

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 2, 2016 which held that the appellant was not eligible for a crisis supplement for vehicle repairs (brakes and mirror switch retainer) because the following criteria set out under section 57 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) were not met.

- 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 obtain the repairs 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's advocate attended the hearing on behalf of the appellant.

The appellant is a sole recipient of disability assistance. According to ministry records, on December 16, 2015, the ministry received an invoice dated October 30, 2015 for vehicle brake repairs in the amount of \$558.82 and an invoice dated November 12, 2015 for a mirror switch retainer in the amount of \$37.58. Copies of both invoices are included in the appeal record and show that there is no balance owing.

In her January 19, 2016 Request for Reconsideration submission, the appellant writes that, when driving to pick up a prescription, her car started to shudder and shake, so she immediately drove it to her mechanic near the pharmacy. Also, her side mirror was broken and needed replacement.

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 process 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. The mother also describes a number of medical conditions the appellant suffers from. She writes that the family helped pay for the car brake repairs because it was dangerous for the appellant to drive with faulty brakes and that the appellant could not speak to a ministry worker as she was under fear of bullying and harassment. Also included in the letter is a quote from the appellant, stating that she used her pad rent and mortgage money to cover the emergency expense.
- A January 15, 2016 letter from the mother and copies of 2 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 appellant's 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 handwritten notations raising a number of arguments as to why the appellant is eligible and also complaints about the ministry.

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; 1 page of a November 9, 2015 reconsideration decision respecting the appellant's request for a crisis supplement to reimburse her propane expenses; and, a copy of 5.2 of the Tribunal's Practices and Procedures which addressed the provision of additional documentation for an oral hearing.

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. She lives below the poverty level and has no savings, so she has been forced to ask family and friends for assistance. The appellant reiterates that her 15 year old car began to shudder and rattle while she was driving to pick up a prescription and that it needed immediate brake repairs.

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 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 vehicle 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 obtain the vehicle repairs 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.

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 are 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 vehicle 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 the timing of the request for assistance is irrelevant as the appellant meets 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 October 2015 and November 2015, she is ineligible.

Section 23(5) clearly 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. In this case, the appellant submitted the invoices for the brake and mirror repairs on December 16, 2015. The invoice for the brake repairs shows that the service was completed on 10/30/2015, which given that there are only 12 months in a calendar year, must be viewed as October 30, 2015. However, the ministry views the invoice for the mirror repair, which shows a service completion date of 12/11/2015, as the 12th of November. In the absence of any indication to the contrary, and based on the dating order used by the service provider on the brake repair invoice, the panel concludes that 12/11/15 is more likely to be the 11th of December.

As the October 30, 2015 was the date the service was provided and the cost incurred respecting the brake repairs and the appellant did not request assistance until December 16, 2015, the panel finds that the ministry reasonably determined that the service costs for the brake repairs were incurred before the calendar month in which assistance was requested. Therefore, the ministry reasonably determined that the eligibility criteria of section 23(5) for the provision of assistance, in this case a crisis supplement for brake repairs, were not met.

Based on the panel's finding that the mirror repair service was provided and the costs incurred on December 11, 2015 and given that the request for assistance was made on December 16, 2015, the panel finds that the ministry's decision that, in accordance with section 23(5), assistance could not be provided for the mirror repair because the requirement to request assistance in the same calendar month as the cost was incurred was not met, was not reasonably supported by the evidence. The panel notes that while this basis of denial has not been upheld, eligibility for a crisis supplement for the mirror repair is still contingent upon meeting the crisis supplement criteria of section 57.

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 alternative resource.

The ministry argues that as the bills for the repairs have already been paid, it appears that the appellant had alternate resources available to meet the expenses.

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 brake and mirror repairs were 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's mother says that she helped pay for the vehicle repairs and the appellant says that she used her shelter allowance. While the appellant and her advocate 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, 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 vehicle repairs. 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 substantiating information. Therefore, 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 vehicle repairs 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 criteria, given that it was unsafe to drive her car when it needed brake repairs. 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 although having a vehicle is a convenience and the minister is aware that the appellant is in receipt of the Special Transportation Subsidy, the appellant has not provided any information to establish that failure to obtain the repairs would have resulted in imminent danger to

her health. At the hearing, the ministry clarified that its position is that the failure to obtain the repairs which would require the appellant to make do without a vehicle has not been shown to result in an imminent danger to the appellant's health, not that the appellant should drive a vehicle in need of brake repairs.

The language of section 57(1)(b) requires that failure to meet the expense will result in imminent danger to the physical health of the person seeking a crisis supplement. In this case, failure to meet the expense would result in the appellant being without a car to drive. While the appellant has provided information which is suggestive of the normal use of a vehicle, the panel finds that the information has not established that being without a vehicle will result in danger to the appellant's physical health, or that any such danger would be imminent. Therefore, the panel finds that the ministry reasonably determined that the information does not establish that a failure to meet the expense will result in an imminent danger to the appellant's physical health.

Conclusion

Although the panel concluded that the ministry decision to deny the appellant assistance for the mirror repair on the basis of section 23(5) was not reasonable, the panel finds that the ministry was reasonable in denying the brake repairs on that basis and that both repairs did not meet all of the mandatory criteria for a crisis supplement under section 57 of the EAPWDR. Therefore, the panel finds that the ministry decision that the appellant is not eligible for a crisis supplement for brake and mirror repairs to her vehicle is reasonably supported by the evidence. The reconsideration decision is confirmed.