

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated November 21, 2016 which denied the appellant a crisis supplement to cover the cost of cleaning up after his trailer fire because the request did not meet all the requirements of section 57 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Section 57 of the EAPWDR stipulates that the minister may provide a crisis supplement to a family unit that is eligible if three statutory criteria are met:

- a) the supplement is required to meet an unexpected expense or obtain an item unexpectedly needed;
- b) there are no resources available, and
- c) Failure to meet the expense or obtain the item will result in imminent danger to physical health or removal of a child under the Child, Family and Community Service Act.

Specifically, the ministry determined that failure to meet the expense or obtain the item will result in imminent danger to physical health.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDR), Section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 57

PART E – Summary of Facts

With the oral consent of the appellant, a support person for the appellant attended but did not participate in the hearing.

For its reconsideration decision, the ministry had the following evidence:

The appellant, who is a single recipient of disability assistance, contacted the ministry on December 27, 2014 to advise that his trailer had burned down and he had been seriously injured.

On March 19, 2015, the appellant contacted the ministry requesting assistance to cover the cost of cleaning up the debris left from the fire as required by his previous landlord. The ministry worker informed him that fire cleanup did qualify as an unexpected expense and he subsequently researched companies that could do the work.

On March 23, 2015, the appellant submitted a written request for a crisis supplement. The ministry attempted without success to contact the appellant by phone on March 26, 2015 to obtain further information. The appellant did not return the ministry's call and on April 1st, the service request was closed as abandoned.

Eighteen months later, on September 9, 2016, the appellant submitted two invoices to the ministry and requested reimbursement. One invoice dated April 5, 2015 in the amount of \$868.61 was for loading burned materials into a bin; the second invoice, dated April 23, 2015 in the amount of \$1885.62 did not specify what work was completed. The appellant stated that his daughter had paid the second invoice. When asked about the delay in submitting the invoices, the appellant did not provide an explanation.

The ministry denied the appellant's request for a crisis supplement on September 13, 2016 stating that the appellant meets the first criteria for eligibility as he is a recipient of disability assistance but he does not meet any of the criteria in sections 2, 3 or 4. The ministry noted that as the fire occurred 21 months earlier and the appellant was made aware of the need to clean the area 18 months earlier, it cannot be considered an unexpected event or item of need as per section 2. The ministry stated that the appellant does not meet the criteria in section 3 because it is not satisfied there are no resources available; both invoices have been paid. Finally, the ministry stated that the appellant does not meet the criteria in section 4 as there is no evidence of an imminent risk to his physical health if he is not reimbursed for the clean-up. The clean-up has been completed and the appellant is now living in a new residence. The appellant submitted a request for reconsideration.

On October 11, 2016, the appellant requested an extension to submit additional information. On October 19, 2016, the ministry noted that the appellant had not yet submitted a signed Requested for Reconsideration. The appellant submitted a signed request on October 21st and another extension was provided to November 21st.

On November 18, 2016, the ministry received the Request for Reconsideration which included further details. The appellant stated in a letter written with his advocate and a hand-written letter.

In the letter written with his advocate, the appellant explains that he is requesting a reconsideration of his request for repayment of the cost for the environmental bins (\$1,885.62) and payment for the

excavator to remove the debris. He lost everything the night his trailer burned; he was left with nothing but charred identification and a nightmare of a life. During the 18 months since the fire he has been unable to attend doctor appointments, birthdays, social gatherings, holidays or any other day-to-day events. If he does happen to make it to an appointment he forgets crucial information and forms. He cannot complete day-to-day tasks and becomes so distraught with his PTSD that his panic goes into extreme action and he cannot leave his house. He has exhausted every resource available to help him get on track.

The appellant states that his biggest problem is not being able to repay his daughter the \$1885.62 that she put on her credit card. She does not have the funds to cover that amount and the fact that she now has a debt that he cannot repay has affected her as well as her new family. He needs this paid for her because it is deeply affecting their relationship as well as her personal financial state. The charge on her credit card was supposed to be temporary until he could pay her back.

In his hand-written letter, the appellant explains that he was transported from the fire scene by ambulance to the hospital where his burns were patched and he was released. He lost everything including all his identification, bank records, phone and keys. He was staying at a homeless shelter where staff later told him that the burn behind his right knee was infected and he should go to the hospital. Being colour blind, he could not see the infection. The appellant had also fallen and injured his right side. When he attended the hospital, it was discovered that he had four broken ribs, pneumonia and that the 3rd degree burn behind his knee was infected. He remained in hospital for three and one-half weeks. Upon his release, he went to social services for help because he had used the \$200 given to him by the ministry to pay for a hotel room they reserved for him.

The appellant also described a series of events in his life prior to his trailer fire. In October 2012, he lost his home and all his personal and business belongings. He had been suffering from pneumonia for an extended time and was unable to work. His property was foreclosed and he was evicted, forced to leave without his belongings. Without his tools, he was unable to continue his work when he recovered. Just prior to the fire at the trailer park, his dog was poisoned. He was already suffering from PTSD.

Included with the Request for Reconsideration was a letter from the appellant's physician dated October 11, 2016 in which is stated: "[He] has over the last 12 months had several health challenges contributing to his delay in form submissions. History of PTSD with recent worsening of classic symptoms. Also a history of panic disorder with agoraphobia and depression. He as well has had other issues including pneumonia for which he is still recovering."

In his Notice of Appeal, the appellant provides the following information. He was told by a ministry worker that the urgent demand made by the owner of the trailer park did qualify for crisis supplement funds as the owner threatened to fine him have plus have the cleanup done and bill him for the costs incurred. The cost of the machine is still outstanding. He had been in hospital with severe burns and his daughter's credit card was used for debris bins she had no intention of paying the bill. The fire claimed all his possessions including his car and his phone, and his phone number was re-issued to someone else making correspondence difficult.

While he was in hospital with severe burns, his daughter coordinated most of the cleanup. Obtaining bins required prepayment. He does not have a credit card and his daughter provided her card with

the understanding she would be reimbursed. Although the appellant's ongoing health problems are of great concern to his daughter, her financial situation is not good. Not being reimbursed the \$1885.62 that was applied to her credit card has placed a great strain on their relationship.

The appellant stated that the [ministry's] letter suggests the machine operator was paid; however, that is not the case. The work was done on the appellant's word that funds would be available after the job was finished.

The panel finds that the information provided by the appellant in his Notice of Appeal is in support of the information before the minister at reconsideration. The panel therefore admits this information as evidence under section 22(4) of the Employment and Assistance Act.

Additional Information

At the hearing, the appellant submitted a letter written by his daughter in which she states "My personal [credit card] was used to secure bins for cleanup of the site after my dad's fire. The use of my card was in no way a resource to cover this cost. I've expected reimbursement for some time now. My father has gone through one catastrophe after another his doctor has determined his previous PTSD did bring on an inability to make appointments."

Admissibility of Additional Information

The ministry did not object to the admissibility of the letter. The panel considered the letter as information that corroborates the information that was before the ministry at reconsideration and admitted the letter in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

The appellant reviewed the information provided in his appeal. He stated that he received 12 burns – two of which were 3rd degree burns, and four broken ribs as a result of the fire. He was told by the ministry that the cost of cleanup was covered. His landlord had told him a bailiff would be appointed and he was in fear of seizure and fine if he did not clean up the mess.

He drew the panel's attention to the letter he wrote in his appeal, stating that it explained what had happened. He did not receive a call from the ministry as he had no phone and his number had been reassigned. He also stated his pneumonia is ongoing and his doctor had determined that he had become agoraphobic after the fire. He believes the agoraphobia is the result of the culmination of the fire, his dog being poisoned, living in a new city environment that he found intimidating, his worsening PTSD – all on the heels of losing all his possessions and the home he built and lived in for 33 years.

When asked by the panel, the appellant confirmed that he did not have insurance for his trailer; he did not have money to pay for insurance. When asked about being told by the ministry in April 2016 that cleanup from the fire of December 2015 would be covered, he stated that he was told cleanup does qualify for emergency funds.

PART F – Reasons for Panel Decision

The issue is whether the ministry's reconsideration decision to deny the appellant a crisis supplement to cover the cost of cleanup following his trailer fire because he did not meet all the requirements of section 57 of the EAPWDR is reasonably supported by the evidence or is a reasonable application of the applicable legislation in the circumstances of the appellant.

The ministry determined that the appellant's request satisfied the requirement that the expense was unexpected and accepts that the appellant does not have alternate resources. However, the ministry was not satisfied that failure to clean up the mess left after the fire would result in imminent danger to his physical health.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Part 5 — Supplements

Division 3 — Supplements — Family Unit Eligible for Disability Assistance or Hardship Assistance

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*.

The positions of the parties

Ministry's position

The ministry's position, as set out in the reconsideration decision, is that while the ministry determined that the appellant met two of the criteria for eligibility – the fire was unexpected and resulted in an unexpected bill for cleanup and the appellant does not have alternate resources, there is insufficient evidence to establish that failure to clean the debris as directed by the landlord would result in imminent danger to the appellant's physical health.

The ministry acknowledges that while the fire occurred 23 months prior to the reconsideration and the costs associated with cleaning up after the fire were incurred 19 months earlier, the appellant's doctor

submitted information suggesting that the appellant may have medical reasons that would explain the delay in requesting assistance. As the fire was unexpected and resulted in an unexpected expense, and given the nature of the appellant's medical conditions, the ministry accepts that the cleanup expense is unexpected.

The ministry also accepts that despite one invoice having been paid by the appellant's daughter, the appellant still owes his daughter for the cost of cleaning up after the fire. The balance of the second invoice remains outstanding; and as such, the appellant has incurred two separate debts, both of which remain unpaid. Incurring a debt is not considered an alternate resource and therefore the ministry accepts that the appellant does not have alternate resources.

However, the ministry is not satisfied that there is any indication that failure to take care of the mess left over from the fire would result in imminent danger to the appellant's physical health. The landlord requested that the appellant clean up the debris but at the time the appellant made the request for a crisis supplement, he was no longer being housed by the previous landlord. There is no indication that the debris left over posed any risk to his physical health. Therefore, the request does not meet all the criteria listed in Section 57(1) of the EAPWDR.

Appellant's Position

The appellant responded to the ministry's position by stating that he was paying for pad rental at the trailer park for 5 months after the fire. When he first approached the ministry, the mess had not been cleaned up and he was still paying rent while living in a homeless shelter. He was not on disability at the time.

He eventually moved into an apartment in the city where he stayed for 20 months and became agoraphobic. Until then, he had spent his entire life a remote area. Being in an apartment in the city was intimidating, and the culmination of events – the fire and the loss of everything he owned; the injuries he sustained from the fire; his dog being poisoned, his PTSD, the result of a severe beating when he was in his 20's and his ongoing pneumonia probably led to his not being able to leave his apartment.

In the last 10 months, he has broken 7 bones. While riding his bike, he was hit by a van and while trying to open a curtain he fell and broke bones. His bones are weak; he has lost 38 per cent of his bone mass. He has multiple sclerosis, uses a cane and has COPD; he was unable to deal with the cleanup on his own.

He stated that he has always been physically active, both in his work and personally. Until recent years, he had always worked out of doors and been gainfully employed.

When asked by the panel if he had insurance on the trailer, he responded that he did not have money to pay for insurance. When asked, the ministry told him regarding whether the cost of cleanup would be covered, he said he was told cleanup does qualify for emergency funds. The fire was in December and in April the ministry told him he qualified. When he approached the ministry, he was not living at the trailer park but he did pay rent for 5 months following the fire. The cleanup occurred after he spoke with the ministry.

Panel Decision

Under section 57(1) of the EAPWDR, the ministry may provide a crisis supplement to a person who is eligible for disability assistance, such as the appellant, if all the applicable requirements in that regulation are satisfied. In this case, the ministry agreed that the request meets two of three criteria. The ministry accepts that the fire was unexpected and it resulted in an unexpected bill for cleanup. The ministry also accepts that the appellant has incurred two separate debts which both remain unpaid and as incurring a debt is not considered an alternate resource, the ministry accepts that the appellant does not have alternate resources.

However, the ministry finds that as the appellant's request for a crisis supplement was made when the appellant was no longer living at the site of the trailer fire, there is no indication that the debris left over posed any risk to the appellant's health.

The fire occurred December 27, 2015. In March, 2016 the appellant contacted the ministry requesting assistance to cover the cost of cleaning the debris. His trailer had burned to the ground; he could no longer live there and was living in a homeless shelter. The appellant explained to the ministry that the landlord told him he had to clean up the debris and threatened to fine him if he failed to do so. The appellant stated that he was told he was eligible for a crisis supplement. He subsequently submitted a Crisis Supplement Request Form. The ministry attempted to contact him the following day and two days later but was unsuccessful and left a message. Hearing nothing from the appellant for five days, the ministry closed the file.

When the appellant submitted a second request for a crisis supplement 18 months later, it was denied and he submitted a reconsideration request. He explained that he was in hospital with an infected burn, four broken ribs and pneumonia when his daughter helped out by coordinating the cleanup and paying for the bins, which was required in advance. The appellant and his physician provided details explaining the extent of the appellant's physical and mental issues and the impact on his behaviour and ability to get out or communicate. He suffers from PTSD, had ongoing pneumonia, was homeless for several months and had no phone. When he moved into an apartment he became agoraphobic.

The ministry's decision acknowledges that the appellant's doctor indicated the appellant may have had medical reasons that would explain the delay in requesting assistance in paying the bills – costs which were incurred 19 months earlier. The ministry states that at the time the appellant's request was made he was no longer being housed by his previous landlord. "There is no indication that the debris left over posed any risk to your physical health."

The ministry has focused on the period of time over which events occurred but it is the panel's position that time is not the issue in this decision.

The appellant did approach the ministry prior to the work being done, before falling out of communication because he had no phone and his number was re-assigned, he was living in a homeless shelter, he was in hospital with infected burns, pneumonia and broken ribs, and he developed agoraphobia and was unable to leave his home.

It is the position of the panel that it is not the delay in submitting invoices, nor where the appellant was living at the time the invoices were submitted, nor the fire debris itself that should be considered. The requirement to clean up the debris when the appellant was physically incapable of doing the work

himself without risk of imminent danger to his health is the issue in this decision.

Regardless of when the appellant requested assistance with payment for the bills, he was incapable to cleaning up the debris from the fire himself and had to seek outside help. The debris from the fire had to be removed and the appellant had no option but to find someone else to do the work. Even if he were not in hospital when the debris had to be clean up, the appellant was suffering burns and broken ribs and he has COPD. Dealing with the ashes from the fire at any time would have placed his physical health in imminent danger.

In the opinion of the panel, there is sufficient evidence to conclude that, on the balance of probabilities, failure to obtain the requested crisis supplement did pose a risk to the appellant's physical health. At the point in time where he was faced with the decision and in the context of the legal threat by his landlord and his deteriorated physical condition, attempting to deal with the clean up without assistance constituted a real physical threat. The ministry response at the point of his first contact supports this view as did the ministry representative attending the hearing who suggested that her office's response would have been positive. The panel concludes the ministry position has likely been affected over time by the sequencing of their contacts and does not fully reflect the situation of the appellant at the time the request was made.

Conclusion

Having reviewed and considered all the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for a crisis supplement was not a reasonable application of the legislation in the case of the appellant.

The panel rescinds the ministry's decision.