

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision (RD) of August 25, 2022 in which the Ministry determined that the Appellant was not eligible for a crisis supplement to pay rent because he did not meet all of the legislative criteria set out in Section 59(1) of the Employment and Assistance Regulation (EAR).

The ministry found that the information provided did not establish that the crisis supplement:

- was for an unexpected expense or for an item unexpectedly needed; and
- failure to provide the crisis supplement would result in imminent danger to the physical health of the person in the family unit or the removal of a child under the *Child, Family and Community Service Act*.

Specifically, the ministry determined the appellant's banking situation was known to him, and there was not enough information to determine that the difficulty accessing assistance funds was unexpected. The ministry also determined that the appellant had secured new accommodation and was not facing imminent danger due to homelessness.

Part D – Relevant Legislation

Employment and Assistance Regulation section 59(1)

Part E – Summary of Facts**Background Information**

- The appellant is a sole recipient of income assistance receiving a monthly support allowance of \$610 and a monthly shelter allowance of \$375 for a total of \$985 monthly.
- On July 29, 2022 the appellant received an eviction notice indicating because rent in the amount of \$800 due on July 29, 2022 had not been paid, the premises had to be vacated by August 8, 2022.
- The appellant requested a crisis supplement from the ministry on August 2, 2022 noting the following reasons for the request:
 - the cheque from the ministry was deposited into an overdrawn account that was no longer accessible because of identity-theft;
 - he had called in to stop the deposit, however he had missed the cut-off time by three minutes;
 - he made arrangements but did not get any assistance to make the payments from the ministry;
 - he has no funds or other resources;
 - there is a threat to his health and safety because he will be homeless and probably die because he wouldn't have a stable place to live and wouldn't take his medicines anymore.
- The ministry denied the crisis supplement request because:
 - the appellant has been dealing with the fraud and bank account issues since December, 2021 and has received four crisis shelter requests since dealing with them; and
 - it has already been nine months since the identify theft, therefore, it is no longer considered an unexpected event.
- The appellant requested a Reconsideration of this Decision (RFR). The appellant indicated that assumptions were made by the ministry that the previous crisis requests were all for the same reasons, when, in fact, there were different reasons for each request.
- The appellant reviewed the ministry policy for crisis supplements and responded as follows (summarized):
 - The ministry has negligently caused extreme hardship and homelessness with no need.
 - The appellant has no other resources to meet the need and has been thrown into a cycle where he would be homeless and then not get moving funds.
 - The original request was made during the month of July when the amount was missed and he was told by the ministry that a crisis supplement could not be made when a payment had not been made.

Information Received After Reconsideration

On September 5, 2022 the appellant submitted a Notice of Appeal (NOA) writing:

- "A catastrophic decision to decline my crisis request because it was deemed "no longer unexpected" caused me to lose everything I had, get evicted and be homeless which is what this group is supposed to not do."; and

- “The process needs changing and I want to be heard as I haven’t been except for one agent who helped.”

At the hearing, the appellant stated it has been one year since he started receiving assistance, and prior to that he worked his entire life. He had some investments, which he thought could supplement the income assistance, however they all “tanked” in a matter of three days in November 2021. The appellant reviewed events that he has encountered since December 2021 and which led to the August crisis rent request. They are:

- On November 29, 2021 he received a call from his bank, the fraud security department, who informed him he no longer had access to his accounts and he needed to prove his identification. Apparently, someone had cloned his phone and accessed his accounts before the bank locked it down. He had no access to the account.
- On December 1, 2021 he sold things to pay rent and contacted community groups to see if any assistance could be provided. He found out there were many agencies to assist women, seniors, persons who had been incarcerated or were a minority group, but none could assist a middle-aged white male. He had no family to ask for help so he contacted the ministry who provided him with his first crisis supplement.
- During December 2021 he contracted Covid and wasn’t able to straighten things out with his bank as he needed to go there in person to provide his identity. The bank had locked his access to his credit overdraft as well.
- The January 2022 cheque from the ministry comes in mid-December so his cheque was deposited to the account that was on hold, so he then received his second crisis supplement from the ministry as he had nothing to pay his rent.
- He had read that someone with Covid, and who had worked, could receive a benefit from the federal government so he received funds from them. He was not aware that this money would be deducted from his income assistance. It was deducted from his February 2022 cheque resulting in no cheque from the ministry to pay February 2022 rent. The ministry assisted with his third crisis supplement for rent.
- During February 2022 he received crisis supplements for food and clothing from the ministry. This was five crisis supplements by February.
- He was \$100 short on his March rent, and he was being harassed by his landlord. He received an eviction notice for March. He took this to the Residential Tenancy Branch, which bought him some time and he didn’t have to move out.
- He received his income assistance for April, and he must have told them to start direct deposit again, however he doesn’t recall doing that but acknowledges that his memory isn’t all that good.
- He started working in April and declared earnings for the next two months as he was told to just declare earnings and not close his file. He did not receive May, June, or July income assistance. His pet, who had been ill, passed away and because he had missed several days work, or was late for work, he was let go.
- He was informed by his bank in April that his accounts were once again locked because someone had once again accessed his account, using a different device.
- He was \$800 short on his July rent and when he contacted the ministry to get funding, he was told he could not receive a crisis supplement if he hadn’t received any income assistance for that month. He was told to contact the ministry again after August 1, 2022.

- When asked to clarify when he found out that his account had once again been frozen, he stated in July, when he went to use his bank card and it didn't work.
- When asked if the second identity theft was for the same account, he answered, yes it was, but that everything had been cleared up previously, so he had been using it, and it was where his pay from his work was deposited to in May and June. He was aware he was in overdraft at his bank, but when he was hacked again all his protections were lost and the account listed as deposit only.
- He called in August to request a crisis supplement and was informed by one agent they would get back to him. When they didn't, he followed up with another agent who informed him that a decision had already been made, which was to deny the crisis supplement for rent. He spoke to three different agents, and no one asked him for any further information, other than to offer him the right to a reconsideration of the decision.
- He wanted to emphasize that the overdraft amount in his account would not have been an issue because he had overdraft protection until it was locked again after the second identify theft occurrence.
- He emphasized that his other crisis requests should not be weighed in the decision.
- He wants to point out that income assistance rates are too low, and people cannot afford to live the way things currently are. He would like things to change Provincially.
- He also would like the ministry to review their Identify Theft Policy as this will be occurring more frequently with use of electronics.

At the hearing, the ministry relied on its reconsideration decision and added that the request for crisis rent was not unexpected because the appellant has been in a position of living where the cost of rent has been higher than his income assistance rates since he started on assistance, and the ministry could not supplement it ongoing with crisis funds. In response to the appellant indicating he would like policy to change provincially, the ministry commented that raising the issues related to rental rates might bring about policy change.

When asked if having to pay rent is a known event, how were past crisis supplements paid to the appellant, the ministry replied that every request is considered on its own merits, depending on what events have occurred. In the August crisis rent request, the appellant's cheque was due to be deposited into an overdrawn account, and the appellant did not notify them to stop the payment in time. The appellant had been in contact with the ministry on July 15, 2022 and did not indicate there was a problem with where to deposit the August cheque. The appellant contacted the ministry again on July 19, 2022, one day before cheque day, which was too late to stop the deposit.

When asked about the reconsideration decision which determined the health and safety criteria for the crisis supplement had not been met because the appellant had since moved and was no longer in crisis, the ministry responded that at the time of the RD the appellant had moved and was no longer at risk of homelessness. The ministry added that homelessness is taken very seriously.

Admissibility of Additional Information

The panel admits the appellant's NOA and the oral evidence given at the hearing under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Neither the ministry nor the appellant raised objection to any of the oral evidence provided.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's RD dated August 25, 2022 wherein the ministry denied the Appellant a crisis supplement to pay for rent. Specifically, did the ministry reasonably determine the information provided did not establish that the crisis supplement was:

- to meet an unexpected expense or to obtain an item unexpectedly needed; and
- failure to provide the crisis supplement would result in imminent danger to the physical health of the person in the family unit or the removal of a child under the *Child, Family and Community Service Act*

The panel must determine whether the ministry's decision that the Appellant did not satisfy the statutory criteria as set out in section 59(1) of the EAR was either reasonably supported by the evidence or was a reasonable interpretation of the legislation in the circumstances of the Appellant.

The appellant's position is he should be eligible for a crisis supplement for rent because his August income assistance was deposited to an account that was affected by a second identity theft occurrence, which affected his overdraft protection, and resulted in his funds no longer available to him. Because he could not pay the August rent, he became homeless for the remainder of the month which caused him to lose some of his belongings.

The ministry's position is the appellant has been living in rental units that cost more than the total amount of his income assistance and has received numerous crisis supplements for rent for various reasons. In the August request for a crisis supplement, the ministry argues it not an unexpected event because the appellant did not notify them in time to have his assistance stopped from being deposited to an account that he knew was overdrawn and had been affected by identity theft. The ministry argues that at the time of reconsideration the appellant had found another residence, so he was no longer considered to have a health or safety risk.

Panel Decision

Section 59(1) of the EAR sets out 3 criteria all of which the appellant must meet before the ministry may provide a crisis supplement (full text of the relevant legislation follows the decision):

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

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

The appellant made a point of saying that the focus on his bank account being overdrawn

should not be at issue, rather it is because the account was locked due to a second identity theft attempt, which was the unexpected event. The appellant stated he had been using the account again until this happened. The panel found the appellant provided conflicting testimony as to when the second identify theft occurred. At one point he stated it happened in April, yet he added that he had been using his account through May and June for his pay deposit from work before it was locked. However, upon further questioning the appellant stated his pay had gone into a different bank account. The appellant stated he found out his account was locked when he went to use his bank card and it didn't work, but did not specify what day this happened on, just "sometime in July". There is no evidence in the appeal record to confirm exactly when the account was locked again, or whether the appellant had access to a different account for his income assistance to be deposited to.

The appellant had already had an identity theft occurrence in December 2021 so the panel considers it reasonable that when the appellant was notified by the bank of a second identity theft, he would be aware the account would be locked, and he would no longer have overdraft protection while it was being reviewed. The ministry record shows the appellant was in contact with them on July 15, 2022, which is the week before cheque issue, with no record that the appellant requested his next assistance cheque be stopped from being deposited to that account. The appellant did not notify the ministry until the day before cheque issue, July 19, 2022, that there was a problem with his account, which was, by then, too late to stop the deposit being made.

The panel finds because the appellant was aware as early as April that his account was locked, resulting in him not having overdraft protection available, and not notifying the ministry in time to stop the deposit from being made to the overdrawn account, it cannot be considered unexpected the August deposit would be put towards the bank account overdraft. Therefore, the panel finds the ministry was reasonable to determine the appellant is not eligible for a crisis supplement for rent because he does not meet the criteria of section 59(1)(a) of the EAR.

In the RD, the adjudicator determined the appellant did not meet the criteria of section 59(1)(b) because by the time of the RD, almost a month after the crisis request, the appellant had already moved into a new address and was therefore no longer in a health or safety risk situation.

The ministry's policy is to reduce the likelihood of homelessness. It is the panel's opinion, that at the time the crisis request was made on August 2, 2022, the appellant was facing eviction and homelessness, putting his health and safety at risk. Therefore, the panel finds the ministry was not reasonable to determine the criterion of section 59(1)(b) of the EAR had not been met.

However, the legislation states that all criteria must be met. The panel finds because the appellant does not meet the conditions of section 59(1)(a) of the EAR the ministry reasonably determined the appellant is not eligible for a crisis supplement for rent.

Conclusion

The panel finds that the ministry's determination the appellant was ineligible for a crisis supplement for rent under section 59(1) of the EAR because he did not meet eligibility criteria

was a reasonable application of the legislation. The panel therefore confirms the ministry's decision. The appellant is not successful on this appeal.

Relevant Legislation

Employment and Assistance Regulation

Crisis supplement

59 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for income 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*. (CFCSA)

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
Janet Ward

Signature of Chair

Date (Year/Month/Day)
2022 October 03

Print Name
Joe Rodgers

Signature of Member

Date (Year/Month/Day)
2022 October 03

Print Name
Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)
2022 October 03