

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated May 26, 2016 in which the ministry denied the appellant a crisis supplement for additional funding for a bed because she has reached her maximum annual allowance for crisis supplements under subsections 57(5) and 57(6) of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). While the ministry agreed that the appellant meets the criteria for the crisis supplement under subsection 57(1) of the EAPWDR, it held that there is no discretion in the legislation to issue a crisis supplement beyond the annual maximum limit.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act - EAA - section 5*

*Employment and Assistance for Persons with Disabilities Regulation - EAR - section 57*

## PART E – Summary of Facts

The evidence before the ministry at the reconsideration included the following:

1. A Request for Reconsideration signed by the appellant on May 17, 2016 in which she states her argument and reports that she is in severe pain without a bed, is sleeping on the floor, and cannot afford the bed she needs for her medical condition.
2. Documents pertaining to the ministry's previous approval of a crisis supplement for a therapeutic bed, including two letters to the appellant as follows:
  - April 20, 2016 (with attached reconsideration decision of the same date) advising that she is approved for a crisis supplement for furniture. The ministry accepted that the appellant's request for a crisis supplement for a therapeutic bed met the criteria in subsection 57(1) of the EAPWDR with regard to an unexpected need, no resources available to obtain the bed, and imminent danger to her physical health as confirmed by her doctor. The ministry noted, however, that there is a limit to the amount of crisis supplements that may be issued in a year, and it is twice the amount of the family unit's monthly rate of assistance. As the appellant is receiving assistance at the single parent rate, her annual limit for crisis supplements is \$2,484.16. The total cost of the bed with tax was \$1,399.98 and the ministry approved a crisis supplement in that amount.
  - April 26, 2016 advising the appellant that the decision of April 20 is amended to exclude a specific amount that she is approved for. Instead, the ministry indicated that she has \$1,634.16 currently left in her cumulative annual maximum for crisis supplements.
3. A letter from a physician dated December 10, 2015, stating that the appellant has lumbar stenosis and a "specific temptrapedic bed is mandatory and medically necessary" or her condition may be severely compromised.
4. A medical imaging report for the appellant's lumbar spine, dated October 13, 2013 indicating mild-moderate, and severe spinal presentations.
5. Quotations for beds: Serta iComfort set for \$1,399, and Tempur-Flex set by Tempur-pedic for \$2,899.97 from one retailer, and an Addition queen mattress and Serta signature foundation from another retailer, total \$1,255.98 including delivery fee with the notation, "not paid for."
6. Information from the ministry record of decision indicating the following:
  - The appellant originally requested a crisis supplement for a bed on November 23, 2015, for the amount of \$4,659.01 supported by quotations. In its reconsideration decision of April 20, 2016, a crisis supplement was approved for \$1,634, the maximum amount available to the appellant under the EAPWDR. On May 2, 2016, the ministry issued a cheque for that amount.
  - The ministry denied the appellant's request for the remaining amount for the bed, \$2,025.01 [\$4,659.01 less \$1,634 less \$1,000 deposit the appellant had already paid]. The appellant requested reconsideration of the decision to deny a crisis supplement for \$2,025.01.
  - The ministry notes the appellant has been issued \$850 in crisis supplements so far this year, along with \$1,634 for a bed; together these add up to her annual limit of \$2,484.16. In its record of May 17, 2016 (*Decision to be reconsidered*), the ministry provides a breakdown of discretionary grants issued to the appellant in the 12 month period, May 2015 to May 2016, including amounts for food, emergency disaster, and furniture.

*Additional submissions*

In her Notice of Appeal dated May 30, 2015, the appellant provides her argument on appeal. The panel will address both parties' arguments in *Part F - Reasons for Panel Decision*.

At the hearing, the appellant described her medical conditions which cause numbness in her legs and difficulty standing up. She stated that she alternates sleeping on the couch and the floor and is unable to get any sleep without a proper bed. She has had to go on medications that the ministry doesn't fund and she has no resources to get the bed she needs. She requires sleep in order to have the energy to take care of her child and she is in consistent pain.

The appellant described other options she looked at for getting a bed. She asked the ministry for an advance on her disability assistance and offered to repay it by having \$20 per month deducted from her cheques but the ministry was unwilling to do so. She also looked into obtaining a bed as a health supplement but this supplement only covers hospital beds and her doctor would not support a request for a hospital bed as it is not what she needs for her condition; she instead requires the specific Tempur-pedic bed as that is what her doctor recommends. The appellant feels that she has run out of options and she wonders what the ministry will do if her medical condition worsens and she can't get adequate sleep to look after her child.

The ministry explained how it determines the one year period for crisis supplements under the legislation. The year does not start on January 1 and is instead based on the 12 month period preceding the date on which the crisis supplement is requested. The ministry explained that it keeps a running list of the crisis supplements that were issued and adds together the amounts provided in the preceding 12 month period to determine whether the client has reached their annual limit for crisis supplements as calculated under subsection 57(6) of the EAPWDR.

Regarding any other options for funding by the ministry, the ministry confirmed that there was no request for a hospital bed and explained that it cannot issue an advance to the appellant because she is entitled to monthly disability assistance at the single parent rate and any additional amount issued would still add to the running list of crisis supplements even if the appellant was willing to repay it. Regarding the appellant's concern about her condition worsening due to lack of sleep and impacting her ability to care for her child, the ministry explained that the Ministry of Social Development does not have jurisdiction over that issue and it would be a matter for the Ministry of Children and Family Development.

The panel finds that the oral testimony substantiates the information in the reconsideration record by adding more detail about the appellant's request for funding for a bed and the ministry's approach to determining her annual entitlement to crisis supplements. The panel therefore admits the testimony under section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the reconsideration decision of May 26, 2016 in which the ministry denied the appellant a crisis supplement for additional funding for a bed because she has reached her maximum annual allowance for crisis supplements under subsections 57(5) and 57(6) of the EAPWDR was reasonably supported by the evidence, or was a reasonable application of the applicable enactment in the circumstances of the appellant. While the ministry agreed that the appellant meets the criteria for the crisis supplement under sub section 57(1) of the EAPWDR, it held that there is no discretion in the legislation to issue a crisis supplement beyond the annual maximum limit.

The following sections of the legislation apply to the appellant's request for a crisis supplement:

### ***Employment and Assistance for Persons with Disabilities Act***

**5** Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

### **Employment and Assistance for Persons with Disabilities Regulation - 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*.

**(5)** The cumulative amounts of crisis supplements that may be provided to or for a family unit in a year must not exceed the amount calculated under subsection (6).

**(6)** In the calendar month in which the application or request for the supplement is made, the amount under subsection (5) is calculated by multiplying by 2 the maximum amount of disability assistance or hardship assistance that may be provided for the month under Schedule A or Schedule D to a family unit that matches the family unit.

### *Positions of the parties*

The ministry accepts that the appellant is eligible for disability assistance under section 5 of the EAPWDA and meets the requirements for a crisis supplement under subsection 57(1) of the EAPWDR and indicates that it is not arguing those criteria. The ministry argues that despite the severity of the appellant's conditions and her need for a specific bed, it cannot issue a further crisis supplement because the crisis supplements that she already received bring her up to the maximum annual allowance for crisis supplements under subsections 57(5) and (6) of the EAPWDR. The ministry argues that the purpose of the legislation is to set a limit on the amount of crisis supplements that recipients are eligible for, noting that subsections 57(5) and (6) are specific and provide no legislative authority for a further crisis supplement for the remaining amount of the bed.

The appellant argues that her condition is worsening without the Tempur-pedic bed, she is in severe pain from sleeping on the floor, and she has no other options for funding the bed she needs. She has had to resort to costly medication and endless doctor's visits and she will fight and appeal the ministry's decision until the bed is approved. She understands that she has "maxed out the crisis grant"; nevertheless, she will appeal to a higher authority to get the bed so that she does not have to suffer like this anymore. She argues that the ministry should approve the bed because her doctor and surgeon have documented her need for it. She would like her medical issue to be resolved so that she is able to sleep and have enough energy to care for her child.

### *Panel's decision*

The panel finds that the ministry reasonably determined the appellant is not eligible for a crisis supplement for the remaining amount of the bed. While her medical need for a Tempur-pedic bed is undisputed, the evidence indicates she was issued a crisis supplement for a bed (\$1,634) on May 2, 2016 as well as crisis supplements that total \$850 between May 2015 and May 2016. As noted by the ministry, a total of \$2,484.16 has been issued in crisis supplement funding in the past year, equal to the appellant's annual limit of \$2,484.16 as calculated under subsection 57(6) of the EAPWDR.

While the legislation does not specify a start or end date for the annual crisis supplement entitlement, subsection 57(5) of the EAPWDR limits "the cumulative amount of crisis supplements that may be provided to or for a family unit in a year" to twice the amount of the client's disability assistance entitlement as calculated under subsection 57(6). Subsection 57(5) states that this amount must not be exceeded. As the appellant's annual maximum of \$2,484.16 in crisis supplements cannot be exceeded, the panel finds that the ministry reasonably determined there is no discretion to issue a crisis supplement for the remaining amount of the bed, \$2,025.01.

While the panel is sympathetic to the appellant's situation, both the ministry and the panel are bound by the legislation and the panel's authority is limited to determining whether the ministry's decision was reasonable based on the evidence or the legislation. Despite the appellant's argument that the ministry should approve the crisis supplement because her doctors have documented her medical need, the panel notes that medical need is not a factor under subsections 57(5) and (6) of the EAPWDR and there is no legal authority for the ministry to provide a crisis supplement above the legislated maximum amount.

### *Conclusion*

The panel finds that the ministry's denial of the appellant's request for a crisis supplement for the remaining amount needed to purchase a Temper-pedic bed was a reasonable application of section 57 of the EAPWDR in the circumstances of the appellant. The panel confirms the ministry's reconsideration decision pursuant to sections 24(1)(b) and 24(2)(a) of the *Employment and Assistance Act*.