

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision of August 24, 2018 in which the Ministry determined that the Appellant was ineligible for a crisis supplement to purchase a backup battery for her pellet stove 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 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 Person with Disabilities Regulation (EAPWDR), Section 57

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The appellant is a sole recipient of disability assistance.

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

- A Request for Reconsideration, signed and dated September 11, 2018 which included a written letter from the appellant that stated that:
 - she had no alternative resources to purchase a backup battery for her pellet stove and security cameras;
 - her father and sister are not able to assist her; and
 - the power goes out in her rural area often lasting from 10 hours at a time to several days and her pellet stove cannot be run without a battery because the stove fan and auger will stop and the pellets already burning will continue to burn and smoke up the house which she could die from.
- An internet printout explaining how pellet stoves operate and things to take into consideration when using a generator versus a battery;
- A letter from the appellant to the ministry requesting assistance to purchase a backup battery to replace her existing backup battery for her pellet stove because hers has deformed and is no longer functional;
- Two estimates for batteries, one in the amount of \$3,013.92 and the other for \$2929 before tax;
- Letters from the appellant's sister and father that indicated they cannot help the appellant; and
- Internet printout pages with information that explains how the appellant's pellet stove battery backup system operates.

On the Notice of Appeal form signed by the appellant on October 4, 2018 she attached a letter that made three points:

1. That she owns a portion of the house and that she pays her father rent for his portion and that they both own it but cannot afford to buy a battery; that she has a generator but it is not big enough to run the pellet stove, that it can only charge the battery; emphasized that a battery is required to run the pellet stove on A/C power or her house will be smoked up and that failure to follow the owners manual could result in property damage, bodily injury or even death; explanation as to how her stove operates; that her smaller generator works well enough, if she had a battery for it to charge, and that a big generator is not appropriate for her needs.
2. That she is questioning why the ministry, in its first denial package, told her that she had demonstrated that #1, regarding her need being unexpected, was satisfied yet in the reconsideration decision it wasn't. The appellant explained that she is not a battery expert to explain how it failed, but that it is bloated and was expected to last longer than the four years she's had it, but it didn't, and she needs to remove it from her house because she's afraid it may start her house on fire.
3. That because her stove does not have a battery and her generator does not run the stove itself, it can only charge the battery, if the electricity were to go out the stove would not operate in compliance with the owners manual instruction and could result in bodily injury or death; and that she could possibly die by the house smoking up if the power goes out while she is sleeping.

The appellant included the crisis supplement policy and wrote that she read on the ministry web site that if the crisis supplement is for heating, there is no limitation policy and no twelve month maximum and that the ministry is mistaken. The appellant also explained where she resided, and that it was 45 km's from the nearest centre, not 8.5 km as the ministry had written. The appellant included two pages from the pellet stove owner's manual, highlighting that the stove must be properly installed and maintained or a house fire may result.

The ministry provided a written submission for the hearing which included the following response to the Appellant's Notice of Appeal:

Unexpected Need

The ministry's position is that this legislated requirement may be met based on the information provided that her backup battery had failed and was expected to last longer than four years and because the original ministry decision had determined that this legislative requirement had been met.

No Available Resources

The ministry questions whether the appellant's old battery had a warranty that she could explore as an alternate resource because the appellant had written that it had only lasted four years and it should have lasted longer. The ministry argues, in regards to who should be responsible for the expense of keeping appliances operational, that the secondary owner may be responsible to fund a portion of the backup battery, regardless of the ability to afford one, and is therefore considered an alternate resource. The ministry also questions the appellant's source of heat because another heat source would be an alternate resource. They argue because the appellant's submissions relate only to her concern of smoke, not heat, that it would be unusual for a pellet stove to be the sole source of heat in a home in this province. The ministry wrote that they had reviewed the detailed information that the appellant provided regarding her specific pellet stove, and that the company website indicated that a replacement backup battery cost is only \$55 USD as compared to the quotes submitted for approximately \$3,000 so they are therefore not satisfied that the appellant does not have the resources to purchase the manufacturer's backup battery because she does not indicate that she has considered this substantially less expensive option. The ministry wrote that the appellant's argument that her generator is small and must be filled with fuel frequently to keep the stove fan running when the power goes out and they argue that although this may be inconvenient, it is nonetheless a resource that is available to her to blow the smoke out of her home.

Imminent Danger to Physical Health

The ministry argues that the appellant has not explained whether she has smoke detectors to alert her, and that she does not explain why she cannot leave her home if it gets smoky, preventing danger to her health. The ministry also argues that the appellant's generator can be used to blow the smoke from her home until the embers in the pellet stove stop emitting smoke. The ministry also wrote that the appellant does not explain how often her power goes out and they are not satisfied that her physical health is in imminent danger if she does not have a backup battery for her pellet stove because the appellant's power is currently on, and her pellet stove is currently operational, therefore her health is not in imminent danger. The ministry argues that the word imminent connotes a degree of immediacy that has not been demonstrated in her circumstances.

Crisis Supplement Limitation

The ministry writes, in regards to the maximum allowable for a crisis supplement under section (7) EAPWDR, that they are not satisfied that a backup battery would be considered "fuel" for heating, fuel for cooking meals, water and hydro and if a crisis supplement were provided for this item that it would be subject to the limitations of section 57(5) and (6) of the EAPWDR.

The ministry summarized their written submission by stating that their position is that the appellant's request for a backup battery does not meet all the legislative requirements for a crisis supplement as required by the EAPWDR.

The appellant did not provide additional information for the written hearing.

Admissibility of Additional Information

The panel admitted the appellant's written letter from her Notice of Appeal, in accordance with section 22(4) of the Employment and Assistance Act (EAA), because the information was in support of the records that were before the ministry at reconsideration.

The panel notes in the written submission that the ministry had done additional research and suggested that a possible resource for the appellant was a \$55 backup battery, as compared to the requested \$3000 estimate, which was not specifically information that had been before the ministry at the time of the reconsideration decision, however is in support of their argument that the appellant had other resources available to her. The panel admitted the ministry's written submission, in accordance with section 22(4) EAA, because it was in support of the records that were before the ministry at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's Reconsideration Decision dated August 24, 2018, wherein the ministry denied the Appellant a crisis supplement to purchase a backup battery for her pellet stove.

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 was a reasonable interpretation of the legislation in the circumstances of the Appellant.

The relevant legislation is as follows:

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*.

(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.

Panel Decision

Section 57(1) of the EAPWDR states that there are specific conditions that must be met to qualify for a crisis supplement. The panel must consider the facts of this case as it applies to the legislation.

The first condition is that the item must be for an unexpected expense, or an item unexpectedly needed.

The panel notes in the initial reason for denial of the backup battery for a pellet stove that the ministry determined that the appellant had met this condition, then, the reconsideration decision was that this condition had not been met, followed up by the ministry written submission where the ministry wrote that the appellant “may” meet this condition. The panel finds that the appellant did meet this condition as the appellant thought the battery would last longer than it did, and it was unexpected when it was no longer usable.

The second condition is that the appellant is unable to meet the expense or obtain the item because there are no resources available to the family unit.

The appellant’s position is that she is financially unable to pay for the battery, that she has sought out family assistance and they are not able to assist and that her generator should not be considered a resource as it cannot be used to run her stove, it only can charge the battery which is no longer usable.

The ministry’s position is that there may be other resources available to the appellant that she hasn’t explored, such as: although the appellant is part owner of the house, the other party is responsible to share in the cost; that the current battery may be under warranty; that the appellant may have an alternate source of heat in the home; that there may be less expensive batteries available that she could afford; and that her generator could be used to blow smoke from the home in the event of a power outage.

The panel finds it reasonable that the co-owner of the home, the appellant’s father, should also be responsible for any repairs and although the appellant provided a written letter from her father that he could not afford to pay, that this resource could be something the appellant could pursue. The panel notes that the appellant wrote that the pellet stove is her primary source of heat and there is no evidence in the appeal record to explain whether there was any other heating source available to her, so we cannot speculate whether there is, or is not, another source of heat available to her as a resource. The panel notes that the appellant provided a printout, specific to pellet stove battery backup, which indicated that the type of twelve volt battery that could be used are “deep cycle” or “deep discharging” which are commonly used batteries, and questions whether the appellant has explored other types of batteries that may be less expensive, in addition to the ones in the estimates she submitted. Therefore, the panel finds that the ministry was reasonable in determining that the appellant had not explored all resources available to her and did not meet this condition.

The third condition is that failure to obtain the item will result in imminent danger to the appellant’s physical health.

The appellant’s position is that if the power were to go out in the middle of the night while her pellet stove was operating and the battery could not cool the stove down, it would result in smoke in her house and her health would be at risk.

The ministry’s position is that the appellant has not demonstrated that failure to provide a backup battery for the pellet stove will result in imminent danger, as the battery is for backup and only required when there is a power failure, so there is no imminent danger.

The panel considers that the definition of imminent does indicate an immediate danger, and because the appellant’s pellet stove is only unable to work during a power outage, that there is currently no imminent danger to her. The panel finds that the ministry was reasonable in determining that failure to provide a backup battery for a pellet stove would result in imminent danger to the appellant’s physical health.

Section 57(7) of the EAPWDR allows for exemptions to the amount that the ministry may issue in crisis supplements in a twelve-month period.

The panel notes that the exemption cited in section 57(7)(a), which is for fuel for heating, would be the relevant exemption to consider as the others are for fuel for cooking meals, water and hydro, which do not fit the circumstances of the appellant. The panel considers that “fuel” would be the material burned in a heating source, such as propane, gas, wood or the pellets, not the heating device itself, so finds that the appellant’s request for a backup battery for her pellet stove to not be a fuel for heating, and therefore this section of legislation would not apply.

The panel notes that all three conditions of section 57(1) EAPWDR must be satisfied to be eligible for a crisis supplement and finds that the appellant did not meet all the conditions.

The panel finds that the ministry’s decision that the appellant was not eligible for a crisis supplement under section 57 EAPWDR was supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry’s decision in accordance with section 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.

The appellant is not successful on appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION: <i>Employment and Assistance Act</i> Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/> and Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Janet Ward	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY)

PRINT NAME Tina Ahnert	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)
PRINT NAME John Pickford	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)