

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the Ministry) reconsideration decision of February 27, 2023, in which the Ministry determined that the appellant was not eligible for a crisis supplement for rent. The Ministry determined the appellant did not meet the legislative criteria set out in section 59 of the Employment and Assistance Regulation (the regulation).

The Ministry found that the appellant did not meet the requirements that:

- the appellant was not eligible for February income assistance (IA);
- 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.*; and
- a crisis supplement may be provided only for the month in which the application is made.

### **Part D – Relevant Legislation**

Employment and Assistance Regulation Section 59

The full text of the legislation is provided in Appendix A at the end of the Decision.

**Part E – Summary of Facts**

The appellant is a recipient of income assistance who did not receive February 2023 assistance because she received Employment Insurance (EI) income that was higher than the IA rates.

**Information before the Ministry at Reconsideration**

- A Request for Reconsideration (RFR) form signed by the appellant on January 31. The appellant wrote as their reason for requesting a reconsideration as (in summary):
  - The landlord has threatened that she will get an eviction notice if the rent is not paid on time.
  - She received zero income for the month of January, and she has no money to pay rent.
  - She was relying on the monthly report that stated she would be received \$935 on January 18, and she would pay her \$600 rent out of that.

**Information Provided After Reconsideration**

On the Notice of Appeal form (NOA), the appellant wrote “Received underpayment from EI due to their error, so I didn’t receive February assistance. Therefore, making me incapable to pay rent.”

At the hearing, the appellant explained that she had received Employment Insurance (EI) from June to September of 2022. In December 2022 EI reviewed the amount she had received and determined she should have been paid a higher rate, so she was issued a lump sum retroactive payment. She was expecting to receive her usual IA cheque on January 18, 2023; however, the lump sum EI was deducted, and she was left with no income to pay her February rent. The appellant explained that when she received the lump sum EI payment, she used it to pay bills that had accumulated while she was on EI, and if EI had given her the correct amount, she would not have accumulated the bills.

The appellant stated that when did not receive her February IA cheque she called her landlady to explain she may be late with her February rent and was told she would receive an eviction notice if it wasn’t paid. The appellant explained this was a very stressful time for her and she suffered from seizures because of it. She stated she did not want to face eviction so borrowed \$600 for the February rent, which she must repay.

At the hearing, the Ministry explaining that a data match with the federal government showed the appellant received a lump sum payment from EI for \$1178 as well as an

income tax return of \$1357.74 in December 2022. Because the EI income of \$1178 is higher than the appellant's IA rate of \$935 per month this mean it resulted in no eligibility for February IA.

The Ministry explained that because the appellant was not eligible for February assistance, it means she is not considered to be a recipient of IA and is therefore not eligible for any supplements such as a crisis supplement. The Ministry added that eligibility for assistance is determined month by month, which is why a monthly report must be completed.

The panel asked to review the Reconsideration Decision which stated that "it has previously established that the appellant is not eligible for February IA" without providing any further explanation. The Ministry explained that the requirement to be a recipient of IA overrides all the other requirements. The Ministry stated that the other requirements were reviewed as well, and notes that because the appellant's rent had been paid, she was not in imminent danger of eviction, so she did not meet that requirement.

### **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.

**Part F – Reasons for Panel Decision**

The issue under appeal is the reasonableness of the Ministry's reconsideration decision, where the Ministry denied the appellant a crisis supplement for rent.

The panel must determine whether the Ministry's decision that the appellant did not satisfy the statutory criteria as set out in section 59 of the regulation was either reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

**The Appellant's Position**

The appellant's position is that she thought she would be receiving her February IA cheque, as indicated on her previous monthly report, so when she did not receive it, she had no money to pay her February rent. She did not want to face eviction so she borrowed the \$600, but she must repay it.

**The Ministry's Position**

The ministry's position is that because the appellant is not a recipient of IA, she is not eligible for a crisis supplement, and she also was not in any imminent danger of eviction because her rent was paid and she was not facing homelessness.

**Panel Decision**

There were three separate determinations made in the Ministry's Reconsideration Decision that affect the appellant's request for a crisis supplement. Some of the determinations appeared to be contradictory so the panel will examine them separately.

- 1) The appellant was not in receipt of February income assistance, so not eligible for a crisis supplement.
- 2) A crisis supplement may be provided only for the month in which the application is made.
- 3) 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 appellant was not in receipt of February income assistance, so not eligible for a crisis supplement.**

Section 59(1) of the EAR sets out that the minister may provide a crisis supplement to or for a family unit that is **in receipt of income assistance**, or hardship assistance, if 3 criteria are met:

- 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 is satisfied that the appellant has an unexpected need and has no resources available to pay for February rent. These requirements will not be further considered by the panel.

The legislation is clear that a crisis supplement may be issued to a **recipient** of income assistance. The panel finds the Ministry did not explain this clearly enough in their Reconsideration Decision. Initially they wrote that the appellant is a sole recipient of income assistance, yet in their decision they made a one-line statement that it had been determined the appellant was not eligible for February IA. However, they did not expand upon this being a requirement when considering a crisis supplement request.

At the hearing, the Ministry emphasized the legislative requirement that no supplement may be issued to someone who is not in receipt of IA. They argue that, because the appellant was not in receipt of February income assistance, she could not receive a crisis supplement for February rent. The ministry further argues that it makes the other requirements of Section 59 irrelevant.

The appellant did not receive income assistance for February and is requesting a crisis supplement to pay her February rent. The panel finds that, because the appellant did not receive February assistance, she is not a recipient of income assistance, and this would affect any requests for a crisis supplement. Therefore, the ministry was reasonable to determine, because the appellant is not a recipient of assistance for the month the crisis is required, February, that she is ineligible for a crisis supplement.

**A crisis supplement may be provided only for the month in which the application is made.**

The Ministry determined that they could not issue a crisis supplement for February rent because the request was made in January.

Section 59(2) states that a crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.

The panel finds even though the crisis request was made in January, it was all related to the appellant not receiving her February IA cheque and her inability to pay her February rent. The panel appreciates that the appellant was being proactive in trying to find ways to pay her rent prior to receiving an eviction notice. During the hearing, the ministry explained the importance of an eviction notice when considering a crisis request. Eviction notices are not typically issued until after rent is overdue. In the appellant's circumstance, her rent was due on February 1, and she requested the crisis supplement in January.

The legislation does specify a crisis supplement may only be provided for the calendar month in which the application or request is made, and the appellant requested a crisis supplement for February rent in January. Therefore, the ministry was reasonable to determine that Section 59(2) was applicable in the appellant's circumstance.

**Failure to provide the crisis supplement would result in imminent danger to the physical health of the person.**

The ministry determined the appellant did not meet the criteria of an imminent life-threatening health need, because when the Reconsideration Adjudicator contacted the appellant on February 27, she had already paid her rent and was not in imminent danger of being homeless. The appellant argues that she had borrowed the money to pay the rent, which she must repay.

The reason the Ministry determined that the appellant had no resources available to her was because they do not consider a personal loan to be an available resource because she is required to repay the money. However, the Ministry then determined that because her rent was now paid, and there was no evidence to show she was at risk of losing her accommodation, there was no imminent danger to her health. They did not address the

fact that the appellant had borrowed money to pay the rent, and which she was required to repay.

At the hearing, the Ministry clarified that they do not expect people to go to a finance company to borrow money, but if someone can borrow from a friend, that is a different situation. The panel finds the Ministry's argument to be contradictory.

The panel found no evidence to indicate the appellant was facing imminent danger to her health, because she maintained her residence and is not homeless. Further, the panel has already found that the appellant is not a recipient of income assistance during the month the request for a crisis supplement is made. Therefore, it is irrelevant whether the appellant is facing imminent danger to her physical health because a crisis supplement may only be issued to a recipient of assistance.

### **Additional Panel Comment**

The panel notes that the appellant was informed on January 18, 2023, that her EI income was deducted, and that she had no eligibility for a February cheque. The Appeal Record indicates the appellant was informed of her right to appeal this deduction, and that it went to a reconsideration, however, she did not follow up with this. At the hearing, the ministry explained that if the appellant had done so, she would have received Benefits while under Appeal, which means they could have issued her a hardship cheque for February.

The panel is aware this does not have bearing on the crisis supplement request; however, the appellant was quite confused about what her rights were, or what options were available to her. The appellant was very stressed and ill after she found out she would not be receiving a February cheque, so may not have understood, or the Ministry may not have clearly explained, this was an option available to her.

### **Conclusion**

The panel finds that the ministry's determination the appellant was ineligible for a crisis supplement for rent under section 59 of the EAR because she 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)

(2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made



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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

Janet Ward

Signature of Chair

Date (Year/Month/Day)

2023 March 27

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2023 March 27

Print Name

Shannon Campbell

Signature of Member

Date (Year/Month/Day)

2023 March 27