

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (Ministry) reconsideration decision dated January 9, 2019 which held that the appellant was not eligible for a crisis supplement for food pursuant to Section 4 of the Employment and Assistance Act (EAA) and Section 59 (1) of the Employment and Assistance Regulation (EAR).

The ministry determined that the appellant meets the criterion of subsection (1) of Section 59 of the EAR as the appellant is eligible for disability assistance. The ministry also determined that the appellant established that, pursuant to subsection (1) (a) that he did not have other resources to meet his need for food, and subsection (1) (b) that the failure to receive the requested crisis supplement will result in imminent danger to his physical health or would cause the removal of a child. However, the ministry determined that the appellant failed to establish that pursuant to subsection (1) (a), the request for a crisis supplement for food is to meet an unexpected expense.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance Regulation – EAR- Section 59 (1)

Employment and Assistance Act – EAA- Section 4

## **PART E – SUMMARY OF FACTS**

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

1. Request for crisis supplement – food application, signed and dated December 17, 2018, and stated that the appellant had '0' dollars left, was hungry, and missed the food bank. It also stated that the appellant does not have friends who can support him, he has no other resources until the next cheque date and that he must take his HIV medication with food otherwise it is not effective.
2. Request for Reconsideration (RFR), signed and dated December 24, 2018, which stated "in my case, there is imminent danger to my physical health because my HIV medication must be taken with food, and I've been missing my doses and I depend on this medication to be alive".

### **Evidence at Appeal**

1. Notice of Appeal, signed and dated January 16, 2019, which stated "I have a legitimate crisis and I am attaching all the evidence with this appeal".
2. A picture of the fungal medication bottle and a receipt for \$121.44. The medication bottle indicates that the prescription was filled on January 14, 2019.
3. Request for crisis supplement – shelter application signed and dated January 16, 2019.

### **Evidence Prior to the Hearing**

1. Letter, signed and dated January 17, 2019, from a social worker which stated that the appellant is a client of the local AIDS clinic, he suffers from post-traumatic stress disorder (PTSD) and anxiety and for this reason attending legal proceeding in person will be difficult and a teleconference hearing is requested.
2. Letter, signed and dated January 14, 2019, from a medical practitioner (MP) which stated that the appellant has a historical diagnosis of asthma.
3. Letter, signed and dated January 3, 2019, from another MP which stated that the appellant "experiences more difficulty with concentration during hearings or evaluations when there are other people in that space, due to his medical condition."
4. Letter, signed and dated November 20, 2018, from another MP which stated that the appellant has a nail fungal infection and he cannot afford oral antifungal treatment.
5. The appellant's bank statement dated January 19, 2019 – February 3, 2019, which indicated that the appellant had a balance of '0' dollars on January 28, 2019.
6. Letter, signed and dated January 28, 2019, from the appellant's sub-landlord, which confirmed that the appellant made a partial payment for his January rent on December 20, 2018 and the complete payment on January 23, 2019, whereas in the past the appellant always paid his rent in full prior to the date the rent was due.
7. An undated laboratory requisition for blood test for liver functioning.

### **Evidence at the Hearing**

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

- He depends on food for his HIV medication to work.
- He has been taking his HIV medication, which is paid for by MSP, for 6 years and during this it is always taken with food.
- He was diagnosed with a fungal infection on November 20, 2018 but could not afford the medication and it was not covered by MSP.
- He had to use his food and rent budget to pay for his nail fungal medication. As a result he has

been short on food leaving his HIV medication less effective and he has been short on his rent payments. As a result he had to submit an application for request for crisis supplement- shelter in January 2019.

- He was able to purchase the fungal medication on January 14, 2019.

At the hearing the ministry relied on its reconsideration decision.

***Admissibility of Additional Information***

The ministry objected to the admittance of all additional information because it was not before the ministry at the time of reconsideration and it is not relevant to the facts of this appeal.

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.

As such the panel determined that the following information is not admissible because it did not provide additional detail or disclosed information that was in support of the information addressed in the reconsideration. Accordingly, the panel did not admit this new information 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*:

1. The letter dated January 17, 2019 from a social worker is not admissible because the information regarding the appellant's PTSD and anxiety is new information that was not before the ministry at the time of the reconsideration decision. In addition the request for a teleconference hearing is not relevant to the issues at appeal.
2. The letter dated January 14, 2019 from a MP is not admissible because the information regarding the appellant's asthma is new information that was not before the ministry at the time of the reconsideration decision.
3. The letter dated January 3, 2019 from a MP is not admissible because the information regarding the appellant's ability to concentrate is new information that was not before the ministry at the time of the reconsideration decision. In addition the information is related to the request for a teleconference hearing which is not relevant to the issues in this case.
4. The letter dated November 20, 2018 from a MP is not admissible because the information regarding the appellant's nail fungal infection is new information that was not before the ministry at the time of the reconsideration decision.
5. The appellant's bank statement shows his balance from January 19, 2019 – February 3, 2019 is not admissible because it contains information for a period dated after the application for crisis for supplement-food, after the RFR and after the ministry's reconsideration decision and therefore is not relevant to the issues at appeal.
6. The undated laboratory requisition for liver tests is not admissible because the information regarding the appellant's liver functioning is new information that was not before the ministry at the time of the reconsideration decision.

The panel found that the letter dated January 28, 2019 from the sub-landlord provided additional detail or disclosed information that was in support of the information addressed in the reconsideration. Accordingly, the panel has admitted this new information 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 found that the appellant failed to establish that his need for a crisis supplement for food was an unexpected expense as required by Section 59 (1) (a) of the EAR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 59(1) of the EAR sets out the eligibility requirements for providing crisis supplement, as follows:

### **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 4 of EAA provides as follows:

### **Income assistance and supplements**

**4** Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

#### *The Ministry's Position*

The ministry argued that the expense of food and rent are ongoing and therefore are not unexpected or unexpectedly needed. Since the appellant could not establish that his need for food or rent was unexpected he did not meet the legislative criteria.

#### *The Appellant's Position*

The appellant argued that he has a fungal infection and the medication for it is not covered by MSP. In order to afford his fungal medication he had to use part of his food and rent money. However, since his HIV medication is only effective if taken with food, he requires a crisis supplement for additional food and has submitted a new request for crisis supplement for rent.

#### *The Panel's Decision*

The legislation requires that the crisis supplement is required to meet an unexpected expense or obtain an item unexpectedly needed, that there are no other resources available to the applicant and that failure to obtain an item will result in imminent danger to physical health or the removal of a child.

Section 59 (1) (a) of the EAR 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. The panel finds that the expense of purchasing food or to pay rent is not typically unexpected as the need for food and rent are ongoing expenses and that at the time of reconsideration the appellant failed to demonstrate otherwise.

The panel acknowledges that at the hearing the appellant explained that the need to borrow from his food and rent allowances was due the requirement to purchase medication for an unexpected medical issue. However the panel finds that this information was not before the ministry at the time of reconsideration and therefore is not a part of the evidence that the ministry could rely on to make its determination. As already indicated in this decision, the information regarding the appellant's need for fungal medication cannot be considered by the panel.

The panel finds that the appellant did not meet the requirement of an unexpected need for food because at the time of the reconsideration decision he failed to demonstrate or provide evidence that his need for food was unexpected or unexpectedly needed. The panel finds that the ministry was reasonable in determining that the appellant's request for a crisis supplement for food was not to meet the need for an unexpected expense and therefore the legislative requirements were not met.

### **Conclusion**

The panel finds that the ministry reasonably concluded that the evidence establishes that all of the criteria set out in Section 59 (1) of the EAR have not been met. The panel therefore finds that the ministry's decision to deny the appellant's request for a crisis supplement for food was a reasonable application of the legislation and was supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful at 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) 2019/02/06

PRINT NAME Jennifer Armstrong	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/02/06

PRINT NAME Rick Bizarro	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/02/06