



## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of June 7, 2016 wherein the ministry denied the appellant a crisis supplement for clothing because the appellant’s request did not satisfy all three statutory criteria set out in section 57(1) of the Employment and Assistance For Persons with Disabilities Regulation (EAPWDR). The ministry was satisfied that the appellant’s need for clothing was unexpected but held that there was insufficient information to establish that:

1. there no are alternate resources available to the family unit, and
2. failure to meet the expense would result in imminent danger to physical health.

## PART D – Relevant Legislation

EAPWDR, section 57

## PART E – Summary of Facts

This hearing has been adjourned several times from month to month at the appellant's request. The hearing was initially scheduled to be a teleconference on July 12, 2016 and was changed by the Tribunal Chair on September 23, 2016 to an oral in-person hearing at the appellant's request. The panel chair and the ministry representative attended the hearing by phone.

At the beginning of the hearing the appellant requested five minutes of silence to respect the passing of her close friend and companion and so she could compose herself for the hearing. During which time the two in person tribunal members read two articles provided by the appellant to the Panel chair and ministry over the phone per the appellant's request.

Her request was granted.

The evidence before the ministry at the time of reconsideration:

- Email from appellant dated April 11, 2016 to the ministry through an advocate. The email is the appellant's request for a clothing allowance due to an unexpected situation that occurred on December 15, 2015 where she was assaulted and pepper sprayed damaging her leather jacket. The appellant provided the police file number for reference.
- Request for an extension on submitting her request for Reconsideration. Attached was an article titled, "Exposing the insanity of the status quo". The request was granted.
- Request for Reconsideration dated May 31, 2016 with a 3 page note and obituary attached. She stated under reason for the request, "I was offered \$50. The full \$100 is needed + warranted. Please read the explanation attached."

The appellant is a sole recipient of disability assistance. On April 11, 2016 the appellant's social worker contacted the ministry and requested a crisis supplement for clothing on the appellant's behalf. Later that day the ministry received a request from the appellant in the form of a letter. The appellant advised the ministry (EAW) that on December 15, 2015 she had been attacked and pepper sprayed. The appellant advised that during the attack her clothing was damaged including a leather jacket and she requested a crisis supplement to replace or repair the clothing, including the repair of her leather jacket.

On April 11, 2016 the appellant contacted the ministry (EAW) to request a crisis supplement for clothing and submitted a letter. In the letter the appellant indicated that she had been attacked and her clothing ruined including her leather jacket. The report indicated she would need to either replace or repair the items.

On April 18, 2016 an EAW reviewed the appellant's request with her and her social worker on the telephone. During that conversation the appellant explained she received the leather jacket as a gift and the special meaning that the jacket holds to her and her need to repair the jacket. The appellant told the EAW that her mental health was at risk as the jacket has value and the "presence of [her special friend] in the coat is irreplaceable sacred medicine". The EAW approved the appellant's request and granted her a crisis supplement of \$50 to replace the jacket. The appellant declined the \$50 crisis supplement stating that she required \$100 to repair the leather jacket and requested an additional \$50 to repair the jacket. The appellant provided details of her attack and a police file number. The ministry accepted that the attack was unexpected and damaged the leather jacket and accepted that the costs associated with repairing or replacing her jacket is unexpected.

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Between June 7, 2016 (date of Reconsideration Decision) and October 27, 2016 (date of Appeal Hearing) the appellant submitted the following additional documents:

1. June 21, 2016 Notice of Appeal with a 2 page note attached. The notes describe the appellant's frustrations in dealing with the ministry, i.e. "asking you to recognize your seriously profoundly abjectly breaching all decency manners + sacred medicine educate (ph. etiquette), by merely giving lip service, then objectifying Sacred Medicine as a thing, item, object"; and her arguments to support her position on requesting a reconsideration, "Would you for the first time Re Consider my Sacred Medicine in the spirit of Twin flame love joy celebration."
2. Letter dated July 4, 2016 from appellant's doctor (Dr.) outlining the circumstances relative to her damaged jacket and that the appellant considers the jacket as "sacred medicine". The Dr. wrote, "This [sacred garment] was very important to this woman in this it was part of her strongly held "spirit breath beliefs; she tells me it was [bursting with twin flame love". The Dr. wrote that the appellant reports that she is under severe financial duress and these life stressor have culminated into a very difficult situation, which has been made worse by the loss of the jacket, her "sacred medicine." The Dr. continued, "she believes that the treatment she has received thus far has been abusive and traumatic. She tells me she feels more violated and hurt by her interactions with the Ministry than by the original pepper spray assault." He stated he has known the appellant for a year, and she has proven herself to be responsible, as well as steadfast in her beliefs and practices. He states, she requests a meeting with a representative of the ministry who will hopefully be able to offer her their assurance that she will no longer be treated with condescension, and that she will be able to feel safe in future dealings with the ministry. He added, I hope that you will reconsider this unorthodox request which comes from a place of sincerity as well as need.
3. On July 11, 2016 the appellant's Request for an Adjournment she noted, "I call for an immediate emergency cease and desist time out pause." Attached to her request was a 2 page note wherein she provides argument to support her appeal and expresses her frustrations in her dealing with the ministry and ministry staff, including "This is NOT Business as usual feel and embrace in your hearts – empathy for my pain; respect for my courage; appreciation for my journey and my respect toward you; Satisfaction you're part of my medicine. Signed Sincerely ..... appellant's name
4. On September 1, 2016 the appellant's request to adjourn her appeal hearing on September 2, 2016 was granted. On the form the appellant wrote, "I am receiving (...) therapy as I'm dealing with the ministry since 2016 February and especially in the last month is more abusive and traumatic than the original pepper spray assault. Take responsibility for all my experiences. Whatever doesn't kill me makes me stronger, wiser and more compassionate. Thank you". . Attached to her first page was an article titled, "Victims and Survivors of Psychopaths" upon which is written "I am not a victim anymore".
5. Article from the Atlantic entitled, "Rethinking One of Psychology's Most Infamous Experiments" - discussing the famous experiment in the 1960's that proved the thesis that ordinary people, under the direction of an authority figure, would obey just about any order they were given, even to torture. Though the term did not exist at the time, Milgram was a proponent of what today's social psychologists call situationism: the idea that people's behavior is determined largely by what is happening around them.
6. Article from Business Creativity entitled, "Do you suffer from the Pike Syndrome?- Discussing an experiment that showed that after a Pike experienced continual failure and pain in trying to eat the smaller fish in the other part of the tank because of a glass panel separating them, the Pike would not attempt to eat the smaller fish even after the glass panel was removed. The

lesson is that it is a good idea to question fixed patterns and obvious ways to deal with a familiar situation.

7. Printout from a Blog post entitled, "Learned Helplessness: The Pike Syndrome" - Recounts the Pike experiment and the behavior of abandoning previously painful and futile attempts, which came to be known as 'The Pike Syndrome.'

The ministry did not object to the panel receiving these submissions.

The panel finds the submissions #1 to #4, with the exception of the article in #7, do contain additional information that supports the information and record that was before the ministry at reconsideration and therefore is admissible as evidence under section 22(4) *Employment and Assistance Act*.

The panel finds the submissions #5 to #7 and the article in Item #4 are comprised of argument in support of the appellant's position.

At the hearing the appellant stated since she began this process in February 2016 and has had the assistance of 3 advocates from various community agencies. She stated that all she wanted was to speak with a ministry representative, who understands her beliefs of "twin flame love and sacred medicine" and be respected. The appellant stated she had been through many challenging situations in her life, is able to feel things much deeper than most people but never experienced treatment like she endured and suffered trying to deal with the ministry. She stated the treatment she received has had a significant impact on her, that maybe it didn't impact her physical health but it definitely impacted her mental health and safety. She re-stated much of the information she submitted on her Request for Reconsideration, Notice of Appeal or Request for an Adjournment form. The appellant expressed how frustrated, demeaned and not respected she felt and how toxic the situation became in trying to work with the various EAW's. The appellant stated that dealing with the ministry was worse than the original assault and being pepper sprayed. The appellant stated that during the incident it took a long time to rinse her eyes clean of the pepper spray and her neck was burning. She was advised to shower to wash the spray out of her hair and she was in pain for about 1 ½ hours. The appellant stated that in September 2016 she resolved this matter with the ministry and the ministry issued her a cheque for \$100 to cover the cost to repair her jacket. The appellant stated that she explained what happened to the EAW, she understood and empathized with her, understood how she felt that the jacket could not be replaced and told her she would authorize a cheque for \$100 and she could pick it up at her local ministry office. The appellant told the panel that to date she has been unable to repair the jacket and had to spend the money on other much needed expenses that the amount she receives in assistance from the ministry is not adequate for her to meet her living expenses. The appellant stated that the appeal was no longer about the money that she wants the ministry to be more empathetic when dealing with individuals. The appellant stated the ministry needed to understand that the leather jacket she received as a gift from her friend gives her comfort and contains her friends spirit which helps to guide her. She stated the ministry needed to respect, not disrespect, the relationship that she had with her friend who has now passed away and needed to respect the "sacred medicine" in the jacket. The appellant stated because of the way she was raised by her parents she is very resourceful, can make her money stretch and can do the work of two people when necessary and doesn't believe in abject poverty like the ministry as the money she receives only covers one-half of what it did five years ago. The appellant stated that she took the leather jacket to a local drycleaners and the estimate to have the jacket dry cleaned and the fabric repaired was \$106.00. She cannot wear the jacket until it is cleaned because the stickiness of the

pepper spray remains in the fabric and it will burn her skin. The appellant understood the advocate she was working with at the time had provided that written estimate to the ministry in February or March 2016. The ministry asked the appellant if she had any sweaters or warm clothes at that time and the appellant refused to answer stating the question did not deserve an answer than she thought the question was demeaning and insulting.

The oral and written appeal submissions from the appellant and her advocate were largely comprised of argument, which is reflected in Part F of the decision. The additional evidence provided was comprised of additional details consistent with, and therefore in support of, the information before the ministry at reconsideration and was admitted pursuant to section 22(4) of the Employment and Assistance Act.

The ministry provided the facts stated as in the Reconsideration decision. The ministry representative stated he had no information regarding the appellant being issued a cheque for \$100.00 to get her jacket repaired.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's reconsideration of June 7, 2016 which determined that the appellant was not eligible for a crisis supplement of \$100 for clothing under section 57(1) EAPWDR because her request did not meet all the legislated criteria set out in section 57(1) EAPWDR is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The ministry was satisfied that the supplement was needed to meet an unexpected expense or obtain an item that was unexpectedly needed, however; the ministry was not satisfied that:

- a) the appellant did not have resources available to the family unit; and
- b) failure by the Ministry to meet the expense or obtain the item will result in imminent danger to the physical health of any person in the family unit, or
- c) will result in the removal of a child under the *Child, Family and Community Service Act*.

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\*](#).

...

- (4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:
- (a) if for food, the maximum amount that may be provided in a calendar month is \$20 for each person in the family unit;
  - (b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of
    - (i) the family unit's actual shelter cost, and
    - (ii) the maximum set out in section 4 of Schedule A or Table 2 of Schedule D, as applicable, for a family unit that matches the family unit;
  - (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.

The issue in this appeal is that the ministry approved a crisis supplement of \$50 to replace (to find another jacket) or repair her jacket and the appellant declined the \$50.00 because that would not cover her costs. The appellant's request was for the maximum amount of \$100 as set out in section 57(4)(c) EAPWDR. The ministry agreed the appellant's request met an unexpected expense or need.

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**No Resources Available to the Family Unit, section 57(1)(a) EAPWDR**

**Ministry's Position**

The ministry argued that the appellant was granted a \$50 supplement to replace or repair her jacket, that the \$50 would cover her immediate need to keep her warm and dry. The ministry argued that the \$50 supplement is still available to the appellant.

**Appellant's Position**

The appellant position is that the leather jacket is irreplaceable to her, that you cannot replace the "sacred medicine" in this jacket with another jacket and the cost to repair the jacket is \$106.00.

**Panel Decision**

The evidence is that the appellant's jacket could not be replaced because it is "sacred medicine" to her and the appellant's position is supported by her Dr. who stated that he had known her for one year and she has proven herself to be responsible, as well as steadfast in her beliefs and practices. The panel accepts the Dr. evidence and accepts that this jacket was irreplaceable to the appellant as it meets a particular emotional need beyond the physical need of keeping her warm and dry, and that repair of the jacket was required rather than replacement. The appellant stated that she cannot wear the jacket until it is cleaned because the stickiness of the pepper spray remains in the fabric and it will burn her skin. The appellant testified that she had obtained a written estimate of \$106.00 to clean and repair the jacket and she thought the first advocate had submitted it to the ministry but the ministry advised that there is no record that the written estimate was submitted for their consideration.

The panel finds it was reasonable for the ministry to determine the appellant could obtain another jacket for \$50.00 and further, that it was not unreasonable for the ministry to determine the jacket could not have been repaired for \$50.00 without any estimates of the actual cost to clean and repair the jacket.

The panel finds the ministry's decision that there were resources available to the appellant was reasonable because the ministry had approved a \$50.00 supplement be issued to her so she could obtain another jacket or have the jacket repaired.

**Imminent Danger to Physical Health, section 57(1)(b)(i) EAPWDR**

**Ministry's Position**

The ministry position is that there was insufficient evidence to support a probability of immediacy that failure to repair or replace her jacket with something that costs more than \$50.00 will place her physical health in imminent danger.

**Appellant's Position**

The appellant argued that the jacket has a special meaning and holds special medicine to her and without the additional \$50 she could not repair the jacket. The appellant argued the physical assault and being pepper sprayed painful physically as well as was traumatic mentally.

**Panel Decision**

The evidence is that the ministry granted the appellant a crisis supplement of \$50.00 to repair her jacket or to obtain another jacket. The evidence is the ministry was not suggesting this jacket could

be replaced with \$50 because the ministry accepted this leather jacket held a special meaning to the appellant which has been supported by the appellant's evidence. The appellant testified that the estimate to repair the jacket was \$106.00 which would leave her \$56.00 short in covering the cleaning and the repair. The appellant's position is that the pepper spray attack is event had a significant impact on her mental well-being as well as being physically painful, causing burning in her eyes and skin, for about an hour and a half after the attack. The appellant's position that her mental health will be impacted if she is unable to repair the leather jacket and her sacred medicine is lost to her is supported by her Dr. in the letter of July 4, 2016. There is no evidence however, medical or otherwise, before the panel that the failure of the ministry to provide the appellant a crisis supplement of \$100 to repair her leather jacket would result in imminent danger to the *physical* health of the appellant, as specifically required by Section 57(1)(b)(i) of the EAPWDA.

The panel finds the ministry's decision that the appellant did not meet the legislated criteria of imminent danger to her physical health was reasonable because, in the absence of evidence to the contrary, even though the \$50.00 supplement approved by the ministry may not have been sufficient to repair her leather jacket; the \$50.00 was sufficient for the appellant to obtain another jacket to keep her warm and dry.

### **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's request for a crisis supplement to repair her leather jacket was reasonably supported by the evidence. The panel confirms the ministry's decision. The appellant's appeal, therefore, is not successful.