

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") reconsideration decision dated March 27, 2017 which held that the appellant is not eligible for a crisis supplement for food pursuant to the Employment and Assistance Regulation ("EAR"). The ministry determined under section 59(2) of the EAR that the appellant had already been issued the maximum available crisis supplement for food for March 2017. The ministry also found that her request for the supplement does not meet all of the criteria outlined in subsection 59(1)(a) of the EAR, specifically that:

- the crisis supplement is required to meet an unexpected need or obtain an item unexpectedly needed; and
- the person is unable to meet the expense or obtain the item because there are no resources available to the family unit.

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:

Panel Note: The appellant's submissions contain information regarding her previous appeals. Only the information relating to her food supplement request in February and March 2017 will be summarized:

1. A Request for Reconsideration ("RFR") signed by the appellant on March 17, 2017 in which she states her argument [which the panel will consider in *Part F - Reasons*] and provides the following information:

- On February 20, 2017, she spent 9 hours in the hospital; accrued costs of \$45.90 after the event; and the ministry has twice received her hospital discharge form for February 20th.
- On February 27, 2017, she spent a total of 2.5 hours on hold in telephone calls to the ministry, attempting to request a crisis supplement for food. On February 28, 2017, she sent a fax to the ministry and these calls are referenced in her fax.
- On March 2, 2017, she attended the ministry office after not getting through by phone. She re-submitted a copy of her February 28, 2017 fax and requested a food crisis cheque in person at the counter.
- On March 15, 2017, she attended the ministry office and showed them her bank balance receipt with 2 cents in her bank account. She also told them that she had come from the food bank that day and had received only a few small food items. She explained that the other food that was offered could not be taken due to her lack of cooking/ refrigeration facilities and she was previously told that only one visit per week to the food bank is allowed.

2. A copy of a fax from the appellant to the ministry dated February 28, 2017 with the following information/ details:

- The subject line includes, *Crisis Grant Request by Telephone Yesterday*
- The appellant writes that she tried to contact the ministry office on February 28, 2017 about a crisis grant but was unable to get through and it is difficult to find a public phone. She waited on hold for a total of 2.5 hours at 2 different locations and did not get through to the ministry.
- On February 20, 2017, she was admitted to the hospital emergency by ambulance and spent 9 hours at the hospital.
- She attaches her hospital discharge report and receipts for items including the things she had to purchase for her medical condition.
- The fax transmission data indicates: "Result Ok" at 12:47 p.m. on February 28, 2017.

3. A copy of a hospital discharge form for the appellant dated February 20, 2017.

4. Information from the ministry's record [*Reconsideration Decision* and *Decision to be Reconsidered*] indicating as follows:

- The appellant is a sole recipient of income assistance.
- On March 2, 2017 the appellant attended the ministry office with a copy of the fax she had sent on February 28, 2017; and a copy of a receipt for a medical device, and two partial receipts on which she wrote the details of her purchases. She stated that she had submitted verification of her hospitalization in February 2017 and she had attempted to request a crisis supplement for food in February and sent the fax because she could not get through on the phone. She was issued a cheque for \$20 based on the information she submitted.
- On March 15, 2017, the appellant contacted the ministry and stated that she should have received more than \$20 for a crisis supplement for food because she had been hospitalized in

February 2017 and had attempted to request a crisis supplement for food in February. The ministry confirmed that it had issued a food crisis supplement for March on March 2, 2017 and told her that the ministry is unable to issue a crisis supplement in March for a situation that occurred in February.

Additional Submissions

Subsequent to the reconsideration decision, the appellant submitted her *Notice of Appeal* dated April 5, 2017 in which she states that she is a single, regular welfare recipient receiving support only of \$235 per month. She attached a one page submission containing her argument on appeal. The panel will consider both parties' arguments in *Part F - Reasons for Panel Decision*.

On the date of the hearing the appellant faxed two submissions to the Employment and Assistance Appeal Tribunal ["EAAT"] office :a 5 page submission and an 11 page submission ["the late submission"], summarized as follows:

1. In the 5 page fax, the appellant reiterates the facts presented in the record of decision and expands her argument on appeal, adding more detail to her argument.
2. The 11 page fax consists of copies of an e-mail exchange with EAAT staff in March 2017 regarding a different appeal; a copy of a letter from EAAT regarding the *Notice of Hearing* for this appeal; a copy of the 5 page submission described in 1. [above]; and copies of receipts for faxes and other administrative expenses.

The ministry had no objections to the above documents but noted that the submissions relating to the appellant's shelter issue is part of another reconsideration decision. The panel accepts the submissions relating to the food crisis supplement as argument in support of the appellant's submissions at reconsideration as the late submission contains essentially the same points but with more detail.

Submissions at the hearing

1. E-mail from the appellant

At the hearing, the appellant stated that she sent an e-mail to EAAT right before the hearing. As neither the ministry nor the panel received it in time for the hearing, the appellant reviewed it orally, stating that it contained submissions about trying to get documents together; the nature of evidence in her other appeals [clothing, food, and shelter]; and, in particular, her problems with advocacy. The ministry objected to anything pertaining to the appellant's shelter issue but had no objections to submissions on the crisis supplement for food. The panel accepts the e-mail submission as further argument in support of the appellant's position as set out in the record of decision.

2. Oral submissions

At the hearing, the appellant and the ministry summarized their arguments and highlighted information from the record of decision. The appellant stated that the ministry told her that she could get a maximum of one crisis supplement per month but they did not process her request for a February food crisis supplement until March, even though she had faxed her request in February 2017 after being unable to contact the ministry by phone. She stated that the ministry told her they do not take food requests at the counter, but it is difficult for her to get access to a public phone and she is often put on hold for long periods and cannot get through to the ministry to make her request.

The appellant stated that she had not received a food supplement since December 2016 and she did not apply for one in January or earlier in February, 2017 [prior to her phone calls and fax to the ministry on February 27-28] as she was occupied with her other EAAT hearings as well as her family court case. She explained that she was very uncomfortable due to her medical condition, after being discharged from the hospital on February 20, 2017, and she had another EAAT hearing the next day and had to improvise a medical device to manage her condition.

When asked what reason she gave for needing a crisis supplement for food when she made her request at the ministry office on March 15, 2017 [was it for the same health reason she had cited in her earlier request?], the appellant stated that she had no funds in the bank and she had no food so the crisis supplement was required to meet an unexpected need for food. She explained that her crisis not only extended from the hospitalization and “battery of hearings”, but by March 15, 2017 she needed food “more than ever” because she was unable to get enough food from the food bank to last until her next income assistance cheque.

When asked whether she can attend different food banks on different days, she stated that she had been to two food banks in February 2017, but some are difficult to get to by transit and she can only carry a limited amount of food and has no way to store it. When asked if she went to any of the places that serve meals [cited by the ministry in the reconsideration decision] or accessed any other resources, she stated that it is difficult to move around and she “cannot get to many different parts of the city each day.” She explained that it was also hard to maneuver her cart in February due to snowy weather, with “dirt, mess, snow, and dog waste on the sidewalk” and although she previously walked long distances to access leisure activities and work locations, some areas of the city are not safe, even in the daytime.

The ministry reviewed the reconsideration decision and explained that a request for a food supplement can in fact be made at the counter and the appellant was issued a food crisis supplement on March 2, 2017 for her unexpected medical situation [hospitalization in February 2017] that extended into the month of March. While the ministry regrets the appellant’s experience with the telephone wait times, the copy of the February 28, 2017 fax that the appellant brought to the ministry office on March 2, 2017 was acknowledged by the adjudicator and considered as part of the appellant’s request for a crisis supplement made on March 2, 2017.

In response to questions about why the appellant’s fax of February 28, 2017 was not attributed to a request for a food crisis supplement in the month of February, the ministry replied that “it is difficult to say what happened on [the appellant’s] file.” The ministry explained that the process for administering a request involves “translating it into a service request, usually the request is put into the system as a service request to be acted upon...If the request came in in February, the ministry person would create a service request and put in a time frame for actioning it.”

The ministry stated that the appellant’s situation of not getting enough food from the food bank was not presented at her March 15, 2017 request as a reason for unexpectedly needing a food supplement, but even if the client has another unexpected situation in the same calendar month, “the ministry doesn’t have the authority to provide additional funds” [beyond the \$20 that was already issued in March]. The ministry explained that while the “unexpected issue doesn’t have to occur in the same calendar month as the request, the unexpected circumstances will still need to exist at the time of the application” and the request would still need to meet all of the criteria in the Regulation.

The panel accepts the oral submissions as argument and admits the testimony regarding the appellant's reasons for requesting a food crisis supplement; her submissions on community resources, and the ministry's testimony on its adjudication process, as evidence in support of the information and records that were before the minister when the decision being appealed was made, pursuant to section 22(4)(b) of the *Employment and Assistance Act*. The panel finds that these submissions further explain and expand upon the facts that are set out by each party in the record of decision.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's reconsideration decision of March 27, 2017 which held that the appellant is not eligible for a crisis supplement for food under 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, under section 59(2) of the EAR, that the appellant had already been issued the maximum available crisis supplement for food for March 2017. The ministry also found that her request for the supplement does not meet all of the criteria outlined in subsection 59(1)(a) of the EAR, specifically that:

- the crisis supplement is required to meet an unexpected need or obtain an item unexpectedly needed; and
- the person is unable to meet the expense or obtain the item because there are no resources available to the family unit.

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

EAR Crisis supplement:

Pursuant to section 59(1):

(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(2):

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

Pursuant to section 59(4):

(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.

Analysis

Jurisdiction of the panel

While the appellant argues extensively that the food crisis regulations are unconstitutional and contrary to natural justice because \$20 per month is “too little” and the person is required “to prove too many things for too little money (or possibly no money at all)”, the panel notes that it has no jurisdiction over constitutional matters or human rights, and the panel also has no authority to amend the legislation. Section 19.1 of the *Employment and Assistance Act* specifically states that certain provisions of the *Administrative Tribunals Act* apply to EAAT. These provisions indicate that EAAT is without jurisdiction over constitutional questions, and has no jurisdiction to apply the *Human Rights Code*.

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 is before the panel is the ministry's decision of March 27, 2017 that found the appellant ineligible for a crisis supplement for food. Under section 59 of the EAR, 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)(b)(i): that failure to meet the expense or obtain the item will result in imminent danger to her health. The panel provides the following analysis for the criteria the ministry determined were not met, beginning with section 59(2), the first issue decided in the reconsideration decision:

Section 59(2): crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

The appellant's position is that she requested a food crisis supplement in February 2017, as verified by her fax to the ministry on February 28, 2017 that referenced her earlier, unsuccessful attempts to contact the ministry by phone. She submits that she also applied for the food crisis supplement by "mentioning it" at her previous EAAT hearings and that due to the "ministry's mistake" she was not issued a food supplement for February 2017. She feels that the ministry is incompetent and "deliberately pranked" her to find that she did not qualify for a crisis supplement, as they refused to take her call until February was over.

She argues that she is eligible for the food crisis supplement that she applied for on March 15, 2017, notwithstanding the \$20 cheque that she received on March 2, 2017. She reasons that the \$20 cheque that was issued to her on March 2, 2017 was for her February 20, 2017 health crisis involving admission to the hospital emergency and associated expenses.

The ministry's position is that the appellant was already issued the maximum available crisis supplement for food in the month of March 2017. The ministry noted that the appellant was issued a crisis supplement on March 2, 2017 and argues that this is the maximum available crisis supplement for the crisis that began with her hospitalization in February 2017. The ministry noted that the appellant presented information about her crisis situation when she attended the ministry office on March 2, 2017: she submitted a copy of her February 28, 2017 fax as well as information on her hospitalization including receipts for expenses, and hand-written notes.

Panel's decision

The panel finds that the ministry unreasonably determined that the appellant was already issued the maximum food crisis supplement for March 2017. While a cheque for \$20 was issued to the appellant on March 2, 2017, the evidence is that the appellant requested a food crisis supplement in February 2017 as confirmed by her fax, received by the ministry within business hours on February 28, 2017. The panel accepts that the appellant also made earlier, unsuccessful attempts to request the food supplement by telephone on February 27, 2017: these phone calls were referenced in the fax. When she attended the ministry office on March 2, 2017, she presented a copy of the fax at the ministry counter and provided additional documents in support of her crisis situation. The panel therefore finds that she attended the ministry's office on March 2, 2017 to confirm and follow up on her February 2017 request.

The ministry acknowledges that the appellant's request for a food supplement is dated in February 2017 but noted that her fax was associated to her service request at the ministry's office on March 2,

2017. The ministry explained that it treated the exchange at the counter on March 2, 2017 as a discrete request for a food crisis supplement in the month of March 2017, notwithstanding that the appellant faxed a request on February 28, 2017. The ministry noted that per the usual ministry procedure, it appears that the appellant's fax received at the ministry's office on February 28, 2017, had not been actioned as a February 2017 service request.

While section 59(2) of the EAR authorizes the ministry to provide a crisis supplement *only for the calendar month in which the application or request for the supplement is made*, the Regulation does not require the actual cheque to be issued in the month that the request was made. Therefore, under the Regulation, a cheque for \$20 could be issued in March for a request that was made in February. In that sense, February would qualify as the *calendar month in which the application or request for the supplement is made*.

In addition, while section 59(4) of the EAR imposes limitations on the dollar amount for a crisis supplement in a calendar month; i.e., *for food, the maximum amount that may be provided in a calendar month is \$20 for each person in the family unit*, this section must be read together with section 59(2) which authorizes the ministry to provide a crisis supplement only for the month in which the request is made. In considering these provisions together, the panel finds that the \$20 issued to the appellant on March 2, 2017 should have been attributed to her February 2017 request. The panel therefore finds that the ministry's application of section 59(2) of the EAR was unreasonable in the circumstances of the appellant. Nevertheless, as noted earlier, all of the criteria for a crisis supplement must be met in order for an applicant to be eligible.

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 a food supplement in March 2017 was unexpected because by March 15, 2017 [the date of her request for the supplement], she still had a severe financial shortfall. She submits that her crisis not only extended from the hospitalization and "battery of hearings" for other, related matters, but by March 15th she "needed food more than ever" because she had been at the food bank that day; was only able to take a few items, and would not be able to get food for 13-14 more days as there is a limit on food bank use [one visit per week]; she does not receive her income assistance cheque until the 20th of the month; and she is not eligible for the food bank during cheque issue week. She stated that she presented her "food bank issue" at the ministry counter on March 15, 2017, and she even offered to show the worker the meagre food items she had picked up at the food bank and she provided receipts for some of her expenses.

The ministry's position is that the appellant had already received a crisis supplement [on March 2, 2017] for her unexpected hospitalization in February 2017. The ministry argues that the appellant "has not submitted any information to indicate a second unexpected situation that occurred in February for which you have not already received a crisis supplement." The ministry noted that the appellant submitted receipts for clothing bought in December as well as historical hydro expenses, but argues that "these have no relation to her need for a crisis supplement for food in February."

Panel's decision

The panel finds that the ministry reasonably determined that the *unexpected expense/ unexpected need* criteria were not met. While the Regulation does not state that the *unexpected expense/ unexpected need* has to occur in the same calendar month as the request for the supplement, or cannot be related to an earlier event, the panel finds that that the ministry reasonably determined that "the unexpected circumstances will still need to exist at the time of the application". The panel finds

that it is reasonable for the ministry to require evidence of an unexpected situation at the time of the request in order to logically associate the request with an unexpected need for the supplement under the Regulation.

While the appellant argues that she was still experiencing a severe financial crisis as of March 15, 2017, that relates to her hospitalization, lack of sleep, pre-occupation with her other hearings, and the inadequacy of her support-only welfare allowance to cover food and other expenses, there is no evidence that her medical condition had worsened or that she had any additional health crisis. The only medical evidence in the record is a discharge document from the hospital dated February 20, 2017 and information that the ministry considered a receipt for a medical device and other expenses directly associated with her condition. The appellant characterizes the subject matter of her other hearings as well as her difficulties with “support-only welfare” as ongoing and inter-related, and there is no evidence that these situations created an unexpected need for food when she requested the supplement in mid-March.

Nevertheless, the appellant argues that she had a further intervening crisis on March 15, 2017 when she was unable to obtain sufficient food from the food bank. The panel notes that the ministry acknowledged this information in the reconsideration decision but did not make a determination on whether insufficient food from the food bank constitutes an unexpected expense/ unexpected need under the Regulation. In any event, information regarding access to the food bank, or any other community resource, relates to whether the appellant had available resources to meet her need for food. The panel therefore finds that the ministry reasonably determined that the *unexpected expense/ unexpected need* criteria under subsection 59(1)(a) of the EAR were not met.

Subsection 59(1)(a): unable to meet the expense or obtain the item because there are no resources available to the family unit

The appellant’s position is that she did not have available resources because she was unable to obtain sufficient food from the food bank to last for the rest of the month due to the limits on food bank usage, her inability to store food and carry more than a few items at once, and while she accessed two food banks, they are not always easy to get to by transit.

Regarding other resources, including places that offer meals, the appellant submits that while she “might do it a few times”, there are several barriers to accessing these resources:

- Health/ safety considerations: “charities not subject to government regulations...No way to verify the quality of the food or whether it was prepared safely.” She therefore might have to “veto some food sites”, and she can also experience digestive upset from food she is not accustomed to;
- Access issues: “cannot get to different areas of the city on the same day” due to issues with mobility and physical capacity caused by “extreme social disadvantage...not reasonable to ask a person with zero money to go around to places that are offering food”;
- Availability: “there might not be any food left by the time [she] gets there”; and
- Access restricted to special populations such as men, or mothers with children.

The ministry noted that there are many resources besides the food bank and it listed the name and address of three local charities that provide daily meals. As these resources are available to the appellant daily, the ministry stated that it was not satisfied that the appellant does not have alternate resources for food.

Panel's decision

The panel finds that the ministry reasonably determined that the criterion of *no resources available* was not met. While the panel appreciates that the appellant may face barriers in accessing food resources, she testified that she will go to places that serve meals on occasion or to events where food is served. The ministry noted at the hearing that the resources listed in the reconsideration decision are recognized charities that are not restricted to special populations. Where a person is experiencing a food crisis and cannot obtain sufficient food from food banks, it is not unreasonable to expect that they would access other resources. While the appellant stated that she does not feel safe in the area where the resources listed in the reconsideration are located, there is no evidence that she made an effort to access meal resources in other neighbourhoods. The panel finds that the ministry reasonably determined that the *no resources* criterion under subsection 59(1)(a) of the EAR was not met.

Conclusion

As the appellant's request for a food crisis supplement does not meet all of the criteria under subsection 59(1)(a) of the EAR, the panel finds that the ministry's decision 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.