

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Social Innovation (the Ministry) Reconsideration Decision of February 14, 2018 in which the Ministry determined that the Appellant was ineligible for a crisis supplement to assist with the cost of dumping fees because she did not meet the legislative criteria set out in Section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation.

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 a supplement to cover dumping fees would result in imminent danger to her physical health; and
- that the Appellant did not have alternate resources available.

PART D – RELEVANT LEGISLATION

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

Employment and Assistance for Person with Disabilities Regulation (EAPWDR), Section 57(1)

PART E – SUMMARY OF FACTS

The Appellant is a sole receipt of disability assistance with a dependent daughter.

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

1. A Request for Reconsideration, signed and dated February 2, 2018, which states:
 - since the first request for assistance with the dumping fees, the state of disrepair has become more pronounced;
 - the Appellant will suffer additional financial hardship if she is subjected to the \$150 fine and possible additional fines; and
 - the Appellant has used her PWD allowance and Goods and Services Tax Credit (GST Credit) to pay for her living expenses and has no extra funds to put towards the dumping fees.
2. A letter of notice dated December 5, 2017 from the Appellant's municipality (Letter of Notice) indicating that it had received a complaint regarding the Appellant's property, setting out the language in the municipality's untidy and unsightly premises bylaw, indicating that the Appellant had until January 7, 2018 to remedy the situation, and stating that the municipality would make an inspection after that date and if it was determined that the Appellant had not complied with the notice she might be subject to a \$150 fine.

Admissibility of Additional Information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) the information and records that were before the Ministry when the decision being appealed was made and "oral and written testimony in support of the information and records" before the Ministry when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of the panel established under section 24 of the EAA: to determine whether the Ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant. That is, panels are limited to determining if the Ministry's decision is reasonable and are not to assume the role of decision-makers of the first instance. Accordingly, panels cannot admit information that would place them in that role.

In her Notice of Appeal (NOA) dated February 28, 2018, the Appellant stated that she was asking the Ministry to "honour (its) original decision ... to pay for the dumping fees for three loads of debris to be removed from (her) property" in order that she could avoid a municipal fine. She wrote that she was unable to complete the cleanup because of her disability, and that she had "never accessed the funds for the final two dump loads". She indicated that she had received the Letter of Notice which threatening to fine her if she did not remove the remaining debris from her yard, and that she could not afford to pay the dumping fee because she had to pay for her "mortgage, food, heat/electricity, telephone, car insurance, gas, and a bus pass for her daughter, in addition to other expenses".

The Panel admitted the evidence in the NOA relating to her statement that she had never accessed the 2016 crisis supplement for the other two dump loads and her argument that she could not afford to pay the dumping fee because it was information in support of evidence that the Ministry had at the time that the Reconsideration Decision was made. However, the Panel did not admit the Appellant's evidence

that she was unable to complete the cleanup because of her disability because there is insufficient evidence that it was in support of information that the Ministry had at reconsideration.

At the hearing the Appellant introduced a monthly record of her family unit income and expenses for the 2017 calendar year in the form of a two page spreadsheet (Income and Expense Statement) providing the following information:

- Income for 2017 from all sources of \$23,725;
- Expenses for 2017 of \$24,729, comprising mortgage, property taxes and other household expenses totaling \$14,987, daily living expenses totaling \$4,406 for groceries, transportation expenses totaling \$5,063, and personal expenses (clothing and Christmas gifts) totaling \$274; and
- A net income shortfall for 2017 totaling \$1,003.

The Ministry did not object to the admissibility of the Income and Expense Statement submitted at the hearing. The information in the Income and Expense Statement supports the Appellant's statement provided in her Request for Reconsideration that she had used her PWD allowance and the GST Credit to pay for her living expenses and has no extra funds to put towards the dumping fees. As it provides evidence of the Appellant's ability to meet expenses, the Panel admitted the additional testimony contained in the Income and Expense Statement as being in support of information and records that were before the Ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the EAA.

At the hearing, the Appellant stated that she disputes the Ministry's contention that the funds are available. She stated that she lives in chronic poverty and summarized the information provided in the Income and Expense Statement. The Appellant also identified a few expenses that were not included in the Income and Expense Statement, including the \$20 a month cost of a cell phone for her daughter so that her daughter could call for help if she needed it, the cost of a \$200 veterinarian's bill for her daughter's pet, and the licensing costs associated with her daughter obtaining her driver's permit. She explained that when she was originally cited under the municipality's untidy and unsightly premises bylaw in April 2016 and was subsequently provided with a crisis grant to cover 3 trips to the disposal site, she was not aware that it was a "use it or lose it" approval requiring that she act on it immediately. She also explained that the approval she obtained was verbal, and that the Ministry representative with whom she dealt at the time had told her to "go and do it and submit your bill". She said that her disability made it very difficult for her to do all the work necessary to complete the task. She explained that she had to borrow a trailer from a local community services organization, attach it to her car, load the trailer with debris, and drive it to the municipal disposal site, and that the \$81 fee for each load was the cost that the municipality charged for disposal, based on the weight of the load. Any other costs associated with the disposal were not claimed. She stated that the municipality has been very understanding and was aware that she is appealing the Ministry's decision, and as a result they have not fined her yet.

At the hearing the Ministry relied on its reconsideration decision and confirmed the Appellant's understanding that the Ministry had approved a crisis supplement to cover the cost of dumping fees for three loads of debris in 2016.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the Ministry's reconsideration decision dated February 14, 2018, wherein the Ministry denied the Appellant a crisis supplement for dumping fees.

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

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, 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
- (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 ...

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Ministry's Position

The Ministry's position is that it is unable to approve the Appellant's request for a crisis supplement because some of the criteria under EAPWDR 57(1) have not been met. Specifically, the Ministry was satisfied that the Appellant receives disability assistance (the first criterion). However, the Ministry was not satisfied that the crisis supplement was required to meet an unexpected expense or that the Appellant did not have the available resources to meet the expense. The Ministry did not address the requirement under EAPWDR 57(1)(b) (that failure to meet the expense would result in imminent danger to the physical health of any person in the family unit or the removal of a child under the *Child, Family and Community Services Act*) in its Reconsideration Decision.

Appellant's Position

The Appellant's position is that, in response to her request to cover the cost of dumping fees for the disposal of three loads of debris that she submitted sometime after receiving the original citation in April 2016, she received approval from the Ministry to cover those costs in the form of a crisis supplement. While she was able to arrange for one load to be disposed of, the cost of which was covered by the Ministry on July 16, 2016, she was unable to complete the work at that time due to her disability. She argues that the Ministry should continue to honour its earlier commitment. She also argues that she cannot afford to cover the cost of removal of the remaining two loads as her monthly expenses exceed her monthly income, and she will be in even greater financial hardship if she has to pay the \$150 municipal fine.

The Panel's Decision

The Existence of an Unexpected Expense or Unexpected Need

Section 57(1)(a) of the EAPWDR states that one criterion which 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. In its Reconsideration Decision, the Ministry found that the need for dumping fees was not unexpected because "this appears to be an ongoing issue dating back to at least July 2016 (and) the need to keep (the Appellant's) property up to code is not unexpected."

The Oxford Dictionary defines a "crisis" as "*a time of intense difficulty...*" or "*a time when a difficult or important decision must be made*". The fact that the difficulty has to be urgently resolved to effectively address the crisis is implied in the definition, and the Panel finds that prompt use of the supplement is a reasonable expectation of the Ministry, as not using the supplement upon approval is incongruous with the need to address a crisis. Therefore, it is reasonable for the Ministry to assume that the Appellant had resolved the crisis with the supplement provided in 2016. In addition, in light of the fact that the need to dispose of the debris was known in 2016, the Panel finds that the Ministry's determination that the need for debris removal was not unexpected at the time that the December 2017 crisis supplement was requested was a reasonable application of legislation in the Appellant's circumstances and reasonably supported by the evidence.

Whether Failure to Remove the Debris Would Result in Imminent Danger to 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. As noted above, the Ministry does not address this criterion in its Reconsideration Decision.

Whether there are Resources Available to the Family Unit

Section 57(1)(a) of the EAPWDR states that a condition 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 stated that it was not satisfied that the Appellant did not have the resources available to make reasonable efforts to comply with the municipality's order but did not provide its reasons for reaching this conclusion.

The legislative test is whether or not a family unit is able to meet the cost of the expense from any resources available to it. Given that income or allowances are received over a monthly period, that most household costs must also be met over the same monthly cycle, and that the Appellant's Income and Expense Statement for the month of December 2017 shows that the she had a net shortfall of \$33.59, the evidence shows that the Appellant did not have the resources available to meet the expenses for the month following receipt of the Letter of Notice. Therefore, the Panel finds that the Ministry's determination that it was not satisfied that the Appellant did not have the resources available to meet the expenses was not reasonably supported by the evidence.

Conclusion

Section 57(1) of the EAPWDR states that the Ministry may provide a crisis supplement to or for a family unit that is eligible for disability assistance if 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** the Ministry considers 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. Therefore all of these conditions must be met for the applicant to be eligible for a crisis supplement. As the Panel has found that the Ministry reasonably determined that the expense was not unexpected, the Panel finds that the Ministry's decision to deny the Appellant a crisis supplement to cover the cost of dumping fees was a reasonable application of the applicable enactment in the circumstances of the Appellant. Therefore the Ministry's decision is confirmed. The Appellant is not successful in her appeal.