

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“ministry”) reconsideration decision, dated 31 July 2018, which determined that the Appellant was not eligible for a crisis supplement for clothing because he did not meet the criteria set out in section 59 of the Employment and Assistance Regulation (EAR). The Ministry determined that the appellant had not demonstrated that:

- the item(s) was unexpectedly needed;
- failure to obtain the item(s) would result in imminent danger to the physical health of a person in the appellant’s family unit or removal of a child; and
- there were no resources available to the family unit to meet the need.

### **PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation, Section 59.

## PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included the following:

### **Request for Reconsideration**

The appellant's Request for Reconsideration dated 19 July 2018, stated:

*I believe I should be eligible for a crisis clothing supplement because I do meet both #2 & #4 of the eligibility conditions.*

*I meet condition #2 because my unexpected expense is my lack of employability due to loss of valid identification, because of this unexpected occurrence I can no longer generate legal income & because I do not want to participate in illegal work I am forced to reach out to government systems for getting off the street instead of criminal activities which many people in my circumstances would turn to. The cost of getting back into the workforce is an unexpected cost.*

*I meet condition #4 because I do not have adequate clothing to keep me dry and mobile so that I am able to walk to the places where I receive free food and clothing – [community resource organization names omitted]. Exposure to elements often negatively affects my health which in turn affect my ability to collect food & cans/bottles for return.*

### **Notice of Appeal**

In the Notice of Appeal dated 14 August 2018, the appellant provided the following reasons for appeal: *I wear women's clothing because its all I can find because the ministry failed to inform me about my request for valid I.D. when I had been held pending for over a month. Therefore, I cannot obtain legal work & I can not afford proper clothing to walk around to free food locations.*

### **At the Hearing**

#### Appellant

The appellant argued that the cause of his crisis, which he describes as trying to become not homeless, is not being outlined or recognized in the reconsideration decision. He argued that his crisis is not having money for food or clothing and needing to walk everywhere to collect cans and bottles. He argued that the assistance he receives is not enough to cover expenses and he doesn't have essentials. He argued that he is now in women's clothing, sandals and shorts and needs to get ready for winter. He argued that he was ready to not be homeless months ago and this has been held up. He stated that his ability to obtain employment has been delayed due to a ministry error in processing his application for valid identification. He argued that the legislation and services provided by the ministry are tailored to people above his economic demographic and that he is too poor for services. He spoke about the opportunity costs associated with attending the hearing, including missing free breakfast and lunch, as well as the social costs every time a person has to talk about their crisis. He argued that when he filled out the initial application, he didn't know anything about it because, while he has been homeless for quite some time, he is new to accessing services. He thought the process would be quick and simple but he is being denied based on unguided information he provided. He stated that he is not angry with individual ministry workers because he understands that they are working within a framework and he recognizes why he has been denied.

#### Ministry

The ministry relied on the reconsideration decision.

### **Admissibility of Additional Information**

The panel finds that the information presented in the appellant's Notice of Hearing and his submissions at the hearing consist of a combination argument and reiteration of information that was before the ministry at reconsideration. As such, the panel finds that there is no information before it requiring an admissibility determination under s. 22(4) of the *Employment and Assistance Act*.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's reconsideration decision dated 31 July 2018, which held that the appellant was not eligible for a crisis supplement because he had not demonstrated that all legislative criteria in section 59(1) of the *Employment and Assistance Regulation* had been met, was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

The ministry was not satisfied that the appellant had demonstrated an unexpected need for clothing. The ministry was not satisfied that the appellant had provided sufficient evidence to demonstrate that failure to obtain funds would place the appellant's physical health in imminent danger. In addition, the ministry found that the appellant had not demonstrated that there were no resources available to cover the cost.

The legislation provides:

### **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*.

Section 59(1) of the EAR allows the minister to provide a crisis supplement to a family unit that is eligible for income or hardship 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. The EAR requires that the following three criteria be met: 1) the item or expense is unexpected, 2) there are no resources available to meet the expense, and 3) failure to meet the expense will result in imminent danger to physical health or removal of a child.

The panel notes that, in the reconsideration decision, the ministry erroneously referred to the almost identical section 57(1) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) rather than section 59(1) of the *Employment and Assistance Regulation*.

As well, the panel notes that Appendix B to the reconsideration decision, in which the legislation is reproduced, also contains an error. In Appendix B section 59(1) begins: **The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if.** This is not correct; Section 59(1) of the EAR begins: **The minister may provide a crisis supplement to or for a family unit that is eligible for income assistance or hardship assistance if.** The panel notes this error for clarity purposes as the appellant is in receipt of income assistance and not disability assistance. Therefore, this appeal is concerned with a crisis supplement under the EAR (income assistance) and not the EAPWDR (disability assistance).

The panel finds these errors to be non-material, as the ministry did not deny the appellant's crisis supplement on the basis that he was not eligible for income assistance and the remaining requirements in sections 57(1) of the EAPWDR 59(1) of the EAR are the same.

### Unexpected Need

Section 59(1)(a) states the applicant must require the supplement to meet an unexpected expense or obtain an item unexpectedly needed. In the reconsideration decision that ministry concluded that the legislation does not contemplate an unexpected event in an individual's life such as job loss or lack of employment that in and of itself did not result in an unexpected expense. The ministry argued that clothing is an ongoing expected expense and the appellant has not demonstrated an unexpected need. As well, the ministry representative at the hearing indicated that the crisis supplement is not intended to provide for work clothing, such as steel toed boots, as there are other benefits available for that purpose. The appellant argued in his Request for Reconsideration that his unexpected expense is his lack of employability due to the loss of valid identification. In the Notice of Appeal and at the hearing, the appellant reiterated this argument, stating that obtaining valid identification has been delayed due to a ministry error but that he is in the process.

The panel finds, based on the information provided, that the Ministry's conclusion that the Appellant has not established his need was unexpected or unexpectedly needed as required under Section 59(1)(a) was reasonably supported by the evidence. In reaching this conclusion, the panel notes that the appellant has explained his situation and provided information about his personal condition; however, the panel finds that the appellant has not provided information that is consistent with the legislated requirement to demonstrate that this personal situation led to an unexpected need for clothing.

### No Resources

Section 59(1)(a) of the *EAR* requires an applicant requesting a crisis supplement to satisfy the minister that he or she is unable to meet the expense or obtain an item unexpectedly needed because there are no resources available to the family unit. In the reconsideration decision the ministry noted that the appellant has stated that he gets clothing from free piles at community resource locations and that he has \$100. The ministry argued that the appellant has not explained why he cannot continue to access those same community resources or why he cannot use some/all of his \$100 to purchase clothing. The appellant has not addressed this criterion in his Request for Reconsideration argument. Similarly, this criterion is not addressed in the Notice of Appeal. The panel notes that the decision to be reconsidered did not indicate that this criterion had not been met. At the hearing the appellant argued that he has no resources and gets what he can by "scooping up free stuff", accessing thrift stores, and using coupons. The panel finds that the ministry's determination that this criterion has not been met is a reasonable application of the legislation because the information provided by the appellant is that there are resources available for this purpose.

### Imminent Danger

Section 59(1)(b) states in order for a crisis supplement to be granted it must be demonstrated that the failure to meet the expense or obtain the item will result in the imminent danger to the physical health of the person or removal of a child. In the reconsideration decision, the ministry argued that the word 'imminent' connotes a degree of immediacy that has not been demonstrated in the appellant's circumstances. The ministry's position is that the appellant did not provide sufficient evidence to demonstrate on a balance of probabilities that failure to obtain the crisis supplement requested would place his physical health in imminent danger. The ministry argued that a need for work clothes does not suggest that the appellant's physical health is in danger. The appellant argued that he meets this condition because he does not have adequate clothing to keep himself dry and mobile so he can access free food and clothing. He argued that exposure to the elements negatively affects his health, which impacts his ability to collect cans/bottles and food. At the hearing, the appellant also argued that he is in imminent danger because he will freeze as the weather gets colder and he doesn't own rain gear or cold weather gear. As well, the appellant argued that he has to access free clothing; he walks 20 km per day and doesn't have proper clothing and shoes.

The Panel finds that there is no suggestion in this appeal that removal of a child under the *Child, Family and Community Service Act* is a possibility. The panel notes that the appellant has provided arguments that he is living in a situation that is not healthful. However, the panel finds that the information provided by the appellant does not satisfy the requirement of imminent danger to physical health because of a

failure to meet an unexpected expense or obtain an item unexpectedly needed. As such, the panel finds that the evidence reasonably supports the ministry's conclusion that there is insufficient evidence to demonstrate that this criterion has been met.

**Conclusion**

The panel finds that the ministry's reconsideration decision, which held that the appellant was not eligible for a crisis supplement to purchase clothing because he did not meet all of the legislated criteria in section 59 of the EAR, is a reasonable application of the legislation in the circumstances of the appellant and is reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not 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

Jennifer Smith

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/05/09

PRINT NAME

Keith Lacroix

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/05/09

PRINT NAME

Donald Stedeford

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/05/09