

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision, dated February 19, 2019 (the “Reconsideration Decision”), which denied the Appellant a crisis supplement for food on the basis that the Appellant had not satisfied the criteria provided for in section 57(1) of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”) and, in particular, that the Appellant had not demonstrated that:

1. the need for food was unexpected or the result of an unexpected expense; and
2. failure to obtain food would result in imminent danger to the Appellant’s health.

PART D – RELEVANT LEGISLATION

Section 57, EAPWDR

PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of disability assistance.

At the time of the Reconsideration Decision, the information before the Ministry consisted of the Appellant's Request for Reconsideration ("RFR").

In the RFR, the Ministry summarized the history of the Appellant's request for a crisis supplement, confirming that the Appellant had advised a Ministry worker that he had gotten an infection on December 31, 2018 during a bottle pickup and had not been able to work in January. After having been denied a crisis supplement, the Appellant also advised that he had incurred expenses for over the counter medications to deal with his illness.

In the RFR, the Appellant set out that he goes to two food banks weekly. Due to being sick, he was required to purchase more of his own food because he had been unable to attend the food bank. The Appellant also stated that he was required to purchase cough syrup, lozenges, and antihistamines with his disability assistance as these items are not covered under his regular medical plan.

The Appellant also stated in the RFR that he requires 21 meals per week to keep his weight up. He describes ordinarily receiving 6 free meals per week at churches.

In his Notice of Appeal, dated March 4, 2019, the Appellant simply stated that the original case worker based the decision to deny a crisis supplement on "a lot of assumptions."

At the hearing of the Appeal, the Appellant reiterated the information he provided in the RFR and also described having had an infestation of mice, which required him to throw away a great deal of food at around the same time that he was ill. The Appellant advised that mice got into his dry goods before the problem was dealt with by the use of rat poison which he had also been required to purchase.

The Appellant added that he normally gets a flu shot each year but did not do so this year. In the result, he caught a bad cold near the end of 2018 which lasted into the early part of 2019.

The Appellant also stated that he subsequently received a crisis supplement for water when his tap water became unsafe to drink.

The panel admits the evidence given by the Appellant at the hearing of the Appeal that relates to the Appellant's illness as oral testimony in support of information that was before the Ministry at the time of the Reconsideration Decision, pursuant to section 22(4)(b) of the *Employment and Assistance Act* ("EAA").

The panel does not admit any of the Appellant's evidence related to an infestation of mice at his residence as there is no indication that the Appellant advised the Ministry of this previously and, in fact, in his evidence at the hearing of the Appeal, the Appellant confirmed that he had not done so.

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PART F – REASONS FOR PANEL DECISION

Issue

The issue in this appeal is whether the Reconsideration Decision, which denied the Appellant a crisis supplement for food on the basis that the Appellant had not satisfied the criteria provided for in section 57(1) of the EAPWDR and, in particular, that the Appellant had not demonstrated that:

1. the need for food was unexpected or the result of an unexpected expense; and
2. failure to obtain food would result in imminent danger to the Appellant's health

was a reasonable application of section 57(1) of the EAPWDR or was reasonably supported by the evidence.

Legislative Framework

The authority to provide crisis supplements to recipients of disability assistance can be found in section 57 of 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*.

(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.]

(7) Despite subsection (4) (b), 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.

Panel Decision

In the Reconsideration Decision, the Ministry accepted that the Appellant was a family unit that was eligible for disability assistance and that there were no alternate resources available to him.

The Ministry was not satisfied, however, that the need for food arose unexpectedly or due to an unexpected expense.

Unexpected Need or Unexpected Expense

The Appellant's evidence is that he required a crisis supplement because he became ill at the end of last year and into the start of this year, was unable to do any work to supplement his disability assistance, and was required to spend part of his disability assistance on uncovered over-the-counter cold medication.

The Ministry noted that food, in and of itself was not an unexpected expense. The Ministry also accepted that the Appellant had become ill but determined that, during cold and flu season, it would not be unexpected to contract a cold virus that required the use of over-the-counter medications. In effect, the Ministry position is that illness is a contingency that should be expected and budgeted for, despite the

fact that the level of assistance does not change during cold and flu season. When asked, the Ministry representative at the hearing conceded that she did not typically expect to get sick. Even were one to expect to develop a cold or a flu, the severity of such illnesses can vary. Some may require no medication at all. Other times, an illness, as in the case of the Appellant, may require medication to treat. Where such medication is not covered, as in the Appellant's case, the expense would not be expected in the panel's view. For that reason, the panel finds that the Ministry was not reasonable in its determination that a family unit in receipt of disability assistance should expect to spend part of that assistance on over-the-counter cold medications instead of food during the winter months.

Imminent Danger to Physical Health

In the Reconsideration Decision, the Ministry points out that the Appellant had received an additional crisis supplement for food and an additional month of assistance since making his request. The Ministry also determined that the Appellant had access to a number of organizations that provided food. However, any access that the Appellant had to food banks and the additional crisis supplement (which the Appellant stated was for water and not food, in any event) was during a period subsequent in time to the period in which the Appellant required the crisis supplement that was the subject of the Reconsideration Decision. Moreover, the Appellant's subsequent disability assistance was for the Appellant's expenses in the month in which it was received, not to offset unexpected expenses from a previous month. Finally, all of these points relate to alternate resources potentially being available and the Ministry had conceded that the Appellant had no alternate resources due to the fact that he was unable to access them in the relevant time period. Namely, when he had fallen ill.

In view of the foregoing and the fact that the Ministry accepted that food was necessary for good health in the Reconsideration Decision, the panel finds that the Ministry decision was not reasonable in not being satisfied that failure to obtain food would result in imminent danger to the Appellant's physical health.

The panel's view is that the need for food was unexpected due to his illness and inability to go out and obtain food from the food banks. The panel also accepts that not having sufficient funds for food when ill was an imminent danger to the Appellant's health. In the result, the panel finds that the Ministry's denial of the Appellant's request for a crisis supplement for food was not a reasonable application of section 57(1) of the EAPWDR in the circumstances of the Appellant and the panel rescinds the Reconsideration decision.

The Appellant is successful in his 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 Adam Shee	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/04/01

PRINT NAME Nancy Eidsvik	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY)

PRINT NAME Susan Ferguson	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/04/01