

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated June 22, 2016 which held that the appellant is not eligible for a crisis supplement for clothing pursuant to the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The ministry determined that her request for the crisis supplement does not meet three criteria in section 57 of the EAPWDR:

1. The appellant requires the crisis supplement to meet an unexpected need or obtain an item unexpectedly needed; and
2. She is unable to meet the expense or obtain the item because there are no resources available; and
3. Failure to meet the expense or obtain the clothing will result in imminent danger to her physical health.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - section 57

PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of:

1. A Request for Reconsideration (“RFR”) signed by the Appellant on June 9, 2016 in which she stated that she lost \$460 on May 25, 2016 when she lost her purse or someone picked it up. She phoned the bus company’s lost and found and reported it to the nearest police detachment. She had taken out the cash from the bank to pay debts, and buy food and clothing. She states that she took out \$100 - \$150 for clothing as she needed light clothing and shoes.
2. Information from the ministry’s record [*Reconsideration Decision* and *Decision to be Reconsidered*] stating that:
 - The appellant is in receipt of disability assistance (“DA”) as a sole recipient. Her monthly assistance is \$941.42 (\$531.42 support, \$375 shelter, and \$35 diet allowance). Her monthly shelter costs are \$403 (\$345 rent and \$58 utilities).
 - In May 2015, she received a crisis supplement of \$100 to purchase clothing. She stated that her clothing did not fit as she had lost a significant amount of weight.
 - On May 26, 2016, she stated that her purse had been stolen with \$460 cash. Her request for a crisis supplement to purchase food was approved.
 - In June 2016, [*typo in reconsideration decision states 2015*], she requested a crisis supplement to purchase clothing. She stated she had gained weight and required summer clothing and that she had not had a new pair of shoes in over a year. The request was denied and on reconsideration the appellant stated that a portion of the stolen money was intended for the purchase of clothing. She reported the theft to the police and she requires lighter clothing for the summer because she is overweight and had not had a pair of shoes since last year.
 - The appellant had not indicated she attempted to access local community resources.

Additional Submissions

Subsequent to her RFR, the appellant submitted two Notices of Appeal and a letter stating her argument on appeal and providing the following information regarding her resources:

- Notice of Appeal dated June 30, 2016: She had to borrow and then repay \$150, and on her last payday she had to double up on paying bills that she was unable to pay from her last pay cheque due to other bills.
- Notice of Appeal dated July 12, 2016: Her last pay cheque went to paying double utilities and food, and she bought a summer jacket for \$10 at a thrift shop.
- Letter from the appellant to the Tribunal dated July 13, 2016: She provides information about using the food bank, reports that she has “extreme anxiety and clinical depression”, and states that she would shop at the Salvation Army and thrift shops for her clothing and that she has no extra resources available to her.

The ministry had no objections to admitting the above documents into evidence. Excepting the information regarding resources for food which is not at issue in this appeal, the panel notes that the information regarding the appellant’s expenses, medical issues, and use of community resources for clothing pertain to the eligibility criteria for a crisis supplement. Nevertheless, while the appellant indicates bills and debt payments in her RFR, information about her health and her use of community

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resources was not provided as of the date the ministry denied her request for a crisis clothing supplement. Excepting the information on the appellant's bills and debt repayments which the panel admits under section 22(4)(b) of the *Employment and Assistance Act* ("EAA") as evidence in support of the information and records that were before the minister at the time the decision being appealed was made, the panel does not admit into evidence the information regarding her medical issues and use of community resources. The panel finds that this information does not meet the test for admissibility of additional information under EAA section 22(4)(b). Regarding the appellant's argument on appeal, the panel will consider the arguments of both parties in *Part F - Reasons for Panel Decision*.

Oral submissions

At the hearing, the appellant stated that she only has thick nylon pants and one or two tops; she requires cooler clothing for her health conditions and her jeans have split from over wear and being overweight. She added that she is completely penniless and has only \$5 left in her DA cheque for clothing as she has to pay extra on her bills to make up for what she lost when her purse went missing. She previously looked after her mother who provided her with food and clothing. However, her mother is recently deceased and the small inheritance she received went toward paying people she owed money to; she has no other family members who can assist her. In response to questions, the appellant provided the following information:

- She cannot remember the exact date she filed a police report for her missing purse (with \$460 cash) but she believes it was the next day and certainly within two days of it going missing.
- She has a bank card but the reason she took out cash is because she needed \$100 to buy cigarettes for the month, \$200 for food, and the rest to pay bills and purchase clothing. She explained that she keeps cash in a drawer to save on bank transaction fees which are \$3 or \$4.50 when she uses her bank card at the branch or at ATM machines. When asked if she could use her bank card in stores (at the debit machine, without being charged a service fee), the appellant explained that she had taken out cash that day for cigarettes and to repay a loan from a friend who had helped her out.
- Regarding her weight gain, the appellant reported that her weight fluctuates due to her medical conditions. In 2014, she gained weight and received a crisis supplement for clothing; in 2015 she lost approximately 17 pounds, and then lost a bit more weight and her clothes no longer fit her and she received a crisis supplement for clothing in May 2015. In June 2016, she requested a crisis supplement because she had gained weight, and the ministry denied her request. On further questioning, she reported that she actually weighs a couple of pounds less this year than she did in 2015. In any event, she reported that the clothes she wore when she previously gained weight no longer fit her, and the jeans she had are now split.
- The appellant further explained that she prefers to purchase clothing from Wal-mart as they offer some good deals, and their prices are often lower than the thrift shops. She explained that she never used community resources in the past and did not know they existed, but she did go to some thrift shops in the past and found that the prices "were not that great." She stated that she was also familiar with a consignment shop that closed down and she did not get around to looking into any other consignment shops (she had planned to take her mother's clothing there as it does not fit her). Further, the Value Village in her neighbourhood is being torn down and although she was also familiar with a church program for free clothing (once a month) in her old neighbourhood she does not know whether that program is still running.

[Redacted]

At the hearing, the ministry stated that it reviewed that appellant's file which indicates that the following crisis supplements for clothing were issued or denied:

- 2014: reason - weight gain due to medications; crisis supplement granted;
- 2015: reason - weight loss; crisis supplement granted; and
- 2016: reason - weight gain; crisis supplement denied.

The ministry also summarized its argument from the reconsideration decision and provided further argument on appeal. The panel finds that all of the oral testimony is in support of the information in the reconsideration record as it adds detail to the information about the police report (police file number was included with her RFR) and provides further detail about the appellant's weight fluctuations. The panel also finds that the appellant's oral testimony regarding community resources (she indicated she had knowledge of some but she did not indicate that she called or visited any) is in support of the ministry's evidence that she had not attempted to access local community resources as of the date she was denied the crisis supplement. The panel admits the oral submissions under section 22(4)(b) of the EAA as evidence in support of the information and records that were before the minister at the time the decision being appealed was made.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's reconsideration decision of June 22, 2016 which held that the appellant is not eligible for a crisis supplement for clothing because her request does not meet all of the criteria in EAPWDR section 57 was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry determined that the appellant's request did not meet the criteria for an unexpected need and a lack of resources to meet the need as required by subsection 57(1)(a) of the EAPWDR, and that imminent danger to physical health was also not met pursuant to subsection 57(1)(b).

The legislation sets out the following eligibility criteria for a crisis supplement:

EAPWDR Crisis supplement:

Pursuant to section 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*.

The panel notes that all of the criteria must be met in order for the ministry to authorize a crisis supplement. The ministry noted that the appellant is a recipient of DA. She therefore meets the criterion of being eligible for assistance pursuant to section 57(1). The panel provides the following analysis for the three criteria the ministry determined were not met:

Subsection 57(1)(a): Crisis supplement required to meet an unexpected expense or obtain an item unexpectedly needed

Appellant's position

The appellant argues that her need for summer clothing is unexpected because she lost \$460 when she dropped her purse and she had budgeted for summer clothing with the cash she lost. She checked the bus company's lost and found and she reported the theft to the police right away. She requires summer clothing because she has gained weight, suffers in the heat due to her medical conditions, and has not had a new pair of shoes in a year. She has only one pair of thick nylon pants that fit, and one or two tops.

Ministry's position

The ministry argues that the need for seasonal clothing or larger clothing is not an unexpected expense, and that unsecured cash is always at risk of being stolen; therefore, the legislative

requirement was not met. The ministry elaborated on its position at the hearing, explaining that weight fluctuation happens gradually over a year unless the client is taking a medication, for example, that causes rapid weight gain. Regarding seasonal changes in the weather, the ministry explained that the normal change from winter to summer is generally gradual and not unexpected.

Panel's decision

The panel finds that the ministry reasonably determined that the *unexpected expense/ need* criteria were not met. Regarding the appellant's weight gain, while the appellant indicated in her request for the crisis supplement that she had gained weight, her testimony at the hearing was contradictory and she may in fact weigh two pounds less than she did in 2015 (at her last request for a crisis clothing grant). Further, there is no evidence that she has gained weight rapidly, as the evidence instead points to fluctuations in her weight over a two year period from 2014 to 2016.

The legislation requires evidence of an unexpected expense or an item that is unexpectedly needed and as these criteria were not met, the panel finds that the ministry reasonably determined the appellant's need for summer clothing was not unexpected pursuant to subsection 57(1)(a) of the EAPWDR.

Subsection 57(1)(a): Unable to meet the expense or obtain the item because there are no resources available to the family unit

Appellant's position

The appellant argues that she has no resources available for summer clothing because she lost \$460 cash and had to double up on bills as a result. Further, she has other expenses including food, utilities, cigarettes, and loans that she has to repay. She submits that while she budgeted for clothing out of the \$460, once she lost that money and had to take care of other expenses out of her DA funds, she has only \$5 remaining for the purchase of clothing.

Ministry's position

The ministry argues that the appellant has alternate resources available for clothing because she receives DA [her support allowance, after shelter costs and less the diet supplement, is \$503.42 per month] and these funds are intended to be used for daily living expenses. The ministry notes that the appellant had not indicated that she attempted to access local community resources. The ministry argued at the hearing that where the expense is not unexpected, clients are expected to gradually budget for items and access community resources, and while it is their personal choice to budget for other items, the support funds are intended to cover basic items such as summer clothing.

Panel's decision

The panel finds that the ministry reasonably determined the appellant did not demonstrate a lack of resources to obtain summer clothing and shoes. The evidence is that the appellant receives a DA support allowance of \$503.42 per month and that she spends some of the funds on discretionary expenses including cigarettes and to repay loans from friends. While the appellant testified at the

hearing that she is familiar with community resources (she named various shops and charities) and this evidence was admitted by the panel, there is no evidence that she checked for clothing at these resources or called to see if the free clothing program she mentioned was still an option. While the appellant argues that she has no resources due to losing her purse, the ministry's position is that even though her cash was lost or stolen, she receives monthly DA that she could use to budget for summer clothing. The ministry's evidence is that she receives support funds of \$503.42 per month that are intended to meet basic needs including clothing.

While the appellant also states in her appeal submissions that she did access community resources (to purchase a summer jacket), there is no evidence in the reconsideration record to suggest that she made any attempt to access community resources as of the date of the reconsideration. The ministry's evidence is that the appellant "had not indicated that she attempted to access local community resources." The panel therefore finds that the ministry reasonably determined that the requirement under subsection 57(1)(a) of the EAPWDR for *no resources available* to meet the expense or need was not met.

Subsection 57(1)(b): Failure to meet the expense or obtain the item will result in imminent danger to physical health

Appellant's position

The appellant's position (expressed in her submissions after the reconsideration) is that she requires cooler summer clothing due to her health issues and that her weight fluctuations are due to her medical conditions. At the hearing, the appellant stated that she does not understand the *imminent danger* criterion, arguing in her Notice of Appeal (of June 30, 2016) that "of course, losing \$460 is an emergency/crisis."

Ministry's position

In the reconsideration decision, the ministry argues there is insufficient evidence to support a probability of immediacy that failure to obtain summer clothing will place the appellant's physical health in imminent/ immediate danger, and therefore the legislative criterion was not met. At the hearing, the ministry explained that imminent danger to physical health would cover situations where, for example, a client did not have a coat in cold winter temperatures. In the circumstances of the appellant, the ministry argued that the legislation "is what it is" and the ministry is required to follow the legislation and determine whether all of the criteria for a crisis supplement are met.

Panel's decision

The panel finds that the ministry reasonably determined that there was insufficient evidence to confirm that the appellant's physical health will be in imminent danger if she does not receive the crisis clothing grant. The legislation requires evidence of an imminent health crisis and the dictionary definition of *imminent* is "impending/ soon to happen". While the appellant included submissions on appeal for her medical conditions, the panel did not admit them as evidence as the information was not before the ministry at the reconsideration. The panel notes that there is no evidence in the

reconsideration record of imminent danger to physical health and therefore finds that the ministry reasonably determined the criterion of *imminent danger* under EAPWDR subsection 57(1)(b) was not met.

Conclusion

The panel finds that the ministry's reconsideration decision that denied the appellant's request for a crisis supplement for clothing under section 57 of the EAPWDR because all of the legislative criteria were not met, was reasonably supported by the evidence. The panel confirms the decision pursuant to sections 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act*.