an oral hearing, the advocate argues that the panel can consider the previous ministry reconsideration decision denying the appellant's request for a crisis supplement for propane costs.

The panel assured the appellant and her mother of its independence from the ministry and explained that the panel must act in accordance with the prescribed legislated limits. The legislation respecting appeals to the tribunal is set out in Part 3 of the Employment and Assistance Act, including the requirements for commencing an appeal and the authority of a panel hearing an appeal. Section 24(1) states:

After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether **the decision being appealed** [emphasis added] is, as applicable,

(a) reasonably supported by the evidence, or

(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Consequently, the panel's authority is limited to making a determination as to whether the reconsideration decision currently under appeal was reasonable – that is, was it reasonably supported by the evidence or a reasonable application of the legislation. In reaching that decision, the panel must consider the applicable legislation and the admissible evidence provided relevant to the decision being appealed. Panel's may consider past tribunal decisions, but are not bound by them, as they are not precedent setting and may be distinguishable based on the facts. The panel explained that while parties are free to bring submissions to a hearing, the panel's authority to consider the reasonableness of the reconsideration decision under appeal does not afford an opportunity to revisit a different reconsideration decision; nor does it enable the panel to address issues respecting the training of ministry personnel.

As the panel's authority is limited to the reasonableness of the reconsideration decision denying a crisis supplement for washer repairs, the panel's reasons below address the reasonableness of the bases of denial set out in the reconsideration decision.

Eligibility under section 23(5)

The appellant argues that she requested assistance with the costs of her washer repairs in October 2015 when she originally submitted the invoice to the ministry. Furthermore, at the hearing, the advocate argued that "timing" was not an issue as the appellant met the three criteria for a crisis supplement.

The ministry argues that in accordance with section 23(5), "assistance", which is defined in section 1(1) as including "supplements", may not be provided for services and costs which were incurred before the calendar month in which the assistance is requested. As the appellant requested assistance in December 2015 for services provided and costs incurred in September 2015, she is ineligible.

Section 23(5) states that assistance, which as defined in section 1(1) includes supplements, may not be provided for services and costs incurred before the calendar month in which the assistance is requested. Both the appellant and the ministry agree that the appellant submitted the invoice for washer repairs in October 2015, when it was included with information respecting a request for reconsideration of a denial for funding for propane, and that she did not make a separate request for funding for washer repairs until December 22, 2015.

Despite the fact that it appears, based on the 1-page excerpt of the propane reconsideration decision, that the ministry telephone contact number referenced in the reconsideration decision was not provided, based on the history of contact between the ministry and the appellant or her advocate, the panel does not accept that this prevented the appellant from seeking a crisis supplement for washer repairs until late December.

Additionally, although the advocate argues that the washer repairs were completed in late September, thus explaining submission of the invoice in the subsequent month of October, the invoice shows that the repairs were completed on September 10, 2015, and ministry records indicate that the washer repairs were not mentioned to the ministry until late October, on the 24th.

Consequently, even if the initial submission of the invoice on October 24, 2015 was accepted as the request for a crisis supplement for the washer repairs, as the repairs were completed on September 10, 2015, the panel finds that the ministry reasonably determined that the service costs were incurred before the calendar month in which assistance was requested. Therefore, the ministry reasonable determined that the eligibility criteria of section 23(5) for the provision of assistance, in this case a crisis supplement, were not met.

Available Resources – section 57(1)(a)

The appellant argues that the monthly disability assistance provided by the ministry is insufficient to cover the repair costs and that she did not have the resources to pay and now owes her mother. Furthermore, it is unreasonable for the ministry to consider financial assistance provided by family and friends as an available resource.

The ministry argues that because the invoice was marked “PAID” when it was submitted to the ministry for review on December 17, 2015, it appears that the appellant had alternate resources available to pay the bill and did so.

The panel notes that the onus is on an applicant to establish eligibility for the requested supplement. The information provided by the appellant establishes that the washer repair was paid for in full and that in addition to her monthly disability assistance, the appellant receives \$200 monthly in grocery cards from her parents. The appellant and her mother argue that it is unfair for the ministry to penalize the appellant due to additional assistance provided by her family and friends for groceries and at times of crisis; however, the panel finds that the ministry has reasonably considered these additional funds when determining whether resources were available to the appellant to meet the costs of the washer repair.

Aside from the assertion by the appellant’s mother that the appellant is overdrawn on her bank account by \$300, information to substantiate the appellant’s finances has not been provided and it is not unreasonable for the ministry to require some independent financial information. The panel also notes that the delay in seeking reimbursement from the ministry does not reflect the need to repay a debt and information substantiating that the appellant’s parents are seeking repayment has not been provided. To the contrary, the mother states that the washer repair funds came out of the grocery money she regularly provides to the appellant as a gift.

In conclusion, based on the available information, the panel finds that the ministry reasonably determined that the appellant had alternate resources to meet the expense of the washer repair and that this requirement of section 57(1)(a) was not met.

Imminent Danger to Physical Health – section 57(1)(b)

The appellant argues that she meets this criterion, given the need to wash her clothes due to her medical conditions. Furthermore, the appellant argues that this requirement is unconscionable and

should be removed from the legislation and that the ministry never asked her for evidence to show that she meets this requirement.

The ministry argues that while a washing machine is a convenient appliance to have in the home, alternatives include washing clothes in a tub or sink, or visiting a laundromat. Although the appellant stated that the repairs were needed due to health reasons, no information has been provided to indicate that she would experience imminent danger to her physical health if she does not have a functioning washing machine in her home. At the hearing, the ministry stated that a doctor's note is the type of information that could establish imminent danger.

Again noting that the onus rests on an applicant seeking assistance to establish eligibility, the panel finds that in assessing whether an imminent danger to health exists, it is reasonable to require information substantiating that failure to have a functioning washing machine in her home will result in imminent danger to her health. Given that there are alternatives to having a washing machine in the home, as the ministry argues, and in the absence of information respecting an impact on the appellant's health, imminent or otherwise, the panel finds that the ministry reasonably determined that an imminent danger to the appellant's physical health has not been established as required by section 57(1)(b).

Conclusion

In conclusion, the panel finds that the ministry's decision that the appellant is not eligible for a crisis supplement for repairs to her washing machine because two of the criteria of section 57 of the EAPWDR and the requirements of section 23(5) of the EAPWDR were not met, is reasonably supported by the evidence. The reconsideration decision is confirmed.