

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “Ministry”) dated January 12, 2017, which determined that the Appellant was not eligible for a crisis supplement to pay for furnace servicing and repairs because the Appellant did not meet all of the criteria set out in Section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Specifically, the Ministry found that the information provided did not establish:

- That the crisis supplement was required by the Appellant to meet an unexpected expense or obtain an item unexpectedly needed;
- That failure to obtain furnace repairs would result in imminent danger to her physical health; or
- That the Appellant did not have alternate resources available.

## PART D – Relevant Legislation

*Employment and Assistance Act (EAA), Section 22(4)*

*Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 5*

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

## PART E – Summary of Facts

The Appellant is in receipt of disability assistance as a sole recipient.

The information before the Ministry at the time of reconsideration included the following:

1. A Request for Reconsideration, signed and dated January 5, 2017, which states in part:
  - That the Appellant had contacted the Ministry to apply for financial assistance on November 1, 2016 because her furnace had not been working since August 2016;
  - That she was told to submit 2 quotes, and that she submitted 3 quotes to the Ministry on November 21, 2016;
  - On December 8, 2016 she called the Ministry for an update and was told that her request had been denied and she would be sent the information about how to appeal that decision;
  - Having received no information about the appeal process, the Appellant contacted the Ministry again by phone on December 15 “and was told there was a backlog”. The appeal documents were received by the Appellant on December 19, 2016;
  - She has been without heat for 4 months and has been sick for over one month;
  - While she noticed that the furnace needed repair in August 2016, it was not a priority at the time as she was dealing with an unexpected problem with a leaking water heater and that heater was replaced in October 2016. She indicated that she had forgotten that the furnace wasn’t working properly; and
  - She has tried several ways to come up with the financial resources to resolve the problem without success, including borrowing the money from a friend, arranging a loan from a Not-For-Profit Society and seeking assistance on-line from the BC Housing Management Commission;
2. A letter dated December 21, 2016 from a counsellor at a Not-For-Profit Society (the Society) in the Appellant’s community addressed to whom it may concern informing the reader that the Appellant has been accessing services from the Society for 6 years and has asked the Society for support because she has been without heat for 4 months and that she has been overwhelmed and unable to follow through on her own; and
3. A letter dated November 28, 2016 from the Appellant to the Ministry appending three quotes from 3 heating services identifying the cost of a diagnostic service call and ranging between \$79.00 plus Goods and Services Tax (GST) and \$139.00 plus GST.

### **Additional Information**

In her Notice of Appeal (NOA) dated January 19, 2017, the Appellant stated that she had forgotten that she noticed that her furnace wasn’t working in August and that she is not asking for financial assistance in buying a new furnace, she is only asking for it to be repaired and that she is “willing to take an overpayment”.

The Ministry did not object to the introduction of the information contained in the NOA as evidence.

The panel accepted the information in the NOA as argument.

In its reconsideration decision, the ministry indicated that the Appellant's mortgage was \$720 per month. At the hearing, the Appellant stated that her mortgage payments had been \$360 bi-weekly (\$780 per month) but that she had renegotiated her mortgage in November 2016. As a result she had been able to reduce her bi-weekly mortgage payments to \$180 (\$390 per month). She also stated that she had advised the ministry of the new reduced shelter costs in her report for the month of November 2016 which was provided to the Ministry in December 2016.

The Ministry did not object to the introduction of the Appellant's evidence regarding the renegotiation of her mortgage, which resulted in a \$390 reduction in her monthly shelter costs. As this information was provided to the Ministry in early December 2016 and the Ministry's reconsideration decision was reached on January 12, 2017, the panel admits the new evidence as oral testimony in support of information and records that were before the Ministry at reconsideration pursuant to Section 22(4)(b) of the EAA.

At the hearing the Appellant stated that everyone deserves heat, that heating a home was critical in the cold winter months and that the ministry's reconsideration decision was discriminatory. She also stated that she wears additional clothing in the house and uses blankets to stay warm. She said that the temperature in her home was 60 degrees Fahrenheit (15 degrees Celsius).

The Appellant emphasized that in August she was focused on her leaking water heater and that because she was not having to heat her home at the time the water heater was the priority, not the furnace. As a result, she did not have to deal with the issue of heating her home until the weather began to turn cold in November, by which time she had forgotten that the furnace might not be functioning properly. She stated that she was not asking for a new furnace, she only wanted the existing furnace repaired, and that she was prepared to take a repayable advance on her next assistance payment and repay it over time.

With reference to whether the Appellant had demonstrated that failure to obtain the furnace repairs would result in imminent danger to her physical health pursuant to EAPWDR Section 57(1)(b)(i), the Appellant pointed out that the Ministry's original decision found that this requirement was met while in its reconsideration decision the Ministry found that it was not met. She stated that she didn't understand why the findings were different in the two decisions.

Regarding the Ministry's contention that the Appellant had not demonstrated that she "is unable to meet the expense or obtain the (furnace repairs) because there are no resources available to the family unit" pursuant to EAPWDR Section 57(1)(a), the Appellant stated that she had advised the Ministry in a letter submitted with her request for reconsideration that she had renegotiated her mortgage to reduce her monthly shelter costs and tried to procure the necessary resources by attempting without success to borrow or otherwise obtain the funds from other sources.

At the hearing, the Ministry relied on its reconsideration decision and explained that there are no provisions in the legislation that would permit the Ministry to consider providing the Appellant with a repayable advance.

The Ministry explained that the reason that it determined that the furnace repairs were not unexpected pursuant to the requirement set out in EAPWDR Section 57(1)(b)(i) was that there was a time lag between when the Appellant first noticed that the furnace was not working properly in August and when the crisis supplement was applied for in November and therefore the furnace repairs were



not unexpected in November. The Ministry also stated that it is the payer of last resort and expects clients to set aside 10% of their monthly shelter allowances towards maintenance and repairs. In addition, the Ministry stated that at the time of the reconsideration decision the Ministry could not find evidence that failure to obtain the furnace repairs would result in imminent danger to her physical health pursuant to EAPWDR Section 57(1)(b).

The ministry also stated that it could not confirm whether the reconsideration decision took into account the information provided by the Appellant that explained what steps she had taken to try to obtain the funds from other sources in order to make the necessary repairs.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's reconsideration decision dated January 12, 2017, wherein the Ministry denied the Appellant a crisis supplement for furnace servicing and repairs.

Specifically, the panel must determine whether the Ministry's decision that the Appellant did not satisfy the statutory criteria as set out in section 57(1) of the EAPWDR was either reasonably supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the Appellant.

The relevant legislation is as follows:

### **EAPWDR**

#### **Panels of the tribunal to conduct appeals**

22 (4) In a hearing referred to in subsection (3), a panel may admit as evidence only

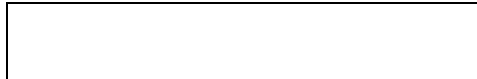
- (a) the information and records that were before the minister when the decision being appealed was made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

#### **Applicant requirements**

- 5** For a family unit to be eligible for disability assistance or a supplement, an adult in the family unit must apply for the disability assistance or supplement on behalf of the family unit unless
- (a) the family unit does not include an adult, or
  - (b) the spouse of an adult applicant has not reached 19 years of age, in which case that spouse must apply with the adult applicant.

#### **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 ...
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.
- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or



(b) any other health care goods or services ....

(5) The cumulative amount of crisis supplements that may be provided to or for a family unit in a year must not exceed the amount calculated under subsection (6).

(6) In the calendar month in which the application or request for the supplement is made, the amount under subsection (5) is calculated by multiplying by 2 the maximum amount of disability assistance or hardship assistance that may be provided for the month under Schedule A or Schedule D to a family unit that matches the family unit.

(7) Despite subsection ... (5) ... , a crisis supplement may be provided to or for a family unit for the following:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro.

\* \* \* \*

### ***Ministry's Position***

The Ministry's position is that the Ministry is unable to approve the Appellant's request for a crisis supplement because none of the three criteria under EAPWDR 57(1) have been met. Specifically:

- The need for furnace repairs are not unexpected because the Appellant was aware that the furnace was not working in August and therefore it was not an unexpected expense in November,
- There is insufficient evidence "to support a probability of the immediacy" that failure to have the furnace repaired would place her physical health in imminent danger, and
- There are alternate resources available to the Appellant to obtain the furnace repairs because a portion of the shelter allowance is intended to cover the cost of maintenance and repairs and the fact that the Appellant has chosen to live in "a residence that far exceeds her shelter allowance does not change the fact you were provided with assistance for this purpose".

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

The Appellant's position is that:

- Everyone should be able to heat their home in the winter,
- The furnace repairs were unexpected,
- She could not afford to set aside funds from her shelter allowance towards repairs, and
- She had tried to obtain the resources from several other sources.

In addition, the Appellant didn't understand why the Ministry first found that failure to make the repairs would result in imminent danger to her physical health and then found that it would not.

## ***The Panel's Decision***

### ***The Existence of an Unexpected Expense or Unexpected Need***

Section 57(1)(a) of the EAPWDR states that one criterion that must be met in order for the Ministry to consider providing a crisis supplement is that the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed.

As noted above, the Ministry found in its reconsideration decision that the need for furnace repairs was not unexpected because the Appellant was aware that the furnace was not working in August 2016 and therefore it was not an unexpected expense in November 2016. The Appellant argues that it was an unexpected need; she had simply forgotten that she became aware of the problem in August because she wasn't heating her home at the time and was dealing with a faulty water heater.

An unexpected event is one which is unforeseen or regarded as unlikely to happen. The panel notes that the Appellant acknowledges that she first became aware of the need for furnace repairs in August 2016. The Ministry's reconsideration decision states that the Appellant advised the Ministry on August 19, 2016 that she was not able to start her furnace, evidence which was not contested by the Appellant either before or at the hearing.

As the legislation requires that a crisis supplement be unexpected at the time it is requested and the request for the crisis supplement for the furnace repairs was not made until November 1, 2016, the panel finds that the Ministry's determination that the need for repairs was not unexpected at the time the crisis supplement was requested was reasonably supported by the evidence and was a reasonable application of legislation in the Appellant's circumstances.

### ***Whether Failure to Repair the Furnace Would Result in Imminent Danger to the Appellant's Physical Health***

Section 57(1)(b)(i) of the EAPWDR states that in order for the Ministry to consider providing a crisis supplement the Ministry must determine that failure to meet the expense or obtain the item will result in imminent danger to the physical health of any person in the family unit. In its reconsideration decision, the Ministry found that there is insufficient evidence to support the possibility that failure to have the furnace repaired would place the Appellant's physical health in imminent danger.

The onus is on the Appellant to show that he or she satisfies the legislative criteria for eligibility for a crisis supplement. While it is obvious that a home will require some source of heating in the winter months, the Appellant did indicate that she was able to wear additional clothing and blankets and that the temperature in the home was 15 degrees Celsius. In addition, she has not provided any information to indicate that alternate heating sources, such as a gas or wood burning fireplace or electric space heaters, for example, are not available to the Appellant and are not being used to provide additional heat to the home.

As the Appellant has not provided any information to demonstrate that failure to obtain furnace repairs could result in imminent danger to her physical health, the panel finds that the Ministry's contention in the reconsideration decision that there is insufficient evidence to support the possibility that failure to have the furnace repaired would place her physical health in imminent danger is reasonably supported by the evidence and was a reasonable application of the applicable enactment

in the circumstances of the Appellant.

*Whether there are resources available to the family unit*

Section 57(1)(a) of the EAPWDR also states that a criterion which must be met in order for the Ministry to consider providing a crisis supplement is that a family unit is unable to meet the expense or obtain the item because there are no resources available to it.

In its reconsideration decision, the Ministry argued that there are alternate resources available to the Appellant to obtain the furnace repairs because a portion of the shelter allowance is intended to cover the cost of maintenance and repairs and the fact that the Appellant has chosen to live in a residence that far exceeds her shelter allowance does not change the fact that she was provided with assistance for this purpose.

The legislative test is whether or not a family unit is able to meet the cost of furnace repairs from any resources available to it. Regardless of whether the Appellant had been able to put money aside from her shelter allowance for maintenance and repairs, the panel notes that the Appellant did pursue a number of options to try to find the financial resources to pay for the furnace inspection from other sources including significantly reducing her shelter costs, and that the Ministry was given this information by the Appellant before it reached its reconsideration decision.

Therefore, the panel finds that the Ministry's determination that the Appellant had not attempted to find alternate resources to obtain the furnace repairs is not reasonably supported by the evidence and was not a reasonable application of the applicable enactment in the circumstances of the Appellant.

***Conclusion***

The panel finds that the Ministry's decision to deny the Appellant a crisis supplement for furnace servicing and repairs was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Ministry's decision is confirmed and the Appellant was not successful in her appeal.