

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision dated March 26, 2019 which held that the appellant was not eligible for a crisis supplement for food by reason that the appellant did not meet any of the three criteria required to be eligible for a crisis supplement pursuant to s.57(1) Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR").

PART D – RELEVANT LEGISLATION

- s. 22(3)(b), 22(4) of the Employment and Assistance Act ("EAA")
- s. 5 Employment and Assistance for Persons with Disabilities Act ("EAPWDA")
- s.57 Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR")

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the EAA.

The evidence before the Ministry at reconsideration was:

A written submission from the appellant stating:

- One month prior he was granted the crisis supplement for food because the Ministry determined that the winter cold temperatures were unexpected. The fact that the Ministry made the determination that this month, the cold was not unexpected to the appellant, was arbitrary.
- The appellant did have unexpected financial resources and circumstances
- He requests the tribunal to compel the Ministry to pay him \$40 for the crisis supplement and to also compel the Ministry to pay punitive damages.
- The Ministry was not correct in asserting that there was no unexpected financial need
 - o The appellant pays \$400 per month for fuel in the cold months because his car is his shelter
 - o The appellant pays \$178 for car insurance monthly
 - o The appellant pays \$20 per month for car maintenance
- He had the unexpected situation of his mother having dementia. He now no longer gets a \$6000 per year gift. He incurred \$1800 in expenses. He spent one year living out of his vehicle in another province during 2014-2015.
- He relied on his mother for financial support and her dementia was unknown to him until recently.
- He was given a notice to end tenancy from his residence in 2016 and 2017 causing him to have to live in his vehicle.
- Living out of his car is a necessity for him. He currently leases a vehicle for \$400 per month.
- The Ministry, in cancelling his original application for income assistance, cost the appellant expenses between \$3000-\$7000.
- The winter of 2018-2019 was colder than average and his fuel costs for shelter/car heat were higher and reduced the appellant's ability to pay for food.
- He has chronic osteomyelitis in his foot, and post 2011 partial foot amputation due to gangrene and infection.
- His mother owed him \$2,000 that she was to pay him in the late fall of 2018. However, she couldn't pay because of her dementia. He attempted to obtain payment from his brother who is the appointed attorney for his mother, but his brother refused to pay.
- He has been unable to pay his bills since the fall of 2018 and his phone service has been cut off.

The appellant's notice of appeal states that the Ministry did not reasonably apply the criterion for eligibility. The Ministry was unreasonably stringent and did not address the reality of a benefit recipient's circumstances, relative to the benefit available.

On May 7, 2019 the panel chair permitted a late submission by the appellant. The late submission contained:

- An amended petition to the BC Supreme Court concerning a judicial review of a previous decision of the Ministry
 - o The amended petition states that the Ministry failed to backdate the appellant's disability payment and transportation payment to May 2016
 - o The amended petition states that the Ministry did make a retroactive payment of \$5,922 to the appellant for basic financial assistance and \$350 for a retroactive food supplement.
- An affidavit of the appellant in that judicial review sworn January 2, 2018
 - o This affidavit outlines the details of the circumstances, and argument, of why the appellant requested judicial review of the tribunal's decision
- A written submission for an appeal of a reconsideration decision for a crisis supplement for utilities (relates to fuel and other costs associated with his shelter [car]) dated May 1, 2019
 - o This submission focusing on why the appellant requires a crisis supplement for utilities and why his circumstances are unexpected
- A copy of the Employment and Assistance Appeal Tribunal decision on the appellant's appeal respecting backdated disability payment.

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- A copy of the Employment and Assistance Appeal Tribunal decision on the appellant's appeal respecting backdated transportation supplement.
- A letter to the Ministry dated September 20, 2018 with respect to the appellant's notice of intent to file an amended petition.

The Ministry responded to the appellant's additional information and continued to rely on their prior written reconsideration decision. The Ministry didn't object to the entry of the new evidence by the appellant.

The panel has reviewed the new information and finds - without determining the merit of the documents at this point - that the documents submitted by the appellant are admissible in support of the appellant's argument at reconsideration that he was in litigation with the Ministry and that this was an unexpected financial expense to him. Further, the documents are also admissible in support of the appellant's argument at reconsideration that a failure to obtain money from his mother was also unexpected to him. The panel therefore admits the additional evidence pursuant to s.22(4)(b) EAA on the basis that they are documents in support of information before the Ministry at the time of reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellant a crisis supplement for food by reason that the appellant did not meet any of the three criteria required to be eligible for a crisis supplement pursuant to s.57(1) EAPWDR is reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

EAA – Panels of the tribunal to conduct appeals

22 (1) If a person commences an appeal in accordance with section 21 (1), the chair must appoint a panel consisting of up to 3 members of the tribunal to hear and determine the appeal.

(2) If a panel consists of more than one member, the chair must designate a chair of the panel from among the members of the panel, and if a panel consists of one member, that member is the chair of the panel.

(3) A panel must conduct a hearing into the decision being appealed within the prescribed period either

(a) orally, or

(b) with the consent of the parties, in writing.

(4) In a hearing referred to in subsection (3), a panel may admit as evidence only

(a) the information and records that were before the minister when the decision being appealed was made, and

(b) oral or written testimony in support of the information and records referred to in paragraph (a).

(5) Evidence referred to in subsection (4) may be admitted whether or not it would be admissible as evidence in a court of law.

(6) The panel chair is responsible for deciding any question of practice or procedure that arises during a hearing and is not provided for in the regulations or in the practices and procedures of the chair under section 20 (2) (a) [powers and duties of the chair].

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 - 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.

[am. B.C. Regs. 13/2003; 248/2018, App. 2.]

The panel finds:

To be eligible for a crisis supplement for food, the appellant must meet all three criteria set out in s.57 EAPWDR. The appellant focuses his argument on the first requirement, being that his need for the crisis supplement for food is to meet an unexpected expense or obtain an item unexpectedly needed. The appellant provides information about how he had many unexpected occurrences that have led him to the point of unexpectedly not having the income for food. The appellant speaks to his on-going litigation with the Ministry, his mother's dementia and her inability to pay him monies that she owes him or to continue to support him. The appellant provides evidence about an unusually cold winter and a loss of housing that causes him to have to live in his car. The appellant provides evidence that because he is required to live in his car he is required to spend additional funds on fuel for his vehicle in order to keep the car warm in an unexpectedly cold month. The Ministry's response to this argument was to determine that the cold winter should not have been unexpected to the appellant because he has lived in his car

before. The appellant declared but had not shown that the circumstances were unexpected. The ministry also did not accept that the appellant's need for food was unexpected.

The panel finds that the legislation requires the appellant to show that his unexpected expense is in relation to food. The appellant did not provide information about that, except that his other unexpected expenses prevented him from having the funds for food. The panel, however finds that the unexpected nature must relate to the crisis supplement the appellant is seeking, which in this case is for food. The appellant hasn't shown that the need for food or the inability to obtain food is unexpected. The panel therefore finds that the Ministry was reasonable in determining that the appellant did not require the supplement to meet an unexpected expense or to obtain an item unexpectedly needed.

The appellant states he doesn't have the income available to purchase food, however the appellant also conceded that he accesses free community resources for food. The Ministry provides numerous examples of places where the appellant can access free meals in the community that he resides. The appellant did not deny or explain if and why he wasn't accessing those services or why they weren't sufficient. The panel therefore finds, that it was reasonable for the Ministry to determine that the appellant had other community resources available to him to assist him with the food expense.

The appellant did not provide evidence on if he would suffer imminent danger to his physical health without the crisis supplement for food, and it was not self-evident. The appellant does state his medical conditions but did not give the kind of evidence required to show that his medical condition would imminently worsen, or a deterioration of his health would occur imminently without the crisis supplement for food. The panel therefore finds that the Ministry was reasonable in determining that the appellant would not suffer imminent danger to his physical health without the crisis supplement for food.

For these reasons, the panel finds the Ministry's decision was reasonably supported by the evidence and a reasonable interpretation of the legislation in the circumstances of the appellant and confirms the decision.

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 checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME MEGHAN WALLACE	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/05/23

PRINT NAME KENT ASHBY	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/05/23
PRINT NAME JANE NIELSEN	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/05/23