

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated November 8, 2017 in which the ministry found that the appellant was not eligible for: (a) hardship assistance ("HA") under section 5 of the *Employment and Assistance Act* ("EAA") to replace \$93 of income assistance ("IA") that the appellant spent to replace a lost bus pass; or (b) a crisis supplement under section 59 of the *Employment and Assistance Regulation* ("EAR") to replace the appellant's lost bus pass. The ministry also determined that the appellant was not eligible for replacement of an IA cheque (to cover that portion of the IA that the appellant used to purchase the replacement bus pass) under section 92 of the EAR.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act - EAA – sections 4 and 5

Employment and Assistance Regulation - EAR - sections 59 and 92

PART E – SUMMARY OF FACTS

The underlying facts are not in dispute. The appellant applied for HA to cover the \$93.00 that she spent from her monthly IA to replace her October 2017 bus pass which she lost. She also requested financial assistance for other items that are not the subject of this appeal.

The evidence and documentation before the minister at the reconsideration consisted of:

1. A Request for Reconsideration (“RFR”) signed by the appellant on October 28, 2017 with the following attached documents:

- An email dated October 4, 2017 in which the appellant stated that she applied to the “Bank of Welfare’s Hardship Assistance program” pursuant to various sections of the legislation. The appellant stated that she needed to replace her bus pass in order to travel to law libraries to “discharge some of the burdens” associated with a court case.
- An email dated October 5, 2017 in which the appellant clarified that her request was for HA to replace her lost bus pass.
- An email dated October 17, 2017 in which the appellant noted that she was appealing the ministry’s denial of HA “with respect to a lost bus pass” which is equivalent to \$93 of the appellant’s October 2017 IA entitlement.

• A 45-page submission dated October 28, 2017 which, among other things, contained the following information:

- The appellant stated that prior to October 2017 she purchased a bus pass with her October 2017 IA issuance.
- The appellant stated that she subsequently lost the bus pass and requested HA to cover the \$93 that she spent to purchase the bus pass.
- The appellant indicated that she required a bus pass to access research materials for a court case against the ministry.
- The appellant stated that she had a budget shortfall of \$93 for October 2017 and these funds were her “overall monies for living.”
- The appellant stated that her IA funds are “direct deposited”. She further clarified that she lost \$93 of her monthly support allowance and not the entire allowance.

• A receipt for a one-zone monthly bus pass, dated September 24, 2017, in the amount of \$93.

2. Information from the ministry’s record of decision which included:

• A letter dated November 8, 2017 in which the ministry advised the appellant that she was not eligible for a crisis supplement to replace her lost bus pass, or to replace the \$93 that the appellant spent on the bus pass.

• The reconsideration decision which stated:

- The appellant is receiving IA as a sole recipient. The appellant’s monthly rate of IA is \$710 (\$335 support and \$375 shelter). The ministry mails rent cheques to the appellant’s landlord and directly deposits the balance of IA into the appellant’s bank account. On September 20, 2017 the appellant received a direct deposit of \$323 IA for October 2017.
- On October 1, 2017, the appellant contacted the ministry and requested funds to replace her lost October 2017 bus pass. The appellant explained that she needed the bus pass to access law

libraries for her court case. The appellant submitted a receipt for a one-zone bus pass that was purchased for \$93 on September 24, 2017.

- The appellant requested HA to replace lost IA benefits. The appellant indicated that she had already received her October 2017 IA but had lost a portion of it. The appellant enquired whether the ministry has a Plan for lost welfare cheques or a portion thereof.
- On October 4, 2017, the ministry determined that the crisis supplement regulation was most applicable to the appellant's request and subsequently determined that the appellant was not eligible for a crisis supplement. The appellant requested reconsideration of the ministry's decision and on October 30, 2017, the ministry received the appellant's RFR with submissions attached.
- The ministry's case management system indicated that the appellant's October 2017 IA cheque was cashed.

Additional information

On November 22 and 24, 2017, the Tribunal received the following material from the appellant:

- An email dated November 22, 2017, in which the appellant raised a number of procedural arguments regarding her other appeals or RFR's.
- A *Notice of Deposit and Monthly Report* for December 2017 IA and an RFR regarding an appeal supplement, and copies of documents that were already provided with her RFR submission of October 28, 2017.
- An email dated November 24, 2017, in which the appellant raised further procedural arguments and attached an RFR signed by the appellant on November 23, 2013 [*sic*]. The appellant requested direction from the Tribunal regarding two ministry reconsideration decisions per the appellant's emails of November 22, 2017.

The ministry did not object to the copies of documents that the appellant had submitted for the reconsideration. However, the ministry objected to admitting into evidence any documents that were not directly relevant to the November 8, 2017 reconsideration decision. Specifically, the ministry objected to any documents that were not directly related to ministry Service Request # SR 1-48433052742: denial of a crisis supplement for funds to replace a loss bus pass and \$93 of IA.

The appellant's submission inter-mingles evidence with legal argument. To the extent that those submissions contain evidence, the panel does not admit the information and documents regarding December 2017 IA, a crisis supplement for food, or a new request for HA. The panel finds that these matters were not before the minister at reconsideration. The information is therefore not admissible under section 22(4) of the EAA as evidence in support of the information and records that were before the minister when the decision being appealed was made. However, the panel accepts the remainder of the evidence filed by the appellant.

The ministry did not submit any new evidence.

Procedural matters

The appellant submitted two *Appeal Adjournment Requests* ("AJR") to the Tribunal prior to the date of the hearing:

- An AJR signed by the appeal coordinator on behalf of the appellant on January 2, 2018. The appellant indicated that she was unavailable on the scheduled hearing date. On January 3, 2018 the Tribunal chair granted an adjournment. The hearing was re-scheduled for February 5, 2018.
- An AJR signed by the appeal coordinator on behalf of the appellant on November 24, 2017. The appellant requested an extension of time for her appeal submission. In the *Notice of Appeal* dated November 21, 2017, the appellant stated that she required an extension of time “as there are constitutional questions involved and many appeals pending re: Ministry of Social Development.” On November 28, 2017 the Tribunal chair granted an adjournment for 15 business days and advised the appellant that the Tribunal does not have the jurisdiction to address constitutional issues.

The appellant did not attend the hearing. Upon confirming that the appellant was notified of the re-scheduled date and time, the panel proceeded to consider the appeal in her absence as it is authorized to do under section 86(b) of the EAR.

PART F – REASONS FOR PANEL DECISION

The issues on appeal are whether the ministry reasonably concluded that:

- (a) the appellant was not eligible for a hardship grant under section 5 of the EAA to replace \$93 of income assistance spent to replace the lost October bus pass;
- (b) the appellant was not eligible for a crisis grant under section 59 of the EAR to cover the cost of the replacement October bus pass; and
- (c) the appellant was not eligible for a replacement IA cheque under section 92 of the EAR

The ministry based its reconsideration decision on the following legislation:

Crisis supplement

EAA

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

Pursuant to the EAR:

Crisis supplement

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, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.

(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.

(4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:

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

(c) if for clothing, the amount that may be provided must not exceed the smaller of
(i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and

(ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.

(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 income 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 (4) (b) or (5) or both, 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.

Hardship assistance

Hardship assistance

5(1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that

- (a) is eligible for it, and
- (b) is not eligible for income assistance.

Replacement cheque

Replacement of lost or stolen assistance cheque

92 If satisfied that an unendorsed assistance cheque has been lost or stolen, the minister may issue a replacement as long as,

- (a) in the case of theft, the matter has been reported to police, and
- (b) in the case of loss or theft, the recipient
 - (i) makes a declaration of the facts, and
 - (ii) undertakes to promptly deliver the lost or stolen cheque to the minister if it is recovered.

Analysis

Hardship assistance

The appellant stated that she requested HA in order to recover the \$93 that she spent on the bus pass that was subsequently lost. While the appellant stated she applied to the "Bank of Welfare's hammock loan program" which is 100% repayable, she now maintains that she would like the \$93 re-issued as a non-repayable appeal supplement. The appellant's eligibility for an appeal supplement was not decided in the reconsideration decision and is therefore beyond the scope of this appeal.

The appellant argued that the HA reconsideration “raises constitutional questions and Charter challenges.” However, the Tribunal does not have the authority to decide constitutional issues by virtue of sections 44 and 45 of the *Administrative Tribunals Act* (“ATA”).

The ministry argued that the appellant was not eligible for HA for October 2017 because she was eligible for IA and she was issued \$323 IA for the month of October 2017. On the ministry’s interpretation of section 5 of the EAA, “a person cannot be eligible for both income assistance and hardship assistance in the same month.”

Panel’s decision - Hardship assistance

Section 5 of the EAA authorizes the minister, subject to the Regulations, to provide HA to persons who are eligible for it **and** who are not eligible for IA. It is clear on the evidence that the appellant was eligible for, and indeed received, IA for October 2017. She received her support entitlement for that month via Direct Deposit. As a consequence, the appellant was not eligible for HA for the month in question.

The panel therefore finds that the ministry reasonably determined that the appellant was not eligible for HA of \$93. The panel finds that the ministry reasonably concluded section 5(1) of the EAA could not be engaged to authorize a payment in the circumstances of this case.

Crisis supplement

The appellant stated that she requested HA rather than a crisis supplement for addressing her bus pass situation (and that she had requested a crisis supplement for insect spray which is not before us). The appellant maintains that the ministry unreasonably considered the crisis supplement provisions in her request regarding her lost bus pass because she did not request a crisis supplement for that item.

The ministry considered the request for the money spent to replace the lost bus pass under s. 59 of the EAR because it considered that provision to be most applicable to the appellant’s request. At the hearing, the ministry explained that while the appellant experienced “hardship” with respect to her lost bus pass, the HA provisions were not applicable to the appellant’s particular circumstances. A ministry worker determined that the crisis supplement regulation was the only legislation “that might possibly help the appellant.” The ministry explained that typically, the crisis supplement legislation applies to requests for food, shelter expenses, utilities, and clothing; however, the ministry will consider requests for other items that do not fit into these previously identified categories.

Based on the analysis of section 5 of the EAA [see separate heading above], the panel finds that it was reasonable for the ministry to also consider whether the appellant’s request could be addressed under section 59 of the EAR which governs crisis supplements. The ministry noted that section 4 of the EAA authorizes payment of a crisis supplement to a family unit that is eligible for it. To be eligible, the ministry must be satisfied that the four criteria under section 59(1) of the EAR are met. The requirements of s. 59(1)(a) and (b) are conjunctive, meaning that both branches of the test must be met.

At the reconsideration, the ministry accepted that the appellant was eligible for (and indeed receives) IA, that she required the crisis supplement to meet an unexpected need, and that she was unable to meet the expense or obtain the item because no other resources were available. However, the ministry determined that the appellant did not meet the final criterion under s. 59(1) because there was insufficient evidence that the failure to meet the expense would result in imminent danger to the appellant’s physical health. Specifically, the minister determined that the failure to replace the bus pass “in order to complete legal research” in libraries for the appellant’s litigation would not result in imminent danger to her physical health. The ministry acknowledged that the appellant may need to access

transportation “for reasons in addition to completing library research” but concluded that there was no evidence to establish an imminent danger to her physical health if she failed to replace her bus pass to access bus transportation.

The appellant argued that there is an imminent risk to her physical health because her October 2017 IA cheque was short by \$93 and that the ministry made “an inappropriate exercise of unimpeded discretion” by not considering the imminent risk to the appellant’s health that resulted from her decreased support funds. The ministry argued, in turn, that the appellant did not specify “what the imminent danger is to your physical health” and that “no evidence has been provided to establish there is an imminent danger to your physical health if the \$93 is not replaced.”

Panel’s decision - imminent danger to physical health

Section 59(1)(b)(i) of the EAR requires evidence of a direct link between not obtaining the crisis supplement for the requested item and imminent danger to physical health. The criterion is met only if the failure to obtain the crisis supplement to pay for or obtain the item will result in imminent danger to physical health. In this case, the appellant needed a replacement bus pass or \$93 to replace the IA funds that she spent to purchase the bus pass. The appellant argued that she will face imminent danger to her physical health if she does not receive the \$93 IA funds.

The panel finds that the ministry reasonably determined there was insufficient evidence of an imminent danger to health on the evidence in this case. As noted by the ministry, the appellant did not indicate what health risk she will face if she does not receive the \$93 of her IA that she spent to purchase a bus pass. The appellant indicated that she has medical conditions that are the basis for her court action against the ministry but there is no medical or other documentation to establish that she will face an immediate and serious health risk if she does not receive the \$93 or even a replacement bus pass. The panel recognizes that there may be health risks associated with a shortage in IA funds but the appellant has provided insufficient detail to confirm what those risks might be in her case. The panel therefore finds that the ministry reasonably determined that imminent danger to physical health under section 59(1)(b)(i) of the EAR was not established by the evidence.

In her reconsideration submission, the appellant argued that she meets the criteria set out in sections 59(5) and (6). These subsections address the cumulative amount of crisis supplements that may be provided to or for a family unit in a year rather than establish any additional basis for entitlement to a crisis grant. An applicant must still meet the criteria under s. 59(1) to be eligible for a crisis grant. In the reconsideration decision of November 8, 2017.

Replacement IA cheque

The appellant argued that she did not request a supplement under the ministry’s “lost and stolen legislation” to replace lost or stolen IA benefits. Instead, she requested HA of \$93 to make up the shortfall in her October 2017 IA funds. The ministry nevertheless considered section 92 of the EAR which applies to a lost “unendorsed assistance cheque”. The ministry argued that because the appellant received IA for October 2017, which was cashed by the appellant, she is not eligible for a replacement cheque for the \$93 that she spent on the bus pass that was subsequently lost.

Panel's decision - Replacement IA cheque

The panel finds that it was not unreasonable for the ministry to at least consider whether the appellant's request could be addressed under section 92 as there did not appear to be other statutory authority to authorize payment of the \$93. Section 92 of the EAR authorizes the ministry to issue a replacement IA cheque if it is satisfied that an unendorsed assistance cheque has been lost or stolen and, in the case of loss or theft, the client provides a declaration and undertaking with respect to the loss. The appellant acknowledged that she received her October 2017 IA cheque via Direct Deposit. The evidence indicates that she spent \$93 of her IA funds on a bus pass that was subsequently lost. As the appellant did not lose her "unendorsed assistance cheque", the panel finds that the ministry reasonably determined that the appellant was not eligible for a replacement cheque for \$93. The panel finds that the ministry reasonably concluded that section 92 of the EAR was not applicable in the circumstances of the appellant.

Conclusion

The panel finds that the ministry's reconsideration decision that found the appellant ineligible for hardship assistance, a crisis supplement, and a replacement IA cheque for her lost bus pass and \$93 shortfall in IA funds was a reasonable application of the legislation. The panel confirms the decision and the appellant is not successful in her appeal.