

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision dated 28 February 2023, in which the ministry denied the appellant's request for a crisis supplement for food. The ministry found the appellant was ineligible for income assistance and therefore did not meet all the requirements under Section 59 of the Employment Assistance Regulation (Regulation).

Part D - Relevant Legislation

Employment and Assistance Act (Act) - Section 1, 4 and 5.

Employment and Assistance Regulations (Regulation) - Sections 39, 44 and 59.

The relevant legislation is provided in the Appendix.

Part E – Summary of Facts

The appellant has an open income assistance file.

The evidence before the minister at reconsideration included the following:

- The appellant last received income assistance for the month of January 2023. He was determined ineligible for February assistance because of income in excess of ministry rates.
- The appellant submitted a request for a crisis supplement, reporting:
 - He has not received assistance and has no means to purchase groceries.
 - He has \$23 in his bank account and has been selling things to pay bills and is eating less and less every day.
- The ministry denied the appellant's request because he is ineligible for income assistance, (The Panel notes that the Reconsideration Decision originally read "eligible"; however, this was clarified at hearing to be a typo and should be 'ineligible'),
- An RBC bank accounts overview statement, a ministry confirmation of assistance statement, and a TD Bank savings account statement.
- The ministry received the appellant's request for reconsideration in which he writes:
 - *"I am receiving assistance. I was approved for the utilities supplement, and I should be approved for the crisis shelter one as well soon".*

Evidence received after reconsideration.

In the Notice of Appeal, the appellant writes;

"I have zero money for food or clothing and my mental health has only gotten worse. I have applied for EI but have not gotten a decision on it yet. They say I have reached my maximum allowable assistance."

The hearing was held as a teleconference.

Appellant

At the hearing the appellant referred to the ministry reconsideration decision (decision) and pointed out that he had met the criteria needed for a supplement except for one. He highlighted the ministry decision that he was not currently eligible for assistance.

The appellant stated that he had received a hydro supplement and felt that this made him eligible. At the beginning of the month, he had received a cheque for \$1275 which he spent on rent.

In answer to questions from the ministry the appellant replied that the date of the cheque was 10 March 2023.

The appellant stated that he had been receiving income assistance (IA) and employment insurance (EI) from about October 2022, when he had to stop work. The EI payments received were delayed and he received a lump sum for approximately \$900 and gave monies to his ex-wife. He stated that he did not receive EI in February. He did receive EI on February 3 in the amount of \$972 and confirmed he was denied IA for February because of EI payments he was receiving.

The appellant stated that he had been self-employed and the EI payments stopped in January 2023 with the last payment being received in February.

The appellant stated that he had been told by a ministry worker that he would receive a letter providing a breakdown for the cheque he received on March 10, 2023, and that this letter would assist him in his appeal; however, he never received the letter. He had used the money immediately to pay the rent for the house where his children live.

Ministry

The ministry relied upon the reconsideration decision. The ministry acknowledges that the appellant has met the criteria relating to an unexpected need and the appellant has no resources available to him and that failure to obtain the item or meet the expense will result in imminent danger to his physical health.

As the request for a crisis supplement does not meet all the requirements under Section 59 of the EA Regulation, the ministry is unable to approve the appellant's request.

In a response to a question by the appellant on whether the hydro supplement is an assistance payment, the ministry stated it cannot answer as the payments may have been arranged in January or at different times and for other purposes and not relevant to the discussion on income assistance. The ministry wanted to clarify that hydro supplements are not income assistance payments for February 2023.

The ministry stated that for the appellant to be ineligible for income assistance he must have received monies from other sources of greater than his rate of assistance of \$935, and that the amounts should have been clarified and stated in the reconsideration decision to assist in understanding.

The ministry clarified that the statement in the decision stating the appellant had previously been found ineligible for disability assistance was a typo and should have read 'income assistance' and that this was an incorrect 'cut and paste'.

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 offered oral testimony on the receipt of other sources of income that related directly to the decision on eligibility.

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 denied the appellant's request for a crisis supplement for food. In particular, was the ministry's decision that the appellant was ineligible for income assistance and therefore did not meet all the requirements under the Regulation for a crisis supplement or hardship assistance 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 he had received assistance by way of a supplement during the month of February and therefore was eligible to receive a crisis supplement. Further, any monies received from EI payments went to his ex-wife and for maintenance of the home where his kids live. The appellant has no means to purchase groceries, has \$23 in his bank account and has been selling things to pay bills and is eating less and less every day.

Ministry Position

The ministry argues that the appellant is not eligible for income assistance (support and shelter allowance) because his income is more than the rate of assistance for his family unit size in that month where he received the other EI income. As a result, the ministry is unable to establish whether the appellant is eligible for income assistance or hardship assistance.

The ministry argues that as the appellant's request for a crisis supplement does not meet all the requirements under the Regulation, the ministry is unable to approve the appellant's request for a food crisis supplement.

Panel Decision

The panel notes the appellant has stated he was receiving EI payments from approximately October 2022 and began receiving income assistance payments at about the same time and had received at least one EI payment of approximately the same amount as the rate of income assistance. The panel also notes that the ministry and the appellant agreed that the appellant had been found ineligible for income assistance for

February on this basis. The panel finds therefore that the appellant was ineligible for income assistance for the month of February.

Section 59 of the Regulation states that to be eligible for a crisis supplement the appellant must meet four criteria;

1. be eligible for income or hardship assistance, and
2. the requested item must be required to meet an unexpected expense, or obtain an item unexpectedly needed, and
3. there are no resources available to obtain the item, and
4. that failure to provide the item will result in imminent danger to physical health or removal of a child under the Child, Family and Community Service Act.

The panel notes the ministry has accepted criteria 2 – 4 and the panel will therefore not comment further on these.

The appellant has argued he had received other ministry support in the form of utility and clothing supplements during the month of February and/or March 2023, and that this support makes him eligible to receive a crisis supplement for food. The ministry has not denied or confirmed whether other supplements or payments have been paid but argues that no income assistance payments were made for the month in which the appellant had been found ineligible.

The panel has considered whether the payment of supplements in one form or another during a period of income assistance ineligibility would constitute a precedent such that further or other supplements must be paid. The panel finds that in the circumstances of the appellant any payments that may have been made as a supplement do not constitute income assistance under the Act and do not create a precedent requiring the payment of further supplements.

The panel finds that as the appellant was not eligible for income assistance at the time of application for a crisis supplement for food, the appellant did not meet the first criteria of the Regulation. The ministry was therefore reasonable in its determination that the appellant did not meet all of the criteria under the regulation for a crisis supplement for food.

Section 39 (1) of the Regulation states that for a family unit to be eligible for hardship assistance, the family unit must be ineligible for income assistance for one or more reasons set out in sections 41 to 47.21, and section 44 states that the minister may provide hardship assistance to a family unit that is not eligible for income assistance if, amongst

other requirements, the minister considers that undue hardship will otherwise occur, and the family unit includes one or more dependent children.

The panel notes the comments by the appellant that he has no means to purchase groceries and has been selling things to pay bills and is eating less and less every day. The panel also notes the appellant's comments that the EI monies were used to provide for maintenance payments and child dependants.

The panel notes with concern the statements by the ministry that because the appellant's income is more than the rate of assistance for his family unit size the ministry is unable to establish that the appellant is eligible for hardship assistance. The panel notes section 44 of the legislation provides for the provision of hardship assistance in circumstances where income assistance is not available due to excess income and where an appellant has dependant children, possibly similar to those of the appellant.

The panel also notes that the wording of the legislation affords the ministry some discretion in the interpretation of the section on hardship assistance. The panel sees no information in the appeal record or argument by the ministry to support any finding on hardship assistance, and the panel therefore can make no finding upon the relevance of the appellant's situation to the eligibility of hardship allowance.

After reviewing all of the evidence the panel finds that the ministry has failed to consider the appellant's eligibility for hardship assistance and to not do so was unreasonable. Therefore, the panel finds the ministry was not reasonable in determining the appellant was not eligible for hardship assistance.

Summary

The panel found the appellant to be ineligible for income assistance at the time of application for a crisis supplement for food and therefore did not meet the criteria established in the Regulation, making him ineligible for a crisis supplement. However, the panel found the ministry had not considered eligibility for hardship assistance and was therefore not reasonable in determining the appellant was ineligible.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision to not be supported by the evidence and was not a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is rescinded. The appellant is successful on appeal.

Appendix A

EMPLOYMENT AND ASSISTANCE ACT

Interpretation

1 (1) In this Act:

"**income assistance**" means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

Hardship assistance

5 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that

(a) is eligible for it, and

(b) is not eligible for income assistance.

EMPLOYMENT AND ASSISTANCE REGULATION

Part 4 — Hardship Assistance

Hardship assistance — eligibility and limitations

39 (1) For a family unit to be eligible for hardship assistance, the family unit

(a) must be ineligible for income assistance for one or more reasons set out in sections 41 to 47.21, and

(b) must not be ineligible for income assistance for any other reason.

(2) A family unit that is eligible for hardship assistance must be provided with hardship assistance

(a) in accordance with Schedule D,

(b) only for the calendar month that includes the income assistance application date, and

(c) only from the date in that calendar month on which the minister determines that the family unit is eligible for hardship assistance, subject to

- (i) section 4 (2) of Schedule D for hardship assistance provided under sections 41 to 46 and 47.21, and
- (ii) section 4 (3) of Schedule D for hardship assistance provided under section 47.2.

(3) A family unit to which hardship assistance has been provided for 3 consecutive calendar months because of the circumstances described in

- (a) section 41, 44 or 46, or
- (b) section 43, unless the source is employment insurance,

is not eligible for hardship assistance under any of those sections for the 3 consecutive calendar months immediately following those 3 consecutive calendar months of receipt.

(3.1) A family unit is not eligible for hardship assistance under section 47.21 if the family unit has received hardship assistance for 12 or more calendar months under this regulation or the Employment and Assistance for Persons with Disabilities Regulation.

(4) If

- (a) hardship assistance has been provided to a family unit under section 47.2 for the calendar month referred to in subsection (2) (c) of this section,
- (b) the family unit continues to be ineligible for income assistance because a member of the family unit has not satisfied the requirement under section 4.1 (2) (b) respecting the completion of searches for employment, and
- (c) the member of the family unit who has not satisfied that requirement is, if applicable, taking the steps to satisfy the requirement as directed by the minister,

hardship assistance may be provided under section 47.2 for a further 2 consecutive calendar months following the initial calendar month for which the hardship assistance is provided.

Family units that have excess income

44 The minister may provide hardship assistance to a family unit that is not eligible for income assistance because the income of the family unit exceeds the limit under section 10 [*limits on income*] if

- (a) the minister considers that undue hardship will otherwise occur,

- (b)the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
- (c)the family unit includes one or more dependent children, and
- (d)the income that causes the family unit to be ineligible for income assistance could not, in the minister's opinion, reasonably be expected to be used to meet the family unit's basic needs.

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,

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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

Don Stedeford

Signature of Chair

Date (Year/Month/Day)

2023/03/30

Print Name

Vivienne Chin

Signature of Member

Date (Year/Month/Day)

2023/03/31

Print Name

Joe Rodgers

Signature of Member

Date (Year/Month/Day)

2023/03/30