APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated May 13, 2019, which determined that the appellant was not eligible for a crisis supplement for shelter because the appellant's request for a crisis supplement, for shelter costs, did not meet the criteria set out in Section 57 of the Employment and Assistance for Persons with Disabilities Regulation.

The ministry was not satisfied that that the appellant had no resources at all to pay the $4,547.15 in credit card debt, or a portion of it.

As well, the ministry found no evidence to determine that failure to obtain $4,547.15 would result in imminent danger to the appellant's physical health.

The ministry was satisfied that it was unexpected that the appellant had to vacate her accommodation abruptly due to the unsafe nature of the home and her negative health effects.

APPEAL NUMBER

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 57 (1)(a)(b)(i)

APPEAL NUMBER

PART E – SUMMARY OF FACTS

Relevant Evidence Before the Minister at Reconsideration

Ministry records state that on April 2, 2019 the appellant requested a crisis supplement for shelter.

Information provided by the appellant (reason for request for reconsideration)

1. Staying at an airbnb was an unexpected expense as no one expects that they will have to abruptly move out of their home due to toxic mold.

2. The appellant experienced previous mold issues at her unit, which she had fully expected the landlord to remediate. The landlord did not fully remediate her unit and as a result she suffered negative health impacts. The appellant was left with no choice but to unexpectedly vacate her unit.

3. The appellant temporarily moved into an airbnb. This was the only alternate accommodation that she could find on short notice. She moved into a new BC Housing unit as soon as she was able to.

4. On March 29, 2019 the appellant provided the ministry with a copy of a report by an environmental consulting firm confirming that her unit was “not safe for occupancy”.

5. The appellant has no resources available to meet the unexpected expense of having to move out of her unit on an urgent basis. Therefore she paid for alternate, safe accommodation on her credit card. She is now in debt and her credit card is incurring interest.

6. The appellant is therefore requesting the maximum crisis supplement she is eligible for.

Additional Evidence

Appellant

Notice of Appeal - May 23, 2019

In the Notice of Appeal the appellant stated, “I did not have the resources to unexpectedly find alternate accommodations and faced imminent danger to my physical health if I did not find alternate accommodation. I meet the criteria for a crisis supplement.”

Written Submission (on behalf of appellant) – received June 21, 2019

The ministry raised a new issue that the appellant had not attempted to recoup some or all of the funds through her landlord or through the Residential Tenancy Branch (RTB). The appellant gathered the following new evidence to demonstrate her attempts to resolve the mold issue with her landlord including attempts to recoup funds.

- ⇒ On December 14, 2017, Doctor1 (Dr. 1) wrote a letter advising the appellant to live in temporary alternative housing while the mold infestation was remediated.
- ⇒ On January 3, 2018, the appellant applied for an RTB dispute resolution seeking an order that the landlord make emergency repairs to remediate the mold infestation in her unit.
- ⇒ On January 11, 2018, the appellant hired a mold experts company to inspect her unit. The

company confirmed that the suite is heavily contaminated and not presently fit for habitation.

- ⇒ On February 7, 2018, Dr. 1 wrote a letter advising that the level of risk found during the inspection was directly connected to the exacerbation of the appellant's medical conditions and requested that the landlord remediate the mold infestation.
- ⇒ On February 15, 2018, the appellant's landlord hired an environmental company to inspect her unit. The inspection recommended remediation of the mold found in the apartment.
- ⇒ In March 2018 the appellant's RTB dispute resolution application was dismissed.
- ⇒ On April 13, 2018 the appellant applied for a reconsideration of the RTB decision and it was again dismissed.
- ⇒ On May 7, 2018 the appellant's landlord hired the environmental company to inspect her unit again and the inspection concluded that the mold had not been adequately removed.
- ⇒ On June 4, 2018 the appellant applied for judicial review of the RTB decision in an attempt to require her landlord to cover the costs of remediation of the mold and alternative accommodation.
- ⇒ On July 25, 2018, the appellant received an eviction notice, which she successfully disputed with the RTB.
- ⇒ On August 22, 2018 Doctor 2 (Dr. 2) wrote a letter advising that the appellant was diagnosed with atopic asthma and upon temporarily evacuating her suite, her lung function improved. Dr. 2 also requested that the mold infestation be remediated to reduce exposure to the appellant's atopic asthma.
- ⇒ On September 18, 2019 Dr. 1 wrote a letter advising that he supported the appellant staying temporarily in a hotel or B&B in order to avoid further exposure to the mold in her apartment that was exacerbating her atopic asthma.
- ⇒ On January 9, 2019, the appellant submitted a BC Housing transfer request.
- ⇒ On January 27, 2019, the appellant booked an airbnb for February and March 2019.
- ⇒ On March 8, 2019 the appellant hired an environmental consulting firm to inspect her unit. The conclusion was that the unit was not considered safe for occupancy due to the elevated mold levels.
- ⇒ On April 1, 2019, the appellant was transferred into a new BC Housing unit.
- ⇒ On June 3, 2019 Dr. 1 wrote a letter advising that the appellant would have faced imminent danger to her health had she not move from her unit when she did and that the stress and debt exacerbated the imminent danger to the appellant's health.
- ⇒ The appellant had to sell some personal belongings in order to attempt to repay her debt. She stated that she had to go into debt to avoid imminent danger to her health through her accommodations, as she did not have the resources to draw on at the time she required such accommodations.

Letters from doctors – received June 21, 2019

- ⇒ December 14, 2017 - letter from Dr. 1 (family physician) To the landlord

The appellant has been a patient of Dr. 1 for several years. The letter was in support of the appellant staying temporarily in an alternate living arrangement while her building/suite is fully fixed following a water leak in her unit. Due to the moisture in the unit and consequential mold, the appellant's chronic, underlying medical conditions have been exacerbated.

- ⇒ February 7, 2018 – letter from Dr. 1 To Whom It May Concern

The appellant's apartment underwent a fungal inspection assessment on January 11, 2018. The report concluded that the suite is heavily contaminated and not fit for habitation. The appellant moved into this unit on March 1, 2011. The doctor's main concern is that the mold in her environment has been

exacerbating her chronic, underlying medical conditions.

⇒ August 22, 2018 – letter from Dr. 2 (respirologist) To Whom It May Concern

The appellant has atopic asthma. Her lung function is 66%, which improved to 77% after she evacuated her apartment and lived in a hotel suite for six months. Dr. 2 notes that the appellant's current apartment contains a high level of fungal spores and mold. He requests that this be professionally cleaned, as this is the best method to manage the appellant's asthma.

⇒ September 18, 2018 – letter from Dr. 1 To Whom It May Concern

Dr. 1 is in full support of the appellant's home being professionally cleansed of the molds and fungi. In the interim, he is in full support of the appellant staying temporarily in a hotel or B&B to avoid ongoing exposure to this environment, which continues to worsen her asthma symptoms.

⇒ June 3, 2019 – letter from Dr. 1 To Whom It May Concern

Dr. 1 confirmed that the appellant had to leave her apartment in February 2019. Had she not moved, she would have faced imminent danger to her health. As well, the stress and debt related to having to move has exacerbated the imminent danger to the appellant's health.

Residential Tenancy Branch Applications and Decisions

⇒ March 1, 2018 - Tenant's Application for Dispute Resolution

Request for compensation for monetary loss - $35,000

The appellant stated that after a flood on December 3, 2017 she has stayed at a hotel from December 10, 2017. As well, she has had trauma caused by yelling, privacy invasion and theft (by landlord agent and staff). Also, she has had asthma, a heart problem and liver damage caused by criminal harassment.

⇒ April 4,2018 – Dispute Resolution Services Decision

The appellant's application was dismissed in its entirety.

⇒ April 13, 2018 - Application for Review Consideration

⇒ April 16, 2019 – Dispute Resolution Services Review Consideration Decision

The Application for Review Consideration was dismissed. The decision issued on April 4, 2018 was confirmed.

⇒ July 25, 2018 - One Month Notice to End Tenancy for Cause form

⇒ November 9, 2018 – Dispute Resolution Services Decision

The appellant's application is granted. The one month notice dated July 25, 2018 is set aside. The tenancy shall continue.

⇒ June 4, 2018 – Petition to the Court (Supreme Court of British Columbia between the appellant and agent for the landlord)

The appellant applies for an order setting aside the April 4, 2018 decision where the appellant's application was dismissed in its entirety and applies for an order for a new hearing.

APPEAL NUMBER

BC Housing Transfer Request - received June 21, 2019

⇒ January 9, 2019 - Application to the BC Housing Registry
Appellant is seeking special consideration of her application for housing by The Housing Registry as she has a serious health condition or disability that is affected by her current housing.

AIRBNB Receipts

⇒ January 27, 2019 – Total $4547.15 (February 1, 2019 – April 1, 2019).
Credit card payments - $2,467.24, $2079.91

Ministry

The ministry's submission was the Reconsideration Decision summary.

Admissibility of Additional Evidence

The panel determined that the information in the Notice of Appeal was considered argument.

The panel determined that the following additional evidence from the appellant was not admissible under section 22(4) of the *Employment and Assistance Act*, as it was not before the ministry at time of reconsideration, nor is it in support of the records before the minister at reconsideration.

⇒ Information Regarding Residential Tenancy Branch Applications and Decisions
⇒ Sale of personal belongings

The panel determined that the rest of the additional documentary evidence, from the appellant, was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the ministry at reconsideration.

APPEAL NUMBER

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, dated May 13, 2019, which determined that the appellant's request for a crisis supplement, for shelter, did not meet the criteria set out in Section 57 of the EAPWDR, is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that the appellant had resources to pay the $4,547.15 in credit card debt, or a portion of it?

As well, did the ministry reasonably determine that there was no evidence to determine that failure to obtain $4,547.15 would result in imminent danger to the appellant's physical health?

The ministry was satisfied that it was unexpected that the appellant had to vacate her accommodation abruptly due to the unsafe nature of the home and negative health affects.

The legislation provides:

Employment and Assistance for Persons with Disabilities Regulation

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…

Ministry Argument

The ministry's position is that it is not satisfied that the appellant had no resources at all to pay the $4547.15 in credit card debt, or a portion of it, as there is no information to suggest the appellant had attempted to recoup some or all the funds through her previous landlord or by accessing the RTB.

As well, the ministry's position is that there is no evidence to suggest that failure to obtain $4,547.15 would result in imminent danger to the appellant's physical health, and she is now living in a BC Housing accommodation.

Appellant Argument

The appellant's position is that on a proper interpretation of section 57(1) of the EAPWDR) the ministry's decision was unreasonable.

The Ministry Failed to Utilize the Fundamental Principles of Statutory Interpretation

The court in Watts v. British Columbia states: "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, and the intention of Parliament [here, the legislature]."

The court in Lee v. British Columbia confirms that one of the primary objectives of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) is the provision of income and disability assistance and other benefits to persons in need." The court in Lee v. British Columbia "also confirmed that the *EAPWD Act* is a "benefits-conferring legislation" that should be considered remedial and should be given a fair, large and liberal interpretation, a principle also reflected in s. 8 of the *Interpretation Act*."

Hudson v. British Columbia confirmed that, "where there is an ambiguity in the meaning of a stature, the ambiguity should be resolved in favour of the applicant seeking benefits under the legislation."

In applying the general principles of statutory interpretation and the specific principles of statutory interpretation of welfare legislation the argument is that the appellant met the criteria in section 57(1) of the EAPWDR for the following reasons:

The Appellant Had No Resources to Pay the Credit Card Debt

- The ministry's determination that it was not satisfied that the appellant had no resources to pay the $4,547 in credit card debt as there was no information to suggest she attempted to recoup some or all the funds through her previous landlord or by accessing the RTB, is not reasonably supported by the evidence.
- Looking to the ordinary sense of the word "resource", the Oxford dictionary definition as it applies here is "a stock or supply of money…and other assets that can be drawn on…An "asset" is defined as "an item of property owned by a person…available to meet debts…"
- The appellant does not have a stock or supply of money or other assets on hand or in the bank to repay this credit card debt. Credit cannot be considered as a resource in this context, as credit is not money or an asset that the appellant actually has. "It is loaned money that creates a debt and interest." The appellant was forced to use the credit (i.e. money she didn't have) to avoid imminent danger to her health and does not have the financial resources or assets to repay the credit card.
- The appellant was in need of accommodation and did not have money to pay for it. She is now in debt with interest accruing because she did not have the resources to pay for the alternate accommodations. The ministry "has not met one of its primary legislative purposes in the appellant's case; to confer a needed benefit to her as a person in need."
- This has created an unsustainable situation for the appellant "that will only continue to snowball, creating indefinite hardship" putting the appellant "in a vulnerable position should she encounter further unexpected expenses."

The Ministry Applied the Legislation Unreasonably in the Circumstance of the Appellant

- The ministry's determination that it would need to find evidence that "failure to obtain $4,547.15 will result in imminent danger" to the appellant's "physical health", was an unreasonable application of the legislation in the circumstances of the appellant. "This debt did not create imminent danger; the debt arose out of the need to access alternate accommodations in order to

avoid imminent danger."

- The EAPWDR "is clear that the requirement is that "failure to meet the expense will result in imminent danger to your physical health." The expense the appellant needed to meet to avoid imminent danger to her physical health was the alternative accommodation. Separately and distinctly, $4,547.15 is the money spent to pay for the expense.
- The ministry's application of the legislation regarding what must cause imminent danger is unreasonable in light of the statutory interpretation principles cited from Watts and Hudson. The ministry should be interpreting the legislation with the object of the Act in mind: "to provide benefits to people in need." "The narrow approach the Ministry used in its decision goes against the principles in *Hudson*, which states that any ambiguity that may arise in interpreting the legislation should be resolved in favour of the applicant."
- Following the ministry's interpretation of the application of the legislation, any person living on income assistance who had access to a credit card would automatically be unable to seek a crisis supplement.

Conclusion

- The ministry agrees that the appellant's necessary evacuation of her suite was "due to the unsafe nature of the home and [her] negative health effects."
- If the ministry's concern is that the appellant should have waited to receive a crisis supplement before booking accommodations, in light of the extensive history of dealing with her landlord, her doctors and BC Housing it is unreasonable to expect that the appellant would not take matters into her own hands to protect herself from a very present and severe danger to her health.
- As established, the appellant's need to evacuate her unit and find alternative accommodations was an unexpected expense. The appellant did not and does not have any resources to pay for this expense. Reports of the mold infestation and physician letters show that failure to evacuate her unit was resulting in danger to her physical health. The appellant therefore has met all three required criteria listed in the EAPWDR under section 57(1). "Further, the provision of a crisis supplement for shelter would fulfill the purpose of the Act – the provision of benefits to persons in need – as she is a person in need and this is a proper use of these public funds."

Analysis

Section 57 of the EAPWDR states that, "The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance…if…a person in the family unit requires the supplement to meet an unexpected expense…and is unable to meet the expense…because there are no resources available to the family unit, and …the minister considers that failure to meet the expense…will result in imminent danger to the physical health of any person in the family unit…"

<u>Section 57(1)(a) – unexpected expense and no resources</u>

The ministry stated that it was not satisfied that the appellant had no resources at all to pay the $4,547.15 in credit card debt, or a portion of it, as there is no information to suggest the appellant had attempted to recoup some or all the funds through her previous landlord or by accessing the RTB.

The appellant argues that, the ministry's determination that it was not satisfied that the appellant had no resources to pay the $4,547 in credit card debt as there was no information to suggest she attempted to recoup some or all the funds through her previous landlord or by accessing the RTB, is not reasonably supported by the evidence. Looking to the ordinary sense of the word "resource", the Oxford dictionary

definition as it applies here is “a stock or supply of money…and other assets that can be drawn on…An “asset” is defined as “an item of property owned by a person…available to meet debts…”

The appellant also argues that she does not have a stock or supply of money or other assets on hand or in the bank to repay this credit card debt. Credit cannot be considered as a resource in this context, as credit is not money or an asset that the appellant actually has. “It is loaned money that creates a debt and interest.”

The appellant provided evidence in the form of airbnb receipts, which show that payment was made by her credit card for $2,467.24 and $2079.91.

The appellant stated that staying at an airbnb was an unexpected expense, as no one expects that they will have to abruptly move out of their home due to toxic mold. The ministry was satisfied that it was unexpected that the appellant had to vacate her accommodation abruptly due to the unsafe nature of the home and negative health affects. The panel finds that as the move was unexpected, it follows that the associated cost of the new accommodation, the airbnb, was also unexpected.

Section 57 of the EAPWDR requires the appellant to demonstrate that she was “unable to meet the expense”…“because there are no resources available…”

As well, the panel finds that a credit card cannot be considered a resource, as it creates debt, as the appellant argues. In other words, the expense to pay for the airbnb, was not met, as it is still outstanding, in the form of debt. Therefore, the panel finds that the appellant has met the requirement under the EAPWDR, section 57(1)(a); accordingly, the ministry’s determination on this point was not a reasonable application of the legislation in the circumstances of the appellant.

Section 57(1)(b) – imminent danger

The ministry stated that there is no evidence to suggest that failure to obtain $4,547.15 would result in imminent danger to the appellant’s physical health.

The appellant argues that the ministry did not correctly interpret the legislation and applied the legislation unreasonably in the appellant’s case. The ministry’s determination that it would need to find evidence that “failure to obtain $4,547.15 will result in imminent danger” to the appellant’s “physical health”, was an unreasonable application of the legislation in the circumstances of the appellant. “This debt did not create imminent danger; the debt arose out of the need to access alternate accommodations in order to avoid imminent danger.

Section 57 of the EAPWDR requires the appellant to demonstrate that it was necessary for her to leave her accommodation as it was causing imminent danger to her physical health.

The appellant provided evidence in the form of numerous detailed letters from doctors (dated December 14, 2017 to June 3, 2019), which demonstrate that the mold in the appellant’s living environment was creating imminent danger to her physical health. Therefore, the panel finds that the unexpected expense (i.e. the airbnb) was incurred to enable the appellant to move from her living environment, to avoid imminent danger to her physical health.

The panel finds the appellant has met the legislative requirement, of the EAPWDR section 57(1)(b)(i) “imminent danger to her physical health”; according, the panel finds that the ministry’s determination on

this point was not a reasonable application of the legislation in the circumstances of the appellant.

Conclusion

In conclusion, the panel finds the ministry's decision was not a reasonable application of the legislation in the circumstances of the appellant and rescinds the decision.

The appellant is successful on appeal.

APPEAL NUMBER

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	
Connie Simonsen	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/07/22

PRINT NAME	
Nancy Eidsvik	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/07/22
PRINT NAME	
Shirley Heafey	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/07/22