

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 chiropractic treatment 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
- Chiropractic treatment is a health care supplement set out in Schedule C and subsection (3) provides that a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C or any other health care goods or services.

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. On July 27, 2015, the appellant was treated by a chiropractor for a dislocated rib. On October 29, 2015, the chiropractor's invoice which showed the amount as paid in full, was submitted to the ministry with a Request for Reconsideration respecting another matter. The appellant was advised that she needed to submit a separate request for assistance for the chiropractic treatment. On December 17, 2015, the appellant requested a crisis supplement to reimburse her for the costs of the chiropractic treatment.

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 coverage for the chiropractor's fees, which is 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 appellant had to pay for the chiropractic treatment immediately so she could breathe without pain.
- A January 15, 2016 letter from the appellant's 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 numerous handwritten notations raising a number of arguments as to why the appellant is eligible and 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; and, 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.

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 writes that having experienced the pain in her ribs before, she recognized it as a dislocated rib and rushed to the chiropractor.

At the hearing, the appellant’s mother stated that the request for assistance could have been a bit late because the ministry did not provide the telephone number referenced in the reconsideration decision respecting the propane costs. The appellant explained how it is hard on her pride to ask the ministry 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 explained that it is common practice for a chiropractor to bill the ministry directly and that assistance from family and friends is considered when determining if resources are available to meet a need. The ministry did not provide additional evidence 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 chiropractic treatment fees 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);
- Chiropractic treatment is a health care supplement set out in Schedule C and section 57(3) provides that a crisis supplement may not be provided for the purpose of obtaining a supplement described in Schedule C or any other health care goods or services; 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 chiropractic treatment, 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 because she meets the three criteria for a crisis supplement set out in section 57 of the EAPWDR, the timing of the request is irrelevant, though the appellant's mother acknowledges that the request could have been a bit late because of the ministry's failure to include the contact phone number referenced in the propane reconsideration decision.

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 chiropractic services provided in July 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. There is no dispute that the chiropractic services were received, and the costs for those services incurred, in July 2015. Consequently, even if the initial submission of the invoice in late October 2015 was accepted as the request for a crisis supplement for the chiropractic services, 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 reasonably 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 costs of the chiropractic treatment and that in order to receive the treatment she had to pay at the time the service was provided. Furthermore, it is unreasonable for the ministry to consider financial assistance provided by family and friends as an available resource.

The ministry argues that the receipt from the chiropractor, which shows no balance owing, indicates that at the time the appellant received the treatment she had available resources to cover the costs of the service.

The panel notes that the onus is on an applicant to establish eligibility for a requested supplement. The information provided by the appellant is that she drove herself to the chiropractor's office for treatment and was required to pay for the service at the time it was received. 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 chiropractor.

Aside from the advocate's assertion that the appellant is overdrawn on her bank account by \$300, information to substantiate that the appellant's finances were not sufficient to cover the chiropractic costs has not been provided and it is not unreasonable for the ministry to require some substantiating information. The panel also notes that the delay in seeking reimbursement from the ministry does not reflect the need to repay a debt and that information substantiating that the appellant's parents are seeking repayment has not been provided.

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

Is chiropractic care an eligible service as a crisis supplement – section 57(3)

The appellant's mother argues that chiropractic care is allowable under the legislation and therefore, the ministry should reimburse the appellant's expenses.

The ministry argues that pursuant to section 57(3) chiropractic services are not eligible for coverage by a crisis supplement because it is a service described in Schedule C.

While section 57 does not provide an exhaustive list of what items or expenses may be covered by a crisis supplement, subsection (3) expressly states that a crisis supplement may not be provided for the purpose of obtaining any of the health supplements set out in Schedule C. As chiropractic services are set out as a health supplement in section 2(1)(c) of Schedule C, the panel finds that the ministry has reasonably determined that a crisis supplement cannot be issued for chiropractic treatment.

Conclusion

In conclusion, the panel finds that the ministry decision that the appellant is not eligible for a crisis supplement for chiropractic services because the requirements of section 23(5) and sections 57(1)(a) and 57(3) of the EAPWDR were not met is reasonably supported by the evidence. The reconsideration decision is confirmed.