



**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated December 10, 2018 in which the Ministry determined that the Appellant is not eligible for a crisis supplement for cost of repairing her gas furnace because she failed to meet all three of the eligibility criteria set out in Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 57(1).

The Ministry determined that two of the criteria in Section 57(1) were met, namely that the Appellant did not have the resources available to cover the cost of repairing the furnace and that the need to repair the furnace was an unexpected expense. However the Ministry was not satisfied that failure to obtain the furnace repairs would result in imminent danger to the Appellant's physical health.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 5*  
*Employment and Assistance for Persons with Disabilities Regulations (EAPWDR ) Section 57(1)*

[Redacted]

## PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of assistance with a Persons with Disabilities (PWD) designation.

The information before the Ministry at reconsideration included the following:

- Appellant's Request for Reconsideration (RFR) dated November 26, 2018, in which she states that she does not have electric baseboards and that she is currently using four space heaters to heat her home. She also stated that a local natural gas furnace maintenance company operating in her community had performed maintenance and repair services on her furnace two years ago;
- One page hand-written note bearing the name and address of the Appellant and dated November 19, 2018, providing quotes from three furnace repair companies showing hourly rates for service calls with the additional note "Repairs for Heating Natural Gas";
- Invoice from a plumbing repair company dated February 15, 2018 in the amount of \$358.04 for parts and labour associated with the replacement of a bathtub hot water tap and issues with toilet;
- Payment receipt from the same plumbing repair company dated February 16, 2018 in the name of the Appellant showing payment in full for the above-noted invoice.

### Additional Information Submitted after Reconsideration

In her Notice of Appeal (NOA) dated December 19, 2018, the Appellant states that the Ministry's decision is wrong because she does not have a reliable source of heat. She explains that she has been heating her home using 4 space heaters which "keep tripping the breakers". She also indicates that the temperatures are dropping and she has concerns that the water in the pipes could freeze causing plumbing issues that would require repair. She explains that the use of the space heaters will significantly increase her hydro bill and that the space heaters maybe both a fire hazard and a tripping hazard, pointing out that she is a disabled person who must wear a leg brace.

### Admissibility of Additional Information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence the information and records that were before the Ministry when the decision being appealed was made and "oral and written testimony in support of the information and records" before the Ministry when the decision being appealed was made, i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of a 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.

At the hearing, the appellant submitted the following additional written information:

1. Five photographs of portable space heaters, situated within her residence.
2. A calendar page of actual temperatures for the month of November, 2018. Available through the Weather Channel for the appellant's community.
3. A document titled "Be Wary of Heaters that Claim to save Money" document. Authored by an unknown source which includes a "Space Heater Cost" and "Electric Space Heater Consumption Chart" with dialogue.

The Ministry did not object to the additional evidence submitted by the Appellant. The Panel admitted the additional evidence as information in support of the information and records that were before the ministry at consideration.

At the hearing the Ministry relied on its Reconsideration Decision and stated that they acknowledged that the Appellant did not have "baseboard heat" within her residence but was currently using four electric heaters to heat her house. The Ministry stated that at the time of Reconsideration the appellant was utilizing four electric heaters to heat her home and had not given any information that she was in imminent danger to her personal physical health from the usage of those space heaters nor of the working condition of the space heaters.

[Redacted]

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the Ministry's Reconsideration Decision dated December 10, 2018 in which the Ministry determined that the Appellant is not eligible for a crisis supplement for the cost of repairing a gas furnace was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant. In particular, the Panel must decide whether the Ministry reasonably determined that the Appellant was not eligible for a crisis supplement for the cost of repairing the furnace because failure to obtain the furnace repairs would result in imminent danger to the Appellant's physical health, pursuant to EAPWDR Section 57(1).

The relevant legislation is as follows:

**EAPWDA**

**Disability assistance and supplements**

5 Subject to the regulations, the minister may provide ... 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 ... 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 ...

\* \* \*

*The Ministry Position*

The ministry's position is that two of the conditions have been met, namely that the appellant requires the supplement to meet an unexpected expense and that she is unable to meet the expense because there are no resources available her. However, the ministry has determined that failure to meet the expense will not result in imminent danger to the physical health of any person in the family unit. Therefore the panel must decide whether the ministry reasonably determined that the appellant was not eligible for a crisis supplement for the cost of repairing the furnace ***solely because failure to obtain the furnace repairs would result in imminent danger to the appellant's physical health.***

The ministry's position, as expressed in the reconsideration decision and at the hearing, is that the

requirement that failure to obtain the furnace repairs would result in imminent danger to the appellant's physical health has not been demonstrated because the appellant "*(has) not provided any information to explain why (she) is unable to continue to use the electric heaters*" and "*as a result, the minister is not satisfied that (her) physical health will be in **imminent** danger if (her) furnace is not repaired at this time*".

### The Appellants Position

The appellant's position is that the ministry should fund the cost of the furnace repair because:

1. ~~The space heaters she is using in place of the furnace keep tripping the circuit breakers;~~
2. The temperatures in the appellant's community are dropping as winter approaches;
3. Water in the pipes in the appellant's home could freeze, resulting in the need for plumbing repairs;
4. The additional costs associated with constantly running the space heaters over the winter months will significantly increase the appellant's hydro bill;
5. Space heaters might be a fire hazard;
6. Space heaters are a tripping hazard; and
7. Two of the four space heaters are no longer working at the present time.

### The Panel Decision

EAPWDA Section 5 states that the Ministry may provide a supplement to or for a family unit that is eligible for it. Both parties acknowledge that the Appellant is eligible for a crisis supplement.

EAPWDR Section 57(1) identifies the conditions which must be met in order for the Ministry to provide a crisis supplement to or for a family unit that is eligible for it. Those conditions are:

1. The family unit or a person in the family unit must require the supplement to meet an unexpected expense or obtain an item unexpectedly needed;
2. The family unit must be unable to meet the expense or obtain the item because there are no resources available to the family unit; and,
3. Failure to meet the expense or obtain the item will result in imminent danger to the physical health of any person in the family unit.

The Ministry position is that two of the conditions have been met, namely that the Appellant requires the supplement to meet an unexpected expense and that she is unable to meet the expense because there are no resources available to her. However, the Ministry has determined that failure to meet the expense will not result in imminent danger to the physical health of any person in the family unit.

The Panel Members deliberated on the evidence and documentation provided by the Ministry and the Appellant. The Panel Members find that the need for furnace repairs to be unexpected and that the Appellant has no resources available to her to meet the expense. The Panel Members find that there is no evidence to support the failure to obtain the supplement will result in imminent danger to the physical health of the Appellant or any person in the family unit. That the additional evidence accepted at the

hearing is in support of the information presented at Reconsideration and confirms the usage of space heaters in the home; the cost effect of electric heating; and weather temperatures of her community. The Appellant stated at the hearing that her water pipes have not been impacted by the weather conditions and heating situation. The Appellant also states that she has only 2 of the 4 heating units in working condition at the present time. The Panel Members note that the Appellant has not provided any evidence either in documentation or verbally of medical conditions affecting her physical health, that have arisen from the usage of the heating units.

The issue on this appeal is whether the Ministry was reasonable in its decision to deny the Appellant's application for a Crisis Supplement. That the Ministry states that two (2) of the three (3) criteria required in Section 57(1) EAPWD have been met, but that the remaining criteria under Section 57 (1)(b)(i) –“the minister considers that the failure to meet the expense or obtain the item will result in *imminent danger to the physical health of any person in the family unit*” has not been met.

### **Majority Reasons of Panel Members**

In the reconsideration decision, the ministry was satisfied that Appellant was not in *imminent danger to physical health to her or any person in the family unit*. That the usage of alternative heat source has minimized the urgency for the furnace repairs at this time.

The Panel Members conclude that at the time of the Reconsideration Decision, the decision was reasonable based on the evidence.

### **Conclusion**

The majority of the panel finds that the Ministry's Reconsideration Decision, which determined that the Appellant was not eligible for a crisis supplement for the cost of repairing a gas furnace, was a *reasonable application of the applicable enactment in the circumstances of the Appellant and reasonably supported by the evidence*, and therefore *confirms* the Ministry's decision. The Appellant is not successful in her appeal.

### **Dissenting Reasons of Panel Chair**

*Additional Comments with Respect to the Admissibility of Additional Evidence*

With respect to the additional written evidence contained in the NOA, at the hearing the Ministry stated that it was not aware of some of the additional information contained in the NOA, for example that the space heaters were tripping the breakers, and therefore objected to admittance of the additional evidence in the NOA.

The Panel accepted the additional evidence submitted in the NOA as evidence in support of the information and records that were before the Ministry at reconsideration because prior to its Reconsideration Decision the Ministry was aware that the Appellant was heating her entire home with four space heaters, and therefore this evidence is in support of the information and records before the Ministry at reconsideration.

At the hearing, the Appellant submitted the following additional written evidence:

1. Five photographs of space heaters, in situ: one in each of two bathrooms in the Appellant's home, one in the kitchen, one in the living room and one in the laundry room. (As there are 4 space heaters and 5 photographs, each showing a space heater, it is not clear which two of the photographs include pictures of the same space heater. However, because 3 distinct models are evident, it must be either the one used in one of the two bathrooms and the kitchen or the one used in the other bathroom and the living room.);
2. A screenshot of a page from a weather reporting website showing the actual average daily temperature for each day in the Appellant's community for the month of November 2018; and,
3. A one page document titled "Be Wary of Heaters that Claim to save Money" providing an analysis of the cost per kilowatt hour of electric space heaters and a heat consumption chart for electric base heaters set at different levels of output.

While the Panel admitted the additional written evidence as information in support of the information and records that were before the ministry at reconsideration, the Panel did not reach a consensus as to the weight that should be given to the new evidence. The Panel Chair would argue that the photographs should be given significant weight because they show the electric space heaters that the ministry knew were in use in situ, and that little weight should be given to the average monthly temperatures experienced in the community in November 2018 as they are not an indicator of future temperatures, and to the document showing cost per kilowatt hour of electric heat for two reasons: cost is not a criterion in EAPWDR s. 57 and the source of the information is not cited (and therefore its reliability cannot be assessed).

At the hearing, the Appellant provided additional oral testimony to the effect that two of the four space heaters were no longer working. In the Panel Chair's opinion, the evidence that two of the space heaters had stopped working is admissible because, as was the case with the evidence in the NOA, that information was in support of information that the Ministry had at reconsideration.

### *Reasons for the Panel Chair's Dissenting Opinion*

The Appellant's position is that the Ministry should fund the cost of the furnace repair because:

1. The space heaters she is using in place of the furnace keep tripping the circuit breakers;
2. The temperatures in the appellant's community are dropping as winter approaches;
3. ~~Water in the pipes in the appellant's home could freeze, resulting in the need for plumbing repairs;~~
4. The additional costs associated with constantly running the space heaters over the winter months will significantly increase the appellant's hydro bill;
5. Space heaters might be a fire hazard;
6. Space heaters are a tripping hazard; and,
7. Two of the four space heaters are no longer working.

The Panel Chair notes that, of the reasons provided, two (i.e. #3 and #4 above) clearly relate to costs and not imminent danger. Whether each of the remaining reasons might reasonably be considered an imminent danger to the Appellant's physical health is discussed in detail below, but first it is necessary to determine what is meant by "imminent danger" and "physical health", neither of which is defined in the EAPWDR.

The Cambridge Dictionary defines "imminent" as "*coming or likely to happen very soon*" (emphasis added), and "danger" as "something or someone that may harm you", so in context an "imminent danger" is something likely to happen very soon that might harm the appellant. The Oxford Dictionary defines "physical" as "*relating to the body as opposed to the mind*" and "health" as "*the state of being free from illness or injury*", so in context "physical health" means the degree to which an individual's body is free from illness or injury.

**The space heaters keep tripping the circuit breakers, two of the four space heaters are no longer working, and space heaters might be a fire hazard**

Webster's New World College Dictionary defines "*space heater*" as "*a small heating unit for warming the air of a single confined area, as a room*" (emphasis added). Therefore space heaters are not designed to heat a large area such as an entire home as an alternative to central heating devices, such as a natural gas or propane furnace or electric baseboard heaters. A circuit breaker "trips" or shuts off the electrical flow to protect the circuit from overheating and causing damage or the possibly of an electrical fire. The Panel Chair finds that the Ministry should have been aware that misuse of the space heaters might have resulted in the tripping of the circuit breakers and caused some of the space heaters to cease working, which might in turn increase the risk of a house fire, and that a house fire is clearly



something that represents a danger to the physical health of anyone living in the home.

### **Temperatures are dropping as winter approaches**

The likelihood of colder temperatures in the weeks and months immediately following the Appellant's request for a crisis supplement is very high in the Appellant's geographic location. This is borne out by climate data. The fact that November 2018 was warmer than usual in the Appellant's community does not mean that long term average temperatures for that geographic location might not be expected for the remainder of the winter. Colder temperatures are expected in the weeks to follow, and colder temperatures increase the necessary power output levels for space heaters to maintain an adequate temperature in the home (assuming there are higher power settings available), which increases power consumption and further increases the risk of fire. Inadequate additional power output availability increase the risk of the danger of hypothermia in extreme cold weather conditions.

### **Space heaters are a tripping hazard**

The Appellant states that she has a physical disability which requires a leg brace. As a result her mobility is compromised. She also argues that the electric cords that provide power to the space heaters create a tripping hazard, thereby increasing the risk of physical danger to the appellant. The photographs show that the electric cords in the living room and the laundry room are loosely placed on the floor. (The Panel Chair also notes that the photo of the two space heaters in the bathrooms might also be considered an electrical shock hazard as they are plugged in next to the bathroom sinks. However, this is not a hazard that was argued by the Appellant.) The Panel Chair finds that the Appellant's contention that the space heaters are a tripping hazard is a reasonable argument, and that the Ministry was not reasonable in failing to acknowledge that such a tripping hazard might put the Appellant's physical health in imminent danger.

### ***Conclusion***

Having reviewed and considered all of the evidence and the relevant legislation, and for the reasons provided above, the Panel Chair finds that the Ministry's Reconsideration Decision, which determined that the Appellant was not eligible for a crisis supplement for the cost of repairing a gas furnace, was not a reasonable application of the applicable enactment in the circumstances of the Appellant or reasonably supported by the evidence, and therefore would argue for a decision that would rescind the Ministry's decision. For this reason, had the Panel Chair's opinion been supported by one or both of the other Panel Members, the Appellant would have been successful in her 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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

January 18, 2019

PRINT NAME

Laurie Kent

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

January 16, 2019

PRINT NAME

Linda Smerychynski

DATE (YEAR/MONTH/DAY)

January 16, 2019