

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the ministry) reconsideration decision dated January 23, 2019 which denied the appellant's request for a crisis supplement for clothing in December 2018. The ministry found that the appellant was not eligible for a crisis supplement pursuant to section 57(1) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) because she was not eligible for disability assistance in December 2018, the month the request was made.

In addition, the ministry was not satisfied that, pursuant to section 57(1)(a) and (b) that:

- the appellant's need for the crisis supplement was unexpected;
- there were no alternate resources available; and
- failure to obtain the clothing 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

*EAPWDR* section 29 and 57

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration was the following:

- The appellant requested a crisis supplement for clothing on December 10, 2018
- The appellant's request for a crisis supplement for clothing was denied on December 13, 2018
- Request for Reconsideration form dated January 15, 2019 (RFR) in which the appellant states that she only received \$1,005 for the whole month so the ministry's reasoning that the appellant was overpaid is not correct. The appellant says that since she has Persons with Disability (PWD) designation, her file remains open and she has applied for assistance again now that her Employment Insurance (EI) has run out. The appellant also says that she receives \$52 per month from the ministry. The appellant says that she has lost over 20 pounds which is significant and has gone down several sizes. She says that in addition to pants, tops, and a suit, she requires underwear and at least one bra since none fit. The appellant says that she has never received any clothing money at all from the ministry.

### **Additional Information**

In her Notice of Appeal dated January 29, 2019 (NOA) the appellant says that since even the monthly EI benefit is below the poverty line, she does not see how anyone can budget for clothing. The appellant says that she could not budget for clothes when her money has had to go for supplements to get well, which resulted in unexpected weight loss. The appellant says that she is not interested in wearing second hand underwear. The appellant says that she has never received any clothing allowance from the ministry.

Prior to the hearing the appellant submitted the following documentation (the Submission):

- Email dated February 21, 2019 indicating that her medical EI has been exhausted and she requires clothing to obtain employment. She also says that she has foot/leg issues. The appellant says that she has had two eye surgeries, 11 radiation treatments on her left eye, which protruded horribly causing difficulty with her sight resulting in an inability to continue her previous employment. The appellant also says that she has been referred for thyroid testing as that is typically the cause for an eye to protrude like hers did.
- Various photographs, 10 pages, depicting the appellant's feet, knees, legs, surgical hardware and hospital bed
- Follow up form dated September 11, 2015 (the "Form") indicating that the appellant felt her diplopia is back. The form indicates that the appellant required a check of her thyroid function and thyroid

At the hearing, the appellant stated that she has PWD designation but had been working, then in receipt of medical EI which has now ran out and she has reapplied for disability assistance. The appellant says that her income last year was \$9,700. The appellant says that she does not have the money to budget for clothing as she lives below the poverty line. She says that she has tried to get clothes at second hand stores but has not been able to find the appropriate clothing. The appellant says that the pants she found were too long and she has not been able to find appropriate footwear or runners.

The appellant says that she had 11 operations as a child and has ongoing foot problems, so she

needs good quality shoes. The appellant says that despite posttraumatic stress disorder she has previously worked as an advocate with community resource programs and is trying hard to get back to work. The appellant says that with her past experience she has a lot to offer an employer and her community.

The appellant says that her need for the crisis supplement for clothing was unexpected because she lost weight very quickly and unexpectedly over just two months, dropping several sizes in a short time. The appellant says that she had not planned to lose weight and believes it was because of her thyroid not working properly and the supplements she took to try and get better. The appellant says that she had to use any extra money she had to purchase supplements for her thyroid. The appellant argues that it is ludicrous to say that someone living so far below the poverty line could budget to buy clothing.

The appellant says that her grocery costs are quite high because she requires gluten free food and many items without gluten cost more to buy. The appellant says that she goes to the food bank on a weekly basis, she needs to earn \$500 to \$700 per month to live and maintain her housing. The appellant says that she has no family or friends that she can ask for financial assistance. The appellant says that if she does not obtain the crisis supplement for clothing, she cannot work, risks being homeless, and then may become suicidal.

At the hearing, the ministry relied on the reconsideration decision.

### **Admissibility of New Information**

The ministry did not object to the admissibility of the NOA or the Submission, except two pages of photographs on which the pictures were not clear.

The panel has admitted the information in the NOA as it is information in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the information in the NOA provides further information and explanation about the appellant's financial circumstances.

The panel has admitted the information in the Submission relating to the appellant's thyroid problems and the Form as that also relates to the appellant's thyroid and possible reasons for her weight loss. However, the panel does not admit the photographs provided with the Submission, as there was no information regarding the appellant's prior surgeries or foot problems before the ministry at the time of reconsideration.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant a crisis supplement for clothing in December 2018 was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

In particular, was the ministry reasonable in determining that, pursuant to section 57 of the EAPWDR, that the appellant was not eligible for disability assistance for December 2018 or that the information provided did not satisfy the legislative criteria of section 57(1)(a) and (b) and demonstrate that:

- the appellant's need for the crisis supplement was unexpected;
- there were no alternate resources available; and
- failure to obtain the clothing would result in imminent danger to the appellant's physical health.

### EAPWDA

#### Disability assistance and supplements

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

### EAPWDR

#### Limits on income

9 (1) For the purposes of the Act and this regulation, "**income**", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

#### Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

- (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:
  - (i) a change that is listed in paragraph (b) (i) to (v);
  - (ii) a family unit receives earned income as set out in paragraph (b) (vi);
  - (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers*

*Compensation Act* as set out in paragraph (b) (vii), and (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 87/2018:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

[en. B.C. Reg. 335/2007; am. B.C. Regs. 85/2012, Sch. 2, s. 4; 332/2012, s. 1; 226/2014, s. 1; 151/2018, App. 2, s. 9.]

### **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 \$40 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) and (6) Repealed. [B.C. Reg. 248/2018, App. 2, s. 2.]

### Panel Decision

The EAPWDR requires a family unit to provide certain personal, income, and employment information to determine whether the family unit is eligible for disability assistance or hardship assistance. Section 5 of the EAPWDA and section 57(1) of the EAPWDR makes eligibility for disability assistance or hardship assistance a pre-condition for a crisis supplement. Section 9(2) of the EAPWDR states that a family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

#### 1. Eligibility for income assistance

The appellant's position is that the ministry ought to have found her eligible for disability assistance as her medical EI ran out and she only received income of \$1,005 in December 2018. The appellant says that she has PWD designation which does not run out and that she received \$52 from the ministry so the ministry should consider her to be eligible for disability assistance in the month of December 2018.

The ministry's position is that the appellant reported that she received unearned EI income of \$1,340 in the month of October 2018. Under section 29 of the EAPWDR, money received in one month, is

declared by the 5<sup>th</sup> of the following month and is deducted from assistance in the third month. The ministry's position is that as the appellant had unearned income of \$1,340 in October 2018, it was declared by November 5, 2018 and is deducted from the appellant's December assistance. The ministry says that as the appellant's maximum disability assistance is \$1,137.42, she was not eligible for disability assistance for the month of December 2018. The ministry says that the \$52 the appellant received was for transportation and is not part of her disability assistance for eligibility considerations.

The ministry's position is that as the appellant was not eligible for disability assistance in the month of December 2018, under section 57(1) of the EAPWDR she was not eligible to receive a crisis supplement in the month of December 2018.

Although not an issue in this appeal receiving a transportation allowance of \$52 per month in December 2018 does not determine eligibility for disability assistance. The appellant did not dispute that she had unearned EI income of \$1,340 in October 2018 that was declared by November 5, 2018 and would be deducted from her December 2018 disability assistance. Although the appellant has PWD designation, as her net income exceeded the amount of disability assistance that she was entitled to in December 2018, the panel finds that the ministry reasonably determined that the appellant was not eligible for disability assistance in December 2018.

The panel also finds that as the appellant was not eligible for disability assistance in December 2018, the ministry reasonably determined that she was not eligible for a crisis supplement in December 2018.

## 2. Unexpected Need or Expense

The ministry's position is that weight loss is something that occurs over time and as such it is not unexpected. The ministry also says that it is not unexpected to have to replace clothing when a person's size changes. The ministry says that the appellant has not provided any information to indicate that her weight loss was sudden or unexpected, or that an unexpected expense prevented her from budgeting to replace her clothing over time.

The appellant says that she did not intend to lose weight and that due to thyroid problems she lost weight unexpectedly over two months. The appellant says that due to living below the poverty line and not expecting to lose weight suddenly, that her need for clothing was unexpected.

The panel finds that as the appellant's weight loss occurred over a relatively short time span, resulting in the appellant dropping several sizes in a short time, that the need for the clothing was unexpected. While it is not unexpected that one would require new clothes over time, it is not typical or expected to drop several sizes over the course of two months which would require more than the typical amount of clothing expected for that time period. The panel finds that the ministry was not reasonable in determining that the clothing supplement did not constitute an unexpected need.

## 3. No Resources Available

The ministry's position is that there are alternate resources available to the appellant to meet the need for clothing, including community resources that provide free clothing to those in need.

The appellant says that she has tried to find clothing at the community resources but that the pants were too long and the available footwear would not provide adequate support. The appellant says that she is living below the poverty line and that her monthly income is not enough to cover her rent and food, much less clothing. The appellant says that she has no family or friends that can provide financial assistance, so she has no resources available.

The panel accepts that the appellant is struggling financially to meet her monthly expenses. However, while the clothing available at community resources may not be the appellant's preferred choices, the appellant admitted that there was some clothing available to her. In addition, the appellant advised that she purchased supplements to help her thyroid as she believed they would help. The appellant confirmed that the supplements were not recommended or prescribed by a physician, but she chose to purchase them based on information provided by a holistic practitioner.

While the panel is sympathetic to the appellant's desire to try supplements that may assist her health, the appellant could have used those funds to purchase clothing, so the panel finds that the ministry reasonably determined that the appellant failed to demonstrate that she had no alternate resources available to meet her need.

#### 4. Imminent Danger to Physical Health

The appellant's position is that if she does not obtain suitable work clothing, including appropriate footwear, she will not be able to work and earn enough money to maintain her housing. The appellant says that if she is not able to maintain her current housing, and becomes homeless, she may become suicidal, causing imminent danger to her physical health.

The ministry's position is that while the appellant says her clothing does not fit right and she is unable to wear it to job interviews, this does not present an imminent danger to her physical safety, so she has not met the legislative criteria.

While the panel acknowledges that the possibility of not being able to earn income to maintain her housing and becoming homeless is a situation the appellant would prefer to avoid, becoming homeless is not, on its own, sufficient to meet the criteria of "imminent danger to physical health". In order to meet this criterion, the danger to physical health must be "imminent" which means that the items are urgently needed. The appellant did not provide any evidence such as an eviction notice indicating that she may become homeless in the immediate future. In addition, the appellant did not provide any evidence from a physician indicating that her need is one that requires immediate action to prevent danger to physical health.

#### **Conclusion**

Having reviewed and considered all the evidence and the relevant legislation, the panel finds that the ministry's reconsideration decision, which found that the appellant is not eligible for a crisis supplement for clothing in December 2018 was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the ministry's decision.



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### PART G – Order

THE PANEL DECISION IS  UNANIMOUS  BY MAJORITY (Check one)

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)  and/or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

### PART H – Signatures

SIGNATURE OF CHAIR	DATE (YYYY MMM DDD)
	2019-02-27
PRINT NAME	
Helene Walford	

SIGNATURE OF MEMBER	DATE (YYYY MMM DDD)
	2019-02-27
PRINT NAME	
Wendy Marten	
SIGNATURE OF MEMBER	DATE (YYYY MMM DDD)
	2019-02-27
PRINT NAME	
Bill Haire	