

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision (the decision) dated December 7, 2021 which denied the appellant's request for a crisis supplement as reimbursement for a new bed as the request does not meet all the requirements under Section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Part D – Relevant Legislation

Employment and Assistance Regulation (EAR) sections 85 and 86,
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

The evidence before the minister at reconsideration included the information below.

- The appellant is a sole recipient with Persons with Disabilities designation.
- On September 13, 2021 the appellant asked for a crisis supplement as reimbursement for the cost of a new bed.
- The appellant had indicated his partner had a health emergency causing bleeding on the appellant's mattress and that performing chest compressions exacerbated the bleeding.
- The appellant claimed to have been sleeping on plywood which hurt his back, and the appellant's roommate loaned money to purchase a new single bed and the appellant is asking for reimbursement.
- The appellant stated having spinal issues with discs and sleeping on the plywood causes pain and nerve damage.
- The ministry denied the appellant's request on September 27, 2021.
- On October 14, 2021 the appellant contacted the ministry and stated that an advocate informed the appellant to provide receipts for the new bed and that his roommate loaned \$445 to purchase a new bed,
- When contacted by the ministry the landlord stated the appellant is renting a room downstairs by himself.
- On November 8, 2021 the appellant provided a request for reconsideration, and asked for an extension to get additional information, but did not provide any receipts or details of the purchase for consideration with the request for reconsideration submission,

Additional information

The appellant's notice of appeal (NOA) contained a handwritten statement that the client owes money for bed, hip spurs, discs etc. Also, that the client borrowed money to purchase a bed as he had been sleeping on plywood. It also had a statement that the "Client has health issues that require bed."

Oral submissions

The hearing was held by telephone.

The appellant did not attend the hearing. Section 86(b) of the Employment and Assistance Regulation permits a panel to hear an appeal in the absence of a party if the party was notified of the hearing. Section 85(2) of that Regulation requires the chair of the tribunal to notify the parties of the date, time and place of a hearing at least 2 business days before the hearing is to commence.

Tribunal records confirm that the appellant was notified of the date and time of the teleconference hearing by priority post to the appellant's address which is a post office box. A notice card, indicating where and when the appellant could pick up the item, was left on 29 December 2021, which is more than 2 business days before the hearing date. Therefore, being satisfied that the appellant was notified of the hearing in accordance with the requirements of section 85(2), the hearing proceeded without the appellant.

Ministry

The ministry referred to the reconsideration decision and provided some statements of clarification as to ministry policy. The legislation is clear that the appellant had to meet three requirements, being that the need was unexpected, that the appellant had no resources and that failure to obtain the item would result in imminent danger to health.

The ministry holds that as the appellant purchased the bed prior to applying for a supplement the need was met.

Under questioning the ministry stated that normal policy is for a client to contact the ministry first as a PWD and be pre-approved for the item requested. The ministry provided an example of one area in which the ministry has a contractual arrangement with a local supplier. Once a number of quotations have been reviewed normally the least cost item would be provided to the client.

The ministry also stated that if a client has met the need for an item then a crisis no longer exists, and the client is not eligible for a crisis supplement. This would include where a client obtains a loan from a third party as the ministry does not consider individual debt. The ministry stated that reimbursement without approval would not occur in any case.

The ministry stated that the appellant had not provided any information on the bed purchased and that no initial investigation had been conducted, explaining that the normal process would include questioning the appellant about the possibility of cleaning the mattress, whether it is only the mattress or the whole bed frame that requires replacement, and question whether a replacement could be obtained elsewhere.

The ministry clarified the use of the term 'bed' in the reconsideration decision. The ministry uses a term of 'crisis furniture' to include a request such as this. The term includes the bed frame, mattress and although the word 'bed' is used it is the ministry understanding that the request was for the mattress.

The ministry referred to the finding in the reconsideration decision that as the appellant had to borrow money the appellant did not have resources available and regretted the way in which it was worded, stressing the following paragraph in the decision clearly shows the ministry found no reason the appellant was unable to ask for other help through the ministry before purchasing the bed and therefore resources were available.

Admissibility of new information

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.

During oral testimony the ministry introduced commentary regarding the wording of the reconsideration decision and provided information on the ministry policy in interpreting request for crisis supplements and whether resources are available.

The panel finds that this information is relevant because it relates to the reasoning and is in support of the ministry's reconsideration decision.

The panel admits the new information under section 22(4) of the Employment and Assistance Act ("EAA") as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's decision which held that the appellant is not eligible for a crisis supplement as reimbursement for a new bed as the request does not meet all the requirements under Section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

In particular, was the ministry reasonable in determining that as a result of the appellant purchasing a bed there is no longer an imminent danger to the appellant's physical health, and further that the appellant had failed to seek ministry approval before purchasing the bed. Were the ministry's denials supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant argues that his partner had a health emergency causing bleeding on the appellant's mattress and that performing chest compressions exacerbated the bleeding. As a result, the appellant claims to have been sleeping on plywood which, as he has spinal issues with discs, hurts his back and causes pain and nerve damage. The appellant's roommate loaned \$445 to purchase a new single bed, and the appellant is asking for reimbursement of this amount.

Ministry Position

The ministry argues at reconsideration that the ministry took into consideration whether the situation that led to the request was so urgent that the appellant did not have the opportunity to ask the ministry for help prior to addressing the need. The ministry found no evidence to suggest the appellant was unable to ask for help before purchasing the bed.

The ministry has noted in the reconsideration decision that the need for a replacement of the bed was unexpected and that the appellant had no resources available. The ministry also argues that the appellant failed to contact the ministry before buying the bed to discuss what other ways the ministry would have been able to help and therefore it was not urgent.

At hearing the ministry wished to clarify that as the appellant borrowed monies, he had financial resources available, and that to satisfy the legislative need the appellant has to demonstrate a personal lack of a potential source of supply to the ministry before the supplement can be provided. The ministry then went on to explain an example of its application policy that the need may be met by direct cash payment or by other means such as contracted supply to the appellant.

Lastly, the ministry acknowledges that sleeping on plywood would have a negative affect (sic) on the appellant's physical health, however as the appellant has already addressed the need by purchasing a bed the ministry holds that there is no longer an imminent danger to physical health.

Panel Finding

The appropriate legislation is found within section 57 of the EAPWDR, which states that the minister may provide a crisis supplement to a person who requires it to meet an unexpected expense and is unable to meet the expense or obtain the item because there are no resources available to the person, and also if the minister considers that failure to meet the expense or obtain the item will result in imminent danger to the physical health of the person.

The Webster dictionary defines crisis as a difficult or dangerous situation that needs serious attention. The legislation discussed above provides a means to test this situation and sets three requirements that must be met for the provision of a supplement.

The ministry has found that the need for a replacement bed was unexpected and that as the appellant had to borrow monies, he had no resources available. These requirements will not be further considered by the panel.

Requirement for Ministry Pre-Approval

The panel notes the ministry's testimony at hearing regarding the intent of ministry policy to pre-approve a crisis supplement where possible for the reasons mentioned above, and the statement in the reconsideration decision that there was consideration as to whether the situation was so urgent that the appellant did not have the opportunity to ask the ministry for help prior to addressing the need. The ministry's interpretation seems to imply the appellant should not deal with imminent danger unless and until the appellant has spoken to the ministry.

The panel notes the ministry has provided this interpretation in oral testimony and has not submitted any further written evidence or quotation of the policy. The panel considers the testimony as oral argument in support of the reconsideration decision.

As the appellant did not attend the hearing the panel is respectful of the inability of the appellant to question this testimony.

The panel notes the legislation makes no specific provision that a request for a crisis supplement be pre-approved by the minister, and the panel also states that any ministry policy is not binding upon the panel.

Therefore, the panel finds the ministry's determination that the appellant was required to contact the ministry before making attempts to cure the crisis is **not** supported by the evidence and is **not** reasonable in the circumstances of the appellant.

Imminent Danger

Regarding the legislated requirement for imminent danger, the panel considered the ministry's comment on the 'negative effect' that sleeping on plywood would have on the appellant's physical health and noted the appellant has written of having spinal issues with discs, hip spurs and that sleeping on the plywood causes nerve damage and pain and notes this is the only

evidence presented by either side to this effect.

The term 'imminent danger' is not defined in the legislation. The Webster dictionary defines imminent as an event happening very soon, and danger as an exposure or liability to injury, pain, harm or loss.

However, the panel notes the legislation's use of "will result in" indicates the imminent danger relates to an expected *future* risk to physical harm or pain.

In this case the request for reimbursement was submitted an unknown period after the event and therefore the panel needs to consider whether if at the time of crisis and/or request would the appellant be subject to an expected future risk of physical harm or pain.

The panel notes limited evidence provided by the appellant either at reconsideration or appeal other than the oral statements recorded by the ministry and comments on the notice of appeal, and the comment by the ministry in the hearing about not being able to complete a full investigation.

The panel needs to consider the amount and type of evidence to assess its sufficiency and investigate the credibility within the probabilities that surround the currently existing conditions. In other words, does the appellant's evidence conform to what a practical and informed person would readily recognize as reasonable?

There are a few factors that argue against the sufficiency and credibility of the appellant's evidence:

1. There is no information relating to the timeline of the original event, the loan, the delivery of the replacement bed and the request for reimbursement,
2. There is no evidence to confirm the damage to the mattress or bedframe, such as photographs or disposal costs,
3. Despite being advised by an advocate to provide receipts there is no evidence offered to confirm the purchase or delivery of the furniture, or information about the type, make, model or any receipts to substantiate the claimed cost of \$445, such as bills, purchase receipts or delivery slips,
4. There are conflicting statements by the ministry and the appellant regarding whether the appellant has a roommate, the landlord stating that the appellant rents a room downstairs by himself,
5. The panel has not been provided with any evidence that confirms the amount of the loan or from whom the loan was obtained, such as a note from the roommate and no information such as bank records to confirm the appellants financial status, and lastly
6. The appellant, although advised of the date and time of hearing, did not attend to provide evidence and testimony in support of the request.

The panel notes no additional information has been provided by the appellant, either with the request for reconsideration submitted November 8, 2021, or up to the date of the reconsideration on December 7, 2021, almost three full months following the original request for reimbursement.

Without such evidence the panel finds the probative value of the statements surrounding the event, the loan, and the need to purchase a bed to be low and finds the weighting of the appellant's evidence to be low. That is, the inability of the statements to establish the facts of which they are offered in proof.

In this case the appellant argues that imminent danger was present, and the ministry argues it was not. The total evidence relating to a disputed fact is considered "sufficient" if its cumulative weight warrants a finding that the fact exists.

Based on a consideration of the total evidence available and the factors discussed above the panel finds insufficient evidence to substantiate that on a balance of probabilities the appellant was at any time in imminent danger to physical health as required by section 57 (1)(b)(i) of the EAPWDR.

Therefore, the panel finds the ministry's determination that the appellant was no longer in imminent danger to his physical health to be reasonably supported by the evidence.

Summary

The panel has found that there is no specific provision that a request for a crisis supplement be pre-approved by the minister, and that there is insufficient evidence to substantiate the appellant was in imminent danger to physical health.

Conclusion

The panel finds the ministry's reconsideration decision which denied the appellant's request for a crisis supplement as reimbursement for a new bed, as the request does not meet all the requirements under Section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), to be reasonably supported by the evidence.

The appellant is not successful upon appeal and the panel confirms the reconsideration decision.

Appendix A

Employment and Assistance Regulation

Time period for scheduling and conducting hearing

85 (1) A hearing must be held within 15 business days after the appeal form is delivered under section 84, unless the chair of the tribunal and the parties consent to a later date.

(2) The chair of the tribunal must notify the parties of the date, time and place of a hearing described in subsection (1) at least 2 business days before the hearing is to commence.

Procedures

86 The practices and procedures of a panel include the following:

(b) the panel may hear an appeal in the absence of a party if the party was notified of the hearing;

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, or

APPEAL NUMBER 2021-0245

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)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Don Stedeford

Signature of Chair

Date (Year/Month/Day)

2022/01/19

Print Name

Jeremy Scott

Signature of Member

Date (Year/Month/Day)

2022/01/20

Print Name

Glenn Prior

Signature of Member

Date (Year/Month/Day)

2022/01/19