

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“the ministry”) Reconsideration Decision of May 10, 2016 in which the ministry determined that the appellant was ineligible for a crisis supplement for 2 beds for herself and her dependent child because she did not meet the legislative criteria set out in Section 59 (1) of the Employment and Assistance Regulation (EAR), specifically because the ministry was not satisfied that:

- there were no other resources available for the family unit; and
- failure to obtain the item would result in imminent danger to the physical health of the appellant.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) Section 59 (1)

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

The appellant is a recipient of income assistance with one dependent child.

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

- request for reconsideration received by the ministry on May 2, 2016 to which was attached a letter from the appellant's advocate dated April 29, 2016;
- April 21, 2016 letter from property manager of the appellant's residence to the appellant's advocate stating that the appellant's premises were treated for bedbugs by a professional pest control service on February 17, 2016 and followed up with a second treatment the following week. The property manager confirmed that no bed bugs had been seen since the initial treatment and that the pest control experts were confident that the bedbug problem had been eradicated.
- April 14, 2016 note from the doctor of the appellant and her child, stating that the child suffers from Scoliosis and Scheuermann's Disease;
- April 16, 2016 note from the doctor of the appellant and her child stating that: "[the appellant and her child] need both Queen size beds due to [the child's] severe nightmares and back conditions.";
- bed estimate # 1 for queen bed \$629, frame \$89.99;
- bed estimate # 2 for queen bed \$796.97, frame \$89.97;
- bed estimate # 3 for queen bed, frame and mattress cover, amounts not legible.

The ministry relied on the reconsideration decision. At the hearing the ministry representative stated the ministry frequently refers clients to the bed retailer's used bed service, which offers gently-used mattresses and bed frames to persons in need. She added that when the bed retailer receives a mattress it is inspected prior to distribution. In its Canadian operations last year the bed retailer donated more than 50,000 mattresses to persons in need through its bed program and rejected approximately 61,000 mattresses as unfit for donation purposes.

The panel determined that the additional oral evidence of the ministry regarding the used bed donor service 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 provided additional details related to the ministry's statement relating to the availability of donor beds.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry decision which determined that the appellant was ineligible for a crisis supplement for 2 beds for herself and her dependent child because she did not meet the legislative criteria set out in Section 59 (1) of the Employment and Assistance Regulation (EAR), specifically because the ministry was not satisfied that:

- there were no other resources available for the family unit; and
- failure to obtain the item would result in imminent danger to the physical health of the appellant.

Relevant legislation:

EAR:

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.

The appellant argues that the need for new beds was unexpected due to the recent infestation of bedbugs in her residence. She adds that the beds must be new to ensure that no new infestations are brought into the home. She argues further that both she and her child require queen-sized beds because her daughter suffers from serious medical conditions, namely Scoliosis and Scheuermann's Disease and because the child is subject to severe nightmares which can lead to violent reactions and which require the appellant's assistance to calm the child.

The ministry accepts that the need for replacement beds was unexpected, but is not satisfied that there are no resources available to the family unit because there are two local donor bed programs offering gently-used beds available to the appellant at little or no charge. The ministry also notes that the bedbug infestation in the appellant's home has been eradicated by two separated pest treatments carried out by professional insect exterminators.

The ministry also accepts that failure to obtain the queen-sized bed will result in imminent danger to the physical health of the child, due to her medical conditions and severe nightmares. However, the ministry is not satisfied that there is sufficient evidence to establish that the appellant's physical health will be imminently endangered if she does not receive a new bed.

Panel Decision

EAR Section 69 (1) sets out the 3 criteria which must be met before a crisis supplement can be provided:

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1. the need for the item must be unexpected;
 2. there are no other resources available to meet obtain the needed item; and
 3. failure to obtain the item will result in imminent danger to the physical health of any person in the family unit.

1. Unexpected Need

The panel finds that the ministry reasonably determined that the appellant's need for beds for herself and the child due to a recent infestation of bedbugs was an unexpected need.

2. Availability of Other Resources

Although the panel sympathizes with the appellant's desire for new beds the legislation requires that the family unit demonstrate that it is unable to obtain the needed items because there are no resources available. The evidence indicates that there are two local suppliers of gently-used donor beds. One of these suppliers receives and inspects more than 110,000 used beds annually in Canada, of which 61,000 are rejected and approximately 50,000 are donated to persons in need. Also, the appellant's home has been declared free of bedbugs following two pest control treatments by professional exterminators.

For these reasons the panel finds that the ministry reasonably determined that other resources were available to the family unit to obtain the needed beds.

3. Imminent Threat to Physical Health

The appellant has provided written evidence from her family doctor that in his opinion both the appellant and her child require queen-sized beds due to the child's medical conditions, namely Scoliosis, Scheuermann's Disease and the child's severe nightmares. The ministry provided evidence that when the child experiences night terrors she can become violent, and the appellant needs to sleep with the child in order to calm her. On this evidence the ministry found that the bed was needed in order to prevent imminent danger to the physical health of the child, but not the appellant.

The panel finds that the ministry's determination was unreasonable because the legislation in EAR Section 59 (1)(i) states that the ministry must consider whether failure to obtain the item will result in "imminent danger to the physical health of *any person* in the family unit". The ministry has determined on the doctor's evidence that the child requires a queen-sized bed but has not adequately explained why it has not accepted the doctor's evidence that both the appellant and her child require queen-sized beds due to the child's medical conditions.

The panel therefore finds that the ministry was not reasonable in determining that both queen-sized beds were required to prevent imminent danger to the physical health of any person in the family unit.

Conclusion

Although the panel finds that the ministry was not reasonable in determining that failure to provide two queen-sized beds would result in imminent danger to the physical health of any person in the family unit (Criterion # 3), the panel finds that the ministry reasonably determined that other resources were available to the family unit to obtain the needed beds (Criterion # 2). The panel therefore finds that the ministry's determination that the appellant was ineligible for a crisis supplement for beds because the criteria required under EAR Section 59 (1) were not met was a reasonable application of the applicable enactment in the circumstances of the appellant, and confirms the decision.