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**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision of February 11, 2019 in which the Ministry determined that the Appellant was ineligible for a crisis supplement - utilities to purchase firewood because he did not meet the legislative criteria set out in Section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

**PART D – RELEVANT LEGISLATION**

EAPWDR Section 57

## PART E – SUMMARY OF FACTS

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 dated January 8, 2019, in which the ministry describes the decision to be reconsidered as follows: the appellant was not eligible for a crisis supplement - utilities because he did not meet all the conditions required in EAPWDR Section 57. Specifically:
  - The worker wrote that he did not meet the condition of an unexpected item or unexpected expense writing that if the appellant's only source of heat is firewood, then when he purchased the firewood he should have been aware of the wood's condition and its ability to burn and taken steps to address its condition, so having wet wood is not considered unexpected.
  - The worker wrote that he met the requirement for no alternate resources because he had asked family, friends and community resources but had not been able to find support to purchase wood.
  - The worker wrote that he met the requirement of imminent danger because without heat and the ability to cook he would be facing imminent danger to physical health.

The appellant signed and dated the form on February 4, 2019 and included a typed note that stated that:

- to have to buy firewood again is an unexpected expense in the budget;
- if he addresses himself to the ministry for money for help it is because he does not have other alternative resources available and that he tried to do his best at the time;
- he is not an expert to determine the condition and quality of wood;
- the wood he has is very green, not dry and is not appropriate to heat and cook with; and
- he needs three cords of wood at \$250 each, total \$750.

On the Notice of Appeal form signed by the appellant on February 19, 2019 he attached two pages that made several points:

1. That the original decision informed him that he had met criterion #2 and #3 and he only had to defend his position about criterion #1 so why does the decision now show he does not meet any of the criterion?
2. That his need for the item is unexpected because nothing was looking wrong with the firewood at the time of purchase and to have to buy firewood again is an unexpected expense.
3. That there are no alternate resources available, as he had taken measures to remedy the situation but to no success, and for the ministry to make the assumption that he hadn't taken measures is an assumption by presumption.
4. That the ministry wrote in the decision that they accept that failure to obtain wood will result in imminent danger to physical health and then to write that the criterion has not been met was possibly a mistake in typing, and that this criterion had been met.

At the hearing, the appellant stated that his need to purchase additional firewood was unexpected because he didn't know that the wood he had purchased in September 2018 would be wet and not usable when he went to use it, which was around the end of December 2018. The appellant confirmed that he had used wood for heating and cooking before and that he had wood left over from the previous year that he used up, and this is when he discovered that the wood he had purchased was green and would not burn. The appellant stated that he believed the ministry had made their decision based on who he was and what he wore and that they didn't show compassion to someone with a disability who was without heat in the cold of January. The appellant emphasized that he had an unexpected need and no other way to pay for additional firewood, and that he had spoken to the person he bought the wood from and they wouldn't take it back or give him his money back. The appellant also stated that he is aware that going to the ministry is the last resort and that he did everything he could before asking them for the crisis money.

At the hearing, the ministry reviewed the reconsideration decision and emphasized that in order for a crisis supplement for utilities to be issued that all three criteria of section 57 EAPWDR had to be met and that the decision was based upon legislation, not the person.

The ministry stated that the appellant does not meet the unexpected criteria because there was no documentation regarding the purchase of wood to show whether it was being sold as green or seasoned wood and that it is the appellant's responsibility to know whether the wood is usable. The ministry also stated that there was no



documentation to indicate that he had made any attempt to return or exchange the wood so they consider that a possible resource available to him. When asked to clarify the reconsideration decision regarding criterion 3 which stated, “as it is winter and cold outside and you are unable to cook, the minister accepts that failure to obtain more wood will result in imminent danger to his physical health; therefore, criterion #3 has not been met”, the ministry could not confirm their position on this criterion.

**Additional Information**

There was no additional information provided in writing or in person that was not in support of information that was before the ministry at the time of reconsideration.

## PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry's Reconsideration Decision dated February 11, 2019, wherein the ministry denied the Appellant a crisis supplement - utilities to purchase firewood.

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.

The appellant's position is that his need to purchase additional firewood in January was unexpected because he was not aware that the wood he had already purchased would not burn when he went to use it three months after purchase and it was an unexpected expense that he could not afford. The appellant argued that he did attempt to get money back and tried to find help before asking the ministry, as he knew that they were the last resource for him. The appellant argued that the first worker who told him he was not eligible wrote that he met criterion 2 as he had tried to get help from family, friends and community resources and that he met criterion 3 because he was facing imminent danger to health if he had no heat or couldn't cook so he thought he only had to defend whether his need was unexpected.

The ministry's position is that all three criteria from section 57 EAPWDR had to be met, and that the appellant did not meet any of these criteria. The ministry argued that, because he had not provided any documentation to show that the three loads of wood he purchased was being sold as "seasoned" or "green" and it was his responsibility to ensure the wood was usable, they were not satisfied that the appellant's need for firewood was unexpected; that there was no documentation to indicate that the wood could not have been returned and then used to purchase alternative wood so they were not satisfied that the appellant did not have alternate resources to meet his need; and although they wrote that they accepted that failure to obtain wood would result in imminent danger to the appellant's physical health, the minister then wrote that they found criterion 3 had not been met.

### **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 that the ministry did not dispute that the appellant had purchased three loads of firewood at a cost of \$750 in September 2018, only that he had not provided documentation as to whether the wood was being sold as "seasoned" or "green" and that it was his responsibility to ensure the wood was usable. The panel finds it plausible that the appellant did not use this wood for several months, after he explained that he had wood left over to use up first, and that he was not aware of its condition until he actually went to burn it. The panel finds it unreasonable for the ministry to acknowledge that the appellant was not an expert, and to then expect him to be aware of its condition even though he had explained that he was not aware it would not burn until he actually went to use it three to four months later. The panel finds it unreasonable for the ministry to expect the appellant to provide documentation that showed whether he was purchasing "seasoned" or "green" wood, as it is reasonable to assume that the appellant would not knowingly purchase wood that would not meet his needs.

The panel finds that because the appellant had already bought wood back in September with the expectation that it would be there for him when he needed it during the winter, and to then have to purchase additional wood in December, that this was an unexpected expense for him therefore condition one has been met.

**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 panel notes that in the Request for Reconsideration (RFR) the ministry acknowledged that the appellant had met this condition because he had asked family, friends and community resources but had not been able to find support to purchase wood. In the Reconsideration Decision the ministry determined that the appellant had not provided any documentation to indicate that he had not been able to return the wood and that this may be a resource available to him. The panel notes that the appellant had indicated in his RFR that he had tried to do his best at the time, and he followed that up with a supporting explanation in his Notice of Appeal that he had taken measures to remedy the situation but with no success, and that he only came to the ministry because he did not have any alternative resources available to him. The panel finds it unreasonable for the ministry to expect the appellant to provide documentation of his attempts to return the wood because what documentation could he

provide that would confirm verbal conversations?

The panel finds that the appellant had tried to find other resources such as trying to return the wood, then seeking out family, friends and community resources with no success so therefore condition two has been met.

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

The panel notes in the RFR the ministry acknowledged that without heat and the ability to cook that the appellant would be facing imminent danger to physical health and that this criterion had been met. The ministry also wrote the same in their Reconsideration decision, however then wrote that the condition had not been met.

The panel finds that as it is winter and cold outside and the appellant is unable to heat or cook, that failure to obtain more wood would result in imminent danger to the appellant's physical health therefore condition three has been met.

### **Conclusion**

The panel finds that the ministry's decision that the appellant was not eligible for a crisis supplement for utilities to purchase firewood pursuant to section 57(1) EAPWDR was not a reasonable application of the legislation in the circumstances of the appellant. The panel rescinds the ministry's decision in accordance with section 24(1)(b) and 24(2)(b) of the Employment and Assistance Act.

The appellant is successful on appeal.

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**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 Janet Ward	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019 March 12

PRINT NAME Susanne Dahlin	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019 March 12

PRINT NAME Linda Pierre	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019 March 12