

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of September 19, 2016 which held that the appellant was not eligible for a crisis supplement to repair her roof under section 57 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because:

- The minister was not satisfied that the funds were needed to meet an unexpected expense as required under subsection (1)(a); and
- The minister was not satisfied that failure to repair the roof would result in imminent danger to the appellant’s physical health as required under subsection (1)(b).

## 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 time of reconsideration:

- Estimate in amount of \$2,077.16 dated September 7, 2016 for roofing materials;
- Roofing quote of \$4,600.00 in the appellant's name for installation of new roof;
- Request for Reconsideration dated September 3, 2016.

The appellant is a sole recipient of disability assistance who receives \$983.42 per month; \$556.42 support allowance, \$375 shelter allowance and \$52 transportation support allowance.

On August 8, 2016 the appellant contacted the ministry and requested a crisis supplement to replace the roof on her home. The appellant told the ministry the roof had been leaking and those roof areas were patched to repair the leak. She stated the electrical wiring and the light fixtures in the ceiling are exposed. She told the ministry the roof is leaking again, that she is concerned about mold and the roof needs to be replaced. The appellant advised she has no money and that she had been to family and friends as well as community organizations and there is no financial assistance is available. She stated that her friends would do the work but have no money for roofing materials. The appellant provided two quotes to the ministry; materials only \$2,077.16 and materials and labor \$4600.00, however, the ministry stated the quote was not clear if the \$4,600.00 quote included materials or if the quote was just for labor. The ministry was satisfied that the appellant had no financial resources to cover the cost of repairing or replacing her roof.

In her Notice of Appeal, dated September 26, 2016, the appellant writes under Reasons for Appeal, "It is a new emergency. It was fixed but NOW it leaks and the roof has come down. It has started raining and because of the new leak it is a fire hazard. Now there is mold. I have asthma. I believe the ceiling has developed mold. We have professional roofers ready to donate their time we just need to pay for the materials.

The appellant submitted the following documents which were attached to the Notice of Appeal:

1. Letter of support dated September 27, 2016 from a friend explaining the appellant's situation and the condition of her residence relative to the three criteria set out in the EAPWR legislation.
2. Letter of support dated September 24, 2016 from another friend further explaining the appellants' circumstances.
3. Photograph of the outside front view of the appellant's home.
4. Twelve (12) photographs showing the damage caused by her leaking roof.

The ministry did not have any objection to the panel receiving these documents but noted that the documents were submitted after the Reconsideration decision.

Two witnesses testified at the hearing on behalf of the appellant.

Witness 1, the author of September 27, 2016 letter, stated she has been assisting the appellant for the past couple of years on a number of matters. The witness stated the appellant's roof has leaked in the past but those leaks were dealt with and the problem was fixed. The witness stated the appellant's request is due to new leaks and professionals have advised that the roof needs to be replaced and patching is no longer an option. The witness stated that when the roof was last repaired

patching the roof was an option. The witness stated that when the roof was last repaired that the roof would last for several more years. In regard to imminent danger the witness stated that 90% of the interior ceiling (drywall) is gone because of the leaks and the ceiling has had to be taken down or it has fallen down. Because the drywall on the ceiling has been removed this has exposed the electrical wiring and the vapor barrier and she has noticed mold and insects and insect eggs on the other side of the vapor barrier which must affect the breathable air and not be good for the appellant or anyone else who may visit.

Witness 2, the author of the September 24, 2016 letter and who also acted as the appellant's advocate, reiterated much of the same information provided by the first witness. He stated when the appellant first had a problem with her roof she was not aware that emergency funding from the ministry was available so she did not peruse that avenue of assistance. The witness stated that had she been aware of that assistance she would have sought the ministry's assistance at that time. The witness stated the leak(s) in the roof at that time were patched and the problem of a leaky roof was addressed.

The appellant testified that when the roof leaked it was repaired and she didn't think it would leak again that soon. She stated that at the time of the repair the consensus was that she would be fine for another 2 or 3 years. She stated that when she noticed that the roof was beginning to leak again she reached out to the ministry for assistance as she did not have the financial resources to replace her roof. She stated that the water leaks caused so much damage to the ceiling that she had to pull some of the ceiling down which exposed the electrical wiring and the vapor barrier. After some time she even had to puncture holes in the vapor barrier to release the water that was accumulating. In response to the ministry, the appellant stated that her residence was built in 1970's and when her mother bought the home approximately 5 to 6 years ago she understood the roof had been replaced and would still have a lifespan of 10 to 15 years. The appellant stated that she moved into her mother's residence approximately 6 months after the home was purchased.

The panel finds items listed above, 1 to 4 inclusive, corroborates what the appellant told the ministry and provides a pictorial description of the interior damage caused by the leaking roof which was information before the ministry at the time of the reconsideration decision. Therefore these items are admissible as evidence, as being in support of the information and record before the ministry at reconsideration. The panel admitted the documents in accordance with section 22(4) EAA.

The panel finds Item #3 is not evidence as this is a picture of the outside front view picture of the appellant's residence and this area was not subject of the information and record that was before the ministry at reconsideration and therefore is not admissible as evidence under section 22(4) EAA.

The oral testimony of the witnesses and the appellant confirms the information that was before the ministry at reconsideration and accordingly the information is in support of the information and record that was before the ministry and is admitted as evidence in accordance with section 22(4) of the EAA.

The ministry referenced the facts in the Reconsideration decision. The ministry stated that it accepts that the appellant does not have alternate resources available to her to replace her roof and had the ministry seen the pictures of the damage the leaky roof had caused to the interior of the residence then the criteria of imminent danger would have been satisfied as well.

## 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 the EAPWDR for home repairs to replace the roof was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances. That is, was the ministry reasonable when determining that:

- it was not satisfied that there that the costs to repair or replace the roof funds are unexpected expense as required under subsection (1)(a); and
- it was not satisfied that failure to repair or replace the roof would result in imminent danger to the appellant's health as required under section 57(1)(b).

The legislation considered:

### **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*.

### Emergency Funding

In their submissions and in their testimony at the hearing, the witnesses referred to the ministry having an "Emergency Fund." The panel notes that nowhere in the Employment and Assistance legislation is there provision for such a fund. The closest provision is titled "Crisis Supplement" and specific criteria are set out in section 57 EAPWDR that an applicant must meet to be eligible for this supplemental funding. The panel also points out that within section 57 under subsection 5 there is a cumulative amount for a crisis supplement(s) that may be provided within a calendar year. The ministry did not address this issue because the appellant's request for a crisis supplement was not approved.

Section 57(1) of the EAPWDR, as stated above, provides three criteria that must be met for a family unit to be eligible for a crisis supplement. The ministry agreed in the Reconsideration decision that the appellant only met one of the three criteria set out in section 57(1)(a); that she did not have the financial resources to replace her roof.

### Unexpected Expense

#### Ministry's Position

The ministry stated in the reconsideration decision that the appellant has resided in her residence for a number of years and repairs to her roof have not been made since the previous owner did them 10-15 years ago. The ministry argued the appellant's roof has been leaking for more than a year; that the appellant described the damage to the roof as "wear and tear" and that nothing has occurred that caused the damage or would have contributed to the damage to the roof. At the hearing, the ministry argued that the appellant knew her roof was leaking, which the ministry deemed to be an ongoing

event and that the appellant should have known the roof would need replacing. The ministry position is therefore that it is not satisfied that the costs to repair or replace the roof are an unexpected expense for her.

#### Appellant's Position

The appellant argued that when her mom bought the home approximately 6 years ago she understood the roof had been recently replaced and had a life expectancy of 10 to 15 years. The appellant argued that there was a leak in the roof approximately one year ago and she had done repairs to the roof when she noticed that it was leaking and felt that the repair would last for another 2 to 3 years. The appellant argued that when she noticed the roof leaking again that event was new and unexpected and she went to the ministry for assistance.

#### **Panel Decision**

The evidence is that the appellant has lived in this home for approximately 6 years. The home was purchased by her mother and at the time of purchase it was understood that the roof had been replaced and was expected to have a life span of 10 to 15 years. Approximately one year ago the roof started to leak, the appellant repaired the roof by patching the leak and the repair was expected to be good for another 2 to 3 years. The evidence is that when the roof started to leak again the professional roofer advised the appellant the roof could not be patched and needed to be replaced. The appellant went to the ministry and her request for assistance was denied. The ministry position is the appellant knew the roof was leaking for a year; that the last repairs to the roof were done by the previous owner and replacing the roof should not have been unexpected. The appellant had acknowledged that her roof leaked approximately one year ago and that leak was repaired by patching the roof, work which the witnesses corroborated. The appellant's evidence is that she understood the roof was replaced just before the home was purchased approximately 6 years ago and when the roof leaked initially, approximately one year ago, that leak was repaired by patching the roof.

The panel gives significant weight to the appellant's evidence as the ministry relied on the information that the roof was leaking for more than a year to determine the event was not unexpected. The panel finds the evidence supports the appellant that the event was unexpected because the ministry did not consider that the appellant had repaired the first leak (about one year ago) and then the roof started to leak again, a development which the panel finds does not support the ministry's position and makes this occurrence or event unexpected. The panel accepts the appellant's evidence that the repair was completed and that she was advised the repaired roof should be good for another 2 to 3 years, an assessment which she reasonably accepted.

The panel finds, based on the evidence above, the ministry's decision that the replacement of the appellant's roof should not be considered an unexpected expense is not supported by the evidence and therefore the ministry's decision that this legislated criterion was not met was not reasonable.

#### **Imminent Danger to Physical Health**

##### Ministry's Position

In the Reconsideration decision the ministry's position is that the appellant is worried about mold developing in her house and what further damage will occur to her house during the winter however the ministry does not have sufficient evidence to support a probability of immediacy that the

appellant's failure to obtain funds to repair her roof will place her physical health in imminent danger. The ministry further argued that the appellant has not indicated any serious health conditions that require her to repair or replace her roof.

At the hearing the ministry stated that had the appellant provided pictures depicting the damage the leaky roof had caused, rather than just describing the situation to the worker, that the appellant would have met this criterion.

#### **Appellant's Position**

The appellant's position is that she has asthma and the mold and insects that are living and growing in her ceiling are not healthy for her. She argued that the ceiling in the cupboard where she had to keep her dry goods, the exposed electrical wiring in the ceiling, puddling of water in ceiling, the lack of drywall or ceiling tiles on the ceiling all lead to potential health and danger risks.

#### **Panel Decision**

The panel finds that the pictures provided by the appellant only corroborates her testimony that she was living in a hazardous situation and that without a proper roof she was living in a situation that provided imminent threat to her physical health if any of the roofing material was to fall down on her or if there was a fire because of the electrical wires being exposed to the wet environment.

The panel finds that, in considering the above and given the ministry's statement at the hearing, the ministry's decision that failure to provide funds to replace her roof would not result in imminent danger to her physical health is not supported by the evidence and therefore the ministry's decision that this criterion was not met was not reasonable.

#### **Conclusion**

Based on the foregoing, the panel finds that the ministry's decision to deny the appellant a crisis supplement under section 57(1) of the EAPWDR to replace her roof was not reasonably supported by the evidence and, rescinds the decision and refers the decision back to the ministry for an amount to be determined under section 57(5) and (6) EAPWDR.