

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated August 15, 2019, which held that the appellant was not eligible for a crisis supplement for food pursuant to the *Employment and Assistance Act for Persons with Disabilities Regulation*, Section 57(1).

### **PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Act (EAPWDA)*  
*Employment and Assistance Act for Persons with Disabilities Regulation (EAPWDR)*  
*Employment and Assistance Act (EAA)*  
*Employment and Assistance Regulation (EAR)*

## **PART E – SUMMARY OF FACTS**

### *Information Before the Ministry at Reconsideration*

1. The appellant was denied income assistance in July 2019 because of income the appellant received in May 2019;
2. In July 2018 the appellant requested a crisis supplement for food;
3. The ministry denied the application for a crisis supplement for food on July 12, 2019, because the appellant did not meet the requirement under section 59(1) of the EAR that a family unit be eligible for income assistance or hardship assistance;
4. In a separate request for reconsideration the appellant requested that the ministry find her eligible for income assistance in July 2019;
5. At that reconsideration the ministry determined that the appellant was eligible for income assistance in July 2019; and
6. On August 8, 2019 (prior to this reconsideration decision) the appellant received income assistance for July 2019.

### *Information Provided on Appeal*

1. The reconsideration decision references EAPWDR section 57 (disability or hardship allowance), however the section relied on by the ministry for the appellant's original application was EAR section 59 (income or hardship assistance). At the hearing the ministry confirmed that the appropriate section was EAR section 59 and that it was an error that the reconsideration decision referred to EAPWDR section 57. The panel determined that there was no procedural unfairness arising from this error because the substantive wording of EAPWDR section 57 and EAR 59 is identical. Consequently, with the consent of the ministry and the appellant, the panel determined that the reconsideration decision would be read for the purposes of the appeal so that all references to EAPWDR section 57 were to be understood as references to EAR section 59.

### *Summary of Relevant Evidence*

1. The appellant was entitled to income assistance for the month of July, 2019; and
2. The appellant did not receive income assistance for the month of July until August 8, 2019.

## PART F – REASONS FOR PANEL DECISION

### Issue on Appeal

The issue on appeal is whether the ministry's decision that the appellant was not eligible for a crisis supplement for food for the month of July 2019 pursuant to EAR section 59 is reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

### Relevant Legislation

EAR section 59:

#### **Crisis supplement**

- 59 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for income 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, and
  - (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. 1, 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. 12/2003; 248/2018, App. 1.]

### **Ministry Position**

The appellant's original application for a crisis supplement for food was made on July 11, 2019. The basis for that application was that the appellant did not receive an income assistance payment on June 26, 2019 due to the ministry determining that the appellant was not eligible to receive income assistance for July 2019. The ministry denied that original application on the basis that the appellant did not satisfy the criteria at EAR section 59(1) that an applicant must be eligible for income assistance to be considered for a crisis supplement. However, the ministry did find that the appellant required a crisis supplement to meet an unexpected expense (food), that there were no resources available to the appellant to meet that need, and that the failure to meet that need would result in imminent danger to the health of a person in the family unit.

At the time of reconsideration, August 15, 2019, the ministry (in a separate reconsideration decision) had determined that the appellant was (retroactively) entitled to income assistance in July 2019. Consequently, at reconsideration the basis for the original decision – that the appellant was not eligible for income assistance – was no longer the case. However, at reconsideration the ministry determined that because the appellant received income assistance on August 8, 2019, that the ministry was not satisfied that the appellant had no resources available to meet the need for food, as required by EAR section 59(1)(a).

In the result, at reconsideration, the ministry found:

1. The appellant was eligible to receive income assistance in July 2019;
2. The appellant has an unexpected need for food in July 2019;
3. That because the appellant received income assistance for July 2019 on August 8, 2019, the appellant had alternate resources available to meet her need for food; and
4. There is no imminent danger to the appellant's physical health from the failure of the appellant to receive a crisis supplement in July 2019.

### **Appellant Position**

The appellant's position was that she was entitled to income assistance in July and therefore the decision by the ministry to deny her application was incorrect. The appellant stated that although she received income assistance for July, that assistance did not come until August and she had to purchase the food in July before she received the assistance.

### **Panel Decision**

The panel notes that the central factor of this appeal is timing and the ability of the ministry to make a retroactive determination of a person's eligibility for income assistance.

The panel notes that when the original decision was made on July 12, 2019, the information before the ministry was that the appellant was not eligible for income assistance and therefore the denial of that application was correct.

However, at the time of reconsideration the information before the ministry was that the appellant was eligible for income assistance for July 2019. The panel notes that a reconsideration decision is a new decision by the ministry based on the information before it at that time – stated another way, the decision made on reconsideration is not a 'review' of the original decision and the reconsideration officer is not limited to affirming or rescinding the original decision.

At reconsideration the ministry determined that the appellant was entitled to income assistance in July 2019 and the panel finds that was reasonably supported by the evidence before the ministry at reconsideration.

At reconsideration the ministry determined that the denial of income assistance in July "resulted in [the appellant] having an unexpected need for food." The panel notes that the denial of assistance did not create an unexpected need for food, but rather an unexpected need for resources to purchase the expected expense for food. However, the panel finds that the ministry's determination that the appellant had an unexpected requirement for a crisis supplement to purchase food was reasonably supported by the evidence before the ministry at reconsideration.

At reconsideration the ministry stated “as you [the appellant] have been issued July assistance, the minister does not accept that you do not have alternate resources to meet your need; therefore, criterion #2 has not been met.” EAR section 59(2) states “a crisis supplement may be provided only for the calendar month in which the application or request for the supplement was made.” The appellant applied for a crisis supplement on July 11, 2019. The panel recognizes that a reconsideration decision is based on the information before the ministry at the time of reconsideration but finds that the reconsideration decision must apply that information in the context of the date on which the original application was made. The panel finds that the ministry’s determination that the appellant had resources available to her on July 11 is not supported by the information available to the ministry because the ministry was aware that the appellant was provided with income assistance for July at a later date, on August 8, 2019.

At reconsideration the ministry stated: “the minister does not accept that failure to obtain a crisis supplement for food will result in imminent danger to your physical health.” The reconsideration bases this determination on the fact that the appellant has “been issued assistance for July and August”. As the panel stated above, the appellant’s eligibility for a crisis supplement for food must be determined as on the date the application is made. The panel finds that the ministry’s statement that it does not accept that the failure of the appellant to receive a crisis supplement for food would result in imminent danger to her physical health because she received income assistance for July 2019 in August is not reasonably supported by the information before the ministry.

However, the EAA section 24(1) states that after the hearing of an appeal the panel “must determine whether the decision being appealed is, as applicable, (a) reasonably supported by the evidence, or (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.” This means that the panel’s responsibility is to review the evidence before the ministry at the time of reconsideration and this goes beyond reviewing the ministry’s articulation of its reconsideration decision. At the time of the reconsideration decision, August 15, 2019, there was no evidence before the ministry that the appellant had suffered any danger to her physical health during the intervening 36 days. Consequently, the panel finds the evidence reasonably supports the ministry’s determination that the criterion that the failure to obtain a crisis supplement would result in imminent danger to the appellant’s physical health was not met.

In conclusion, the panel finds that the reconsideration decision of August 15, 2019, was reasonably supported by the evidence. The panel therefore confirms the ministry’s decision. The appellant’s appeal is thus not successful.

**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

**Trevor Morley**

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

**Richard Roberts**

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

**Keith Lacroix**

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)