

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of July 4, 2016 wherein the ministry determined the appellant was not eligible for a crisis supplement to pay his mortgage arrears because he did not meet all the legislated criteria under section 57(1) *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”).

The ministry was not satisfied that:

1. the appellant’s need to make his mortgage payments each month is unexpected;
2. that he did not have alternate resources available to make his mortgage payments; and
3. failure to obtain the funds to pay his outstanding mortgage arrears would result in imminent danger to his physical health of the appellant.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 57

PART E – Summary of Facts

The ministry did not attend the hearing. The panel being satisfied the ministry was notified of the date and time of the hearing, the hearing proceeded under section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of reconsideration:

- Letter to appellant dated May 16, 2016 from the bank's lawyer advising the appellant he is in default in making his mortgage payments and, that under the terms of the mortgage the Mortgage becomes immediately due and payable immediately.
 - the appellant has 10 days to make the outstanding payment and provide the proof of insurance or proceedings will be commenced for the enforcement of the mortgage, and
 - Notice of Intention to Enforce Security on the appellant's property dated May 17, 2016.
- Expired Authorization to Possess Dried Marihuana for Medical Purposes in appellant's name.
- Expired Personal-Use Production License Dried Marihuana for Medical Purposes in appellant's name.
- Note dated June 17, 2016 signed by appellant indicating the reason(s) for the arrears.

The appellant is a single recipient of disability assistance. His month assistance is \$906.42 (\$531.42 plus \$375 for shelter). The appellant's monthly shelter costs are \$1,713.95 (\$938.78 mortgage, \$89.17 property taxes plus \$686.00 utilities).

On May 25, 2016 the appellant requested a crisis supplement in the amount of \$6,031.25 to pay his mortgage arrears, legal fees and other costs associated with the mortgage. The appellant is a grower and seller of medical marihuana and in January 2016 he had a crop failure and was unable to make his mortgage payments. He provided the ministry with a letter from the bank's lawyer advising he was in default on his mortgage payments (from January 21, 2016 to April 21, 2016) and the bank was demanding the entire amount of the mortgage plus interest as due and payable. The letter noted the appellant was \$5,196.25 in arrears and that partial payments "shall in no way be construed as an agreement by our client (bank) to reinstate the Mortgage." Attached to the letter was a Form 86 – Notice of Intention to Enforce Security.

The hearing was initially scheduled for August 4, 2016 and was adjourned until the next day at the appellant's request. The hearing was again adjourned at the appellant's request as he was waiting for new information. The hearing was re-scheduled to August 23, 2016 so new information could be submitted; however, no new information was received by the Employment and Assistance Appeal Tribunal for the panel to consider.

At the hearing the appellant stated:

- that the bank's intention to foreclose on his property may not necessarily be true because in the explanatory notes of the Petition of the Court filed by the bank's solicitor it stated that the bank may be willing to renegotiate the mortgage if the arrears were paid;
- that the Request for Reconsideration of the ministry's decision date stamped June 17, 2016 the ministry agreed that criterion #3 – imminent danger to health – had been met and now the ministry in the Reconsideration decision that is under appeal says it has not been met.
- that his personal safety would be in danger if he has to move out of his house;
- that he has put his heart and soul into his house so that he could grow and sell his medical

marihuana to deal with all his pain.

- that the non-payment of his mortgage payments was unexpected because of unforeseen circumstances – increased hydro expenses, several marihuana crop failures, the ministry took over the payment of his bills (hydro) which only left him with \$42.17 a month to live on, equipment breakdown and failures;
- that in July 2015 he was broke and he agreed to let the ministry take over his hydro payments;
- that the ministry's attitude was pay the bills first and him second which resulted in less hydro so less marihuana crop, more pain and less medication;
- that the Federal government changed rules and he couldn't change his license so he couldn't change his crop size to change his crop yield to generate more money;
- that his resources are depleted;
- that since 2005 his hydro costs have been \$66,000 which would be \$6,000 a year and \$500 a month ($\$66,000 / 11 \text{ years} = 6,000$ or \$500 a month) and he paid it but since the ministry took over paying his bills he has no money;
- that he put \$50,000.00 into renovations so he could grow his medical marihuana;
- that he has recently made renovations to his house and built a bedroom in his garage, which is heated, so that he can rent out his house;
- that the government has bailed out several countries and refugees to help them and the ministry needs to take care him;
- that the ministry is responsible for paying for his medication and if he wasn't growing medical marihuana it would cost the ministry more than \$60,000 a year;
- that he couldn't qualify for a loan because he only has \$41 a month for food and expenses;
- that the current regulations don't allow him to increase the number of plants he needs to grow or the type of strain he needs to grow;
- his current strain of marihuana can cure a number of illnesses but a crop takes 10 months to grow and only yields 15 grams of product per plant whereas the other plants will produce a crop in 60 days and will yield 125 grams/plant.
- that he does not have any children that live on his property.

The panel found the appellant's testimony provided information that was in support of the information and record that was before the ministry at reconsideration and accordingly has admitted this information in accordance with s. 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision that the appellant was not eligible for a crisis supplement under section 57(1) EAPWDR to pay his mortgage arrears was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

The ministry was not satisfied that:

1. the appellant's need to make his mortgage payments each month is an unexpected;
2. that he did not have alternate resources available to make his mortgage payments; and
3. failure to obtain the funds to pay his outstanding mortgage arrears would result in imminent danger to his physical health of the appellant.

The legislation considered:

EAPWDR

Crisis supplement

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*.

Unexpected Expense

The ministry position, in the Reconsideration decision, is that while the failure of appellant's medical marijuana crop may have been unexpected, the making his mortgage payment each month is not considered an unexpected.

The appellant's position is that he has had several marijuana grow crops and has never had a failure. He argued that the crop failure was unexpected and he relied on the revenue from these crops to provide revenue to pay his mortgage payments and other expenses. He argued that because of the crop failure he was unable to raise the funds to make his mortgage payments.

Panel Decision

The evidence is the appellant has had a mortgage for several years and he has always made his payments on time. The panel finds that a mortgage payment for the appellant each month was not unexpected as he knew he had a mortgage payment and knew he was not making that payment. The panel finds that the fact his marijuana crop failed and he was unable to make his payment does not make the expense unexpected.

The panel finds the ministry reasonably determined that the appellant's need for the ministry to pay his outstanding mortgage payment(s) was not an unexpected expense or an item that was unexpected needed.

Alternate Resources

The ministry's position, in the Reconsideration decision, is that the appellant receives disability assistance each month and the support allowance is intended to be used for his shelter costs. The ministry argued that the appellant's choice to divert some of those funds for other expenses and to rely on the funds from his marihuana crop to pay his mortgage payment which is significantly higher than his shelter allowance is his choice. The ministry argued that the appellant has received the maximum shelter allowance as a sole recipient of disability assistance for many years.

Appellant's position is that he does not have any money, that the ministry took over his payment in July 2015 to pay his bills and he only has \$41 a month for food and other expenses. The appellant argued that he has doubts that a bank would give him a loan based on that information.

Panel Decision

The evidence before the panel is that the ministry provides the appellant with a shelter allowance each month to assist him in covering his shelter costs. The evidence is the appellant's shelter costs, i.e. hydro and mortgage, are significantly higher and the panel finds that these costs are established by choices the appellant made to establish his medical marihuana grow operation. The evidence is that at one time the medical marihuana grow operation supported all the appellant's expenses, including his \$6,000 annual hydro bill but with the crop failure these funds dried up very quickly. The evidence is that the appellant sold some of his marihuana crop to other medicinal uses of marihuana to generate revenue. At the hearing the appellant testified that recently he had completed renovations on his home so that he can live in his garage and rent his house and has also rebuilt a vehicle engine.

The panel finds there is insufficient evidence to demonstrate that the appellant does not have alternate resources available to meet his expense.

Imminent Danger to Health

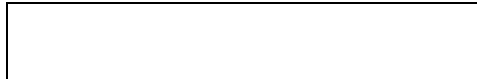
The ministry's position is that there is insufficient evidence to support a probability of immediacy that failure to obtain funds to pay the outstanding mortgage arrears will place the appellant's physical health in imminent/immediate danger.

The appellant's position is that he does not want to have to move from his residence as he has put his heart and soul into establishing a medical marihuana operation. The appellant also argued that the annual cost of his medicine if he was not utilizing the marihuana for pain management would be approximately \$60,000 and that he would likely be homeless on the street and using opiates and/or alcohol. There is no medical evidence before the panel that the appellant's health would be in imminent danger if the ministry did not make his mortgage arrears payment.

The evidence is that there are no children that reside with the appellant and therefore there was no threat that a child would be removed if he was not eligible for a crisis supplement for his outstanding mortgage payments.

Panel Decision

The panel finds the ministry was reasonable in determining that the appellant has not satisfied the legislative criterion related to "imminent danger to physical health" or the "removal of a child under the



Child, Family and Community Service Act”.

Conclusion

Since the Ministry reasonably determined that all the criteria in EAPWDR section 57 have not been satisfied, the panel finds that the ministry’s decision to deny the appellant a crisis supplement to pay his outstanding mortgage arrears was reasonably supported by the evidence. The ministry’s decision is confirmed.