

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 July 17, 2019, which denied the appellant's request for a crisis supplement to cover the cost of food. The ministry found that all of the requirements of Section 57 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as the cost of food was not an unexpected expense or an item unexpectedly needed.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 57

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 *Employment and Assistance Act*.

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Letter dated September 18, 2018 in which the appellant's physician wrote that the appellant has been diagnosed with atopic asthma that is exacerbated by environmental factors including fungal elements that have been found in her apartment. The physician wrote that he is in full support of the appellant's home being professionally cleansed of the molds and fungi in her apartment and with her staying temporarily in alternate accommodation;
- 2) Email receipt dated January 27, 2019 for accommodation for 59 nights for the total amount of \$4,547.15;
- 3) Letter dated June 3, 2019 in which the appellant's physician wrote that the appellant had to leave her tenancy in February 2019 and, if she had not moved out, she would have faced imminent danger to her health. The physician wrote that the stress and debt related to having to move out of her unit has exacerbated the imminent danger to the appellant's health; and,
- 4) Request for Reconsideration dated July 5, 2019 in which the appellant wrote:
 - She was forced to move into alternate accommodation due to serious mold issues in her BC Housing unit. She had to redirect her limited funds to shelter, which left her without enough money to feed herself.
 - Staying in alternate accommodation was an unexpected expense. She did not expect to abruptly move out of her home due to toxic mold. This unexpected expense is the reason she does not have enough money for food.
 - She had experienced previous mold issues at her unit which she expected her landlord to remediate. The landlord did not fully remediate her unit and, as a result, she suffered negative health impacts, as set out in the letters from her physician.
 - She temporarily moved into alternate accommodation as it was the only accommodation she could find on short notice. She could not use her shelter funds for the alternate accommodation because she needed them for her BC Housing unit to preserve her status in BC Housing so she would be eligible for a transfer.
 - She did not expect that her shelter funds would not be adequate for her housing. She also did not expect to be forced to spend money she normally used for food on extra shelter costs.
 - She moved into a new BC Housing unit as soon as BC Housing was able to find her a safe unit.
 - She received a crisis supplement for food for the previous two months but she needs the food crisis supplement to be able to feed herself. She is now in great debt and her credit card is incurring interest. She is doing everything possible to try to pay off the debt she incurred for the alternate accommodation, which leaves her without enough money for food.

Additional information

In her Notice of Appeal dated July 24, 2019, the appellant expressed her disagreement with the ministry's reconsideration decision and wrote that it was unexpected that she would accrue so much debt that she would be in financial hardship for months.

Prior to the hearing, the appellant provided the following additional documents:

- 1) The court decisions in *Lee v. Employment and Assistance Appeal Tribunal (EAAT) and Ministry of Social Development*, 2013 BCSC 513 ["Lee"]; *Hudson v. British Columbia (EAAT)*, 2009 BCSC 1461 ["Hudson"]; and *Watts v. British Columbia (Social Development and Social Innovation)*, 2014 BCSC 1085 ["Watts"]; and,
- 2) Written Submission of the appellant dated August 16, 2019.

The ministry relied on its reconsideration decision as the ministry's submission on the appeal.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

The arguments contained in the appellant's written submission will be addressed in Part F-Reasons for Panel Decision, below.

PART F – REASONS FOR PANEL DECISION

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a crisis supplement to cover the cost of food because all of the requirements of Section 57 of the EAPWDR were not met as the cost of food was not an unexpected expense or an item unexpectedly needed, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the appellant's circumstances.

Section 57 of the EAPWDR sets out the eligibility requirements for providing the crisis supplement, as follows:

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. . . .

Panel decision*The position of the parties*

The ministry wrote in the reconsideration decision that the provisions of Section 57 of the EAPWDR allow for the ministry to provide a crisis supplement when all of the legislative criteria are met, specifically that the supplement is required to obtain an item unexpectedly needed of for an unexpected expense, the family unit has no resources available to meet the expense or obtain the item, and failure to obtain the item will result in imminent danger to the physical health of any person in the family unit or the removal of a child under the *Child, Family and Community Service Act (CFCSA)*. In the reconsideration decision, the ministry found that the requirements that the appellant has no resources to purchase food and that failure to buy food would result in imminent danger to the appellant's physical health have been met; however, the ministry found that there was insufficient evidence to establish that the need for a supplement to purchase food was an unexpected expense.

In the reconsideration decision, the ministry noted that the appellant rented alternate accommodation in February and March 2019 as her BC Housing unit had been deemed unsafe to live in due to a problem with mold. The ministry wrote that the appellant incurred a large bill for alternate accommodation and continued to pay her shelter cost at BC Housing although she was living elsewhere. The ministry noted that the appellant received a crisis supplement for food in the months of April and May as a result of paying down her bill for the alternate accommodation. The ministry took the position that, at the time of the appellant's request the bill for the alternate accommodation is no longer considered unexpected, nor is it unexpected to have to pay off the bill while still purchasing food. The ministry held that food is an ongoing cost that is not unexpected and was not satisfied that an unexpected expense had prevented the appellant from purchasing food.

In her written submission, the appellant argued that the ministry failed to utilize the fundamental principles of statutory interpretation as summarized by the court in the *Watts* decision, i.e. that the words of the Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of [the Legislature]. The appellant wrote in her submission that the court in the *Lee* decision confirmed that one of the primary objectives of the EAPWDA is the provision of income and disability assistance and other benefits to persons in need, and is benefits-conferring legislation that is to be considered remedial and given a fair, large and liberal interpretation, a principle also reflected in Section 8 of the *Interpretation Act* RSBC 1996,c. 238. The appellant wrote that the court in the *Hudson* decision confirmed that where there is an ambiguity in the meaning of a statute, the ambiguity should be resolved in favour of the applicant seeking benefits under the legislation. The appellant argued that when applying the general principles of statutory

interpretation and the specific principles of statutory interpretation for welfare legislation, the appellant met all of the criteria specified in Section 57(1) of the EAPWDR.

Analysis

Not reasonably supported by the evidence:

The appellant argued that her inability to purchase food was unexpected and the ministry's determination, that the ministry was not satisfied that at the time of the appellant's request an "unexpected expense" prevented the appellant from purchasing food, is not reasonably supported by the evidence. The appellant wrote in her submission that the legislation does not define "unexpected" but information from the ministry website regarding crisis supplements explains that an "unexpected" expense or item unexpectedly needed refers to an unforeseen situation that suddenly interferes with a person's ability to pay the expense or obtain the item, and the ministry did not dispute the information from the ministry website, as referred to by the appellant on appeal. The appellant argued that her inability to pay for food precisely meets the ministry's explanation of "unexpected" as the unforeseen situation was her being forced to vacate her BC Housing unit due to toxic mold and to pay for alternate accommodation in addition to her BC Housing unit and this suddenly interfered with her ability to purchase food.

The appellant argued that she could not purchase food because she had to direct all of her limited funds to paying off the debt incurred due to the alternate accommodation. The appellant argued that in a prior decision on the appellant's request for a crisis supplement for shelter based on the same situation, both the ministry and the Tribunal made findings of fact that the need for the appellant to vacate her unit was unexpected. The ministry did not dispute the appellant's assertion that the Tribunal wrote in the previous decision that, because the need to vacate the unit was unexpected, it follows that the associated cost of the alternate accommodation was also unexpected. The appellant argued in her submission that it further follows that the inability to meet the expense of food due to the unexpected cost of the alternate accommodation is also unexpected.

In the reconsideration decision, the ministry determined that incurring the bill for the alternate accommodation was no longer unexpected and it is not unexpected to have to pay off the bill while still purchasing food. In terms of evidence, the ministry considered that the appellant left her BC Housing unit and rented alternate accommodation in February and March 2019 and incurred a "large" bill, at a cost of \$4,547.15 for the two months as set out in the email receipt dated January 27, 2019. The appellant requested a crisis supplement for food on June 4, 2019, which is over 4 months after she incurred the cost for the alternate accommodation and was initially required to vacate her BC Housing unit.

Panel finding

The panel notes that the ministry considered whether a "crisis" existed for the appellant at the

time of her request for a crisis supplement for food in June 2019, or whether there was an unforeseen situation that suddenly interfered with her ability to pay for food. The panel finds that the ministry was reasonable to conclude that at the time of the appellant's request for a crisis supplement in June 2019, the need to vacate the BC Housing unit and the associated cost of the new accommodation were no longer an unforeseen situation that had "suddenly" interfered with her ability to pay for food. The appellant wrote in her Request for Reconsideration that she moved into a new unit as soon as BC Housing was able to find her a safe unit, and a period of several months had passed since when the appellant incurred the debt for alternate accommodation. The appellant wrote that she received crisis supplements for food for two months, which allowed the appellant an opportunity to budget and to determine how quickly she is able to pay down the debt while meeting her need for food. Although the appellant's desire to pay down the large bill incurred for alternate accommodation may interfere with her ability to pay for food well into the future, the panel finds that the ministry's conclusion, that the expense was no longer unexpected in June 2019, is reasonably supported by the evidence.

Not a reasonable application of Section 57 of the EAPWDR to the appellant's circumstances:

In her written submission, the appellant also argued that the ministry applied the legislation unreasonably in her circumstances as the ministry had arbitrarily designated a point in time at which the expense for the alternate accommodation was no longer considered unexpected. The appellant argued that the ministry's application of the legislation regarding what qualifies as an unexpected expense is unreasonable when considering the principles of statutory interpretation from the *Watts* and *Hudson* decisions, as previously discussed. The appellant argued that there is clearly ambiguity regarding the length of time that an expense must exist before it becomes "not unexpected" and this ambiguity should be resolved in the appellant's favour.

The appellant argued that the ministry's interpretation of the legislation effectively creates a new requirement for eligibility for a crisis supplement by reading in an arbitrary time limit for qualifying an expense as unexpected and the ministry does not have the authority to establish new criteria. The appellant wrote that the ministry creating new eligibility criteria is problematic for three reasons, namely: 1) the legislation exists in part to provide predictability in how assistance will be provided to people in need, 2) it is in the ministry and the Tribunal's best interest for the criteria to be explained in an accessible and transparent manner so their resources are expended on meritorious cases, and 3) the ministry creating new and arbitrary criteria runs counter to a primary object of the EAPWDA, which is conferring benefits to persons in need.

Panel finding

Section 57(1) of the EAPWDR stipulates that the ministry "may" provide a crisis supplement to

or for a family unit that is eligible for disability assistance if the criteria in sub-sections (a) and (b) are met. The use of the term “may” in the Section confers discretion on the ministry to determine whether the legislative criteria are met in the circumstances of the appellant at the time of the request. In exercising its discretion, the ministry must consider the specific circumstances of each case and decide whether a given expense is “unexpected” at the time of the applicant’s request. In order to further define the meaning of the words “unexpected expense,” the ministry provided information on the ministry website that explained this refers to an *unforeseen* situation that *suddenly* interferes with a person’s ability to pay the expense or obtain the item [emphasis added]. Although the appellant argued that there is ambiguity regarding the meaning of unexpected, the panel finds that the ministry explanation is consistent with an ordinary, dictionary definition, which includes synonyms of: ‘unforeseen,’ ‘unanticipated’ and ‘unpredicted,’ which definition is sufficiently clear to be capable of being applied to the facts of each situation.

While the appellant argued that the ministry read in an arbitrary time limit for qualifying an expense as “unexpected,” effectively establishing a new criterion, the panel finds that the ministry did not purport to specify a particular time period at which an expense is no longer considered unexpected, but merely applied Section 57 to the facts that existed at the time of the appellant’s request in June 2019. The time of the appellant’s previous requests for crisis supplements for food were in closer proximity to the time in January 2019 when she incurred the expense for the alternate accommodation, affording little leeway for planning. While the appellant also argued in the alternative that predictability is required in how assistance will be provided to people in need, the panel notes that though guidelines as to time frames may be helpful to applicants, it is clear from not only the discretion provided the ministry, but in the application of all legislation, that the section should be applied to the particular facts of the applicant in each situation; in any event, applying a hard timeline (through guidance material) would likely end up creating the very thing the appellant complains of: an additional criterion. The panel notes that the court in the *Lee* decision confirmed a dual purpose for the EAPWDA that also includes good stewardship of public funds required for the programs. The panel finds that the ministry reasonably applied Section 57(1) of the EAPWDA to the appellant’s circumstances and determined that incurring the bill for the alternate accommodation in January 2019 was not unexpected at the time of her request in June 2019 and, therefore, was not an unexpected expense that had prevented the appellant from purchasing food.

Conclusion

The panel finds that the ministry’s reconsideration decision, which denied the appellant’s request for a crisis supplement for the cost of food because all of the requirements of Section 57 of the EAPWDR were not met, was reasonably supported by the evidence and a reasonable application of the applicable enactment in the appellant’s circumstances and the panel confirms the ministry’s decision. The appellant’s appeal, therefore, is not successful.

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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-09-06

PRINT NAME

Wayne Reeves

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-09-06

PRINT NAME

Richard Roberts

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-09-06