

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated December 21, 2017 which held that the appellant was not eligible for a crisis supplement for an elevator levy for repairs to his building's elevators pursuant to Section 5 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) and Section 57 (1) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). The ministry determined that the appellant failed to establish that, pursuant to section 57 (1) of the EAPWDR, his request for crisis supplement for an elevator levy met the requirements because he did not have other resources to meet his need for an elevator levy, and that failure to meet the expense of an elevator levy would result in imminent danger to the appellant's physical health.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR- Section 57

Employment and Assistance for Persons with Disabilities Act – EAPWDA- Section 5

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision included the following:

- Credit-line [Line of Credit (LOF)] Activity from Oct 15, 2017 to November 02, 2017.
- Confirmation of a Transaction on October 20, 2017 showing a withdrawal from a Life Income Fund (LIF).
- Copy of the ministry's required monthly reporting stub for the month of October 2017.
- A copy of a single page from a former EAAT decision (appeal # 2017-00247) with the ministry's position regarding that appeal circled.
- Request for Reconsideration (RFR), signed and dated December 11, 2017, which included a 5-page attachment that sets out the appellant's argument as follows:
 1. The ministry already stated a position that his request for a crisis supplement for the elevator levy met all the eligibility criteria but he was not eligible for the supplement because, at that time, he had almost exhausted the maximum amount for a crisis supplement for the year and the amount left over would not cover the entire levy. He is entitled to a claim for a crisis supplement that is twice his monthly assistance (\$3,842.12) once per year and he has not been given a crisis supplement in over year.
 2. Since the original application for a crisis supplement application for an elevator levy in November 2016, the condition of the elevators has not changed (one is shut down for repairs and one is servicing the building) and they continue to be an imminent danger to his physical health.
 3. He exhausted all other resources (friends and family) and could not come up with funds for the elevator levy. He continues to pay interest on the money borrowed from his LOC.

Evidence On Appeal

Notice of Appeal (NOA), signed and dated January 5, 2018, which included a 2-page attachment that sets out the appellant's argument as follows:

1. He had to use his [LIF] to pay off his LOC. However this money was for his future and now the lack of these funds poses a burden on his retirement.
2. He tried alternative resources such and family and friends but no one could loan or give him funds.
3. The elevators in the building are constantly breaking down and that hinders access for emergency responders. Therefore, his physical health is in imminent danger.

Evidence at the Hearing

At the hearing the appellant presented the arguments as listed in his NOA and added the following:

- He believes there are extenuating circumstances in his case that are important.
- In November 2016 the ministry approved a crisis supplements for upgrades to his condo building's fire alarm panel. In this case he used funds from his LOC to pay the levy and then cashed in some of his LIF to pay the LOC. The ministry reimbursed him in full for this expense and the situation is the same with the elevator levy.
- He needs the funds reimbursed to pay back his LIF to ensure he has money for his retirement. He depends on disability assistance, which is a fixed income, and he is physically not able to work due to his medical condition of degenerative disc disease with 5 slipped discs in his back. His wife has bursitis in both hips and some emotional problems.
- The elevators in the building service 19 floors (he is on the 5th floor) and they are 35 years old.
- The repairs to one of the elevators began in either October or November of 2017 and are scheduled for completion in either the end February or beginning of March of 2018. Until then one elevator will be shut

down (the one being upgraded) and two are servicing the building but are constantly breaking down which poses an imminent danger to his (and others') physical health as it hinders the response time for emergency responders.

- In response to a question the appellant stated that when he was approved for Person with Disability designation (PWD), he disclosed all of his financial information to the ministry. Therefore the ministry was aware that he had a LIF and yet still reimbursed him for the funds he used to pay for the fire alarm panel upgrades as a crisis supplement.
- In response to a question, the appellant stated that he does not regularly withdraw funds from his LIF but has in the past 3 years. He is on a fixed income and uses the LIF to supplement his income when necessary.
- In response to a question the appellant stated that the only reason he was denied his original request for a crisis supplement for the elevator levy was because he had already received a crisis supplement that same year for the fire alarm panel upgrades and not because he did not meet the legislative requirements.

At the hearing the ministry relied on its reconsideration decision and added the following:

- If alternative resources are used (as they are in this case) the ministry cannot consider a crisis supplement. The ministry is the payer of last resort. In this case the appellant had other means (the LIF) to pay for the elevator levy.
- The failure to reimburse the appellant for the elevator levy does not pose an imminent danger to his physical health.
- The ministry's previous decision granting a crisis supplement for a fire alarm panel is not relevant because the full picture of what was before the ministry at the time is not available to the panel, and the ministry may have made a mistake in that decision.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision which found that the appellant failed to establish that his request for a crisis supplement for an elevator levy could not have been met by other resources and that failure to meet the expense of an elevator levy would result in imminent danger to the appellant's physical health, as required by Section 57 (1) of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 5 of EAPWDA provides as follows:

Disability assistance and supplements

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

Section 57 of EAPWDR provides as follows:

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*.

(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 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 (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

The Appellant's Position

The appellant's position is that, pursuant to section 57 (5) and (6) of the EAPWRD, he is annually entitled to twice the amount of his monthly PWD assistance as a crisis supplement. The appellant argued that the ministry already stated a position that his request for crisis supplement for the elevator levy met all of the eligibility criteria except that he had almost exhausted the maximum amount of the crisis supplement for the year and therefore, was not eligible. Since it has been over 1 year since he was approved for his last crisis supplement he is entitled to another one. The appellant also argued that there are extenuating circumstances in his case as the money used from his LIF to pay the elevator levy was for his retirement future and since he lives on a fixed income, he is physically unable to work due to his medical condition, and the shortage of these funds will be a burden on his retirement. The appellant further argues that he has approached family and friends but no one is able to help him with this need. Finally the appellant argues that "there is still a greater chance of imminent danger to physical health, due to these elevators constantly breaking down" which could slow down the response time for first responders and leave him in distress in an emergency situation.

The Ministry's Position

The ministry argued that the appellant had resources available to him to pay for the elevator levy as he used his LOC to meet the immediate need for the funds and then (on October 20, 2017) he was able to transfer \$18,296.93 from his LIF to fully pay his LOC, which included paying for the \$7347.44 elevator levy. The ministry also argued that the appellant has failed to establish that there is an imminent danger to his physical health if the ministry does not does not reimburse him the requested amount.

The Panel's Decision

Section 57 (1) (a) of the EAPWDR states that the minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if the family unit or 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 ministry considers the failure to meet the expense or obtain the item will result in imminent danger to the physical health of a member of the family unit.

In the case of the appellant, the ministry determined that the need to pay a \$7347.44 elevator levy was an unexpected expense. Although the appellant argued that the ministry already stated a position that his request for a crisis supplement for the elevator levy met all of the eligibility criteria with the exception of exceeding the annual maximum, as outlined in the page from a previous Tribunal decision, the panel finds that this was a previous request considered by the ministry at a different point in time and each request must be considered by the ministry on the basis of the current evidence before the ministry.

Available Resources

The appellant stated that he requires the ministry to reimburse him for an amount equal to twice the amount of his monthly PWD assistance towards the cost of an elevator levy because of his extenuating circumstances. The appellant argued that he paid for this levy from his retirement savings which will create a financial burden on him in his retirement. The Panel finds that the ministry reasonably determined that, under Section 57(1)(a) of the EAPWDR, the appellant must show he has canvassed other resources as the ministry is the 'payer of last resort;' meaning if a recipient of assistance has other resources available, he or she must first exhaust those resources before turning to the ministry for funds. In this case, the appellant had a LOC, which he accessed to immediately pay for the elevator levy. He later accessed \$18,296.93 from a LIF to pay off the debt on his LOC. Although the appellant argued that he approached his friends and family for funds and they were not able to help, he was ultimately able to pay the elevator levy from his own resources. The panel finds that the appellant demonstrated that he had resources available to him to meet his need of an elevator levy and that he used these resources. As a result, the panel finds that the ministry's decision which determined that the appellant had alternative resources available to meet his need of funds to pay the elevator levy was a reasonable decision pursuant to section 57 (1) of the EAPWDR.

Imminent Physical Danger

The appellant argued that one of the elevators in his building is shut down for repairs while the others are constantly breaking down and this poses an imminent danger to his physical health because emergency responders could be delayed in their response time. The ministry determined that the appellant has not demonstrated that his physical health is in imminent danger. The panel notes that the elevator levy has been paid to the building strata in full and therefore it is not the failure to pay the elevator levy that is causing the delay in the repairs to the elevators or causing the working elevators to constantly break down. The panel notes that the requirement in Section 57(1)(b) of the EAPWDR is that the failure to meet the expense will result in imminent danger to the physical health of any person in the family unit. In the appellant's case, the possibility of a delay in emergency responder's response time is not an imminent danger but rather a potential danger that may or may not occur, and this possibility is not due to the failure to meet the expense, which has been paid by the appellant, but due to the progress of the work on the elevators, which is under the control of the strata. The panel finds that the appellant is requesting the ministry to reimburse him for the withdrawal from his LIF and not to cover the cost of repairs to the actual elevators. As a result the panel finds that the ministry reasonably determined that the appellant has not established that the failure to reimburse his LIF for the funds he used for an elevator levy will result in an imminent danger to his physical health as required by section 57 (1) of the EAPWDR.

Conclusion

The panel finds that the evidence establishes that the ministry was reasonable in its determination that all of the criteria set out in Section 57 (1) of the EAPWDR have not been met by the appellant. As a result the panel finds that the ministry's decision to deny the appellant's request for a crisis supplement for an elevator levy was a reasonable application of the legislation and was reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful in his appeal.