

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated June 17, 2016 which held that the appellant is not eligible for a crisis supplement to purchase a mattress under section 57 of the Employment and Assistance for Persons with Disabilities Regulations (“EAPWDR”). On reconsideration, the ministry accepted that the appellant meets the criterion of failure to meet the expense or obtain the item will result in imminent danger to physical health. However, the ministry found that two other criteria in subsection 57(1) of the EAPWDR were not met:

1. The crisis supplement is required to meet an unexpected expense or obtain an item unexpectedly needed; and
2. There are no resources available to the family unit to meet the expense.

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 the reconsideration included the following:

1. A Request for Reconsideration (“RFR”) signed by the appellant on June 1, 2016 in which he stated that:

- He has been sleeping on a thin mattress that is very uncomfortable. He wakes up with a stiff back and lower back pain and he cannot sleep for more than two hours at night, on and off, as he keeps waking up with back pain.
- He has not had a good sleep since December 2015 when he was staying at his parents’ house. He borrowed an air mattress when he moved but he has to return it to his parents’ house.
- He takes sleeping pills but they do no help because of his low back pain.

The RFR also included argument that the panel will consider in *Part F - Reasons for Panel Decision*.

2. Three quotations from retailers for mattresses, including a bed frame, taxes, and delivery, for the amounts of \$985.56, \$545.00, and \$1,449.22.

3. A submission from the appellant’s counsellor (undated) containing argument in support of the appellant’s need for a bed.

4. A letter to the ministry from a physician dated June 9, 2016, stating that the appellant has been sleeping on a foam mattress on the floor for the past five months, has developed back pain from sleeping on the foam, and requires a proper mattress to sleep on.

5. Information from the ministry’s record (*Reconsideration Decision* and *Decision to be Reconsidered*) indicating the following:

- The appellant receives disability assistance (“DA”) as a sole recipient in the monthly amount of \$948.08 (\$531.42 support, \$375 shelter, and \$41.66 treatment supplement).
- He moved to his current address in December 2015 and had been living with his parents prior to the move.
- In February 2016, he requested a crisis supplement to purchase a new mattress, indicating he had just moved to his own place and required a bed. He was asked to provide quotations and when he did not respond to that request, the service request for the crisis supplement was marked as *abandoned* and closed.
- In April 2016, he again requested assistance to purchase a bed. He stated he had just moved to his own place and local community resources had been unable to assist. He advised that his parents would not help him to obtain a bed and none of the community resources he checked had a bed available.
- In May 2016, he advised the ministry that he has a bad back and had been sleeping on a “borrowed camp foamie” that he had now returned. At that time, he provided three quotations for mattresses. He indicated that the foamie was a “leaky air mattress” and he was on the wait list for a bed from the Salvation Army.

Additional submissions

In his Notice of Appeal dated June 23, 2016, the appellant states that he goes through sleepless nights and back pain and it affects his functioning. The Notice of Appeal also contains a submission on appeal and the panel will address the arguments of both parties in the next section - *Part F - Reasons for Panel Decision*.

At the hearing, the appellant continued his argument and stated, in response to questions, that he is prescribed morphine for his lower back pain; he moved out of his parents' place in January 2016 (not December 2015) because his parents "wanted him out", and his expenses include groceries and rent. He also stated that he gives money to his children (a total of \$50 - \$100 per child, per month) and he has a repayment of \$200 on a loan. He testified that when he checked with the Salvation Army and some churches, they said that they hardly ever get any mattress donations due to bedbug problems. The ministry stated that it has no record of any mandated child maintenance payments and explained that a crisis supplement for a mattress cannot take the form of a health supplement which is a different application process for clients who require a hospital bed..

The panel finds that the Notice of Appeal and oral testimony corroborate the information in the reconsideration record regarding the appellant's disturbed sleep and back pain, and add detail to the information regarding the appellant's resources. The panel therefore admits these submissions 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 at the time the decision being appealed was made.

At the hearing, the appellant introduced a letter from a physician, dated July 17, 2016. In the letter, the physician states that the appellant has been his patient for approximately ten years and has been marginalized by addictions and mental health issues. The letter states that the appellant has significant mechanical back pain due to frequent fluctuations in his weight and also caused by a "bad bike accident" that resulted in two radial fractures. The letter further states that the "foamie type mat" the appellant is sleeping on is "totally inappropriate" considering the appellant's back pain and limping gait that is a function of his back pain. The appellant has upcoming back surgery in September 2016 and his recovery will likely be compromised "due to the very uncomfortable foamie mat."

The ministry objected to admitting the letter into evidence, on the basis that it is not in support of the reconsideration decision. The ministry noted that the letter relates to the criterion of imminent danger to physical health, and the ministry determined on reconsideration that this criterion was in fact met.

The panel finds that the letter is in support of the eligibility criteria for a crisis supplement that were before the ministry at the reconsideration and therefore admits it pursuant to section 22(4)(b) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister at the time the decision being appealed was made. Nonetheless, the panel will not consider the information in the letter in determining the reasonableness of the ministry's decision because the letter relates solely to the appellant's health issues and the ministry already found that the requirement of imminent danger to health was met.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of June 17, 2016, which held that the appellant is not eligible for a crisis supplement to purchase a mattress pursuant to section 57 of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry was not satisfied that the crisis supplement was required to meet an unexpected need or expense, and that there are no resources available in the family unit to meet the expense.

The following sections of the legislation apply to crisis supplements:

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 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, 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.
- (4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:
 - (c) if for clothing, the amount that may be provided must not exceed the smaller of
 - (i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and
 - (ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.

In the appellant's circumstances, all of the criteria in subsection 57 must be satisfied, in particular, the criteria in section 57(1)(a) as the ministry already determined that the imminent danger to health requirement in subsection 57(1)(b) was met. The panel provides the following analysis for the criteria the ministry found were not met:

Unexpected expense or item unexpectedly needed, EAPWDR subsection 57(1)(a):

Appellant's position

In his Notice of Appeal, the appellant argues that he is unable to function properly in the day time when he experiences sleepless nights and back pain due to not having a proper mattress. His situation "is hard" and he is willing to pay back the money to the ministry in order to get a crisis supplement. Similarly, in his RFR and oral argument, he submits that "everything is a dream" with not getting enough sleep; he nods off during the day, and sleeping pills do not help because of back pain and he "can also only take so much pain med." He submits that without a mattress, his back pain is getting worse every day and improper sleep is affecting him mentally and emotionally. He is "very depressed from not sleeping right" and physically it is very tiring with his sore back. His counsellor as well, (in the submission for the reconsideration), argues that the appellant needs the ministry's support for a bed to facilitate his journey of healing, relieve stress, and to help his back as he is on a tight budget.

Ministry's position

In the reconsideration decision, the ministry argues that the appellant's need for a mattress is not unexpected because he was aware that he would need a bed when he "made the decision to move from his parents' home". In response to the appellant's testimony at the hearing that he did not move out of his parent's place by choice, the ministry argued that any move, for whatever reason, entails a need for furniture, and therefore the need for a mattress is still not unexpected and the legislative requirement was not met.

Panel's decision

The panel finds that the ministry reasonably determined that the appellant's need for a mattress was not unexpected. As argued by the ministry, a move to a new residence entails obtaining furniture for the new home and the need for furniture is therefore not unexpected regardless of the reason for moving. While the appellant may not have been having problems with back pain until he had been sleeping on the foamie mat, the evidence indicates that the appellant had a bed when he moved, albeit an air mattress that he had to return to his parents' place followed by the unsuitable foamie mat. Subsection 57(1)(a) of the EAPWDR requires an unexpected need or expense, and as this requirement was not met, the panel finds that the ministry's decision was reasonable.

No resources available, EAPWDR subsection 57(1)(a):

Appellant's position

The appellant argues that he did check community resources including the Salvation Army and churches but they did not have any beds and do not often get any in. The ministry record indicates he was on the waiting list for a bed from the Salvation Army. The appellant's counsellor notes that he is on a tight budget, and at the hearing, the appellant argued he has other expenses including

spending money for his children, and repaying a loan. However, he is willing to pay back the ministry if they provide a crisis supplement as he really needs a proper mattress for his back pain.

Ministry's position

In the reconsideration decision, the ministry argues that the appellant's support allowance is considered an alternate resource that could be used to purchase a mattress. The ministry argues there was insufficient evidence to establish that the appellant could not gradually budget his support allowance, from the date of his move, in order to obtain a bed, and therefore the legislative criterion of *no resources* was not met. At the hearing, the ministry explained that even though the appellant contacted community resources to try and find a bed, there is still an expectation for the client to budget their support allowance when the need for the item is not unexpected. The ministry understands that funds are tight for persons on DA, but argues that budgeting could be done on a gradual basis. Regarding a loan that the appellant is willing to pay back, the ministry explained that the crisis grant is not set up in that manner as eligibility requires meeting all of the legislative criteria, and once a crisis supplement is issued there is no requirement or opportunity to repay it.

Panel's decision

The panel finds that the ministry reasonably determined that the appellant did not meet the criterion of *no resources available to the family unit* pursuant to subsection 57(1)(a) of the EAPWDR. The evidence is that the appellant receives monthly DA of \$948.08 and these funds are intended to cover his basic needs. While the appellant indicated that he attempted to obtain a bed from community resources and that he got a quotation from the retailer that the ministry recommends to clients (the quotation with the lowest price), there is no evidence to indicate that he also attempted to gradually budget for a bed out of his support funds. The counsellor reports only that the appellant "is on a tight budget", with no breakdown of his expenses.

Although the appellant reports that he gives money to his children (up to \$150 per month) and owes a loan payment of \$200, these are considered voluntary expenses as argued by the ministry, because there is no mandated child support in the ministry record (which indicates the appellant is a sole recipient of DA), and there are no details regarding the loan or what it is for. The legislation requires a lack of available resources to pay for the requested item, and as the appellant provided no budget information or details regarding mandatory expenses, the panel finds that the ministry reasonably determined that the *no alternate resources* criterion in subsection 57(1)(a) of the EAPWDR was not met.

Conclusion

The panel finds that the ministry's reconsideration decision which found the appellant is not eligible for a crisis supplement to purchase a mattress, because all of the criteria in section 57 of the EAPWDR were not met, was reasonably supported by the evidence. Accordingly, the panel confirms the decision pursuant to sections 24(1)(a) and 24(2)(a) of the *Employment and Assistance Act*.