

APPEAL NUMBER
2021-0143

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated July 6, 2021 which held that the appellant was not eligible for a crisis supplement for a bed. The appellant had requested a crisis supplement because the staff of the business in which he was renting accommodation refused to fumigate the room he was renting for bedbugs. The ministry's decision was based on the ministry's determination that the appellant has not submitted any evidence that there was an infestation of bed bugs in the appellants accommodation and that "obtaining a new bed will not eliminate bedbugs and their bites, as bedbugs do not confine themselves to a bed and can live in various furniture, as well as cracks and dark crevices in a room."

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWD), s. 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), s. 57 (Crisis Supplement)

PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included:

1. The appellant was a sole recipient of disability assistance;
2. The appellant had resided at their current accommodation since November 2020;
3. The appellant's accommodation was in a hotel;
4. The appellant alleged they were "consistently" getting bitten by bedbugs and that the bites resulted in infection; and
5. The manager of the hotel in which the appellant was being accommodated denied the presence of bedbugs.

The appellant did not attend the hearing. After confirming that the appellant had received the Notice of Hearing, the Hearing was adjourned for 10 minutes. After the adjournment ended, the panel determined that it was appropriate to proceed with the Hearing.

At the Hearing, the ministry provided further information. It informed the panel that the appellant was in receipt of the maximum amount of shelter allowance that they were eligible for and that the ministry did not impose any conditions on where the appellant had to secure accommodation. The panel determined that it was appropriate under section 22(4) of the *Employment and Assistance Act* to admit this additional evidence because the panel considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal, although it was not determinative of the matter under appeal.

PART F – REASONS FOR PANEL DECISION

Introduction

The issue at appeal is whether the reconsideration decision dated July 6, 2021 which held that the appellant was not eligible for a crisis supplement for a bed was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstance.

Summary of The Relevant Legislation

Section 5 of the EAPWD permits the ministry to provide a supplement to or for a family unit that is eligible for it.

Section 57 of the EAPWDR establishes that the ministry may provide a crisis supplement and specifies the conditions under which that supplement can be provided. The conditions that are relevant to this appeal are found in section 57(1) and are:

1. The family unit is eligible for disability assistance or hardship assistance;
2. The supplement is required to meet an unexpected expense or obtain an item unexpectedly needed;
3. There are no resources available to the family unit to meet that expense or obtain the item;
4. 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.

Extracts of The Relevant Legislation

EAPWD section 5: 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.

EAPWDR section 57: 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*.

The Appellant's Position

The appellant in the Notice of Appeal stated: "I have a bed bug infestation. I have no immune system due to terminal cancer and every time I get a bite it gets infected." The appellant was requesting a supplement to purchase a new mattress and box spring.

The Ministry's Position

The ministry affirmed key aspects of the decision at reconsideration including:

1. The appellant was eligible for hardship allowance;

2. The ministry was not satisfied that the appellant needed “to obtain a new bed unexpectedly”;
3. The ministry was satisfied the appellant did “not have resources available to meet the expense of a new bed”;
4. The ministry was not satisfied that there were any bedbugs in the appellants accommodation because:
 - a. The ministry contacted the manager of the Hotel providing accommodation to the appellant and were told that there were no bedbugs at that location;
 - b. The appellant provided no information, other than their statement, that bedbugs were present at the appellant’s accommodation;
5. The ministry did not comment on whether the appellant was experiencing bedbug bites and whether those bites caused an imminent danger to the physical health of the appellant. The panel notes that the appellant provided no medical documentation to the ministry or in the Notice of Appeal;
6. The ministry was not satisfied that the failure to obtain a new bed will result in imminent physical danger to the appellant because:
 - a. If the accommodation is fumigated a “mattress encasement can be used to stop bedbugs”; and
 - b. Without treatment of the accommodation “a replacement mattress can become infested”.

The Panel’s Decision

On appeal there was no dispute that the appellant was eligible for hardship assistance and, if a new bed was required, that the appellant did not have resources available to meet the expense of obtaining a new bed.

The first issue on appeal was whether the appellant’s request for a replacement bed met the requirement as “an item unexpectedly needed.” The need for a replacement bed must be connected to the inability of the current bed to meet the reasonable requirements of the appellant. The appellant stated that the current bed did not meet their requirements because it was infested with bedbugs.

The panel reviewed the evidence and was not satisfied that the current bed is infested with bedbugs. The appellant provided no evidence to the ministry or the panel indicating that there were bedbugs other than a written statement. This statement was contradicted by a statement from the manager of the hotel that there were no bedbugs. In the absence of photographs of the bed, photographs of any bites experienced by the appellant or any medical documentation related to bites experienced by the appellant the panel is not satisfied that the current bed is infested with bedbugs.

The panel also considered whether, even if the current bed was infested with bedbugs, a replacement bed was “needed.” The panel accepted that there was a possibility that if the current bed was infested with bedbugs and that it was fumigated, that a replacement bed would not be needed because a mattress encasement may have been an acceptable way to allow the current bed to meet the appellants requirements.

Consequently, the panel has determined that the requirement in EAPWDR s.57(1)(a) that the appellant requires a supplement to “obtain an item unexpectedly needed” was not met because the panel is not satisfied that a replacement bed is needed.

The panel also considered the requirement in EAPWDR s.57(1)(b) that the failure to obtain the item (a replacement bed) will result in imminent danger to the physical health of the appellant. The panel is not satisfied that the appellant has provided information that this criterion was met. If the panel assumes that the current bed is infested with bedbugs that bite the appellant, the appellant has not provided sufficient evidence indicating that the appellant faces imminent danger to their physical health because there is no information from a medical practitioner about the effect the appellant suffers because of these bites. Furthermore, the appellant has not provided sufficient evidence regarding if there are other ways to avoid imminent danger to their physical health. As an example, the appellant has not provided evidence regarding whether it is possible to move to different accommodation that does not have a bedbug infestation which would eliminate any imminent danger to their physical health without requiring obtaining a replacement bed.

Consequently, the panel has determined that the requirement in EAPWDR s.57(1)(b)(i) that the failure to obtain a replacement bed will result in imminent danger to the physical health of the appellant was not met because the panel is not satisfied that the appellant will face imminent danger to their physical health.

Conclusion

The panel confirms the ministry decision and therefore the appellant is not successful in their appeal.

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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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/08/02

PRINT NAME

Vivienne Chin

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/08/03

PRINT NAME

Bob Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/08/03