

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision of April 11, 2019 (the "Reconsideration Decision"), which denied the Appellant a crisis supplement for fuel for January, February and March, 2019 because the Ministry was not satisfied that the Appellant had met all of the criteria set out in sections 23 and 57 of the *Employment and Assistance For Persons With Disabilities Regulation* ("EAPWDR").

**PART D – RELEVANT LEGISLATION**

Section 5, *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA")  
Section 23 and 57, EAPWDR

**PART E – SUMMARY OF FACTS**

The Appellant is a sole recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- Letters from the Ministry to the Appellant, dated March 28, 2019 (the "Initial Decision");
- Requests for Crisis Supplement – Shelter, dated February 2 and March 3, 2019 (the "Request"), which set out that:
  - the Appellant needed a supplement for the months of January, February, and March, 2019 in order to heat his vehicle as he lived in his vehicle;
  - the Appellant was no longer receiving monies from his mother as he had prior to moving to British Columbia;
  - the Appellant had previously lived in his vehicle for approximately 1-1/2 years from 2014 to 2016 in another province;
  - the Appellant had no resources to pay for extra fuel needed due to unexpectedly cold temperatures;
  - the disability the Appellant receives is insufficient to cover overdue debts; and
  - not having heat was a direct threat to the Appellant's health issues, which include diabetes and chronic Osteomyelitis;
- 5 photocopies pages of 24 receipts for gas from various gas stations, totaling \$600.50 (the "Receipts"), as follows:

Date	Amount
2-Jan-19	\$14.00
3-Jan-19	\$40.00
6-Jan-19	\$40.00
9-Jan-19	\$20.00
9-Jan-19	\$30.00
12-Jan-19	\$25.00
13-Jan-19	\$25.00
15-Jan-19	\$25.00
17-Jan-19	\$20.00
19-Jan-19	\$25.00
21-Jan-19	\$10.00
23-Jan-19	\$40.00
24-Jan-19	\$20.00
26-Jan-19	\$20.00
29-Jan-19	\$25.00
31-Jan-19	\$29.50
<b>January</b>	<b>\$408.50</b>
3-Feb-19	\$25.00
4-Feb-19	\$25.00
5-Feb-19	\$20.00
7-Feb-19	\$20.00
9-Feb-19	\$20.00
13-Feb-19	\$30.00

APPEAL NUMBER	
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14-Feb-19	\$20.00
18-Feb-19	\$32.00
February	\$192.00
<b>Total</b>	<b>\$600.50</b>

- The Appellant's Request for Reconsideration ("RFR"), in which the Appellant sets out that:
  - his February crisis supplement for utilities is for January and March as well;
  - he is seeking \$300.00 for each of January, February, and March of 2019; and
  - that the Ministry's unreasonably denied him a crisis supplement by having "whimsically" denied money that he was owed;
- a letter, dated December 9, 2015 (the "Doctor's Letter"), from a doctor in the province in which the Appellant formerly resided, setting out the health dangers associated with cold winter and hot summer weather conditions to the Appellant's health and, in particular, to an open foot ulcer and blood glucose challenges from which the Appellant suffers;

In his Notice of Appeal, dated filed April 12, 2019, the Appellant stated that the "Ministry misapplied the criteria for the supplement at issue, contravening the spirit of what its intention actually is for deserving, needy financial assistance recipients" and included:

- an 8 page submission (the "Submission"), detailing:
  - a history of what the Appellant describes as unexpected events, dating back to 2000, including, but not limited to:
    - multiple motor vehicle accidents (the "MVs");
    - extended litigation arising from the MVs;
    - issues with rental units in which the Appellant resided;
    - a denial of the Appellant's original application for assistance from the Ministry, which forms the subject matter of a Petition for judicial review (the "Petition");
    - the Appellant's mother developing dementia, resulting in the cessation of previously provided financial assistance from her due to the Appellant's brother acting on a power of attorney starting in the middle of 2018; and
    - ongoing harassment of the Appellant by organized crime figures since 2002;
  - that due to some of the unexpected events described, the Appellant has been forced to live in his vehicle;
  - that the Appellant gets only two hours of sleep per night;
  - lack of heat presents a danger to his health;
  - lack of funds limits how long he can leave heat on in his vehicle overnight;
  - that fall and winter temperatures in 2018 and 2019 were colder than normal; and
  - that \$1,270.00, which is the amount of the Appellant's monthly assistance is not sufficient for the Appellant to live on and manage to meet any unexpected expenses;
- the Doctor's Letter;
- a copy of the Petition, filed by the Appellant for judicial review of a previous decision of this tribunal which denied the Appellant back dated assistance;
- a copy of an affidavit (the "Affidavit") filed in the British Columbia Supreme Court, presumably with the Appellant's Petition in respect of the previous decision for which the Appellant is seeking judicial review (Note: although the Appellant's e-mail to the tribunal references three affidavits, only a copy of the first affidavit, unsworn, formed part of the appeal record for this Appeal).

Pursuant to section 22(4) of the *Employment and Assistance Act* ("EAA"), the panel admits those portions of the Submission that speak to allegations that the Reconsideration Decision was not

APPEAL NUMBER

reasonable as argument and as written testimony in support of the information and records that were before the Ministry at the time of the Reconsideration Decision, pursuant to section 22(4)(b) of the EAA.

The panel does not admit the Petition or the Affidavit as neither are records that were before the Ministry at the time of the Reconsideration Decision or written testimony in support of information and records that were before the Ministry at the time of the Reconsideration Decision, as required by section 22(4) of the EAA.

**PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the Ministry was reasonable in its determination that the Appellant had not met the criteria required under sections 23 and 57 of the EAPWDR and was not eligible for a crisis supplement for fuel for the months of January, February, and March 2019.

*Relevant Legislation*

~~Section 5 of the EAPWDA authorizes the Ministry to provide assistance and supplements:~~

~~**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.~~

~~Section 57 of the EAPWDR authorizes the Ministry to provide a crisis supplement in certain circumstances:~~

**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.

Section 23 of the EAPWDR sets out the dates for which an applicant may be eligible for disability assistance and a crisis supplement:

**Effective date of eligibility**

**23** (1) Except as provided in subsections (1.1), (3.11) and (3.2), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance

- (a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and

(b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.

(1.1) The family unit of an applicant who applies for disability assistance while the applicant is 17 years of age and who the minister has determined will be designated as a person with disabilities on his or her 18th birthday

(a) is eligible for disability assistance on that 18th birthday, and

(b) on that date, is eligible under section 4 and 5 of Schedule A for that portion of the month's shelter costs that remains unpaid on that date.

(1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for

(a) a support allowance under sections 2 and 3 of Schedule A on the disability assistance application date,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the disability assistance application date, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c) for disability assistance under sections 6 to 9 of Schedule A on the disability assistance application date.

(2) Subject to subsections (3.01) and (3.1), a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.

(3) Repealed. [B.C. Reg. 340/2008, s. 2.]

(3.01) If the minister decides, on a request made under section 16 (1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).

(3.11) If the minister decides, on a request made under section 16 (1) of the Act, to designate a person as a person with disabilities, the person's family unit becomes eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 of this regulation.

(3.2) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person with disabilities, the person's family unit is eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of the dates referred to in subsection (3.11).

(4) If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

- (a) the date the family unit became eligible for disability assistance;
- (b) 12 calendar months before the date of payment.

(5) A family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

[am. B.C. Regs. 340/2008, s. 2; 264/2013, s. 2; 151/2018, App. 2, ss. 7 and 8.]

#### *Appellant Position*

The Appellant's position is that the Ministry misapplied the criteria set out in section 57 of the EAPWDR and that:

- his need for fuel was unexpected due to a variety of factors, including past events and circumstances, all of which put the Appellant in the circumstance of requiring a crisis supplement for fuel in the month of February, 2019;
- he does not have the resources to obtain alternate accommodations to his vehicle, other than shared accommodation which would leave him vulnerable; and
- the vehicle which the Appellant occupies does not, in and of itself, present a hazard to the Appellant's health, contrary to the Ministry's finding in the Reconsideration Decision that sleeping in a vehicle may exacerbate the Appellant's medical conditions and expose the Appellant to physical danger.

#### *Ministry Position*

The Ministry's position is, as set out in the Reconsideration Decision, that:

- the Appellant had not satisfied it that the need for fuel was not unexpected because the Appellant had previously lived in his vehicle in another province where winters are generally colder than in the area of British Columbia in which the Appellant resides;
- the cessation of financial assistance from the Appellant's mother was also not unexpected at the time of the Appellant's request for a crisis supplement in February, 2019 as such financial assistance had stopped in the summer of 2018;
- there was no increase in the Appellant's fuel costs in January, February, and March of 2019, being approximately \$300.00 per month, which was less than the \$400.00 that the Appellant claimed to have spent on fuel in December, 2018 in a previous application for a crisis supplement;



- the Appellant had the resources to pay for fuel in February, the Receipts having indicated that the Appellant paid for fuel using cash or debit and the Appellant having not provided evidence of the method of payment for the remainder of his fuel purchases for February and March or evidence that he was unable to make such payments with his own resources; and
- the Appellant had not demonstrated that he had failed to meet his fuel expenses or that failure to meet the expense would result in imminent danger to his physical health.

The Ministry also found that the Appellant would, pursuant to section 23 of the EAPWDR, only have been eligible for a crisis supplement for the month of February, in any event.

### *Panel Decision*

Section 57 of the EAPWDR sets out the criteria for eligibility for a crisis supplement of the nature requested by the Appellant.

An applicant demonstrate that:

- the supplement is needed “to meet an unexpected expense or obtain an item unexpectedly”;
- the applicant is “unable to meet the expense or obtain the item because there are no resources available to the family unit”; and
- the Ministry “considers that failure to meet the expense or obtain the item will result in imminent danger to the physical health of any person in the family unit.”

Additionally, section 23(2) of the EAPWDR expressly sets out that “a family unit is not eligible for a supplement in respect of a period of time before the minister determines the family unit is eligible for it.”

The Request was for a supplement for fuel for the months of January, February, and March, 2019. By operation of section 23, the panel finds that the Ministry was reasonable in its determination that the Appellant was not eligible for a crisis supplement for the month of January as the Request was only made in the month of February.

With respect to the requests for a supplement for the months of February and March, 2019, the criteria set out in section 57 is applicable.

The reason given by the Appellant for his application in the Request is the need for fuel to heat his vehicle, where the Appellant resides. As noted in the Reconsideration Decision, the Appellant had made a previous request for a crisis supplement for fuel in December. That the Appellant was residing in his vehicle at least as early as December, 2018, indicates that it should not have been unexpected that fuel would be needed to heat his vehicle in the month of February, 2019. As such, the panel finds that the Ministry reasonably determined that the need to obtain fuel to heat his vehicle in February and March of 2019 should not have been unexpected.

The Appellant submits that the winter months were colder than average, making the cost of fuel unexpected. However, the receipts submitted by the Appellant for the month of February, 2019, total just \$192.00 and cover the period up to February 18, 2019, approximately two thirds of the way through the month. No receipts were submitted in respect of March, 2019. As such, the Receipts actually suggest a *decrease* in the Appellant’s fuel costs for the months of February and March, 2019. The panel finds that the Ministry was reasonable in its determination that the cost of fuel for February and March, 2019 was not an unexpected expense.

The Appellant submits that he does not have the resources to pay to heat his vehicle, largely because the rates of disability assistance are too low. However, as noted in the Reconsideration Decision, the Receipts indicate that the Appellant did pay cash or use a debit card to make fuel purchases in February, 2019. Likewise, the Receipts also indicate that the Appellant's fuel costs for February, 2019 may have decreased rather than increased. The panel finds that the Ministry reasonably determined that the Appellant had not demonstrated that he had no resources available to him to purchase fuel in the months of February and March, 2019.

Finally, the Appellant submits that failure to obtain a supplement for fuel will result in imminent danger to his physical health. The Appellant cites at least two health issues in the Request. In the submission, the Appellant challenges the Ministry's finding that sleeping in his car may exacerbate his medical conditions but he does not provide further information supporting a finding that failure to obtain a supplement for fuel will result in an imminent danger to his physical health. While the Doctor's Letter describes "serious health risks" to the Appellant from cold winter conditions (and summer heat and humidity), the letter doesn't describe how living in his car poses an imminent danger to his physical health and was written by a doctor in another province (which, generally speaking, experiences hotter and more humid summers and colder winters) in December 2015, which was prior to the period of time in which the Appellant first appears to have resided in his vehicle. For the above reasons, the panel finds that the Ministry reasonably determined that the Appellant had not demonstrated an imminent danger to his physical health if he did not get a crisis supplement for fuel for the months of February and March of 2019.

Based on all of the foregoing, the panel finds that the Reconsideration Decision was a reasonable application of sections 23(2) and 57 of the EAPWDR and the Appellant is not successful in this 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

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/06/02

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/06/02

PRINT NAME

Connie Simonsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)