

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“ministry”) reconsideration decision, dated 4 December 2019, in which the ministry determined that the Appellant was not eligible for a crisis supplement because they had not demonstrated imminent danger to their physical health as required by section 57 of the Employment and Assistance for Persons with Disabilities Regulation (“Regulation”).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation, Section 57.

PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included the following:

The appellant is a person with disabilities and is in receipt of receipt of provincial disability assistance.

The appellant contacted the ministry on 5 September 2019 to request assistance to replace their furnace. Documentation and information to support this request was provided to the ministry on 24 September 2019 and 2 October 2019. This information included estimates for 2 different heat pumps. On 5 October 2019 the ministry denied the appellant's request for a crisis supplement.

On 5 November 2019 the appellant filed a request for reconsideration, sought an extension of time and provided supporting information and documentation. This information included the appellant's written argument detailing the reasons for the request and an estimate for a new oil furnace. The ministry determined, in a reconsideration decision dated 4 December 2019, that the appellant was not eligible for a crisis supplement for furnace replacement because they had not met on of the required criteria set out in the legislation.

Additional information before the panel on appeal consisted of the following:

Notice of Appeal

In the Notice of Appeal, the appellant indicated that the ministry's decision was causing undue hardship. They indicated that they are a person in receipt of disability assistance with many health conditions. They also argued that the ministry had never mentioned the woodstove prior to the reconsideration decision and did not allow them to explain. They also indicated that their woodstove does not heat their whole home.

Appeal Submissions

The appellant provided 2 sets of advocate submissions and a letter from their family physician prior to the hearing.

The first advocate submission (undated) was prepared by the appellant's MLA constituency office.

The second advocate submission, dated 15 January 2019, was prepared by a community advocacy organization.

The family physician's letter, dated 9 January 2019, stated that the appellant faces various physical limitations that prevent them from chopping and hauling wood sufficient to heat their home and they cannot rely on this heat source though winter.

At the Hearing**Appellant**

The appellant argued that their physical health is in imminent danger as they live at a high elevation where winter temperatures are low and their home is without heat, except for one room. The appellant indicated that they do have a woodstove but that woodstove is not capable of heating their whole home, as it is located in an addition outside of their main residence and heats only that one room addition. The addition does not contain a bedroom, kitchen or bathroom. Furthermore, the woodstove is small and is only capable of burning for 4 hours. The appellant has been staying with a friend when possible. When they are at home, they stay in the one room addition, sleeping on a couch in front of the woodstove to keep warm and with an alarm set to wake them to maintain the fire in the wood stove through the night. As a person with disabilities, the appellant argues that they are not capable of doing the physical labour required to maintain a woodstove without assistance. They have relied upon the assistance of family,

friends and neighbours to chop and carry firewood and supply kindling. The appellant estimates that they have approximately 5 days of wood left at the time of the hearing.

Ministry

The ministry relied on the reconsideration decision.

Admissibility of Additional Information

The panel finds that the information presented in the appellant's Notice of Hearing, their testimony at the hearing and the physician's letter is admissible in accordance with s. 22(4) of the *Employment and Assistance Act*. While this information was not before the ministry at reconsideration, and not part of the record, the panel finds that consideration of this evidence is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. In reaching this determination, the panel notes that the ministry did not object to the admission of this information.

The panel finds that both advocate submissions consist of argument and do not required an admissibility determination under s. 22(4) of the *Employment and Assistance Act*.

Panel Note: the appellant testified that the letter from the family physician was written and provided in January 2020 and not January 2019. All parties agreed that this was a typographical error and the panel accepts that the letter should properly be dated January 9, 2020.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's reconsideration decision, dated 4 December 2019, was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

In the reconsideration decision, the ministry found that the appellant had demonstrated an unexpected need and that there were no resources available to cover the cost, but that the appellant had not demonstrated that failure to meet the expense would result in imminent danger to their physical health.

The relevant section of Regulation provides:

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*.

Section 57(1) of the Regulation allows the minister to provide a crisis supplement to a family unit that is eligible for disability assistance if the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed. There is no dispute regarding the appellant's eligibility for disability assistance. The Regulation requires that the following three criteria be met: 1) the item or expense is unexpected, 2) there are no resources available to meet the expense, and 3) failure to meet the expense will result in imminent danger to physical health or removal of a child. In this appeal, the first two criteria are not at issue as they have been met. Therefore, only issue in this appeal is the third criterion.

Imminent Danger

Section 57(1)(b) states that in order for a crisis supplement to be granted it must be demonstrated that the failure to meet the expense or obtain the item will result in the imminent danger to the physical health of the person or removal of a child. The panel finds that there is no suggestion in this appeal that removal of a child under the *Child, Family and Community Service Act* is a possibility.

In the reconsideration decision, the ministry determined that the appellant had not established that failure to replace their furnace would result in imminent danger to their physical health. The ministry's rationale for this conclusion was that their review of the appellant's file indicated that there was a woodstove in the appellant's home and the appellant had previously communicated to ministry staff that this wood stove was their primary heat source as it was cheaper than oil. The ministry found that the appellant had not indicated that they were unable to use the woodstove or that it did not adequately heat their home.

The appellant, through their testimony and advocate's arguments, stated that the ministry's decision is unreasonable for three reasons. First, the appellant is not physically capable of maintaining a woodstove

due to their disabilities. The appellant argues that they have relied upon the assistance and good will of others in order to use this heat source. The appellant refers to the physician's letter in support of this argument. Second, the appellant has only about 1 week's supply of wood and cannot obtain more given the current shortage of seasoned firewood, the increasing cost due to this shortage and difficulty having firewood delivered in winter conditions. Third, the woodstove is a secondary heat source at best as it only burns for 4 hours and heats less than $\frac{1}{4}$ of the appellant's home. The appellant argues that the woodstove does not heat the kitchen, bedroom or bathroom areas of the home.

In addition to the three substantive arguments regarding imminent harm, the appellant also made a procedural argument regarding the reasonableness of the ministry's reconsideration decision. The appellant argued, that because there was no mention of the woodstove in the original 5 October 2019 decision, it was unfair and unreasonable for the ministry not to have allowed the appellant to explain the situation with their woodstove prior to the reconsideration decision.

The panel finds, based on the information provided, that the ministry's conclusion that the appellant has not established an imminent danger to their physical health as required under Section 57(1) was not reasonably supported by the evidence nor a reasonable application of the legislation in the appellant's circumstances. The panel finds that the appellant has provided sufficient admissible evidence to establish that their woodstove does not heat their home sufficiently given its size and location. The panel finds that living in a home without heat in sleeping, bathing and cooking areas will result in imminent danger to the appellant's physical health.

Furthermore, with the panel finds that the physician's letter and testimony establish that the appellant is not physically capable of maintaining the woodstove and cannot rely on this heat source. In the reconsideration decision, the ministry notes that the appellant is in receipt of disability assistance and indicates that the appellant's file history was reviewed. However, there is no mention in the reconsideration decision of any consideration of the appellant's disability. The panel finds it unreasonable for the ministry not to have considered and discussed the appellant's physical capacity in relation to the woodstove in its reconsideration decision. The panel also finds it unreasonable for the appellant to be required to rely on the goodwill of others as a means to maintain a safe level of heat in their home over winter, as they testified they have been forced to do. In light of these findings, the panel finds that the appellant has demonstrated imminent danger to their physical health and the ministry's determination on this criterion is not reasonable.

In light of its findings regarding the ministry's reconsideration decision, the panel has not addressed the appellant's procedural fairness argument.

Conclusion

The panel finds upon review of all of the admissible evidence including the information not before the ministry at reconsideration that the ministry's reconsideration decision, which held that the appellant was not eligible for a crisis supplement is not a reasonable application of the legislation in the circumstances of the appellant nor reasonably supported by the evidence. The panel rescinds the ministry's reconsideration decision. The appellant is successful on appeal.

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

Jennifer Smith

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/01/18

PRINT NAME

Anne Richmond

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Robert Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)