

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated June 21, 2018 which held that the appellant was not eligible for a crisis supplement to pay rent for the month of May 2018, pursuant to Section 5 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and Section 57 (1)(a) and (b)(i) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

The ministry determined that the appellant had no resources available to pay his rent pursuant to Section 57 (b)(i), and that failure to meet the expense of rent would result in imminent danger to his physical health pursuant to Section 57 (1)(a). However the ministry determined that the appellant's need for rent was not an unexpected expense or unexpectedly needed pursuant to Section 57 (1)(a).

PART D – RELEVANT LEGISLATION

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

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

PART E – SUMMARY OF FACTS

The appellant did not have his appeal package at the time of the hearing but elected to continue with the hearing despite this.

The evidence before the ministry at the time of reconsideration consisted of:

1. 10-Day notice to end tenancy for unpaid rent or utilities addressed to the appellant and dated May 14, 2018.
2. Request for Reconsideration (RFR), signed and dated June 5, 2018, stated, in part, the following:
 - “my wife, who usually pays the rent while I supply groceries, moved out without my knowing and took the rent money”
 - “she was taken off of the ministry file April 11th...”.
 - “the April 25th cheque was used to pay bills (hydro, phone ,cable and 2 cell phones) and buy groceries”.
 - “the money I am receiving now that I am living by myself barely covers my expenses”.

Evidence On Appeal

Notice of Appeal (NOA), signed and dated June 27, 2018, which, in part, stated the following:

- “when I confronted [my wife] about moving and after I phoned [the ministry] about our file she told me [the ministry] had her mixed up with someone else and everything was fine, as she had done this before”.
- “thinking nothing was wrong and expecting rent to be paid, I went ahead and paid all our bills, including a larger than normal grocery shop”.
- “By the time I clued in, rent wasn’t paid”.
- “I never said I was able to make payment arrangements, fortunately management has worked with me in getting this paid”.

Evidence at the Hearing

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

- He did not know that his wife was moving out and while she was moving out the police made him sit on the sofa so that he would stay away from her.
- His wife paid the rent and he paid everything else.
- He called the ministry one week before cheque issue day and was told that everything on his file was fine. At that time he was not told that his wife was taken off of his file or that his shelter costs would be reduced on the upcoming cheque for May 2018.

At the hearing the ministry relied on its reconsideration decision and added that in the NOA the appellant stated that he confronted his wife about moving and therefore he must have had some indication that his wife was moving out. The ministry also stated that the maximum allowable limit for a sole recipient for shelter costs is \$375. Even if the \$375 amount was paid out to the appellant, which is not possible without eligibility, it would not be enough to prevent his eviction because his rent was \$688.

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 minister when the decision being appealed was made and “oral and written testimony in support of the information and records” before the minister when the decision being appealed was made – i.e. information that substantiates or corroborates the information that was before the minister 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 this case, the panel found that the NOA's reference to "when I confronted [my wife] about moving and after I phoned [the ministry] about our file she told me [the ministry] had her mixed up with someone else and everything was fine, as she had done this before" and "a larger than normal grocery shop", provided additional detail or disclosed information that was not in support of the information addressed in the reconsideration decision. Accordingly, the panel has not admitted this new information from the NOA as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision that the appellant failed to establish that his need for a crisis supplement for shelter expense was an unexpected need or unexpectedly needed pursuant to 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.

The relevant legislation provides as follows:

EAPWDA:

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.

EAPWDR:

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 is that his wife left unexpectedly and without paying the rent. As a result, his need for rent was unexpectedly needed.

The ministry's position is that the circumstances that led to the appellant's rent not being paid are unclear. The ministry argued that the appellant was aware that his wife left April 30th and therefore he was aware at this time that he needed to pay his own rent. As he was aware the May rent was due and did not use his resources to pay his rent, the ministry is not satisfied that the need for \$668 to pay rent is unexpected. Since the criteria of section 57(1)(a) have not been met, the appellant is not eligible for a crisis supplement for shelter to pay rent for the month of May 2018.

The Panel Decision:

The panel notes that the ministry argued that the amount \$688 cannot be issued to the appellant pursuant to the legislation and that the appellant, as a sole recipient, is eligible for shelter costs of only \$375. The panel finds that making a determination on the amount of funds a recipient is eligible for is not within its jurisdiction. Therefore, the panel will not address any matters regarding the amount the appellant is eligible to receive.

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 that failure to meet the expense or obtain an item will result in imminent danger to physical health or the removal of a child under *Child, Family and Community Services Act*.

Unexpected Need or Expense

With respect to whether shelter costs are unexpected or unexpectedly needed, the ministry argued that the appellant was aware that his wife left on April 30th and therefore he was aware at this time that he needed to pay his own rent. The appellant does not deny knowing this information on April 30, 2018 and acknowledges that he called the ministry on said date to inform them that his wife moved out. The appellant argued that his wife usually paid the rent and he paid all the other expenses. He did not realize until April 30, 2018 that his May 2018 rent was not going to be paid, as he would normally expect per his arrangement with his wife. The panel notes that the ministry, which acknowledged that it knew about the change on the appellant's file, has presented insufficient evidence that the appellant had prior knowledge that his wife was leaving and that this would affect his shelter eligibility. The argument that the ministry has presented amounts to speculation. The panel finds that the ministry was unreasonable to conclude that one-day notice is sufficient notice to deem the cost of rent as not unexpected, especially since the division of financial responsibilities, such as they were, was a regular agreement for the appellant and his wife and was suddenly altered.

At the hearing the ministry argued that the appellant had some indication that his wife was leaving because in his NOA he stated "when I confronted [my wife] about moving and after I phoned [the ministry] about our file she told me [the ministry] had her mixed up with someone else and everything was fine, as she had done this before". The panel finds that the NOA and some of the information contained within it, specifically the additional information identified in Part E above, was not before the ministry at the time of reconsideration. The panel finds it unreasonable for the ministry to justify or explain its decision at the appeal hearing by relying on information that it did not have access to or knowledge of at the time it made its decision.

For these reasons, the panel finds that the evidence does not support a finding that the appellant did not meet the criteria set out in section 57(1) of the EAPWDR and therefore, the ministry was not reasonable to find that the appellant was ineligible for a crisis supplement for shelter.

Conclusion:

The panel finds that the ministry's reconsideration decision, which determined that the appellant was ineligible for a crisis supplement for rent, was not reasonably supported by the evidence, and therefore rescinds the decision. The appellant is successful on 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)

2018/07/20

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/07/20

PRINT NAME

Simon Clews

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/07/20