



## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 25, 2016, which held that the appellant is not eligible for a crisis supplement pursuant to section 57 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* because the item is not an unexpected expense or an item unexpectedly needed, failure to obtain the item will not result in imminent danger to health, and there are alternate resources available to obtain the item or meet the expense.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Section 57

## PART E – Summary of Facts

The Panel reviewed the evidence submitted in the written record:

- The appellant is a sole recipient with Persons with Disabilities designation
- On May 19, 2016, the Appellant requested assistance to pay for a bed and advised the ministry that she had been sleeping on a couch for the last two years.
- On August 3, 2016, the Appellant advised the ministry that she has a bed but has been sleeping on the couch for the past 3 years because the bed is not suitable.
- In her reasons for the Request for Reconsideration dated August 10, 2016, the appellant states that her bed belonged to the landlord and has now been sold, and she has ongoing costs (for prescriptions and transportation) which prevent her from saving for a bed. The ministry states that while the Appellant is unable to meet the expense or obtain the item because there are no other resources, and there is an imminent danger to the Appellant's physical health, the bed is not an unexpected expense of an item unexpectedly needed because she has a bed but indicated it was unsuitable.
- A note from the Appellant's General Practitioner ("GP") issued on August 18, 2016 states that the Appellant requires a new bed due to her sciatica pain. The note also has the date June 19, 2014 written on it.
- Information regarding the medications taken by the Appellant is also included in the appeal record.

### **The Appellant provided new evidence after reconsideration and prior to the appeal:**

- A note from the Appellant's GP dated September 16, 2016 states that the Appellant requires a new bed due to sciatica pain, but then also states that the Appellant's, "health has unexpectedly changed and has deteriorated. For this change she medically requires a new bed for her health." The note also has the date June 19, 2014 written on it.
- Another note from the GP, dated September 1, 2016, which appears to be identical to the previous note issued on August 18, 2016, but has "VOID" stamped on it.
- Another copy of the note from the GP dated September 1, 2016, voided, but with a handwritten note on it clarifying that the 2016 dates on the doctor's notes refer to the date the note/prescription was issued, and the other date refers to the Appellant's "GFR" level, stating, "It's to make sure she doesn't get a Rx that can make her levels go lower."
- A handwritten note from the Appellant, undated, detailing the impact her arthritis has had on her daily living tasks. She states that it was unexpected that the arthritis has spread throughout her whole body and notes that she is in constant pain. She states that she sleeps on the floor in her room and that it is very difficult to get up and down and states this was completely unexpected.
- A handwritten note from a friend dated September 12, 2016 indicating that the Appellant used to be mobile and quick on her feet but her body has quickly deteriorated over the past couple of months and she has required assistance with washing her hair and at times requires assistance applying an over the counter remedy on her back. The note states the Appellant is sleeping on a pile of blankets on the floor.
- A Fax cover letter dated September 2, 2016, from her Advocate to another Doctor's office requesting confirmation of the Appellant's upcoming medical appointment. Handwritten on this is a note that the appointment is on October 4 @ 3pm.

### **The Appellant brought new evidence to the appeal hearing.** The new evidence included:

- A prescription receipt in the amount of \$74.93 dated September 19, 2016 for medication taken for depression
- A prescription receipt in the amount of \$3.71 also dated September 19, 2016 for pain medication.
- A receipt from a local drug store tallying these two receipts, for a total of \$78.64
- Two photographs of blankets and a pillow on the floor of what appears to be a bedroom.

At the hearing, the Appellant stated:

- The pain medication she takes is difficult on her kidneys and kidney function must be monitored, and the 2014 date on her prescriptions is related to the monitoring of her GFR levels. She has an appointment with a specialist in October because her pain medication has resulted in stomach issues and she is experiencing a sudden and rapid deterioration of her health.
- She pays almost \$30 / month in prescription costs, out of pocket
- Her monthly support amount is reduced by \$10 per month, for the next 29 months, as part of a repayment arrangement with the ministry.
- She suffers from mental health issues, for which she takes medication
- She has additional monthly transportation costs as she is unable to access public transportation due to anxiety issues
- She was sleeping on a love seat in the living room for the past two years, but it belongs to her landlord (who shares the

premises) and he told her one month ago that she needs to sleep in her own room because he wants to use the love seat to watch television.

- Her landlord thought she was moving out of province a couple of months ago, and so he sold her bed. She decided not to move after realizing how challenging it would be to make the transition and ensure her health care needs were taken care of. This was in July or August.

At the hearing, the ministry relied upon the information and evidence included in the original reconsideration decision.

### **Admissibility of New Evidence**

The ministry representative indicated she had no objections to the new evidence submitted to the appeal tribunal prior to the hearing, or to the evidence presented at the hearing itself.

Section 22(4)(b) of the Employment and Assistance Act states a panel may admit as evidence only:

- a. the information and records that were before the minister when the decision being appealed was made, and
- b. oral or written testimony in support of the information and records referred to in paragraph (a).

The panel must decide if the evidence described below is admissible pursuant to s.22(4):

The note from the GP dated September 16, 2016, indicating that the Appellant's health had unexpectedly changed. The panel finds that this clarifies and supports the information provided by the GP on August 18, 2016. The other two notes from the GP also clarify information provided prior to the original reconsideration. The panel determines that this evidence is admissible pursuant to s.22(4) of the EAA.

The handwritten note from the Appellant provides information about the Appellant's health and pain levels, and is in support of the information before the Ministry at the reconsideration. The panel finds that these letters are admissible pursuant to s.22(4) of the EAA.

The photographs of the Appellant's bedroom showing that there is no bed in the Appellant's bedroom support the Appellant's statement on the Request for Reconsideration that the landlord had sold her bed. The panel finds that this new evidence is admissible pursuant to s.22(4) of the EAA.

The note from the Appellant's friend dated September 12, 2016 which describes the Appellant sleeping on the floor constitutes new information that was not before the ministry at time of reconsideration. The panel finds that this new evidence is *not* admissible pursuant to s.22(4) of the EAA.

### **Finding of Fact:**

- The Appellant is a single recipient in receipt of disability assistance.
- The Appellant suffers from medical conditions which include mental health issues, sciatica, and pain resulting from her physical health.
- The Appellant had access to a bed which she did not use, and for two years or more opted to sleep on the love seat in the living room
- The Appellant no longer has access to the bed
- The Appellant's GP supports her request for a bed
- The Appellant's shelter costs exceed her shelter allowance by \$186 per month
- The Appellant has ongoing expenses related to prescription costs that are not covered by medical.
- The Appellant's physical health has deteriorated recently.

## PART F – Reasons for Panel Decision

The issue before the panel is the reasonableness of the ministry's reconsideration decision which held that the appellant is not eligible for a crisis supplement to pay for a bed pursuant to section 57 of the *EAPWDR* because the item is not an unexpected expense or an item unexpectedly needed, failure to obtain the item will not result in imminent danger to health, and there are alternate resources available to obtain the item or meet the expense.

### **Section 57 (1) of the EAPWDR states: 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.

In order to be eligible for a crisis supplement under s.57 of the *EAPWDR*, the Appellant must meet all three of the above criteria.

The Appellant argues that the original ministry decision conflicts with the Reconsideration decision, as the original decision acknowledged that the Appellant did not have resources to purchase the bed, and met the criteria of being in imminent danger. In the original decision, the ministry indicated that the only criteria the Appellant had failed to meet was that the crisis supplement must be for an unexpected expense or an item unexpectedly needed. For the purposes of this appeal, the panel is limited to reviewing the Reconsideration decision and rationale on its own merits. The Reconsideration is a new decision; the fact that some aspects of a reconsideration decision are not the same as the original decision does not establish that the Reconsideration Decision was unreasonable; Reconsideration Decisions take into account some information that may not have been provided at the time of the original decision.

The panel considered the arguments for each of the three criteria.

The Appellant argues that the deterioration of her health and resulting need for a proper bed were unexpected and that due to her mental health issues and medications she takes for mental health, she is unable to plan and budget, so expecting her to plan is unreasonable. While there was much medical information submitted prior to reconsideration about the medications the Appellant takes as well as generic information about the use and purposes of each drug, there is no documentation to support the argument that the Appellant is incapable of planning, so the panel is unable to give much weight to this argument. The Appellant further argues that her landlord sold the bed, and the photographs of her bedroom reflect that she does not have a bed in her room. The Ministry argues that the need for a bed was not an unexpected expense or an item unexpectedly needed. As the Appellant was sleeping on a love seat for over two years, the Appellant was aware for quite some time that she did not have a suitable bed and there is no substantial change to the Appellant's circumstances as even if the bed had *not* been sold, the Appellant would not be using it. The Appellant argues that her health has recently deteriorated, which is why her former arrangements are no longer suitable, and this deterioration was unexpected. This is supported by the physician's note dated September 16, 2016, clarifying the original doctor's note submitted on August 18, 2016. The panel determines that the ministry's position on this criteria is not an interpretation of the legislation which is reasonably supported by the evidence in the circumstances of the Appellant.

The Appellant argues that given that her shelter costs exceed the shelter allowance, and she has additional ongoing expenses for prescriptions and transportation that are not covered by the ministry, as well as a \$10/month repayment being deducted from her monthly cheque by the ministry, these expenses must be paid from her support allowance and she has no ability to put any money aside to save up for furniture. The Ministry argues that the Appellant did not

demonstrate that there are no resources available to the family unit for purchasing a bed. The ministry argues that the Appellant's support allowance is available to her, and she should budget on a gradual basis for a new bed. Based on the evidence respecting the Appellant's finances, the panel finds that in the circumstances of this Appellant, the ministry was unreasonable to conclude that she had other resources with which to meet the need.

The Appellant argues that not having a bed is harming her health as she is already experiencing pain from her sciatica and other conditions and that this pain is impacting her need for pain medication as well as her mobility – specifically to get up and down. The Ministry argues that the Appellant did not demonstrate that a failure to obtain the item will result in “imminent danger to the physical health” of the Appellant, noting “there is insufficient evidence to support a probability of immediacy” and notes that the date on the doctor's note is from two years ago. The Appellant clarified that the note from her doctor is current, and the Ministry was incorrect in its interpretation that the note was two years old. The panel notes that a plain language interpretation of “imminent danger” is that there is a danger which could be reasonably be expected to cause serious physical harm in the immediate future. The panel accepts the Appellant's statement that the doctor's note is current and not two years old. The physician's note dated September 16, 2016, also clarified that the Appellant's health has unexpectedly changed and deteriorated and so the panel determines there is a probability of immediacy. For these reasons, the panel determined that the Ministry's decision was not reasonably supported by the evidence.

**Panel Decision:**

For the reasons listed above, the panel determines that the Ministry's decision is not a reasonable interpretation of the legislation and is not reasonably supported by the evidence in the circumstances of the Appellant, and rescinds the ministry's decision. The Appellant is successful on appeal.