

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (ministry) reconsideration decision dated April 18, 2018 which held that the appellant was not eligible for a crisis supplement for a bed 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, a crisis supplement for a bed was necessary:

- to meet an unexpected expense or one that was unexpectedly needed; and
- that failure to meet the expense of a bed or obtain a bed would result in imminent danger to his physical health.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR- Section 57 (1)

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 reconsideration included:

1. A letter (Letter) dated February 9, 2018 which is not signed and the author is unknown. In part, the Letter stated:
 - The bed purchased by the ministry in 2015 was stolen by the appellant's landlord and he was forced to buy his own bed in June 2017.
 - A person died in his bed leaving blood and bodily fluids all over the bed and bedding.
 - It is unsafe for the appellant to sleep on this bed as he could be exposed to toxins that would exacerbate his health conditions.
 - The stress of dealing with the crisis supplement request is having a negative impact on his health.
 - A bed was requested in June 2017 but the appellant's third party administrator did not request assistance from the ministry until December 2017.
 - Medical documents outlining the appellant's health conditions and letters from different community organizations that the appellant works with, are provided with the Letter (the panel notes that no additional evidence such as medical documents and support letters was submitted).

2. Request for Reconsideration (RFR) signed and dated April 6, 2018.

Evidence On Appeal

Notice of Appeal, signed and dated May 8, 2018, in part stated that the ministry was aware in June 2017 that the appellant's bed was soiled with blood.

Evidence At The Hearing

At the hearing the appellant presented the following documentation:

- Health supplement information sheet 11 diet supplements (HSIS 11) which is signed by the appellant's physician and dated January 10, 2017. The physician indicated that the appellant requires a 'restricted sodium diet', 'diabetic diet' and 'high protein diet' due to 'chronic bacterial infection' and 'hepatitis C'. The physician also wrote "please ensure patient has diabetic ensure supplements with each meal daily".
- A letter dated January 4, 2017 from a social worker with the Ministry of Children and Family Development (MCFD) Youth Services Team (MCFD letter). The MCFD letter addresses concerns MCFD had regarding the appellant's housing. The MCFD letter makes a case to have the appellant secure 2-bedroom accommodations in preparation for his son returning to live with him once the son reached the age of majority.
- A letter dated May 18, 2016 from a community case worker from a local organization. The letter described the circumstances that led to the appellant's need to pay for a storage facility for his furniture and makes a plea for help from the ministry to cover the cost of the storage facility.
- A note (the physician's note) from the appellant's physician signed and dated April 4, 2016. In the note the physician stated "patient having persisting fungal infections around (his genitals), he needs antifungal creams to help with his ongoing fungal rash. Please ensure he is covered for his antifungal cream".
- 2015 T4A in the name of the appellant's son.
- 2015 T4A in the name of the appellant.
- A cheque for \$257.63 dated January 18, 2017 issued by the ministry to the appellant.
- Bank statement dated July 14, 2017 which indicated that the appellant had an overdraft balance \$616.31 in his chequing/savings account, \$5631.97 in investments and a balance owing of \$3725.54 on his credit card.
- 2-page Payment Explanation Sheet from Service Canada regarding the appellant's Canada Pension Plan (CPP) disability benefits. This document is dated July 19, 2017.

- A 2-page letter from a community case worker for the same local organization as the letter dated May 18, 2016. This letter, dated May 25, 2018, reiterates much of the information that was provided in the February 9, 2018 letter that was before the ministry at the time of reconsideration.

At the hearing the appellant presented verbal evidence which related to his financial situation both past and present. The panel notes that the ministry has conceded that the appellant does not have the resources to pay for or obtain a bed. Therefore the summary of facts will focus only on the appellant's testimony that is relevant to the issues addressed in the ministry's reconsideration decision; namely was the need for a bed unexpected or unexpectedly needed and will failure to obtain a bed cause imminent danger to the appellant's physical health.

At the hearing the appellant, in part, stated that:

- He suffers from diabetes, liver disease and exposure to black mold which caused an infection in and around his genitals. This is an ongoing fungal infection.
- In June 2017 his friend's pancreas burst while he was sleeping in the appellant's bed. This soiled the appellant's bed. He could no longer use his bed, due to the fear that the blood and bodily fluids would cause further health problems, so he threw it out.
- He informed the ministry of the soiled bed in June 2017 via his third party administrator.
- He did not have the resources to have the bed sanitized or cleaned.
- Currently, he is sleeping on the floor with a simple sheet on the floor. This adds to his fungal infection, increases the chronic bacterial infection he suffers from and causes his liver to hurt.

When questioned, the appellant stated that:

- He was homeless for 13 months from 2015-2017 and therefore did not have a bed.
- He does not have recent documentation from his physician to demonstrate that sleeping on the floor is exacerbating his medical conditions; namely that sleeping on the floor causes his medical condition to worsen and therefore his physical health is in imminent danger.

At the hearing the ministry relied on its reconsideration decision.

Admissibility of Additional Evidence

The ministry objected to the admittance of the all of the documents evidence presented by the appellant at the hearing because the ministry was of the opinion that the documents were not relevant to the issues at appeal.

On review of the evidence, the panel notes that the MCFD letter, the May 18, 2016 and May 25, 2018 letters from the case worker, both of the 2015 T4As, the cheque from the ministry, the bank statement and the CCP payment explanation sheet are in support of or corroborate the evidence that was before the ministry at the time of reconsideration. The panel therefore finds that the listed documents are admissible as they are 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*. However, as stated previously, the ministry has conceded that the appellant does not have the resources to pay for or obtain a bed, therefore the panel places little weight on all new evidence relating to finances. The panel also finds that while the May 18, 2016 and May 25, 2018 letters make reference to the appellant's medical conditions they do not indicate how his current sleeping arrangement (sleeping on the floor) exacerbate his conditions, and furthermore since both letters are authored by community case workers and not a medical practitioner, the panel calls into question the community case workers' authority to speak on medical matters. For these reasons, the panel places little weight on the May 18, 2016 and May 25, 2018 letters.

On review of the evidence, the panel notes that the HSIS 11 and the note dated April 4, 2016 from the appellant's physician are in support of or corroborate the evidence that was before the ministry at the time of reconsideration. The panel therefore finds that these documents are admissible as they are 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*.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision which determined that the appellant failed to establish that his need for a crisis supplement for a bed was an unexpected expense or was unexpectedly needed, and that failure to obtain the bed would result in imminent danger to the appellant's physical health, as required by Section 57 (1) (a) 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(1) 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*.

The Appellant's Position

The appellant's position is that someone bleeding to death on his bed created an unexpected need for a bed and that sleeping on the floor is an imminent danger to his physical health as it exacerbates his fungal infection and hurts his liver.

The Ministry's Position

The ministry's position is that the appellant's need for a bed is not unexpected or a bed is not unexpectedly needed. The ministry also argued the appellant failed to provide enough information to establish that failure to provide a crisis supplement for a bed could result in imminent danger to the appellant's health. Since the appellant has not met all of the legislative criteria required to be eligible for a crisis supplement for a bed, pursuant to section 57 (1) of the EAPWDR, he is not eligible.

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.

Unexpected Need or Expense

In its reconsideration decision, the ministry acknowledged that someone's death in the appellant's bed was unexpected and that the appellant has recently incurred extra electricity expenses, but no evidence has been provided to confirm the damage to the bed or to confirm that the bed was unable to be cleaned or sanitized. As a result, the ministry was not satisfied that the appellant has an unexpected need for a new bed at this time.

The panel notes that the appellant was not able to provide evidence to demonstrate that the bed was damaged as a result of someone's pancreas bursting on the bed. The panel notes that the appellant did not provide evidence to demonstrate that the bed was beyond cleaning or sanitization. The panel finds that evidence does not demonstrate that someone dying on the bed created an unexpected need for another bed.

The panel finds that the ministry reasonably determined that the appellant failed to establish that she needs a bed unexpectedly or that it was an unexpected expense, pursuant to Section 57(1) of the EAPWDR.

Imminent Danger to Physical Health

In its reconsideration decision the ministry noted that the damage to the appellant's bed and level of toxicity have not been established. The ministry noted that the Letter is not signed and it is unclear who wrote it. Therefore the ministry is unable to determine that the writer of the Letter is qualified to confirm that the appellant's health is being negatively impacted by sleeping in the soiled bed. The ministry further noted that the appellant is currently sleeping on the bed and it does not consider this to reflect a situation where the appellant's health is in urgent danger.

The panel notes that the appellant stated that he was homeless for most of the time after someone died in his bed in June 2017, and that for the past several months he has been sleeping on the floor. The panel finds that there is no evidence to support the ministry's contention that the appellant was sleeping in the bed at the time that the reconsideration decision was made. However, the panel also notes that 'the Letter' stated that the appellant *could* be exposed to toxins that exacerbate his health conditions. However, neither 'the Letter' nor the appellant provided evidence that the bed had toxins or that if the toxins existed, they would exacerbate the appellant's medical conditions (liver disease and exposure to black mold). In 'the HSIS 11' which is dated January 10, 2017, the physician indicated that the appellant suffers from chronic fungal infection. In the 'note' dated, April 4, 2016 the physician indicated that the appellant suffers from 'ongoing fungal rash'. The panel notes that the evidence demonstrates that the appellant's fungal infection and rash predates him sleeping on the floor. The panel also notes that at reconsideration or at the hearing the appellant was unable to provide evidence to demonstrate that sleeping on the floor has caused an exacerbation of his medical conditions and/or that there is an imminent danger to his physical health.

The panel finds that the ministry's conclusion that there is not sufficient information to establish that failure to meet the cost of a bed will result in imminent danger to the physical health of the appellant, pursuant to Section 57(1) of the EAPWDR, was reasonable.

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 a bed 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 at appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one)

 UNANIMOUS BY MAJORITY

THE PANEL

 CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:*Employment and Assistance Act*Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b) **PART H – SIGNATURES**

PRINT NAME

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/05/29

PRINT NAME

Simon Clews

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/05/29

PRINT NAME

Carla Tibbo

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/05/29