

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated January 10, 2019 in which the ministry found that the appellant was not eligible for a crisis supplement under section 57 of the Employment and Assistance for Persons with Disabilities Regulation ("EAWDR") for fuel to heat his car. The ministry was not satisfied that the need for fuel was an unexpected expense and that failure to purchase fuel will result in imminent danger to the appellant's physical health.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation - EAWDR – section 57

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. A Request for Reconsideration (“RFR”) signed by the appellant on December 29, 2018 with an attached 4-page submission in which the appellant states his argument and provides the following information:

- While receiving disability benefits in another province (2002 - 2015), the appellant had additional support funds from his mother (a “financial gift” of \$6,000 per year plus medical and vehicle expenses). In December 2015, the appellant received a small settlement from litigation and no longer needed his mother’s help. The appellant expected that his mother would resume assisting him once he depleted his restitution.
- The appellant began living out of his car in May 2018 and a few months later, his mother experienced serious health problems and moved to a long-term care facility. Her expenses increased and the individual with power of attorney refused to provide the appellant with any of his mother’s money for support, including \$2,000 that he gifted to his mother when he received his restitution. The appellant explains that his mother agreed (by verbal agreement) to return the \$2,000 to him if the appellant was unsuccessful with his other litigation/appeals but the individual with power of attorney refuses to repay the \$2,000.
- The appellant currently has a legal action in progress against the ministry, in which he is claiming more than \$6,500 in retroactive disability benefits.
- The appellant previously lived out of a car in another province, during the cold season, with his mother financially assisting him with fuel expenses.
- Before moving to his car in May 2018, the appellant was living in an apartment. The appellant states that he was forced to vacate the apartment because he could no longer afford the rent of \$1,300 per month.
- The appellant suffered other financial losses (moving and storage expenses) when he was previously “forced to move out” of shared accommodations.

2. A letter from a physician dated December 9, 2015, stating that “cold winter conditions and summer heat and humidity pose serious health risks to (the appellant) in light of his diabetic condition.” The letter states further that the appellant’s condition includes “an open foot ulcer wound and blood glucose challenges.”

3. Notes to supplement the appellant’s service request for a \$600 heat crisis supplement. The appellant writes that a lack of funds for fuel means that he cannot leave the heat on in his car all night. In 2016-2017, he secured a 2-bedroom apartment with two room-mates who paid him \$875 per month for a \$1,300 monthly rental. The appellant states that he had to move out on April 30, 2017 due to problems with his room-mates among other factors. On his moving day, the appellant started residing in a one-bedroom apartment but indicates he could not stay there because the landlord would not allow him to rent out the bedroom to help with expenses. The appellant reports that he only gets two hours of sleep at a time (in his car), but he has a greater need for recuperative sleep due to pain and inflammation in his body. The appellant indicates that lack of heat also exacerbates his other conditions, including his partially amputated foot, osteomyelitis, and chronic diabetes.

4. A *Request for Crisis Supplement - Utilities*, signed by the appellant on December 5, 2018. The appellant states that his shelter is a car, and he receives \$52 per month (bus pass equivalent) from the ministry. His fuel costs exceed \$400 per month and he pays \$178 per month for car insurance. The appellant indicates that he needs to leave the car heater on as the temperature is zero degrees Celsius overnight and he requires more fuel for heat (maximum \$600).

5. Information from the ministry's record of decision which indicates:

- The appellant was denied a crisis supplement on December 27, 2018 and submitted an RFR on December 29, 2018. The ministry completed its review of the RFR on January 10, 2019.
- The appellant is a sole recipient with Persons with Disabilities ("PWD") designation. His file has been open since April 27, 2017.
- The appellant receives \$1,220.42 per month for disability assistance which includes \$758.42 for a support allowance, \$375 for a shelter allowance, \$35 for a diet allowance, and \$52 for a transportation supplement.
- The appellant has been residing in a rented car since May 2018 and the ministry's records indicate he pays \$387.09 per month to rent the car. A file review indicates that in April 2018, the appellant gave notice to leave his rented residence and moved into the rental car.

Additional information

The appellant filed a Notice of Appeal, received by the Tribunal on January 14, 2019 with a submission that the panel accepts as argument. At the hearing, the appellant summarized his argument and provided additional details regarding his situation which include the following:

- The appellant's file with the ministry was opened on April 17, 2017. The appellant made a petition to the court which resulted in his file being made retroactive to 2016. The appellant received \$5,900 in retroactive assistance for May 2016 - April 2017. In response to questions, the appellant clarified that the retroactive payment he received was for regular income assistance and his claim for retroactive PWD benefits (\$6,500) is still before the courts. The appellant states that he was designated as a PWD in 2017. He further advises that the first PWD cheque he received was for November 2017.
- The appellant pays \$400 per month to a car dealer, to rent the car that he is currently living in. He pays \$178 per month as a separate payment for car insurance. These payments, as well as his other expenses, come out of his monthly PWD allowance.
- The appellant's sleep problems (2 hours of sleep at a time) are temperature-related while living in his car. Most of the time, he turns on the engine every hour or two but he currently leaves the engine running all night due to the cold, or he turns it on whenever he feels cold. The appellant reports that he has not had problems with carbon monoxide because the car is an older model which allows a breeze to move through the car.
- The appellant applied for subsidized housing two years ago through BC Housing. He provided a medical application and a homelessness application to supplement his application for housing. The appellant explained that he requires appropriate ("physical handicap accessible") accommodation for his disabilities. The appellant notes that he forgot to mention his BC Housing application in his request for the crisis supplement.

The panel finds that the supplemental information is in support of the information and records that were before the minister at the reconsideration. The appellant's finances, expenses, and sleep problems are mentioned in the reconsideration record. While the BC housing application was not before the minister at the reconsideration, the ministry had no objections to the information and the panel finds that it is in support of the appellant's evidence about his challenges to find suitable housing (and related arguments). The panel admits the oral testimony under section 22(4) of the *Employment and Assistance Act* as evidence in support of the information and records that were before the minister when the decision being appealed was made.

The ministry provided argument at the hearing and did not submit any new evidence.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry reasonably concluded that the appellant was not eligible for a crisis supplement, under section 57 of the EAPWDR, for fuel to heat his car. On reconsideration, the ministry was not satisfied that the need for fuel was an unexpected expense and that failure to purchase fuel will result in imminent danger to the appellant's physical health.

The ministry based the reconsideration decision on the following legislation:

Pursuant to the 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*.

Analysis

At the reconsideration, the ministry accepted that the appellant has no resources available to meet the expense or obtain the item under section 57(1)(a) of the EAPWDR. Specifically, the ministry was satisfied the appellant has no available funds to buy fuel to heat his car and that he is no longer able to secure assistance from his mother. However, the ministry determined that the appellant did not meet the first criterion under section 57(1)(a), the requirement for an unexpected expense or unexpected need for the item. The ministry was also not satisfied that failure to meet the expense would result in imminent danger to the appellant's physical health pursuant to section 57(1)(b).

To be eligible for a crisis supplement, the ministry must be satisfied that the three criteria under section 57(1) of the EAPWDR are met for a family unit that is eligible for disability assistance. The requirements of sections 57(1)(a) and (b) are conjunctive, meaning that both branches of the test must be met.

Unexpected expense/ item unexpectedly needed

The ministry argues that crisis supplements are for "urgent situations that a person cannot reasonably plan for or anticipate." The ministry argues that the appellant has been living in his car since May of 2018 and would have been aware since that time that he would require money for gas to heat the vehicle when the weather got colder.

The appellant argues that it was unexpected that his mother would experience a health condition leaving him without the \$6,000+ support that she had previously provided for 15 years. The appellant states that he reasonably expected his mother to support him once he depleted his restitution and he also expected that she would repay him the \$2,000 as agreed. The appellant argues that it was unexpected that he would not have resources to pay for car heat. The appellant argues that having an unexpected lack of resources is equivalent to an unexpected expense under the legislation.

The appellant notes that he also has “past unexpected outcomes and happenstances” that were beyond his control. The appellant states that it was unexpected that he would get into a car accident that seriously injured his spine and it was unexpected that his litigation would not provide him with financial security.

Regarding these arguments, the ministry submits that it is not reasonable to expect that someone would give the appellant money on the basis that they had done so in the past. The ministry argues that since the appellant’s mother did not become ill until after May 2018, and the individual with power of attorney refused to repay the \$2,000 loan around that time (according to the appellant’s information), the appellant would have known since the summer that he would not be receiving assistance from his mother. In addition, the ministry argues that the appellant’s car accident and associated litigation happened some time ago, and the appellant would have known what his financial status was at the time he moved into the rental car.

Panel’s decision

The panel finds that the ministry reasonably determined the appellant’s fuel expenses or his need for fuel to heat his car was not unexpected. The appellant’s evidence indicates that he moved into the car in May 2018; that his mother suffered a serious health incident “a few months later”; and that the individual with power of attorney refused to pay him \$2,000 or release any of his mother’s funds around that time. In addition, the appellant was unsuccessful with his appeal litigation before he moved to BC in 2015 and while he received some funds from his court action against the ministry, his claim for retroactive PWD benefits is ongoing.

The appellant argues that his financial difficulties (which leave him unable to pay for fuel to heat his car) are the result of “recent and distant unexpected occurrences” but the panel finds that the ministry’s position is not unreasonable. The ministry argues that it is unrealistic for the appellant to expect his mother to continue to support him or to expect that litigation would certainly be successful. The evidence indicates that the appellant has known since May 2018 that he would need fuel to heat his car during cold weather. The panel therefore finds that the ministry’s position is reasonably supported by the evidence and the ministry reasonably determined that the criterion for an unexpected expense or need under section 57(1)(a) was not met.

Imminent danger to physical health

The ministry acknowledges that sleeping in a car without heat during winter would have a negative impact on a person’s health. The ministry argues that the appellant could temporarily stay in a shelter or use his disability assistance for temporary shared accommodations while he seeks a more preferable option. The ministry argues that because the appellant has other options for shelter, the criterion for imminent danger to physical health is not met.

At the hearing, the ministry expanded its argument and stated that while sleeping in a car without heat poses a health risk, sleeping in a car with the engine running is inherently unsafe. The ministry argues that it could be seen as negligent in providing a supplement to support people who choose to live in such a dangerous environment.

The appellant argues that he has no choice but to live in his car because he cannot afford suitable accommodations with the ministry shelter allowance of \$375 per month, especially given his need for accessible accommodations. The appellant states that shared accommodations are "untenable" due to a lack of rights for tenants among other factors. The appellant notes that he was "forced to move out" of two apartments before moving into the car. He was unable to afford the rent at the most recent apartment and his subsidized housing application has been pending for two years.

The appellant argues that his health issues are temperature-related and cold temperatures are especially bad for his diabetes. The appellant argues further that the letter from his physician is evidence that he faces imminent danger to health if he is unable to heat his car. The appellant submits that the ministry does not have the credentials to provide a medical opinion.

Panel's decision

Section 57(1)(b)(i) of the EAPWDR requires evidence of a direct link between not obtaining the crisis supplement for the requested item and imminent danger to physical health. The criterion is met only if the minister considers that failure to obtain the crisis supplement to pay for or obtain the item will result in imminent danger to physical health. The appellant's evidence is that cold temperatures exacerbate his medical conditions and his physician writes that "cold winter temperatures pose serious health risks" to the appellant in light of his diabetic condition. While the physician's letter was written in December 2015, there is no information to suggest that the appellant's diabetes has improved and is no longer impacted by cold temperatures.

The ministry does not dispute the medical information and the panel considers the physician's letter, the appellant's information on his medical conditions, and general knowledge of risks associated with cold temperatures, to be evidence of a serious health risk from cold weather. That risk obviously becomes an immediate danger when a person is sleeping in a car during the winter without fuel for heat.

The ministry bases its position on alternative living arrangements that are "options" available to the appellant, but the appellant's current circumstance is that he is living in his car and the legislation requires the ministry to assess whether there is imminent danger on the basis of the person not obtaining the requested item. It is reasonable to expect that failure to obtain fuel for the car (for the reasons set out above) will result in imminent danger to the appellant's physical health. The panel therefore finds that the ministry did not reasonably apply the legislation in the circumstances of the appellant. The panel finds that the ministry unreasonably determined that imminent danger to physical health under section 57(1)(b)(i) of the EAPWDR was not established on the evidence.

Conclusion

In order to be eligible for a crisis supplement, all of the criteria in section 57(1) need to be met. At the reconsideration, the ministry found that the criterion for no available resources was met. On appeal, the panel finds that the ministry was not reasonable in concluding that failure to obtain fuel for the car will not result in imminent danger to physical health. However, the panel also finds that the ministry reasonably determined on the evidence that the requirement for an unexpected expense/ item unexpectedly needed was not met. As not all of the requirements are met, the panel finds that the ministry's reconsideration decision is reasonable. The panel confirms the decision and 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 checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input type="checkbox"/> or Section 24(2)(b) <input checked="" type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Margaret Koren	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019-02-13

PRINT NAME Sandra Chan	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019-02-13
PRINT NAME Nancy South	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019-02-13