

### PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision, dated August 23, 2018, which denied the appellant’s request for a crisis supplement to cover the cost of a new furnace. Although the ministry was satisfied that the appellant did not have the funds to pay for a new furnace, the ministry was not satisfied the other requirements of section 57 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were met, specifically:

- The ministry was not satisfied the appellant’s need for a new furnace—when the application was made in July 2018—was unexpected as the appellant had made three previous abandoned requests to the ministry for assistance with the furnace since late 2016 and the furnace had not been operational since at least April 2017; and
- The ministry was not satisfied the appellant was in imminent danger as a result of the furnace not working given it was summer.

### PART D – RELEVANT LEGISLATION

*Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), Section 57

## PART E – SUMMARY OF FACTS

The information before the ministry on reconsideration included the following:

- The appellant and his spouse have Persons with Disabilities designations.
- On October 16, 2016, the appellant's third party service provider advised the ministry that the appellant's furnace was broken and unsafe to use. The ministry requested 2 quotes and information to confirm that the repair was required. No further information was provided so the ministry considered the request abandoned.
- On April 12, 2017, again the third party service provider advised the ministry that the appellant had shut down his furnace due to rusted out pipes. The ministry requested quotes to repair the furnace, but no further information was provided and the request was considered abandoned.
- On December 14, 2017, the third party service provider again advised that the furnace was broken and requested help to repair or replace the furnace. The ministry again requested more information and quotes, but none were received so the request was considered abandoned.
- On July 9, 2018, the third party service provider made a request on behalf of the appellant for a crisis supplement noting that the furnace has been an ongoing concern since February 2012 but nothing had been done as the appellant did not provide quotes.
- On July 12, 2018, the ministry denied the appellant's request for a crisis supplement as the need to replace the furnace was not unexpected; the minister was not satisfied that the appellant's physical health was in imminent danger without heat in July; and the request was for more than the maximum cumulative limit of crisis supplements for the year.
- On August 13, 2018 the appellant submitted his request for reconsideration, including two additional quotes and indicating that the appellant was trying to prepare for winter, that being without a furnace will negatively impact his health and the health of others in his house, that the need for a furnace started as an unexpected expense and has gotten worse, and that as an elderly disabled person, his health and well being needs to be considered.

The documents before the ministry on reconsideration included the following:

- An undated quote from a plumbing and heating company for a 97% American Standard Gold S9V2 furnace for \$4,850 before tax, and 92.1% American Standard 92 for \$ 3,450 before tax;
- A quote dated July 24, 2018 from a heating and air conditioning company for a ML193UH045X)24B Lennox Merit Series 93% gas furnace for 3,764.25 after tax (with further upgrade options);
- A quote dated July 9, 2018 from a heating company outlining three different furnace options from \$4,294.02 to \$5,318.26 with GST included;
- A crisis supplement request made on behalf of the appellant, dated July 9, 2018, setting out the reasons for the request including a severe winter storm in February 2012, and the family being in poor health due to dampness and cold in the house. The request also outlines that the appellant had explored alternative resources in the community. The request also included a list of repairs made to the appellant's home since July 2012.
- An email chain between the ministry and the third party service provider noting the July 9, 2018 request for a crisis supplement; the ministry's denial of that request; and the appellant's request for a reconsideration of that decision. The third party service provider notes that the appellant has had double pneumonia a couple of times and had to be kept in blankets during the winter to help him keep warm.

In his notice of appeal, the appellant wrote: "See attachments – both have health issues. Very high Hydro bills."

At the hearing the appellant was represented by an advocate. Both the appellant and the advocate made submissions to the panel. The appellant described how his furnace broke a few years ago in the winter and the fan was repaired with assistance from the ministry. At a later date, the gas company advised the appellant that his current furnace was not safe as elements were worn out and there was a danger of an explosion. The furnace has been turned off since then. The appellant described how an aboriginal service organization attempted to help him to make an application for a new furnace but a conflict between that organization and his third party service provider led to that application being abandoned in 2016. He says the ministry has "put him in circles" since then. He says he has suffered discrimination as a First Nations person, he is also disabled, and he deserves heat. He

has suffered from the cold and from pneumonia. He submitted that it was not fair of the ministry, after asking for three quotes, to have made its decision on the crisis supplement after he had submitted only one quote but while he was in the process of obtaining the second and third quote. In response to questions from the panel, the appellant said he has electronic heaters that he has used in the winter, but it makes his electricity bill very high.

The appellant's advocate submitted that the ministry's position that the weather was warm in July is "off the mark." She said while it is true that winter is expected, it should not be expected that the appellant should live with no furnace. There is a basic human requirement for heat. The advocate requested that the panel consider the appellant's history of pneumonia and said the appellant should not be prejudiced in his appeal by the former requests to the ministry being abandoned.

At the hearing, the ministry representative reiterated the rationale from the reconsideration decision: the several abandoned requests for repairs/replacement of the furnace meant that the need was not unexpected; and the request being made in the summer meant that there was no imminent danger to the appellant's physical health. The ministry representative also said the ministry makes decisions concerning crisis supplements when the information is before it to do so.

## PART F – REASONS FOR PANEL DECISION

### The Issue on Appeal

The issue on appeal is whether the ministry's decision that denied the appellant's request for a crisis supplement to cover a new furnace on the basis that the requirements of section 57 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were not met, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the appellant's circumstances.

### The Legislation

Section 57(1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the crisis supplement, 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.

### **Appellant's Position**

The appellant's position is that the ministry's process has not been fair; while winter is expected, it should not be expected that the appellant should live with no furnace; the appellant should not be prejudiced in his appeal by the former requests to the ministry being abandoned; and the appellant's history of pneumonia should be considered in making a decision on imminent danger to physical health.

### **Ministry's Position**

The ministry's position is that, while the appellant's need for a new furnace may have been unexpected when the furnace originally broke, the furnace has not been operating since at least April 2017 and was the subject of ministry requests for information in April and December of 2017. In July 2018, the need for a new furnace could not be unexpected; further the appellant provided no information to show that something unexpected prevented the appellant from saving the funds for a new furnace between the time he learned of the need for a replacement and July 2018. The ministry is not satisfied that the failure to provide the appellant with a crisis supplement for a new furnace in July 2018 would result in imminent danger to his health given temperatures during the summer, and given that a new furnace is not the appellant's only source of heat as heaters were brought in last winter to keep the appellant warm.

### **Panel's Decision**

Section 57(1) of the EAPWDR only allows the ministry to provide a crisis supplement where:

- (1) the supplement is to meet an unexpected expense or obtain an item unexpectedly needed (s. 57(1)(a));
- (2) there are no resources available to the family unit (s. 57(1)(a)); and
- (3) the minister considers that failure to meet the expense or obtain the item will result in imminent danger to physical health of any person in the family unit (s. 57(1)(b)).

While the original ministry decision referred to the legislative requirement that the cumulative amount of crisis supplement available to the family unit in the year must not exceed 2x the amount of disability assistance provided to the family in the month during which the request is made, the reconsideration decision does not place any reliance on this provision so it is not considered on this appeal.

The ministry accepted that there were no resources available to the family unit, so the second requirement above was satisfied.

With respect to the first requirement that the supplement is to meet an unexpected expense or to obtain an item unexpectedly, the panel finds that, given the need for a new furnace or furnace repairs has been ongoing for a number of years before the application for a crisis supplement, the need to obtain the item (i.e., the new furnace) could not be said to be unexpected in July 2018. While the appellant argues he should not be expected to live without a furnace, the fact is he *has* lived without an operating furnace since at least April 2017 so he should have expected the need to replace the furnace since at least that time. While the panel appreciates that the appellant feels the ministry and the dynamic between the third party service provider and an aboriginal organization may have contributed to a crisis request not being made when the expense was unexpected, the panel can only assess the reasonableness of the ministry's reconsideration decision made in August 2018. The panel finds there is no

evidence that the expense was unexpected at the time the request for a crisis supplement was initially made in July 2018 or reconsidered in August 2018. Therefore, the ministry's decision that the first requirement was not satisfied because neither the item nor expense was unexpected is reasonable on the evidence.

With respect to the third requirement that failure to meet the expense or obtain the item will result in imminent danger to physical health of any person in the family unit, the panel notes that "imminent" suggests urgency such that danger to physical health is about to occur. The ministry made its reconsideration decision in August when there was no imminent danger from an inoperable furnace. Further, the ministry noted the material before it indicated the appellant used electric heaters to keep warm the previous winter—something that the appellant confirmed on appeal. While the appellant argues he has suffered from pneumonia, there is no medical evidence before the panel (nor before the ministry at reconsideration) to suggest an imminent physical danger. In all these circumstances, the panel finds the ministry's determination that the third requirement was not met was reasonable on the evidence.

### **Conclusion**

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a crisis supplement for the cost of a new furnace because the requirements of section 57(1) of the EAPWDR were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision. The appellant is not successful in his 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

Kathy Grant

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/10/22

PRINT NAME

Kevin Ash

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/10/22

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/10 22