

### **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 19 June 2023, which determined that the appellant was ineligible for a crisis supplement for shelter.

Specifically, the ministry determined that the appellant was not eligible to receive a crisis supplement because the appellant had not met the criteria. The ministry was not satisfied that the appellant had shown: 1) that the expense was unexpected; and, 2) posed an imminent danger to her physical health.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act (Act) section 5.*

Employment and Assistance for Persons with Disabilities Regulation (Regulation) section 57.

*Employment and Assistance Act section 22(4)*

## Part E – Summary of Facts

### Evidence at the time of reconsideration

As part of the application for reconsideration, the appellant submitted:

- 1) A “Request for Crisis Supplement – Shelter” application, signed May 30, 2023 which stated that the appellant needed help to cover a catch-up strata fee and a special levy.
- 2) The AGM minutes from the appellant’s Strata Council’s property management company dated May 17, 2023 which stated:
  - a. her monthly strata fees are retroactively increased starting from January 2023, and the “catch-up” fees from January – May 2023 for her unit is \$304.59
  - b. a special levy of \$210,000 for “Water ingress & Roof Deck Repairs” is approved, and her unit’s share is \$2,637.36, payable on June 1, 2023.
- 3) A statement from the appellant explaining “the sudden & unexpected payment of the catch-up fees & the special levy suddenly” delivered on May 17 by post was “a sudden payment which I can’t afford...”.

According to the Ministry’s decision, the following is a chronology of events, which is not disputed by the appellant:

The ministry advised the appellant that she was not eligible for a crisis supplement for shelter on May 31, 2023.

The appellant initiated a Request for Reconsideration on May 31, 2023.

The ministry completed its decision on June 19, 2023.

In the decision, the ministry found that:

- 1) The appellant is in receipt of disability assistance and is eligible for a crisis supplement if the other criteria are met.
- 2) The appellant has no other resources available to pay for the utilities.
- 3) The appellant has not satisfied the ministry that she faces imminent danger to her physical health, stating “you have not submitted any information or evidence that not paying your catch-up fees and special levy would result in you being homeless or in any immediate danger”.
- 4) The increase in strata fees is not an unexpected expense, as “strata fees in most buildings increase every year, and this should be budgeted and planned for”.

The appellant submitted a Notice of Appeal to the Tribunal on June 26, 2023.

### **Testimony at the hearing**

The ministry was not in attendance at the hearing. It was confirmed that the ministry was properly notified of the hearing and the hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The appellant spoke about her current situation. She is a single mother caring for three children. Two of her children have respiratory health concerns that require on-going care.

Her building suffered a fire in 2018, and has had ongoing issues with water ingress, condensation and mold.

In 2022, her home also had water leaks from the roof.

The appellant presented additional evidence at the hearing, including:

- 1) Four notices from the local fire department as follows:
  - a. September 9, 2019 "Notice of Violation" regarding 12 fire doors that did not close properly and need repair;
  - b. September 10, 2019 "Notice of Violation" regarding "combustible storage" in a service room and storage rooms where aisles were obstructed;
  - c. March 11, 2020 "Notice of Violation" regarding doors that did not latch closed" and "require repair"; and
  - d. March 11, 2020 "Notice of Violation" regarding the lack of a Fire Safety Plan.
- 2) A report from an environmental engineering firm dated September 9, 2019 which provided a "Mold Assessment" of the appellant's unit which concluded "visible mold growth was observed" and "Penicillium/Aspergillus like species was detected at concentrations over 5 times greater than the outdoor baseline samples."
- 3) A letter from the property management company of July 9, 2018 outlining a fire incident at the building and resulting structural damage.
- 4) A letter from a local nurse practitioner dated March 17, 2020 which outlines the appellant's diagnosis of an upper respiratory tract infection.
- 5) A "Certificate of Health Status" dated March 11, 2020 from a local medical clinic physician with a diagnosis of one of the appellant's children, stating that their "chronic cough and nasal congestion" were "more likely to occur when exposed to environments with poor air conditions for prolonged periods, especially if they include... mold and dampness".
- 6) Two referral letters from an overseas hospital regarding the two of the appellant's children, outlining their diagnoses of ciliary dyskinesia.

At this time, the panel chair adjourned the hearing to allow the additional information to be reviewed by the panel members and the ministry. The ministry's review of the additional information would provide it with an opportunity to raise any objections prior to the panel considering whether any new evidence might be entered into the hearing record, as permitted under Section 22(4) of the Employment and Assistance Act. Technical problems also arose at the hearing before the adjournment, which were addressed prior to the continuation of the hearing.

The hearing resumed two days later and the appellant submitted new evidence, including:

- 7) Two videos time stamped "2019" showing water accumulating over three days on a window ledge and outside in the ground against an apartment building; and
- 8) A photo of water condensation and mold

The appellant stated that she puts all her efforts into her children, and that her priority is to ensure that they are healthy and have access to good educational opportunities.

The appellant confirmed that she sat on the Strata Council previously. She also stated that she had paid off her mortgage on her apartment in 2022.

The appellant concluded by noting that it was "not easy to ask for help", and that this required her to "lose her dignity" and she felt shame in sharing her experience. She cannot afford to use her heater or clothes dryer.

In response to a question from the panel, the appellant said she had not tried to get a loan to cover the additional fees or asked the strata council if she could have more time to make the payments.

In response to another question from the panel, the appellant said that, from her time on the Strata Council, she was aware that "legal letters" were usually sent to residents whose fees had not been paid, but that she had not yet been threatened with any legal action relating to nonpayment of the catch-up and special levy fees.

The ministry was notified of the rescheduled hearing and was not present at the rescheduled hearing. The hearing proceeded in accordance with section 86(b) of the Employment and Assistance Regulation.

The panel reviewed the new evidence provided by the appellant in her submissions and at the hearing. The panel admitted all of the new evidence because it is reasonably required for a full disclosure of all matters relating to the appeal.

**Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's reconsideration decision that determined the appellant was ineligible for a crisis supplement for shelter was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine that the appellant was ineligible for a crisis supplement because she did not meet the criteria?

**Ministry position**

In the decision, the ministry found that the appellant was not eligible for a crisis supplement for shelter as it was not an unexpected expense and there was no imminent danger.

The ministry stated the "strata fees in most buildings increase every year" and that they could also not conclude that the special levy was unexpected, "as it could have been mentioned in previous strata meetings about the upcoming special levy".

The ministry concluded that they were not satisfied that either fee was unexpected.

The ministry stated that the appellant's health was not in imminent danger, noting that ... "imminent" denotes a sense of urgency" and that the appellant had not provided any evidence in her application that would help them conclude that not paying either fee would "result in you being homeless or in any immediate danger". The ministry concluded that they were unable to establish that the appellant's "physical health is in imminent danger if you do not pay the outstanding strata catch-up fees and special levy".

**Appellant's position**

The appellant states that the May 17 letter from the property management company posted to her regarding the strata fee catch-up and special levy was "sudden and unexpected". She noted that was a "sudden payment which I can't afford..."

The appellant also states that the health of her family is impacted by her current living situation. She has provided medical reports, fire inspection reports and images of the water ingress and mold in her housing unit to confirm that her current situation is a danger to her and her children's physical health.

**Panel's reasons**

Section 5 of the Act states that a crisis supplement may be provided to a family unit that is "eligible for it".

Section 57 of the Regulation provides more detailed requirements for a crisis supplement. These include:

- 1) The family unit must be eligible for disability assistance;
- 2) the expense must be unexpected;
- 3) there are no resources available; and,
- 4) failure to meet the expense will result in imminent danger to the physical health of anyone in the family unit.

In the decision dated June 19, 2023, the ministry concluded that the appellant was not eligible for a crisis supplement for shelter because the expense was not unexpected and there was no evidence that there was imminent danger to the physical health of anyone in the family if the expense was not met. As the ministry has concluded that the other criteria were met, the panel will only address the criteria of “unexpectedness” and “imminent danger”.

The ministry found that the appellant should have known “strata fees increase in most buildings increase every year”. The appellant states that the fees were “sudden”, and she can’t afford them. The panel is sympathetic to the appellant’s situation regarding affordability, but in this case the focus is on whether the catch-up and special assessment fees are unexpected.

In regard to the special assessment, the ministry was unable to establish that the charge was unexpected without additional information such as past strata minutes which might support a lack of notice. The evidence includes the minutes of the Strata AGM of May 16, 2023, during which the catch-up fees and the special assessment were voted on. The minutes include the approval of the proof of notice of the meeting agenda which includes the payments due from each unit for the catch-up and special assessment. During the hearing, the appellant stated that she had been a member of the Strata Council in the past. The panel finds that it is reasonable to conclude that the appellant would have an understanding of how strata councils assess strata owners and provide notice of such assessments.

As the Strata Council AGM minutes include the results of the unanimous vote of strata members in attendance to approve the additional fees, the panel finds that the ministry reasonably determined that these fees were not unexpected. In light of the Strata’s documented maintenance and repair issues, the panel finds the ministry’s position that annual fee increases are expected to be reasonable.

The ministry found that there was no evidence to support the finding that not paying the catch-up fees or special assessment would result in imminent danger to the physical health of anyone in the appellant's family. The appellant provided evidence that the health of both herself and her children were impacted by her living situation, with examples of water ingress, condensation and mold.

The panel notes that section 57 provides for a crisis supplement where "**failure to meet the expense...** will result in imminent danger to the physical health of any person in the family unit" (emphasis added). The panel finds that the appellant's evidence of danger to her family's health as a result of the mold and fire code violations would not reasonably be considered possible outcomes resulting from her nonpayment of the catch-up fees or the special levy. Therefore, the panel finds that the ministry reasonably focused on the risk of the appellant's family being homeless if the additional fees were not paid.

The appellant did not provide any evidence of threatened eviction for nonpayment of the additional fees. The panel notes that the appellant said at the hearing that she had paid off her mortgage in 2022 and had not tried to arrange for a loan to pay the additional fees, or approached the strata council about options to defer payment of the additional fees.

The panel sympathizes with the appellant in that the conditions of her home negatively impact her and her children's health. The appellant has provided evidence of health and safety issues with the building dating back to 2018, and has provided evidence that water issues, condensation and mold have been on-going. However, no evidence supports the finding of urgency or that an imminent danger to the family's physical health exists resulting from the nonpayment of the catch-up and special levy fees, which were the reasons given for the appellant's need for a crisis supplement.

At the hearing, the appellant confirmed the process the Strata Council follows when fees are unpaid, including legal steps prior to eviction, which could happen in the long term. No evidence was put forward that supported the risk of homelessness by the appellant in the event of not paying the fees.

All the criteria must be met in order to obtain a crisis supplement. In this case, the panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and a reasonable application of the legislation. The panel confirms the ministry's decision. The appellant is not successful in the appeal.



## **Schedule of Legislation**

### **Employment and Assistance for People with Disabilities Act**

#### **Section 5**

##### **Disability assistance and supplements**

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 People with Disabilities Regulation**

#### **Section 57**

##### **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

(ii) removal of a child under the Child, Family and Community Service Act.

(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:

(a) if for food, the maximum amount that may be provided in a calendar month is \$40 for each person in the family unit;

(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;

(c) if for clothing, the amount that may be provided must not exceed the smaller of

(i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and

(ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.

(5) Repealed. [B.C. Reg. 248/2018]

(6) Repealed. [B.C. Reg. 248/2018]

(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.

## **Employment and Assistance Act**

### **Section 22**

#### **Panels of the tribunal to conduct appeals**

**22 (4)** A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

APPEAL NUMBER 2023-0183

**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

Robert McDowell

Signature of Chair

Date (Year/Month/Day)

2023/07/17

Print Name

Katherine Wellburn

Signature of Member

Date (Year/Month/Day)

2023/07/17

Print Name

Simon Clews

Signature of Member

Date (Year/Month/Day)

2023/07/17