

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 25, 2016 which held that the appellant is not eligible for a crisis supplement for clothing pursuant to the Employment and Assistance Regulation (EAR). The ministry determined that the appellant's request for the crisis supplement does not meet all of the criteria outlined in section 59(1) of the EAR, specifically the provision that states the minister may provide a crisis supplement if the supplement is required to meet an unexpected need or obtain an item unexpectedly needed. The ministry also found that the appellant had received the maximum available crisis supplements for clothing within the preceding 12 calendar months from the date of application for the crisis supplement and she is therefore ineligible for a crisis supplement pursuant to section 59(4)(c)(i) of the EAR.

PART D – Relevant Legislation

Employment and Assistance Regulation - EAR - section 59

PART E – Summary of Facts

The evidence before the ministry at reconsideration included the following:

1. A Request for Reconsideration (RFR) signed by the appellant on November 15, 2016 in which she states her argument [which the panel will consider in Part F - Reasons] and provides the following information in several pages of attached typed and hand-written submissions:
 - On November 1, 2016 the appellant contacted the ministry by telephone to request a crisis supplement for food and advocate for herself in the context of the food and clothing crisis she was facing. After a lengthy wait on hold, the ministry representative indicated she would issue a crisis supplement for food, and she would try and put one through for clothing as well.
 - On November 2, 2016, the appellant attended the ministry office and picked up a cheque for a food crisis supplement, and asked about the crisis supplement for clothing which had been denied. The office staff told her to come back if she wanted reconsideration, and in the meantime, apply for another crisis supplement for food as she had not reached her maximum food crisis supplements for the year. The appellant was subsequently cut off from a telephone call to the ministry when she requested an additional crisis supplement for food within the same month. After several days delay, the reconsideration packages for clothing and food crisis supplements were finally ready for pick up at the ministry office and the appellant picked them up on November 14, 2016.
 - The appellant has been on assistance (IA) since March 2016 and has only been able to ask for two clothing crisis supplements, \$50 each, in April and June 2016. Her welfare is support-only due to a family safety issue, caused in part by having to move out of government subsidized housing. The government now prevents her from providing proof of address to the ministry other than a document from family court asking her not to disclose the address.
 - She sat on an uneven surface and damaged her trousers and she purchased sewing supplies to repair the trousers. It was almost impossible to find a place to sew her trousers as her housing is not very good and nowhere is there enough lighting.
 - The appellant moved from subsidized housing on October 31, 2015 and states that “the housing maliciously controlled her move” and retained her hiker’s backpack and she has no secure backpack to hold her belongings during a period of unstable housing. She was not permitted to remove her backpack from the “building-directed, orchestrated control of the move” that involved a call by the appellant to the police at one point to allow her to complete the move. However, many belongings that she desperately needs were held back, especially her backpack and also clothing.
 - She has asked a person from the subsidized housing to return the pack to her but they stopped contacting her from the building. She states that “similar to the trousers”, she can “hardly repair [illegible] daypack and the sewing supplies to do so, run her short of money this month.”
 - The ministry office told her that she did not receive the crisis supplement for clothing because her clothing crisis supplements are over the maximum limit for the year but she still has until the end of December to qualify for four more food crisis supplements.

[Redacted]

2. Information from the ministry's record [Reconsideration Decision and Decision to be Reconsidered] stating that:

- The appellant is a single adult family unit.
- On November 2, 2016 she requested a crisis supplement for clothing, stating that her pants had split and she bought sewing materials but when she sat on a rough surface her pants ripped again. She stated that her shoes were falling apart and her feet are getting wet.
- The appellant has received two crisis supplements for clothing, of \$50 each, in April and June 2016 for a total of \$100.

Additional Submissions

Subsequent to the reconsideration decision, the appellant submitted her Notice of Appeal dated December 12, 2016 that sets out her argument. The panel will consider both parties' arguments in Part F - Reasons for Panel Decision. Attached to her Notice of Appeal are the following documents in support of her position:

- Notice of Change of Address effective November 1, 2015 with hand-written notations indicating that a judge has ordered that the other party not be given the appellant's address due to safety issues on file and all communications to the appellant are to go through the court/ family justice counsellor.
- A two-page typed submission from the appellant dated December 12, 2016 in which she states her argument on appeal and reiterates that she sat on an uneven surface and ripped her pants, while holes had appeared in her shoes after they were left unattended due to not having a backpack to keep belongings together. Her backpack was left behind after she was forced to move out of government subsidized housing a year ago (October 31, 2015) "due to fraudulent mismanagement of a family problem by another government ministry" including fabricated information about the appellant. Her support-only welfare has been \$235 per month since March 2016 with a seasonal (xmas) bonus added to her November 2016 cheque. She has been without a shelter allowance since March 2016 because she provided a family court document in lieu of rent receipts to explain why she did not submit rent receipts after her move on December 31, 2015. The appellant explains that her RFRs for clothing and food crisis supplements were paired when they were first submitted and she has not yet received a response for the food crisis supplement. She wants to appeal the food crisis supplement for November 2016 if it is also denied, and she informed the ministry that she also wants a reconsideration of the reduction of her welfare to support-only since March 2016.
- Notice of Deposit of \$270 IA dated December 12, 2016 [\$235 support plus xmas bonus].
- IA Monthly Report dated November 23, 2016.
- Cheque stub for \$20 crisis supplement for food dated December 5, 2016.

The ministry had no objections to the above documents and the panel accepts them as argument in support of the appellant's submissions for the reconsideration which contain essentially the same information.

Oral submissions

At the hearing, the appellant and the ministry summarized their arguments and reviewed some of the pages in the record of decision. The ministry explained that it is a common misunderstanding that the ministry provides a yearly clothing allowance as the clothing crisis supplement is intended for unexpected emergency situations such as a recent fire. The ministry explained that it is discretionary

and up to the ministry worker to determine whether the need for the clothing is unexpected. The ministry explained that even if the all of the criteria in section 59(1) of the EAR were determined to be met, the appellant would not be eligible for a crisis clothing supplement until April 2017 because she applied for one in April 2016 and the twelve month calendar period is calculated from the date of the application.

In response to questions, the appellant provided an update on her RFRs stating that her food crisis supplement is still at the reconsideration stage and she has not yet received a decision, and her shelter allowance was denied at reconsideration and she is in the process of preparing an appeal. When asked by the ministry why she was not able to go back into her former residence to retrieve her backpack and clothing, the appellant explained that she had difficulty funding her move because she had to pay to retrieve her vehicle that was wrongfully towed, and she was intimidated to go back and ask for her belongings. She stated that she contacted the police and the residential tenancy branch but was unable to file a formal complaint.

In response to a question from the panel regarding how long she had the shoes and pants before they fell apart, she stated that she might have got them in August 2016 but often when she gets shoes or trousers, holes will appear after a short time and they will only last for a month due to poor quality. She stated that since 2013, she has had many experiences with trying to keep a proper set of clothing and has expended many different efforts to do so. The panel accepts the oral submissions as argument in support of the arguments that were made by the parties at reconsideration.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's reconsideration decision of November 25, 2016 which held that the appellant is not eligible for a crisis supplement for clothing pursuant to the EAR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry determined that the appellant's request for the crisis supplement does not meet all of the criteria outlined in section 59(1) of the EAR, specifically the provision that states the minister may provide a crisis supplement if the supplement is required to meet an unexpected need or obtain an item unexpectedly needed. The ministry also found that the appellant had received the maximum available crisis supplements for clothing within the preceding 12 calendar months from the date of application for the crisis supplement and she is therefore ineligible for a crisis supplement pursuant to section 59(4)(c)(i) of the EAR.

The legislation sets out the following eligibility criteria for a crisis supplement:

EAR Crisis supplement:

Pursuant to section 59(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.

Pursuant to section 59(4)

(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.

The panel notes that all of the criteria must be met in order for the ministry to authorize a crisis supplement. The ministry notes that the appellant is a recipient of IA. She therefore meets the criterion of being eligible for assistance pursuant to section 59(1). The ministry also accepts that the appellant meets the criteria in subsection 59(1)(a) of being unable to meet the expense or obtain the item because there are no resources available; and subsection 59(1)(b)(i), in that failure to meet the expense or obtain the item will result in imminent danger to health.

The panel provides the following analysis for the criteria the ministry determined were not met:

Subsection 59(1)(a): Crisis supplement required to meet an unexpected expense or obtain an item unexpectedly needed

The appellant argues that her need for clothing is unexpected because she was forced to move out of housing in October 2015 due to a family fraud situation and she was unable to retrieve her backpack and clothing from her former residence. She argues that the legislation does not require the loss of her clothing to be recent in order to be characterized as unexpected. She argues that the ministry does not even address the issue of her backpack in the reconsideration decision and at one point told her that a backpack is not considered clothing. However, she views a backpack as a clothing accessory to keep all her belongings together and carry supplies and laundry. She submits that the loss of her hiking backpack is her main focus, and the ministry has therefore wrongly stated the facts in the reconsideration decision. She states that she purchased the hiking backpack two decades ago and requires it as a clothing accessory as it is difficult to keep her life together without her backpack.

The appellant submits that her shoes and trousers are also an issue, and she has tried to repair shoes with pieces of plastic, and the trousers she attempted to repair were ripped again when she sat on an uneven surface. She argues that it is “weird to have to characterize crisis supplement expenses as unexpected because some circumstances are expected and predictable”, and to “harp on unexpected is unreasonable where there is a threat to the person’s life.”

The ministry characterizes the appellant’s need for pants and shoes as arising from wear and tear and argues that it is not unexpected to have to replace them over time. The ministry notes that the appellant stated that both her pants and shoes are falling apart and although she attempted to repair her pants they ripped again.

Panel’s decision

The panel finds that the ministry reasonably determined that the *unexpected expense/ need* criteria were not met as set out in subsection 59(1)(a) of the EAR. The focus of the reconsideration decision is the appellant’s need for pants and shoes because the ones she had were falling apart and the pants ripped again after she tried to repair them, when she sat on an uneven surface. The appellant testified that she is having ongoing issues with poor quality clothing and holes often appear after a few weeks and her shoes and trousers may only last for a month. Since 2013, she has made efforts to repair both shoes and trousers and she had already had the shoes and pants for a few months, since about August 2016. Based on the appellant’s evidence that in her experience she often has to replace her poor quality clothing every few months, the fact that she has to replace these particular trousers and shoes, is an expected expense. The panel therefore finds that the ministry reasonably characterized the situation as wear and tear with the need to replace worn clothing over time.

Regarding the appellant's argument that the ministry has wrongly stated the facts and ignored the issue of her backpack being lost to her when she had to move out of her former residence, the panel notes that the ministry does not mention the backpack in the reconsideration decision and made no finding on whether a backpack can be included in a request for a crisis clothing supplement (as a clothing accessory). In relation to this, the ministry made no determination regarding whether the circumstances surrounding the appellant's move caused her to have an unexpected need for a backpack or for clothing that was also left behind at her former residence. The panel notes that the EAR does not define clothing, and the plain meaning (Oxford dictionary) definition of clothing does not include clothing accessories. In any event, there is no clear evidence surrounding the circumstances of the appellant's move such as a copy of an eviction notice, police report file number, or other supporting documentation, and even if it were established that the appellant's move resulted in an unexpected need for clothing, the appellant is still not eligible for a crisis clothing supplement unless all criteria set out in section 59 of the EAR are met.

Subsection 59(4)(c)(i): \$100 maximum crisis supplement for clothing

The appellant emphasizes in her submissions that the ministry is violating international laws against cruel and unusual treatment by forcing her to live at a woefully inadequate income level. She submits that by denying the person the food and clothing they need to live and exist in the community, it appears that the ministry is attempting to put people, through the process of extreme financial pressure into the cemetery across the street from the ministry office. The appellant argues that \$100 per year for clothing is unreasonable since clothing costs more than that, and even laundering a single set of clothing easily costs more than \$10 per week, and trousers and shoes that can be purchased for \$100 (including the tax) would easily be worn out in less than a month. The appellant argues that a single person's welfare, especially at the support-only level, does not provide enough money to replace shoes and trousers every single month. She adds that \$500 per year would be a more realistic amount for clothing, and that she needs \$100 to replace her missing backpack.

The appellant argues that it is unreasonable for the ministry to conclude that her health is in imminent danger [due to the holes in her shoes and clothing] without providing "alternatives to buy new clothing through other sections of the legislation that would fund clothing in a more general way" or "cover discretionary factors in situations where the expense claimed does not fit within the letter of the law". The appellant argues that applying an overly legalistic interpretation of the legislation in her circumstances is "unreasonable and excruciating". She argues that her need for a shelter allowance, and food and clothing crisis supplements are connected, that her shelter and food issues are relevant to the whole picture, and that it is unreasonable for the ministry and the panel to compartmentalize her problem to just the clothing supplement. She notes that her support-only welfare rate creates "severe and excruciating restrictions on her life".

The appellant further describes the challenges recipients face in making an application for a crisis supplement, involving numerous calls and trips to the ministry office. She notes that there is a lot of rigmarole to go through for just a small supplement and submits that "most people would just drop dead on the pavement from starvation", unable to navigate the process, "and that people, already incoherent from poverty, are instead accused of being drunk or losers when dealing with ministry staff". The appellant submits that the law is wrong "and the ministry has the discretion to do anything

it wants including breaking the law". She argues that the only way for the ministry and the panel to be proper citizens is to break the law and give her \$500 for clothing for 2016 rather than \$100.

The ministry's position is that the appellant has received the maximum crisis clothing supplements of \$100 within the preceding 12 calendar months from the date of her application for the crisis supplement. The ministry argues she is therefore not eligible for a crisis supplement for clothing at this time pursuant to subsection 59(4)(c)(i) of the EAR. The ministry notes that the appellant received crisis supplements of \$50 in April and June 2016 for a total of \$100. The ministry explained at the hearing that the appellant is not eligible for a crisis clothing supplement until April 2017 and all other criteria must still be met. The ministry submits that it is unable to approve the appellant's request for a crisis supplement for clothing as she has already received the maximum crisis clothing supplements under the Regulation.

Panel's decision

The panel finds that the ministry reasonably determined that the appellant is not eligible for a crisis clothing supplement because she has received the maximum supplements of \$100 as set out in subsection 59(4)(c)(i) of the EAR. Section 59(4) of the EAR clearly states that crisis supplements for food, shelter, or clothing are subject to limitations. Under subsection 59(4)(c)(i), the limit for the clothing crisis supplement is set at \$100 in the 12 calendar month period preceding the date of application for the crisis supplement. The evidence, which the appellant does not dispute, is that she received a \$50 crisis clothing supplement in April 2016 and another in June 2016 for a total of \$100. She then applied for a crisis clothing supplement in November 2016. As 12 calendar months had not passed since her application for the crisis clothing supplement in April 2016, the panel finds that the ministry reasonably applied the Regulation in determining that the appellant is not eligible for a crisis supplement for clothing pursuant to subsection 59(4)(c)(i) of the EAR.

The appellant requests the panel to "break the law" but that would violate natural justice principles that require administrative tribunals to act within their jurisdiction and make a fair, unbiased decision. The panel explained at the hearing that it is not authorized to change the legislation or replace the ministry's decision with a new decision. The panel's authority under the *Employment and Assistance Act* is to decide whether the ministry's reconsideration was reasonably supported by the evidence or was a reasonable application of the applicable legislation. The panel is also not authorized to determine the reasonableness of the ministry's decision on the basis of human rights or international rights arguments as proposed by the appellant who argues that the decision violates international laws against cruel and unusual treatment.

Regarding the appellant's concerns about compartmentalizing her situation into separate issues with regard to her shelter allowance and applications for food and clothing crisis supplements, the panel appreciates the appellant's view that her issues are interconnected and relate to the bigger picture of the adequacy of welfare rates and the restrictiveness of the legislative criteria for various allowances or supplements. Nevertheless, the panel is only authorized, under the *Employment and Assistance*

Act, to make a decision on the appeal of the ministry's reconsideration decision. In this case, the only reconsideration decision that was before the panel was the ministry's decision of November 25, 2016 that found the appellant ineligible for a crisis supplement for clothing.

Conclusion

While the panel sympathizes with the appellant's circumstances and arguments, it finds that the ministry's reconsideration decision that denied the appellant's request for a crisis supplement for clothing under section 59 of the EAR because all of the legislative criteria were not met, was a reasonable application of the Regulation. The panel confirms the reconsideration decision pursuant to sections 24(1)(b) and 24(2)(a) of the *Employment and Assistance Act* and the appellant is not successful in her appeal.