

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) Reconsideration Decision of February 11, 2016 in which the ministry determined that the appellant was ineligible for a crisis supplement for clothing for the month of January 2016 because she did not meet the legislative criteria set out in Section 59 (1) of the Employment and Assistance Regulation (EAR), specifically because she failed to enter into an agreement to repay hardship assistance under Section 5 (2) of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Sections 46, 59 (1)

Employment and Assistance Act (EAA) Sections 1 (1), 5

PART E – Summary of Facts

The appellant is a single person with one dependent child. On November 17, 2015 she applied for income assistance.

The information before the ministry at the time of reconsideration included the following:

- request for reconsideration received by the ministry January 28, 2016 in which the appellant noted that her child has grown and her clothes have rips and/or no longer fit.
- arguments put forward by the appellant which will be noted in Part F of this appeal decision.

At the hearing the appellant tendered a letter from the office of the provincial Ombudsperson dated December 8, 2015 advising the appellant that they had closed their investigation on the appellant's behalf because the ministry had informed them that they had granted temporary income assistance to the appellant for 3 months. The ministry did not object to the admission of the letter.

The appellant stated that she believed that she was receiving income assistance because on November 17, 2015 a ministry employee told her that she would receive income assistance for a period of 3 months. On that date she picked up a pro-rated assistance cheque for the month of November and on November 19th she received an assistance cheque for the month of December. When she attended at the ministry office in December the appellant was asked to sign a repayment plan for hardship assistance, which she refused to sign because she believed she was still receiving income assistance.

The panel determined that the additional written and oral evidence of the appellant regarding her assumption that she was receiving income assistance was admissible under Section 22 (4) of the Employment and Assistance EAA as evidence in support of the records before the ministry at reconsideration because it was not new information and was related to the eligibility of the appellant for a crisis supplement, which is the subject of this appeal.

The ministry relied on the reconsideration decision, which is summarized as follows:

- in December 2015 the ministry determined that the appellant was ineligible for income assistance;
- On January 11, 2016 the appellant requested a crisis supplement for clothing for her child because the child had no winter clothing accessible by the appellant due to the need to flee an abusive relationship, and all available resources were spent in purchasing food for a vegan diet that was not available in the shelter at which the appellant and her child were residing;
- the ministry determined that the appellant met the eligibility criteria for a crisis supplement set out in EAR Section 59 (1), namely:
 1. she required the supplement to meet an unexpected need;
 2. she had no resources available to purchase the items; and
 3. failure to obtain the items would result in imminent danger to the physical health of the child.

but was ineligible for the crisis supplement because she was not eligible for income assistance or hardship assistance.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of February 11, 2016 in which the ministry determined that the appellant was ineligible for a crisis supplement for clothing for the month of January 2016 because she did not meet the legislative criteria set out in Section 59 (1) of the Employment and Assistance Regulation (EAR), specifically because she failed to enter into an agreement to repay hardship assistance under Section 5 (2) of the Employment and Assistance Act (EAA).

The relevant legislation is as follows:

EAR:

Family units that have excess assets

46 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the assets of the family unit exceed the applicable limit under section 11 (2) and (2.1)[*asset limits*] if

- (a) the minister considers that undue hardship will otherwise occur,
- (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
- (c) the applicant satisfies the minister that
 - (i) the assets that caused the family unit to be ineligible are not immediately available to meet the family unit's basic needs, and
 - (ii) every effort has been made and continues to be made to sell the assets, and
- (d) the family unit
 - (i) includes one or more dependent children

Crisis supplement

59 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for income 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.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

EAA:

Interpretation

1 (1) In this Act:

"hardship assistance" means an amount for shelter and support provided under section 5 (1) [*hardship assistance*];

Hardship assistance

5 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that

- (a) is eligible for it, and
- (b) is not eligible for income assistance.

(2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

Consequences of not accepting or disposing of property

14 (1) The minister may take action under subsection (3) if, within 2 years before the date of application for income assistance or hardship assistance or at any time while income assistance or hardship assistance is being provided, an applicant or a recipient has done either of the following:

- (a) failed to accept or pursue income, assets or other means of support that would, in the minister's opinion, enable the applicant or recipient to be completely or partly independent of income assistance, hardship assistance or supplements.

The appellant argues that:

- the ministry has unfairly denied a crisis supplement for clothing for her child because the child's rights fall under the United Nations Convention on the Rights of the Child.
- she has been unfairly denied a crisis supplement for clothing because another member of the shelter in which the appellant resides applied for and received a crisis supplement at the same time;
- both the appellant and the investigating officer from the Ombudsperson's office were informed by a ministry employee that the appellant was receiving income assistance for a period of 3 months commencing November, 2015;
- in December 2015 she was offered hardship assistance but refused to sign a promise to repay because she believed she was continuing to receive income assistance;
- the ministry should have considered EAA Section 14 (1) in making the reconsideration decision.

The ministry argues that although the appellant met the eligibility criteria for a crisis supplement set

out in EAR Section 59 (1), specifically:

1. she required the supplement to meet an unexpected need;
2. she had no resources available to purchase the items; and
3. failure to obtain the items would result in imminent danger to the physical health of the child

she was nevertheless ineligible for the crisis supplement because she was not eligible for either income assistance or hardship assistance. She was deemed ineligible for income assistance because her assets exceeded the limit for a single person with one dependent child. She was deemed ineligible for hardship assistance because she did not sign a repayment agreement when requested to do so by the ministry prior to being provided with hardship assistance.

PANEL DECISION

1. UN Convention on the rights of the Child

The applicability of the United Nations Convention on the Rights of the Child is beyond the jurisdiction of this tribunal and will not be adjudicated in this decision.

2. EAA Section 14(1)

EAA Section 14 (1) allows the ministry to reduce or deny assistance for an applicant who fails to accept assets that would enable the applicant to be completely or partly independent of income or hardship assistance. The panel finds that the ministry was reasonable in not considering or applying this enactment because it was not relevant to the issue under reconsideration, namely a crisis supplement for clothing.

3. Eligibility for a Crisis Supplement

EAR Section 59 (1) states that the minister may provide a crisis supplement to or for a family unit that is eligible for income assistance or hardship assistance, if:

1. the supplement is required to meet an unexpected need;
2. there are no resources available to purchase the items; and
3. failure to obtain the items will result in imminent danger to the physical health of the child.

At the time of reconsideration the ministry determined that eligibility criteria 1, 2 and 3 were met but did not approve the appellant's request for a crisis supplement for clothing because it determined that she was ineligible for income assistance and hardship assistance.

The panel finds that the ministry reasonably determined that the appellant was ineligible for income assistance for the month of January 2016 because in December 2015 the ministry found that the appellant's assets exceeded the legislated limit for a single person with one dependent child.

EAA Section 5 (1) states: "subject to the regulations, the minister may provide hardship assistance to or for a family unit that is eligible for it, and is not eligible for income assistance". Under Section 5(2), the ministry has the option of requiring repayment before providing hardship assistance. As well, EAR Section 46 states that the ministry may provide hardship assistance to a family unit whose assets exceed the applicable limit in cases of undue hardship, but only if the applicant provides the type of security specified by the minister for the repayment of the hardship assistance, and provided also that the applicant is making every effort to sell the excess assets.



The panel finds that the ministry reasonably determined that the appellant was ineligible for hardship assistance because she declined to sign a repayment agreement as required by EAR Section 46 and EAA Section 5 (2).

The panel therefore finds that the ministry reasonably determined that the appellant was ineligible for a crisis supplement for clothing under EAR Section 59 (1) because she was not eligible for income assistance or hardship assistance.

In conclusion, the panel finds that the decision being appealed is a reasonable application of the applicable enactments in the circumstances of the appellant, and confirms the decision.