

APPEAL NUMBER  
2021-00070

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

The decision under appeal is the Ministry of Social Development and Poverty Reduction (Ministry) reconsideration decision dated March 26, 2021 that the appellant did not qualify for a crisis supplement for COVID-related expenses because the information provided did not meet the requirements set out at section 57 of the Employment and Assistance for Persons with Disabilities Regulation. Specifically, the Ministry determined that the appellant had not demonstrated:

- The supplement was needed to meet an unexpected expense or obtain an item unexpectedly needed.
- The appellant had no resources available to meet the need.
- Failure to provide the item would result in imminent danger to the appellant's physical health.

### **PART D – RELEVANT LEGISLATION**

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

## **PART E – SUMMARY OF FACTS**

The appellant is in receipt of disability assistance as a single person with no dependents. They are homeless and reside in their vehicle.

On February 11, 2021, the appellant requested a Crisis Supplement for clothing but indicated that the request was for COVID-related expenses rather than clothing.

On February 16, 2021, the Ministry denied the appellant's request on the ground that they had already received the \$100 maximum for clothing in the preceding 12 months. The appellant confirmed to the Ministry that the request was not for clothing and a new service request was opened to review their request as Crisis Supplement-Other rather than Crisis Supplement-Clothing.

On February 17, 2021, the appellant provided additional information to the Ministry via email in support of their request for a Crisis Supplement. In this email, the appellant described their circumstances and explained their position, including the following arguments:

- the COVID-19 pandemic was unexpected, causing increased costs and societal expenses, and its duration and end are unforeseeable;
- a 20 cent per litre increase in fuel prices was unexpected;
- a new infection caused the appellant to make several extra trips to their pharmacy;
- community centres are closed for general use and libraries have reduced hours, causing the appellant to drive extra kilometres to use washroom facilities and spend additional time in their vehicle with unexpectedly increased fuel costs to stay warm;
- the appellant needs car fuel for heat and extra community travel; and
- the appellant does not have available resources as all of their resources have been exhausted.

On February 22, 2021 the Ministry denied the appellant's Crisis Supplement-Other request finding that it did not meet the requirements set out in the EAPWDR.

On March 15, 2021, the appellant submitted the Request for Reconsideration, indicating that they were in need of a Crisis Supplement of \$150 to meet COVID-19 expenses, increased auto fuel costs and unexpected car repairs.

On March 26, 2021 the Ministry denied the appellant's Crisis Supplement-Other request finding that it did not meet the requirements set out in the EAPWDR.

### **Appeal Submissions**

With the consent of the parties, this hearing was conducted in writing.

The appellant did not provide written appeal submissions. The appellant requested an extension of time to provide submissions as they were recovering from an infection-related illness. This request was granted. The appellant provided an email prior to the extended deadline indicating that they had previously been granted two similar crisis supplements in April 2020, totalling \$300. The appellant, in their Notice of Appeal, indicated that the Ministry's reconsideration decision is "patently unreasonable" and that they disagree with the reconsideration decision for reasons already submitted and for the reasons provided in their two successful previous crisis supplement applications. The appellant requested that the Ministry provide this panel with the documentation related to those previous crisis supplements.

The Ministry indicated that it would rely on the reconsideration officer's decision of March 26, 2021 as the written submission for this appeal. However, the Ministry then went on to add what it refers to as a few points of clarification. These clarifications are as follows:

- *In February 2021, all income assistance and disability assistance recipients, including [the appellant],*

received \$150 for COVID-related expenses. From May 2020 to January 2021, \$300 had been provided to recipients for this reason.

- There is no evidence to establish [the appellant] had a \$150 unexpected expense or unexpected need in February 2021 that could not be met.
- It is unknown when [the appellant] incurred car maintenance costs. [They] did not mention them February 16 or 17 when discussing [their] crisis request, which indicates they were not the impetus for [their] request.
- The resources available to [the appellant] in February 2021 include:
  - \$150 all recipients received for COVID-related expenses,
  - \$117.50 remaining in his shelter allowance after paying \$257.50 to lease his vehicle/place of residence (\$375 – \$257.50),
  - \$341.85 transportation supplements, most of which were for gas to drive round trip from [City] to [City] to attend daily IV therapy through February 25, and
  - [City] Hospital was a daily resource through February 25, to help meet his needs for warmth and a washroom.

The Ministry responded to the appellant's request that the Ministry provide all related documentation for two previous crisis supplements, totalling \$300. The Ministry provided documents relating to an April 3, 2020 crisis supplement of \$100 and case notes for an April 8, 2020 crisis supplement of \$200.

### **Admissibility**

The panel finds that the information provided by the parties on appeal is in the nature of elaboration rather than evidence that is new or different. The appeal submissions of both the appellant and the Ministry are admissible in accordance with section 22(4) of the *Employment and Assistance Act*.

## **PART F – REASONS FOR PANEL DECISION**

The decision under appeal is whether the Ministry's reconsideration decision, in which the ministry determined that the appellant was not eligible for a crisis supplement, was reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant. The ministry determined that the appellant did not qualify for a crisis supplement for shelter costs because they had not established that: the supplement was needed to meet an unexpected expense or obtain an item unexpectedly needed; there were no resources available to meet the need; and failure to meet the need would result in imminent danger to the appellant's physical health.

### **Majority Reasons**

For the reasons that follow, the panel majority finds that the Ministry's reconsideration decision is neither reasonably supported by the evidence nor a reasonable application of the applicable legislation in the circumstances of the appellant.

To qualify for a Crisis Supplement, a number of criteria set out in the EAPWDR must be met.

A preliminary criterion to consideration of a Crisis Supplement is the requirement that any applicant must be a part of a qualifying family unit. The EAPWDR specifies that this means a family unit that is eligible for disability assistance or hardship assistance. There is no dispute in this appeal that the appellant meets this criterion as a recipient of disability assistance.

There are three other criteria that must also be satisfied. First, there must be an unexpected expense or item unexpectedly needed. Second, there must be no resources available to meet the expense. Third, failure to meet the expense or obtain the item will result in imminent danger to the physical health of a person in the family unit or removal of a child under the [Child, Family and Community Service Act](#). There are no children in the appellant's family unit for this appeal and the relevant portion of the third criterion for this appeal is imminent danger to the physical health of the appellant.

### **Unexpected Need or Expense**

With respect to the first criterion, the Ministry determined that the expense or need was not unexpected. The Ministry indicated that it did not consider the appellant's explanation sufficient to demonstrate that the expense or item needed was unexpected. The Ministry argued that an "unexpected" expense or item "unexpectedly" needed means that there must be an unforeseen situation that suddenly interferes with one's ability to pay for the expense or item. The Ministry stated that it does not consider COVID-related expenses, inflation, cost of food, weather changes, fluctuations in gas prices, and fluctuating costs to maintain a vehicle to be unexpected. The ministry argued that because the appellant has had a lease-to-own agreement for their vehicle since May 2020, costs to maintain and repair the vehicle are not unexpected. Further, the Ministry argued that the COVID-19 pandemic has been ongoing since March 2020 with daily updates and projections indicating it is expected to continue still for many months and does not consider COVID-related expenses unexpected. Finally, the Minister argued that the reduction in the emergency disaster supplement rate change is not also unexpected because the supplement has always been temporary, and recipients were notified of the rate change in advance.

The appellant argues that their need for a crisis supplement is unexpected. The appellant argues that the duration and eventual end of COVID-19 are unforeseeable. They argue that COVID-19 is a worldwide crisis that is, in and of itself, an unexpected event and not a normal ongoing process. The appellant argues that the pandemic has caused closures and reduced access to community centres, community food programs and libraries. This has led to unexpected increases in food and heating/fuel costs and has forced the appellant to spend more time in their vehicle each day rather than indoor spaces. They further argue that a significant increase in fuel prices due to extreme weather events in Texas is an unexpected event leading to an unexpected additional heating/fuel expense. As well, the appellant argues that medical complications have required them to undertake additional unexpected travel in their vehicle, also causing an unexpected expense. Also, with respect to their vehicle, the appellant argues that they have had unexpected vehicle repair or maintenance costs including battery replacement.

Finally, the appellant argues that the Ministry's reduction of the emergency disaster benefit from \$300 to \$150 was also unexpected.

The panel majority finds the Ministry's reconsideration decision to be unreasonable on this criterion. While it may be reasonable for the Ministry to conclude that one or more of the events described by the appellant could be expected, it is not reasonable for the Ministry to conclude that an individual living in their vehicle in a British Columbia winter should be able to anticipate and budget for a confluence of factors, all of which contribute to an unexpected expense for automotive fuel. It is the view of this panel that these factors, which include a global pandemic, resulting in lowered access to public spaces and community services for food, heat and bathing/washroom facilities; increased fuel prices; vehicle repair costs beyond the appellant's monthly maintenance budget; a reduction in emergency benefits prior to a resumption of services; and medical complications requiring additional travel for treatment and supplies, should be considered together rather than in isolation from one another. The panel takes judicial notice of the fact of both an ongoing COVID-19 pandemic, resulting in lowered access to community resources and services, and increased automotive fuel prices, regardless of whether the increase relates to unexpected extreme weather events in another country. The Ministry does not take issue, either at reconsideration or in its appeal submission, with the appellant's assertion that the appellant has had recent medical complications requiring increased travel for healthcare and medications. The panel notes the Ministry's argument that the appellant has not provided sufficient evidence to establish a \$150 COVID-related expense or need. The panel acknowledges that it would have been helpful if the appellant had been able to provide specific expense receipts, but is nonetheless prepared to find that the appellant has had an unexpected fuel expense, due to additional needs for travel resulting increased usage and additional costs relating to increased fuel prices. The panel majority finds that the appellant has demonstrated that this confluence of factors leading to increased fuel costs and usage, accompanied by reduced access to community services and financial support from the Ministry, amounts to an unexpected expense. The Ministry's determination that this criterion was not met is not reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

#### No Resources Available

With respect to the second criterion, the Ministry determined that the appellant has resources available to meet their essential needs and found that this criterion had not been met. The Ministry argues that the appellant is receiving \$1636.67/month, which includes a \$375 shelter allowance; \$52 for transportation; \$56.25 for medical transportation; \$205 and \$150 emergency disaster supplement for pandemic-related expenses. The Ministry further argues that the appellant has received \$243.60, for medical transportation to attend daily IV, and the \$500 BC Recovery Benefit. The Ministry concluded that the appellant does have resources available to meet their needs and notes that the appellant has not provided documentation to establish COVID-related expenses in excess of \$150/month.

The appellant's information indicates that their "normal" monthly vehicle expenses are approximately \$800. The appellant's position is that recent repairs have been approximately \$900, which is significantly more than their expected \$100 expense for maintenance and repairs. The appellant argues that COVID-related expenses amount to an additional \$300 expense for them and it is ridiculous for the Ministry to expect that individuals reliant on disability assistance can simply rearrange their budgets to accommodate additional expenses. The appellant indicates that their resources are exhausted, and they require a crisis supplement; there are no other resources available.

The panel majority finds the Ministry's reconsideration decision to be unreasonable on this criterion. While the Ministry has done a thorough job of outlining the benefits provided to the appellant to meet their essential needs, it has not made any reference to the appellant's expenses or completed any analysis of the appellant's essential needs or costs associated with meeting those needs. In the panel majority's view, the Ministry has unreasonably concluded, on the basis of funds provided, that there are resources available to the appellant. The Ministry has made no reference to the documents in evidence that speak to the appellant's essential living costs and appears to have made no further inquiry or request to the appellant for additional information regarding their actual cost to meet essential needs. While the Ministry is not obligated to request additional information from its clients, including the appellant, is it unreasonable for the Ministry to not address the information before it when conducting its analysis. Instead of considering the appellant's regular \$790 monthly vehicle expense, as set out in the appellant's May 2020 letter to the Ministry, lease agreement and insurance policy (Note: this policy is not in evidence before

this panel), the Ministry has not addressed this information in its analysis of available resources in the reconsideration decision. Furthermore, in the appeal submission, the Ministry has suggested that the appellant has a remaining amount of \$117 from their shelter allowance after paying for their vehicle expenses. This calculation of \$117 available relates to the lease payment only and does not take into consideration any regular insurance, fuel or maintenance costs for the vehicle that is the appellant's home. In our view, any reasonable determination about the availability of resources must include a consideration of both the appellant's available income and their actual expenses. For these reasons, the panel majority finds the Minister's analysis and conclusions on this criterion unreasonable. The Ministry's determination that this criterion was not met is not reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

### Imminent Danger

On the final criterion, the Ministry has concluded that failure to provide a \$150 crisis supplement will not result in imminent danger to the appellant's health. The Ministry argued that because the appellant received a \$300/month emergency disaster supplement for 10 months and received \$150/month from February through April, the appellant has ongoing resources available for COVID-related expenses. The Ministry concluded that it does not consider denial of a \$150 crisis supplement to amount to an imminent danger to the appellant's health. In reaching this conclusion, the Ministry referred to its conclusion on the previous criterion. The Ministry concluded that because it determined that the appellant had not demonstrated that their assistance and supplements each month was insufficient to meet their essential needs and COVID-related expenses, failure to provide the crisis supplement requested would not result in imminent danger to the appellant's health.

The appellant argues that food and fuel for heat and community travel are essential and that failure to meet these needs will result in an imminent danger to health.

The panel majority finds the Ministry's reconsideration decision to be unreasonable on this criterion. The Ministry appears to have conflated its analysis on this criterion with its analysis of the previous criterion. Rather than engaging in an analysis or consideration of whether a failure to meet the expense would result in imminent danger to the appellant's health, the Ministry has concluded that there is no imminent danger to health because of the past provision of resources. This is not a reasonable interpretation of the language in the legislation, which states in part "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." The legislation refers to a failure to meet the expense not a failure to receive a benefit. The question here is not whether failure to provide \$150 will result in imminent danger to health but whether failure to meet the expense will result in imminent danger to health. The main expense here is fuel for heat and transportation for a person living in a vehicle. The appropriate consideration for this criterion is whether a failure to meet the appellant's fuel and transportation expense would result in imminent danger to their health. It is unreasonable for the Ministry to conclude that a failure to meet the heating and fuel expenses of an immunocompromised individual, with multiple permanent medical conditions and a co-morbid infection requiring daily intravenous treatment, while living in their vehicle in the winter does not amount to an imminent danger to their health. This conclusion is particularly problematic in light of the Ministry's earlier conclusion for the same client that a failure to meet expenses "will result in imminent danger to your health as you are immune compromised and live in your vehicle which you are having to drive further distances to community resources." The Ministry seems, in the current reconsideration decision, to be interpreting the same legislation in a manner that is different than its previous interpretation of the same provision for the same Ministry client due to an unreasonable conflation of the legislative criteria. A failure to meet expenses for heating and fuel would continue to result in imminent danger to the appellant's health so long as his circumstances haven't changed, meaning that he continues to be immunocompromised and live in his vehicle. The question of whether there are resources to meet the expense (criterion 2) is separate from the question of whether failing to meet the expense would result in imminent danger. The Ministry's determination that this criterion was not met is not reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

### **Conclusion – Panel Majority**

The panel majority finds that the Ministry's reconsideration decision was not a reasonable application of the legislation in the circumstances of the appellant and is not reasonably supported by the evidence. The panel rescinds the Ministry's reconsideration decision. The appellant is successful on appeal.

## **Dissenting Reasons**

### **Unexpected Need or Expense**

The appellant argues that their need for a crisis supplement is unexpected because

- the duration and eventual end of COVID-19 are unforeseeable.
- COVID-19 is a worldwide crisis that is, in and of itself, an unexpected event and not a normal ongoing process.
- the pandemic has caused closures and reduced access to community centres, community food programs and libraries. This has led to unexpected increases in food and heating/fuel costs and has forced the appellant to spend more time in their vehicle each day rather than indoor spaces.
- a significant increase in fuel prices due to extreme weather events in Texas is an unexpected event leading to an unexpected additional heating/fuel expense.
- medical complications have required them to undertake additional unexpected travel in their vehicle, also causing an unexpected expense.
- they have had unexpected vehicle repair or maintenance costs including battery replacement.
- the Ministry's reduction of the emergency disaster benefit from \$300 to \$150 was also unexpected.

The dissenting member finds that despite the appellant's overall difficult situation there is insufficient evidence that the appellant on or shortly prior to February 11, 2021 was suddenly facing an unexpected expense or need. While the appellant argues that COVID-19 is an unexpected event and not a normal ongoing process the dissenting member finds that on February 11, 2021, the day of the request at issue, the pandemic was 1 year old and no longer a sudden and unexpected occurrence. There have been widespread epidemics in the world before, and it is fairly certain that the current one will not be the last one. The dissenting member agrees with the appellant that the end of the pandemic is unforeseeable.

While the appellant argues that the pandemic has caused closures and reduced access to community centres, community food programs and libraries which led to unexpected increases in food and heating/fuel costs and has forced the appellant to spend more time in their vehicle each day rather than indoor spaces, the dissenting member finds that community closures, reduced access, and, in the appellant's case, increased food and heating costs, in February 2021 - 1 year into the pandemic - were no longer unexpected.

Whether a rise in fuel prices can be causally and/or solely linked to an extreme weather event requires expert testimony, for example from political and economic analysts. While the appellant argues that a significant increase in fuel prices due to extreme weather events in Texas was an unexpected event leading to an unexpected additional heating/fuel expense the dissenting member finds that in absence of expert evidence there is insufficient evidence that an extreme weather event in another country lead to an unexpected rise in fuel expenses.

While the appellant argues that medical complications have required them to undertake additional unexpected travel in their vehicle causing an unexpected expense, the dissenting member finds that even though the appellant required daily transport to the hospital on and shortly prior to February 11, 2021 for which the ministry provided a \$341.85 transportation supplement, there is insufficient evidence that these medical complications were unexpected.

The appellant argues further that they had unexpected vehicle repair or maintenance costs including battery replacement. The dissenting member notes that the appellant did not mention any repair costs at the time of their request for the supplement, neither did they mention anywhere when these repair and maintenance costs occurred, or how they were unexpected. The dissenting member finds that car repair and maintenance costs occur on a regular basis and that there is insufficient evidence that these costs were unexpected.

While the appellant argues that the ministry's reduction of the emergency disaster benefit from \$300 to \$150 was unexpected the dissenting member is in agreement with the ministry's statement that that the emergency disaster supplement has always been provided as a temporary supplement and recipients were notified of the rate change in advance. The dissenting member finds therefore that there is insufficient evidence that the reduction from \$300

to \$150 was unexpected.

Consequently, the dissenting member finds that the ministry reasonably determined that the appellant was not facing an unexpected expense, or an item unexpectedly needed.

The dissenting member notes that there is not enough evidence that an unexpected expense was caused by a confluence of many factors that lead to increased food, medical, fuel and heating costs accompanied by reduced access to financial support from the ministry.

#### **No Resources Available**

The onus is on the appellant (not on the ministry) to demonstrate that they have no resources available. While the appellant reported they have no resources available to meet their fuel or heat expenses the dissenting member - in light of the ministry calculation - finds there is insufficient evidence of the appellant's lack of resources.

The ministry had calculated for February 2021:

- \$150 all recipients received for COVID-related expenses
- \$117.50 remaining in his shelter allowance after paying \$257.50 to lease the appellant's vehicle/place of residence (\$375-\$257.50)
- \$341.85 transportation supplement, most of which were for gas to drive round trip to and from the hospital to attend daily IV therapy through February 25, and
- The hospital was a daily resource through February 25, to help meet the needs for warmth and a washroom.

Based on this evidence the dissenting member finds the ministry reasonably determined that the appellant had resources available to meet their basic needs.

#### **Imminent Danger to Physical Health**

The appellant argues that food and fuel for heat and community travel are essential and that failure to meet these needs will result in an imminent danger to health.

Undoubtedly the appellant's physical health is already compromised. However, while failure to obtain food and fuel for heat and community travel naturally results in imminent danger to health, the dissenting panel finds that there is not enough evidence that the appellant in fact is unable to obtain these items as they were not able to demonstrate that the amount of assistance plus any supplements are not sufficient to meet essential needs. Thus, the dissenting member finds the ministry reasonably determined that failure to obtain a \$150 crisis supplement will not result in imminent danger to the appellant's physical health.

#### **Conclusion – Dissenting Member**

The dissenting member finds that the ministry's decision to deny the appellant a crisis supplement for COVID-related expenses was reasonably supported by the evidence and a reasonable application of the legislation in the appellant's circumstances. The ministry's reconsideration decision is confirmed, and the appellant is not successful on appeal.



### Relevant Legislation

The following section of the EAPWDR applies in this appeal:

#### *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 sum of

(A) the maximum set out in section 2 of Schedule A and the maximum set out in section 4 of Schedule A, or

(B) the maximum set out in Table 1 of Schedule D and the maximum set out in 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) Repealed. [B.C. Reg. 248/2018]

(6) Repealed. [B.C. Reg. 248/2018]

(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.

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**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)

2021/05/28

PRINT NAME

Keith Lacroix

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/03

PRINT NAME – DISSENTING MEMBER

Inge Morrissey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/03