

**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 10 June 2022 where the ministry denied the appellant’s request for a crisis supplement for furnace oil tank replacement.

**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**

The evidence before the minister at reconsideration included;

- The appellant is in receipt of disability assistance,
- On February 28, 2022, the appellant submitted a request for furnace oil tank replacement, reporting;
  - a need for a new double walled tank,
  - no technicians available locally means needing to convert to natural gas,
  - the tank is expired, will leak and create a biohazard,
  - the appellant will have no heat or house insurance.
- Quotes for a new tank and for other conversion options were presented, along with information from Fortis Gas. The breakdown on quotes was as follows;
  - Exhibit 2 - for a new double wall tank dated 2 June 2022 for \$6496
  - Exhibit 3 - for a new baseboard heating dated 8 June 2022 for \$10 700
  - Exhibit 4 –for a new gas furnace dated 20 October 2021 for \$6861, and
  - a quote for new gas furnace dated 27 August 2021 for \$6863.85

The quote for a new tank included removal of the old tank and oil, and a full furnace service; however, the other three quotes for optional heat supply did not include any costs for removal of the old oil tank or oil.

- The appellant's house insurance company requires a new double walled oil tank be installed for safety purposes or they will not renew her insurance policy,
- The current tank is 16 years old, and the appellant has no other sources of heat other than the oil furnace, and if something goes wrong then she has no heat and no house insurance,
- The appellant states there are no service technicians in the local area to service heat anymore and if she stays with oil the insurance company will not cover her,
- A copy of an email from the insurance company stating that the appellant will need to replace her tank before her policy can be renewed,
- A letter from an advocate for the appellant in June of 2022 as part of the request for reconsideration states in part that the present oil tank is deemed to be below the acceptable building code, that an attached email from the insurance company states the tank MUST be replaced with a double wall tank or they will refuse to insure her home. The notification of this requirement was in May 2021 and was totally unexpected and not anticipated. The present furnace and tank have worked for the last sixteen years was deemed irrelevant and is not open for discussion or negotiation, and the advocate notes that insurance companies can update the requirements for their policies, and this cannot be anticipated by policy holders. The advocate states that the appellant's asset will be at significant risk that could have significant consequences for the appellant given that the point of insurance is to mitigate risk.
- The advocate states that the appellant could not have anticipated either the circumstances or the or the cost of the upgrade.
- The advocate further states that the appellant has received a quote for a replacement tank from the closest company in the area, which is more than 2.5 hours away including a ferry ride and not available for emergency calls. In summary the advocate states that

the need for a new double wall tank meets the requirements of the legislation in terms of the risk to the home and her need to upgrade her heating system to meet both building codes and insurance company requirements. Further that the expense could not have been anticipated as the need for a new tank was only provided in May of 2021. The advocate goes on to suggest that conversion to natural gas is a cost-effective alternative to a new tank and offers benefits in terms of reliability, safety, and availability of maintenance professionals.

### **Evidence submitted to the Tribunal**

The appellant provided a written submission, received at the tribunal on 15 July 2022. The document is a 27-page series of handwritten notes, copies of ministry policy apparently downloaded from the internet, copies of emails from tank suppliers and commercial information on types and costs of tanks and why replacement is suggested as well as a sales invoice quote dated 2 June 2022, for \$6496.00 to remove the old tank, place a new concrete slab, supply and install a new tank, run new lines to the furnace and disposal of oil and the old tank and a furnace service. Aside from the policy information much of the other information duplicated material that had been submitted with the request for reconsideration.

Specifically, the letter states that the appellant completed two requests for the crisis supplement, the first beginning in January 2022 and the second in February 2022 and provides a ministry SR application number for each. The letter also highlights a portion of a ministry policy document that states the replacement of home heating would constitute an acceptable crisis supplement if classed as an emergency repair. This emergency repair would be in the heating season when no other means are available for home heating and cooking and all other eligibility requirements are met. The document then discusses policy requirements.

The appellant's submission also shows a photograph of the appellant's oil tank in the garden annotated as a common sight of a typical oil tank that has been installed on the outside of most residential homes for the last 60 years. The appellant's tank weighs 300 pounds and sits on a few levelling bricks. There is then a description and sketch of the proposed new double wall tank that weighs only 135 pounds (empty) and needs to be founded on a 4-inch reinforced concrete slab. This upgrade could not have been expected.

The submission then provides copies of a series of emails between the appellant and the ministry outlining what information the ministry would need to evaluate the eligibility for a crisis supplement. Several words or portions of sentences have been highlighted in yellow. These sentences are interactions between the ministry worker and the appellant.

The submission includes copies of documents that describe why insurance companies can refuse to insure homes with oil tanks due to concerns with environmental risk.

The submission includes emails exchanges between the appellant and her insurance representative, discussing the efforts the appellant has made since at least July 2021 to obtain quotations from service providers for a new tank and for options such as replacement with natural gas. On 9 July of 2021 she obtained an extension to 28 October 2021 from the

insurance company (the first extension), and then received an email on that date to confirm that a further extension was being granted until 28 May 2022 (the second extension).

The next segment of the submission is copies of a 2015 publication that describes what can happen when maintenance is not done properly on furnace and flue systems, why owners need to clean oil-fired furnace chimneys, and sections of this publication are highlighted by the appellant that state what disasters and pitfalls can occur if people fail to do this work, including fires, deaths, property losses and health risks.

The last section of the document is a corporate profile of a USA company discussing the reasons for chimney repair and dryer vent cleaning.

The ministry did not submit any written documentation.

### **Hearing**

The hearing was held as a videoconference. The appellant had requested the presence of an advocate, and both attended the hearing. Oral testimony by the appellant was provided throughout the hearing via the advocate and/or the appellant.

### **Appellant**

At hearing the appellant reiterated much of what had been provided by the ministry timeline in the reconsideration decision and in the appellant's 27-page written submission. The verbal submissions were presented in a manner to respond to the ministry findings in the reconsideration decision.

The advocate and appellant submitted that the requirement to replace the tank was a complete shock to the appellant. Newer homes would not have an oil tank installed so old homes need to convert or replace these items and now oil and natural gas are a similar price. There are no local service companies available for oil tank and oil furnace servicing.

In response to the ministry concerns about the time delay in applying for the crisis supplement, the appellant testified that she first contacted the ministry in January of 2022 and provided a claim number for both the January application and of a second date in February 2022. The appellant explained the delay submitting that it arose from the practicalities of getting quotes, the pandemic delays and her disability.

The appellant testified that she knew (from past experience) that she had to obtain quotes and documentation. It took her several months to recognise that there are no local technicians available as many people were on holiday and to understand what the difference is with double walled tanks.

The appellant also testified that her disability means she is living in constant pain, has made trips to hospital to visit her surgeon 5 times in the last five months and sometimes she is unable

to move during the day. She estimates that fifty per cent of her active time over the period of May 2021 to January 2022 was curtailed because of her disability.

The appellant also described the impact upon her of the lack of reasonably available servicing in practical terms and upon her health. The appellant testified that she noticed lots of soot coming down the chimney around October/November 2021 and that the burners on her furnace were clogged. She cleaned the chimney and burners with a shop vac and also felt sick around that time. She attributed this to the furnace/oil tank issue, having read about carbon monoxide related effects due to blocked flues.

The appellant provided proof that she had a \$42,126.03 water claim damage several years ago which was covered under insurance. If she has no insurance in the future, she would not be covered for any damage to the home for any claims, including due to a claim related to the oil tank and furnace.

The appellant quoted from two previous tribunal decision related to crisis supplements that she felt were instructive to the panel. The first decision is 14-11, where in the second paragraph of the final page the panel found that *"the appellant faced the imminent disconnection of his electrical supply in winter with no resources to pay for necessary repairs or even the ability to find a contractor to do the work. Electrical cut off would have meant no heat, no ability to cook, and difficult living circumstances in winter. The Panel finds that the lack of this essential service in winter would cause imminent danger to the Appellant's physical health"*.

Further, the appellant quoted from tribunal panel decision 12-345 in which a ministry client requested assistance to purchase a replacement furnace and *"the ministry has accepted that the appellant's request for a crisis supplement for a replacement furnace meets the remaining eligibility criteria set out in s. 57 including that the need for the item be unexpected."*

The appellant then addressed the ministry policy highlighted in the submission document, which reads *"the Emergency home repairs may include essential items for the protection, replacement, and repair that are part of the physical structure of the recipient's home and the repair or replacement of home heating and cooking appliances when no other means are available for home heating and cooking, and all other eligibility requirements are met."* The appellant feels this policy supports her request as it specifically speaks to home heating.

The appellant referred to an email exchange in her written submission between her and the ministry worker wherein the ministry requests some form of documentation to show that the insurer is requiring a new tank. The appellant feels this indicated that the requirement was met once she submitted the email from the insurance agent to show this was an 'unexpected item suddenly needed'.

During questioning from the panel, the appellant stated the existing oil tank has never been serviced, that she had to service the furnace, herself, in January 2022 with a shop vac and that previously the furnace was serviced yearly prior to the COVID 19 Pandemic. It has not been done since then.

The appellant provided testimony on the financial challenges she currently has. The appellant states that a lack of service technicians and lack of service will create a life risk to her. Living without heat will cause further health problems. The advocate stated that the crisis today is one of the differences in a crisis of fact versus a crisis of psychological making. If the home is lost through a fire or if the furnace cannot be maintained, then this creates an imminent danger.

The appellant answered that she has a temporary extension of home insurance now as the insurer is aware of this hearing process and is awaiting its outcome. The furnace is working just now. It is not providing heat at this time of year; The fan is running providing air throughout the house.

In summary comments the appellant stated that the ministry has narrowly interpreted the legislation and should have considered a broader interpretation of what is 'imminent danger'.

### Ministry

The ministry at the hearing relied upon the reconsideration decision.

The ministry does not object to the panel admitting the appellant's written submission.

The ministry summarized the decision stating that the legislation requires the item to be unexpected and in looking at the number of months and waiting so long to apply for a supplement it is not now unexpected. Further the legislation does not allow the ministry to consider assets, they are required to consider the health of the individual and level of risk.

The ministry stated the loss of house insurance is the danger being presented by the appellant.

During questioning the ministry stated that the request by the worker for proof of need is part of the process. They consider what is the timeline, is an item unexpected and it is not uncommon for a worker to ask for supporting documentation but that a request does not mean that eligibility has been determined.

The ministry confirmed that the ministry policy can consider home heating items for a crisis supplement. During an exchange with the panel the ministry provided an example of heating replacement as if a request was in December of a year and a client had no heat in a home the ministry may consider since it is in winter it would be appropriate to purchase two plug-in heaters. In this case the appellant applied in February for a potential loss of insurance, not heat.

### **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.

In this case the appellant submitted a document that provided information on replacing a heating tank. The panel finds that this information is relevant because it relates directly to the appellant's original testimony discussed in the reconsideration decision regarding her belief the unforeseen request made by her insurance company and potential danger to health justifies a crisis supplement.

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 in this appeal is the reasonableness of the ministry's decision that the appellant is not eligible for a crisis supplement to replace a furnace oil tank. In particular, was the ministry's decision, that the need to replace the tank was not unforeseen or that failure to replace the tank would not place the appellant in imminent danger, supported by the evidence or a reasonable interpretation of the legislation in the circumstances of the appellant?

The relevant legislation is provided in Appendix A.

**Appellant Position**

The appellant argues that there is a requirement to upgrade her heating system to meet building code and insurance company requirements. The need for this upgrade was unexpected as her present system has worked well for 16 years and she was only advised in May of 2021 of the impending change to her insurance requirements. Continuation of coverage will only be possible by installing a new double walled oil tank or changing to a natural gas system.

The appellant further argues that to not upgrade the system puts the risk of potential loss of the home at a significant level risk, and health and safety should not be narrowly defined as to only the physical self. The loss of the home in a fire would result in a loss of shelter and physical health and safety would then be at risk. Her position includes that her discovery of the lack of reasonably available maintenance service unexpectedly also puts her safety at risk. The appellant surmises that she experienced some health issues last winter related to carbon monoxide emissions from the furnace.

**Ministry Position**

The ministry argues that the appellant was notified in May 2021 that the tank needed to be replaced and did not apply for a supplement until February 2022. While the ministry agrees that the appellant could not have anticipated a change in the coverage terms the ministry is not satisfied the requirement to obtain a new tank or a new furnace is unexpected 9 months after being first made aware and therefore the criteria has not been met.

The ministry also argues that only the house asset is at risk, that there is no evidence to suggest the appellant's health is at risk of imminent danger should the appellant be unable to obtain a new oil tank or furnace and by extension home insurance. The ministry states the current furnace is functioning and therefore the request does not meet the legislative criteria.

The panel notes that in the reconsideration decision the ministry in its decision section states: *"that the ministry is not satisfied that failure to obtain new double walled tank or gas furnace will*



*not (sic) result in imminent danger to your physical health”* and finds this to be a typographical error.

### Panel Decision

Section 57(1) of the EAPWD Regulation states that the ministry may provide a crisis supplement if:

1. the appellant requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed;
2. there are no resources available to the appellant; and
3. failure to obtain the crisis supplement will result in imminent danger to the physical health of the appellant.

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 all be met for the provision of a supplement.

The ministry has found that the appellant had no resources available to pay for the tank replacement. This requirement will not be further considered by the panel.

The comments by the appellant that there are many such tank and/or the furnace systems installed and that they will fail at some time due to age or a lack of maintenance cannot be disputed. However, the panel notes that as a foreseeable event, planning can be made to offset the ultimate costs associated with these future events and mitigate potential environmental damage, and that the quotation for a replacement double wall tank did include the construction of a concrete slab and a full furnace service.

The appellant also raises concerns of the ongoing suitability of oil-based heat systems and a need to convert to other heating methods. Although there may be merit in the appellant's submission, the panel's focus is on the reasonableness of the ministry's decision and the application of the criteria set out in the legislation.

The evidence presented on fire safety and environmental risk is from the appellant's research into the insurance company's requirement for an updated type of tank to continue home coverage. There is no evidence to support the argument that the appellant's current oil-based heating system or the present oil tank is not operational or legally not allowed to be used.

The panel reviewed the tribunal decisions quoted by the appellant from 2012 and 2014 but do not find them to be persuasive. In each case the panel finds the individual circumstances of the appellants to be different from that of the appellant in this case. In the first submittal the client was dealing with imminent disconnection of his electrical supply in winter which would have meant no heat and no ability to cook, and in the second submittal the client needed a furnace to meet the basic need for heat, with no finding made by the panel on the circumstances of the unexpected expense as this had already been accepted by the ministry. These decisions differ from this case as the panel has found no evidence that the appellant's current oil-based heating system is not operational. The panel also notes that these decisions are not binding upon the panel even if found to be relevant.

As to whether the need for a replacement tank was unexpected the panel has considered the evidence and testimony provided by the appellant.

The panel finds the item needed is a replacement oil tank that the appellant could not reasonably have anticipated, and that the cost was unknown at the time of the notification in May of 2021. The cost could not be ascertained without a formal contractor quotation and the panel is satisfied that the appellant undertook a reasonable process of determining why the need arose, what options and construction alternatives were available and the cost of each. The requirement and associated costs have not changed in the intervening months since the original notification.

The panel notes the ministry conclusion that the appellant could not reasonably anticipate a change in her insurance providers coverage terms. The panel considered the appellant's explanation for the eight-month delay to January (including due to the pandemic and the appellant's disability) and finds that the ministry was unreasonable to consider that the time delay meant that it was not unexpected.

Based on the evidence and in the circumstances of the appellant the panel finds the need for a new heating oil tank is an unexpected expense within the meaning of section 57(1)(a) of the legislation. The panel finds therefore that the ministry was not reasonable in its finding that the need was not unforeseen.

The panel considered whether failure to obtain the new oil tank or alternate system will result in imminent danger to the physical health of the appellant. The term 'imminent danger' can be defined as a threat being immediate or imminent. This requires the panel to find that death or serious physical harm could occur within a short time.

While ministry policy is not binding upon the panel the section quoted by the appellant indicates that although replacement of home heating may be considered, it requires that all other eligibility requirements are met.

The advocate's argument that if the tank leaks or if the house burns down and the appellant has no insurance, the expenses the appellant would incur would be too much for the appellant as she is dependent on income from the ministry. The panel finds this argument to have both weight and merit; however, although this is possible, the issue in the appellant's circumstances is whether the pending loss of insurance will result in imminent danger to the physical health of the appellant.

The appellant had argued that she had suffered from the effects of carbon monoxide from the furnace. The panel finds that there is no objective evidence to support the applicant's contention that she suffered the effects of carbon monoxide last winter. To further support this point, the appellant had stated that the furnace is currently working, and the system has worked well since 2003.

The appellant argues that there are no oil technicians to replace an oil tank and no technicians to service an oil furnace anywhere locally and that this lack will create a risk to her life.

However, the panel notes the appellant's quote for a new double wall tank, dated 2 June 2022 from a company within the general area, includes a fee for a full furnace service. The panel finds no objective evidence to support the argument that reasonable service to the appellant's oil-fired heating system is not currently available, therefore creating a heightened risk to her health.

The panel finds that the main purpose for the oil tank and/or furnace replacement is the demand by the insurance company and the appellant's choice to adhere to that demand or go without house insurance and continue to use the oil tank and furnace. Based on the evidence the panel finds that a failure to install a new double wall heating oil tank or upgrade to an alternate heating system may result in a loss of house insurance coverage, and that while such loss will increase the potential risk to the house as an asset, it will not result in imminent danger to the appellant as required by section 57(1)(b)(i) of the EAPWD Regulation.

The panel therefore finds the ministry was reasonable in its determination that the appellant did not meet the legislative requirements of imminent danger to physical health.

### Summary

The panel finds the insurance company's requirement for installation of a new heating oil tank is an unexpected expense within the meaning of section 57(1)(a) of the legislation. The panel also finds that failure to follow that requirement or to install an alternate heating system (resulting in a loss of house insurance coverage) will not result in imminent danger to the appellant as provided in section 57(1)(b)(i) of the EAPWD Regulation.

### Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision, to be supported by the evidence and a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is confirmed. The appellant is not successful on appeal.

### Appendix A

## 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,
- (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:
- (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;
- (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)

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

**Part H – Signatures**

Print Name

Donald Stedeford

Signature of Chair

Date (Year/Month/Day)

2022/07/29

Print Name

Kent Ashby

Signature of Member

Date (Year/Month/Day)

2022/07/29

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2022/07/29