

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated May 25, 2021 (the RD) which found that the Appellant was not eligible for a crisis supplement for a reimbursement of medical costs under Section 5 of the *Employment and Assistance Persons with Disabilities Act* (EAPWDA) and Section 57(1) of the *Employment and Assistance Persons with Disabilities Regulation* (EAPWDR).

The Ministry determined that the Appellant meets the criterion of EAPWDA Section 5 as the Appellant is designated as a Person with Disabilities (PWD), and is thereby eligible for a crisis supplement, if the Appellant also meets the criteria in EAPWDR Section 57(1). However, the Ministry determined that the Appellant did not meet any of the three criteria in EAPWDR Section 57(1). Specifically, the Ministry determined that:

- The request for the crisis supplement is not to meet an unexpected expense or an expense unexpectedly needed;
- There were other resources available to the Appellant to meet the need for the crisis supplement; and,
- Failure to meet the need would not result in imminent danger to the Appellant's physical health.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EAA) Section 17

EAPWDA Section 5

EAPWDR Section 57 and Schedule C Section 2

The relevant legislation is provided in Appendix A

PART E – SUMMARY OF FACTS

The Appellant is a single recipient of disability assistance.

The evidence before the Ministry at the time of the RD consisted of a partially completed Request for Reconsideration (RFR), signed by the Appellant on May 10, 2021 in which the Appellant did not state their reasons for the RFR. Included with the RFR were:

- Seven single page BC Housing and Management Commission (BC Housing) Notice of Entry forms dated March 2, 2020, March 23, 2020, July 14, 2020, July 24, 2020, August 4, 2020, October 19, 2020, and October 24, 2020. The Notice of Entry forms state that “... notice is hereby given that a Representative(s) or agent of BC Housing will be entering the premises for the reasons given”. The reason given on all the forms is “Pest control treatment”, with the word “steam” added in handwriting on 4 of the forms, “steam, dusting” added on one form and “treatment bed bugs” added on one form. The forms also bear a partial address in the space provided (unit number and street number only) and the Appellant’s name has been handwritten at the top of one of the forms;
- Four health care services provider Emergency Discharge Summary forms bearing the name of the Appellant, with the following dates and treatment of diagnosis details:
 1. October 25, 2018 – Primary diagnosis: Cellulitis, arm, an indication that no procedures were performed, and orders for three prescription medications;
 2. October 26, 2018 – Primary diagnosis: Cellulitis, arm, an indication that no procedures were performed, and instructions to start taking a specific medication immediately;
 3. October 28, 2018 – Primary diagnosis: Cellulitis, arm, an indication that no procedures were performed, and instructions to continue taking specific medications;
 4. January 7, 2019 – Primary diagnosis: Abscess, Procedure performed: Drain abscess, and no medications given;
- Prescription for medication dated September 20, 2019 in the name of the Appellant;
- One page letter dated April 28, 2020 prepared on behalf of the Appellant, addressed “To Whom it May Concern” on a community medical clinic’s letterhead and signed by a medical practitioner, identifying a particular type of medication and stating (in part) “*I understand this medication is rather costly and if financial assistance can be offered to cover the cost of this, I would be grateful*”;
- Sixteen receipts dated between May 15, 2019 and January 15, 2021 for purchases of jewelry, clothing, furniture, food and prescription drugs;
- Three page patient medical expense report on a pharmacist’s letterhead listing expenditures totalling \$31.88 made on March 23, 2019 and May 12, 2019 of which the patient paid \$0.00 for two prescriptions;
- One page patient medical expense report on a pharmacist’s letterhead listing expenditures totalling \$228.06 made on six purchases between January 8, 2019 and November 27, 2019 of which the patient paid \$161.96 for four of the prescriptions;

- Two page medical imaging dated May 29, 2020 on a health care provider's letterhead and signed by a medical practitioner referring to an examination of the Appellant on that date stating that the Appellant has "*mild degenerative disc disease*";
- One page invoice from a community medical clinic dated December 23, 2020 in the name the Appellant for a "form fill" in the amount of \$100.00;
- One page invoice from a community medical clinic dated January 5, 2021 in the name the Appellant for a "short note" in the amount of \$30.00;
- One page undated BC Housing form requesting the transfer of the Appellant from his apartment to another apartment with the reason given as "medical need", indicating the Appellant's diagnosis, his daily medication and the comment "*Very severe allergy and was hospitalized 4 times in the year. Would like to be move(d) to the ground floor (of) the same building or another building*";
- One page letter dated January 5, 2021, prepared on behalf of the Appellant, addressed "To Whom it May Concern" on a community medical clinic's letterhead and signed by a medical practitioner, indicating that the Appellant has osteoarthritis and stating (in part) "*I would ... fully support (the Appellant's) application to move to a ground-floor apartment*";
- Utility invoice dated February 10, 2021 addressed to the Appellant in the amount of \$440.86, including the notation "*Your account is overdue*";
- Utility invoice dated February 23, 2021 addressed to the Appellant, showing an overdue amount of \$186.16 and a current billing period amount of \$217.35; and,
- One page fax memo from a pharmacy to the Appellant's medical practitioner referring the Appellant and stating that "*Ciprodex ear drops are not covered by Pharmacare and patient does not want to pay for it. Can you recommend another ear drop instead?*" and containing the hand-written response "*Sorry, no other (illegible) as left I(illegible) perforated*".

At the hearing the Appellant explained that he had gone into a Ministry office in March 2021 to ask for additional funding to help him with some of his additional expenses because he could not afford to pay them. He said he was not just asking for help in paying his prescription medication bills. He stated that he spoke to a Ministry worker whom he had dealt with many times and who "*always gave me a hard time*", and that he had to go back 4 times because he wasn't getting the help he needed. He said that he hadn't worked for more than 2 years and that, in addition to the cost of his prescription medication, he had to replace clothing, bedding and furniture because many of his possessions had been destroyed or damaged due to a bed bug infestation in his apartment. He explained that there were also utility bills that were in arrears because he was spending almost all his monthly income assistance on food, clothing, furniture, and prescription drugs. In response to a question from the Panel, the Appellant said that this included the two utility bills that were included in the appeal materials.

In response to other questions from the Panel, the Appellant said that he had started taking the allergy medication several years ago, before the bed bug infection, and was still on it. He stated that the allergy medication, which was in the form of ear drops, was not covered by Pharmacare, and that there was a generic form of the medication that was covered but "*it doesn't work well*". He said that he didn't know

how much he was spending on all his prescription medications each month but that the ear drops alone cost about \$60 per month.

The Ministry relied on its RD and stressed that the Ministry was not able to give a client a crisis supplement for medication. In addition, a crisis supplement is designed for a one-time, unexpected expense, and that the receipts the Appellant had submitted for the prescription drugs in March 2021 were from purchases made in 2019 and 2020. The Ministry also explained that a crisis supplement could only be provided in the month in which the one-time unexpected expense was incurred. In response to a question from the Panel about the timing of the expense and the claim, the Ministry explained that a crisis supplement could be given for a client who qualified for it after the expense had been incurred, provided the request was made within the current monthly benefit period, even if the request was made in the following calendar month.

Regarding the damages that resulted from the bed bug infestation, the Ministry explained that it could not cover those costs, as the *Residential Tenancy Act*, which is administered by a different ministry, says that those type of damages are the responsibility of the landlord, and that those protections also applied to damages suffered by anyone who was a client of BC Housing. The Ministry suggested that the Appellant approach BC Housing for compensation for those damages and that, if BC Housing was not prepared to cover the damages resulting from the bed bug infestations, he should approach the Residential Tenancy Branch for assistance.

The Ministry also stated that if there was confusion about what types of expenses the Appellant was looking for help with in March 2021 (i.e. more than just a supplement for prescription medication), it might have been because the Ministry worker and the Appellant had difficulty communicating, as English was not the Appellant's first language. The Ministry explained that there were advocates who can assist clients when there are problems with communication and offered to provide him with advocate referrals after the hearing.

Additional Information Submitted after Reconsideration

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

The Appellant did not provide their reasons for the appeal in the Notice of Appeal (NOA).

The Panel did not consider any of the information presented by the parties at the hearing to be new evidence.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's RD, which found that the Appellant was not eligible for a crisis supplement for a reimbursement of medical costs in the form of prescription medications was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. Was it reasonable for the Ministry to determine that the Appellant's request for the crisis supplement did not meet an unexpected expense or an expense unexpectedly needed? Was it reasonable for the Ministry to determine that there were other resources to meet the need for the crisis supplement? Was it reasonable for the Ministry to determine that failure to meet the need would not result in imminent danger to the Appellant's physical health? And was it reasonable for the Ministry to determine that a crisis supplement may not be provided for the purpose of obtaining prescription medications?

The Appellant's Position

The Appellant's position is that he has had some unexpected expenses recently, including the high cost of prescription medication and the loss of clothing and furniture due to bed bug infestations, and has been unable to get the necessary additional assistance from the Ministry to help with those expenses.

The Ministry's Position

The Ministry's position is that the RD is a response limited to the Appellant's application for a crisis supplement to cover the ongoing cost of prescription medication in 2019 and 2020, and that a crisis supplement is intended to cover a one-time, current unexpected expense, and does not cover prescription medications.

ANALYSIS

EAA Section 17 says that a person can ask the Ministry to reconsider a decision that results in a refusal to provide a supplement to someone in the person's family unit, and that a person who is dissatisfied with the outcome of an RFR may appeal that decision to the Employment and Assistance Appeal Tribunal. The Panel notes that the Ministry's RD relates solely to the Ministry's decision to deny the Appellant's request for a crisis supplement for a reimbursement of medical costs, in this case prescription medications. Therefore, the Panel may only consider the reasonableness of the Appellant's request for a crisis supplement for a reimbursement of the prescription medications. The Panel does not have jurisdiction to consider any other decision the Appellant may have intended to ask the Ministry to make for any other form of income assistance, hardship assistance or supplement.

Unexpected Expense

EAPWDR Section 57(1)(a) says that the Ministry can provide a crisis supplement to a client who is eligible for disability assistance if the client requires the supplement to meet an unexpected expense.

Panel Decision

“Unexpected” is not defined in the EAPWDA or the EAPWDR, but the Merriam-Webster dictionary defines “unexpected” to mean unforeseen or not anticipated. The Panel notes that the Appellant said at the hearing that he had started taking the allergy medication several years ago.

Therefore, the Panel finds that the Ministry reasonably determined that the expense was not unexpected because the Appellant had “*ongoing requirements for this medication*”.

No Resources Available

EAPWDR Section 57(1)(a) says that the Ministry can provide a crisis supplement to a client who is unable to meet the expense because there are no resources available to the family unit.

Panel Decision

The Panel notes that the Appellant was paying at least \$60 per month for prescription medications in addition to being responsible for living expenses, including several hundred dollars each month for utilities, comprising an electricity bill of approximately \$100 per month, other utility bills, and the cost of other essentials, including food and clothing. In its RD, the Ministry wrote “*you had the resources to pay for your medication, as it was already paid for*”. While the available evidence shows that the Appellant was able to pay for his medication, the available evidence (including the Appellant’s testimony at the hearing and the documents including unpaid invoices submitted in the hearing materials), indicates that he was not able to pay for at least \$658.21 in past and currently due utility bills at the time he asked for a supplement to cover the cost of his prescription medicine (i.e. in March 2021).

Therefore, based on the available evidence, the Panel finds that the Ministry unreasonably determined that the Appellant had the resources available to meet his medical prescription expenses in March 2021.

Imminent Danger to Physical Health

EAPWDR Section 57(1)(b)(i) says that the Ministry can provide a crisis supplement to a client if failure to meet the expense or obtain the item will result in imminent danger to the physical health of any person in the family unit.

Panel Decision

In the RD, the Ministry determined that the Appellant “*(had) not demonstrated that (he) will face imminent danger to (his) physical health without reimbursement of (his) medication costs, as (he had) obtained the medication and (he had) not provided any further evidence reflecting an imminent danger to (his) physical health*”. The Panel notes that no evidence has been presented to show that failure to meet the expense or obtain the prescription medicine would have resulted in imminent danger to the Appellant’s physical health.

Therefore, the Panel finds that the Ministry reasonably determined that it had not been demonstrated that the Appellant’s physical health was in danger if he was unable to obtain the prescription medication.

Prescription Medication Eligibility as a Crisis Supplement

EAPWDR Schedule C Section 2(1) says that the Ministry can pay for medical supplies as a health supplement if they are provided to a family unit that is eligible for general health supplements, but Section 2(1.1) of that schedule says that medical supplies do not include prescription medications.

Panel Discussion

In the RD, the Ministry determined that “*a crisis supplement may not be provided to obtain a supplement described in (EAPWDR) Schedule C or any other health care goods or services and therefore the ministry cannot provide you with a crisis supplement to reimburse you for medication costs*”.

The Panel notes that the EAPWDR Schedule C describes a health supplement as a subset of general health supplements, and Schedule C s. 2(1.1) excludes prescription medication from the list of eligible health supplements. The Panel also notes that Schedule C does not set out the criteria for crisis supplement eligibility. The criteria for crisis supplement eligibility are given in EAPWDR Section 57, which describes a crisis supplement as a “*supplement to meet an unexpected expense or obtain an item unexpectedly needed*” for which other criteria must also be met (specifically, the applicant must not have the available financial resources to pay for the unexpectedly needed goods or service and failure to provide it would result in imminent danger to the applicant’s physical health). Because Schedule C provides a list of eligible health supplements and specifically excludes prescription medication, prescription medication isn’t a health supplement. And because prescription medication isn’t an eligible supplement covered under Schedule C, it isn’t excluded under EAPWDR Section 57(3)(a).

Notwithstanding the above, the Ministry’s conclusion on this point was correct as 57(3)(b) excludes other health care goods (which would reasonably include prescription medications) from eligibility under section 57.

The Timing of the Provision of a Crisis Supplement in Relation to when it is Requested

EAPWDR Section 57(2) says that a crisis supplement can be provided only for the calendar month in which the application or request for the supplement is made. This restriction reflects the one-time nature of a crisis supplement: it is not intended to provide a supplement for an ongoing need.

In the RD, the Ministry wrote “*the ministry cannot provide a crisis supplement for a cost that incurred in 2019 or in 2020 as that is not a cost occurred within the current month, in accordance with Section 57(2) of the EAPWDR*”.

At the hearing, the Ministry also stated that a crisis supplement could be given for a client who qualified for it after the expense had been incurred, provided the request was made within the current monthly benefit period, even if the request was made in the following calendar month, but not at some later date beyond that. The Panel notes that there is nothing in the legislation that says that a request for a crisis supplement must be made within a limited time before or after the unexpected need arises.

Therefore, the Panel finds that it was not reasonable for the Ministry to determine that a crisis supplement for a cost that is not incurred within the current month is not eligible.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the Panel finds that the Ministry's RD, which determined that the Appellant was not eligible for a crisis supplement, was reasonably supported by the evidence and was a reasonable application of the EAPWDA in the circumstances of the Appellant, and therefore confirms the decision. The Appellant's appeal, therefore, is not successful

APPENDIX A - LEGISLATION

EMPLOYMENT AND ASSISTANCE ACT

17 (1) ... a person may request the minister to reconsider any of the following decisions made under this Act:

(a) a decision that results in a refusal to provide ... a supplement to or for someone in the person's family unit;
...

(3) ... a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) ... may appeal the decision that is the outcome of the request to the tribunal.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Disability assistance and supplements

5 Subject to the regulations, the minister may provide ... 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 ...

(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.

Schedule C

Health Supplements

General health supplements

2 (1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [general health supplements] of this regulation:

(a) medical ... supplies ...

(1.1) For the purposes of subsection (1) (a), medical ... supplies do not include ... prescription medications.

APPEAL NUMBER
2021-0115

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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/07/07

PRINT NAME

Jennifer Armstrong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/07/07

PRINT NAME

Daniel Chow

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/07/09