

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated July 27, 2020, which determined that the appellant was not eligible for a crisis supplement for a fridge, because her request did not meet all the criteria set out in section 57 of the Employment and Assistance for Persons with Disabilities Regulation.

Criteria

1. The family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed.
2. They are unable to meet the expense or obtain the item because there are no resources available to the family unit.
3. Failure to meet the expense or obtain the item will result in imminent danger to their physical health.

Specifically, the ministry was not satisfied that the appellant did not have resources available and that there was imminent danger to her physical health.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 5

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

PART E – SUMMARY OF FACTS

Relevant Evidence Before the Minister at Reconsideration

Ministry records show:

The appellant is a sole recipient of disability assistance.

On July 3, 2020, the ministry noted the appellant reported using a \$300 emergency/disaster supplement, provided by the ministry for COVID-19 related expenses, to buy a fridge as she did not have a fridge where she was living.

On July 6, 2020, the appellant contacted the ministry to request a replacement fridge as her fridge was not working right. She was losing groceries and had no extra funds to make the purchase. The appellant stated that when she first moved in, there was an operating fridge but now it was not always functioning and made a noise that was intolerable.

The appellant reported the concern to the landlord on many occasions, but the landlord refused to do anything. Therefore, the appellant bought a fridge/freezer from a social services organization that was really small and didn't work - the plug didn't fit in the wall nor was it keeping milk cold or meat frozen. So, the appellant gave it away. The organization wouldn't take it back or repair it.

The ministry phoned the appellant's landlord and spoke with the property manager who was aware of the fridge issue and that the appellant had raised concerns. They stated maintenance checked the fridge out a few times to assess the problem and determined that the fridge was fully functional. The property manager stated the appellant's biggest issue with the fridge was the noise it made.

The ministry phoned a second property manager who also verified the fridge and freezer were working properly. There were work orders to back that up. They also stated the appellant tended to fixate on something, which exacerbated her condition, and a condition to the appellant moving in to the unit was to work closely with a support worker. They stated if the fridge was not working properly it would be replaced by the property managers.

Upon making the original decision, the ministry did not note whether it was determined the appellant had an unexpected expense or needed to obtain an item unexpectedly. Therefore, the ministry deemed the appellant met this criterion.

Email from Property/Strata Management Assistant (May 15, 2019)

- asking a maintenance worker to look at the fridge.

The tenant "is special needs and can become very anxious over little things. She said the fridge is knocking and waking her up at night."

Work Order (May 15, 2019)

Comment: "Fridge working but noisy" – called worker from an appliance store – please arrange to meet them at unit.

Comments: - went to look at the fridge, unplugged it, adjusted the fridge, sprayed the fan motor. The fridge was fine. Then called the person at the appliance store to look at it later - also couldn't find anything.

Work Order (February 18, 2020)

Comment: "Can her fridge be levelled to make it quieter? It's driving her crazy."

Comments: Leveled fridge, nothing wrong with fridge.

Work Order (May 11, 2020)

Comment: "Fridge is still noisy – Please confirm working properly."

Comments: Worker went through the motions with the appellant again and there was nothing. And all was good with the appellant also.

Request for Reconsideration (July 16, 2020)

The appellant stated that she did not get a big fridge. She got the same one still squealing and noisy and she is going out of her mind. Her heart was pumping for a week and she thought she was going to have a heart attack with all the noise going on for a long time. They can't fix it and won't get her a new fridge so she bought a baby fridge but the plug-in won't go into the wall properly and won't keep milk cold and/or freeze meat so she got rid of it. It was \$55.00. She can't stand it. They expect her to adjust it every three or four hours. It's affecting her mentally and she physically gets sick every day.

Additional Information

Appellant

Notice of Appeal (received August 13, 2020)

The appellant stated she needs insulin in the fridge and the fridge is noisy. It's affecting her health, mind and heart.

At the hearing the appellant reiterated that she is going out of her mind. The fridge still squeals and she thought she was going to have a heart attack. The appellant also clarified that she tried to address the noise issue by turning a knob but it didn't help. As well, the appellant clarified that the fridge, supplied by the property managers is working, but making noise. It was the fridge that she bought that didn't keep food cold.

Ministry

At the hearing, the ministry stated that the three criteria under section 57 of the EAPWDR need to be met. The ministry clarified that in the reconsideration decision, the first criterion, (unexpected expense or obtain an item unexpectedly) was considered met only because the original decision did not address this criterion. The other two criteria (no resources and imminent danger to physical health) were not met.

The panel determined that the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is:

Whether the ministry's reconsideration decision that determined the appellant was not eligible for a crisis supplement for a fridge because her request did not meet all the criteria set out in section 57 of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Criteria

1. The family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed.
2. They are unable to meet the expense or obtain the item because there are no resources available to the family unit.
3. Failure to meet the expense or obtain the item will result in imminent danger to their physical health.

Specifically, did the ministry reasonably determine that the appellant had resources available and that there was no imminent danger to her physical health?

Ministry records show the ministry deemed the appellant met the first criterion - requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed..

Relevant Legislation

Employment and Assistance for Persons with Disabilities Act

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.

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

Appellant Argument

The appellant argues that she needs a new fridge as the fridge she has is noisy and affecting her health mind and heart. Her heart was pumping for a week and she thought she was going to have a heart attack with all the noise going on for a long time. She is going out of her mind. It is affecting her mentally and she physically gets sick every day. The property managers would not get her a new fridge.

Ministry Argument

The ministry argues that the appellant had a working fridge/freezer provided by the landlord upon move in, so the fridge was not considered an essential item that would affect health and safety. The fridge making sounds did not constitute a broken fridge. The property managers provided verbal confirmation that the fridge was assessed on multiple occasions and works. As well, work order documents were submitted by the property managers to verify the fridge was assessed multiple times by maintenance workers and there was nothing wrong with it, and so there was no danger of food spoiling.

If the fridge had any further maintenance issues or stopped working, the landlord was solely responsible for the maintenance and replacement of the fridge. As the property managers would repair or replace the fridge should it be required, the ministry argues the property managers are a resource.

As well, the ministry argues there is no evidence to confirm the sounds from the fridge will result in urgent danger to the appellant's physical health.

Section 5, EAPWDA - Disability assistance and supplements

Section 5 of the EAPWDA states, "the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it." Ministry records show the appellant is a sole recipient of disability assistance. Therefore, the panel finds the ministry reasonably determined that the appellant can be considered for disability assistance under section 5 of the EAPWDA.

Section 57(1)(a), EAPWDR – unable to meet expense, no resources

Ministry records show that on July 6, 2020, the appellant contacted the ministry to request a replacement fridge as her fridge was not working right, she was losing groceries and had no extra funds to make the purchase. However, at the hearing the appellant clarified that the fridge supplied by the property managers, is working. The issue is that it is making noise.

The ministry argues that the fridge making sounds did not constitute a broken fridge. The property managers provided verbal confirmation that the fridge was assessed on multiple occasions and works. As well, the ministry argues work order documents were submitted by the property managers to verify the fridge was assessed multiple times by maintenance workers and there was nothing wrong with it, and so there was no danger of food spoiling. And, as the property managers would repair or replace the fridge should it be required, the property managers are a resource.

The panel finds that as the appellant clarified that the fridge is working and ministry records state that the property managers would repair or replace the fridge should it be required, the property managers are considered a resource.

Therefore, the panel finds the ministry's determination that the appellant has not met the requirement under 57(1)(a) (unable to meet expense, no resources) to be reasonable.

Section 57(1)(b)(i), EAPWDR – failure to meet expense will result in imminent danger to physical health

The appellant argues that the fridge is noisy and affecting her health, mind and heart. Her heart was pumping for a week and she thought she was going to have a heart attack with all the noise going on for a long time. She is going out of her mind. It is affecting her mentally and she physically gets sick every day.

The ministry argues there is no evidence to confirm the sounds from the fridge will result in urgent danger to the appellant's physical health.

At the hearing, the appellant clarified that that fridge, supplied by the property managers, is working but making noise. Evidence in the form of work orders demonstrate that the appellant's fridge functions properly in keeping food from spoiling.

Although the panel acknowledges that the noise from the fridge may be causing health issues for the appellant, there is insufficient evidence to demonstrate that failure to meet the expense (repair the fridge or buy a new fridge), will result in imminent danger to her physical health. The panel therefore finds the ministry reasonably determined that the appellant does not meet section 57(1)(b)(i) of the EAPWDR.

Conclusion

In conclusion, the panel finds the ministry's reconsideration decision, that determined the appellant was not eligible for a crisis supplement for a fridge, because her request did not meet all the criteria set out in section 57 of the EAPWDR, was reasonably supported by the evidence.

Specifically, the panel finds the ministry reasonably determined that the appellant had resources available and that there was no imminent danger to her physical health.

APPEAL NUMBER
2020-00197

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)

2020/09/03

PRINT NAME

Vivienne Chin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/09/03

PRINT NAME

Laurie Kent

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/09/03