

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“Ministry”) dated December 11, 2023, in which the Ministry refused a crisis supplement for shelter for February 2024 rent. The Ministry determined that, while the Appellant did not have resources to pay his February 2024 rent, he did not meet the criteria for a crisis supplement for shelter because:

- The inability to pay February 2024 rent was not the result of an unexpected circumstance or expense; and
- Failure to meet the expense would not result in imminent danger to his physical health.

The Ministry also determined that, as the Appellant applied in December 2023 for a crisis supplement for February 2024 rent, he was not eligible for the supplement because a crisis supplement may only be provided for the calendar month in which the request for the supplement is made.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (“Regulation”), section 57

Employment and Assistance Act, section 22(4)

Part E – Summary of Facts

The Appellant is a sole recipient of disability assistance under the Employment and Assistance for Persons with Disabilities Act.

The Appellant earned more in the month of December 2023 than in previous months, with the result that his December income put him over the maximum annual earnings exemption for a sole recipient. As a result, his February 2024 disability assistance (received in January 2024) would be reduced. In January 2024 he earned less because the employer's business was closed over the winter holiday. The Appellant was left without enough money in January 2024 to pay his February 2024 rent of \$850.

Anticipating his income fluctuation, on December 3, 2023 the Appellant applied for a crisis supplement for shelter. In his application, he stated that the situation that led to his request was not unexpected. In answer to the question of whether he was currently facing eviction or other imminent danger to his physical health, the Appellant answered "unknown". He asked for an exception to the annual earnings exemption limit, to allow for an increase of 7 to 8 percent, which would result in no deduction from his January 2024 disability assistance. At reconsideration he asked for an increase of 10 percent, or \$1,500, for the annual earnings exemption amount in 2023.

Ministry records indicate that the Appellant requested a crisis supplement for shelter in January 2023, for February 2023 rent, for the same reason – that his earned income in the previous year was more than the maximum annual earnings exemption, and when the excess was deducted from his February disability assistance, he would not be able to pay his February rent.

Additional Evidence:

For the appeal, the Appellant provided:

- His written submission, most of which is argument, in which he provided the following additional information:
 - Before reporting December income, he has \$455.73 remaining in his annual earnings exemption.
 - His earned income in December would be approximately \$1,345 more than the annual earnings exemption.
 - When the excess was deducted from disability assistance paid in January 2024, he might receive approximately \$100.
 - January is the slowest month in his industry, so he will not earn enough to supplement his disability assistance and pay his February 2024 rent.

- A memo from his employer stating:
 - December 2023 was a very busy month.
 - There would be a slowdown in operations in January 2024.
 - The business would be closed for one week of the pay period covered by the January 5, 2024 payday.
- Pay stubs showing earned income:
 - December 2, 2023: \$906.45 net
 - December 30, 2023: \$499.53 net.

At the hearing, the Appellant stated that he has not received an eviction notice from his landlord.

Admissibility:

The Ministry did not object to the additional evidence provided by the Appellant. The Panel finds that the additional evidence relates to whether the Appellant has resources to meet the expense, whether the expense is unexpected and whether there is an imminent risk to the Appellant's physical health. Therefore, the Panel finds that the additional written and oral evidence is reasonably required to determine the issues on the appeal and is admissible under section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's reconsideration decision, in which the Ministry denied the Appellant a crisis supplement for shelter for February 2024 rent, was reasonably supported by the evidence, or was a reasonable application of the legislation in the Appellant's circumstances.

Appellant's Position:

The Appellant agrees that the Ministry has applied the legislation correctly, but asks for an exception, or an increase to the annual earnings exemption amount in his circumstances, so that the full amount of his December 2023 income is not deducted from his February 2024 disability assistance. He argues that the annual earnings exemption has not kept pace with inflation. He points out that the price of goods has increased at least 11 percent from September 2021 to November 2023, and his rent has increased 27 percent over the same period. He also says that it is unfair that the annual earnings exemption is the same for every community in British Columbia when rents can be vastly different.

The Appellant also maintains that he should not be ineligible for a crisis supplement for February 2024 rent just because he applied in December 2023. He says that the Ministry practice of requiring declaration of income for calculation of disability assistance several months in the future is confusing.

Ministry Position:

The Ministry says that it is bound by the legislation, and it does not have discretion to increase the annual earnings exemption beyond the amount set out in the Regulation.

The Ministry acknowledges that the Appellant's income from employment and disability assistance in January 2024 will not be enough to pay his February 2024 rent. Therefore, the Ministry accepts that the Appellant does not have resources to meet that expense. However, the Ministry says that the February rent, and the reduced income in January, are not unexpected. The Ministry also maintains that failure to meet the expense will not result in imminent danger to the Appellant's physical health or removal of a child under the Child, Family and Community Service Act. The Ministry points out that the February 2024 rent is not due yet, and the Appellant has not been given an eviction notice.

The Ministry also says that it cannot provide a crisis supplement for an expense that will be incurred in a calendar month other than the month the request is made.

Panel Decision:

The Panel finds that the Ministry's reconsideration decision was a reasonable application of the legislation in the Appellant's circumstances.

In December 2023, the Appellant applied for a crisis supplement for shelter because he expected that he would not be able to pay his February 2024 rent. His December 2023 income would put him over the maximum annual earnings exemption for a sole recipient of disability assistance, and his February disability assistance would be reduced as a result. His January 2024 earned income would be less than usual because of business closures over the winter holiday. He says that lower employment income and reduced disability assistance in January 2024 would leave him without enough money to pay February 2024 rent when it comes due.

The Ministry decided that the Appellant was not eligible for a crisis supplement for shelter. The Ministry accepted that the Appellant did not have resources to pay his February 2024 rent. The Ministry did not accept that the expense, or the circumstances giving rise to the need, were unexpected. The Ministry also did not accept that there was an imminent threat to the Appellant's physical health, because the Appellant has not received an eviction notice for failure to pay rent. The Ministry also stated that it could not provide a crisis supplement requested in December 2023 to pay for an expense that would not be incurred until February 2024.

While he has appealed the Ministry's decision to deny a crisis supplement for shelter, on appeal and at the hearing the Appellant was not arguing that he was eligible for the crisis supplement. The Appellant agreed that the Ministry has applied the legislation correctly. He explained that he had accessed the appeal process because it seemed to be the only way to move his request to a body that could consider his actual request.

The Appellant asks for an exception to the legislation that sets a maximum annual earning exemption for recipients of disability assistance. He hopes that the Tribunal may be able to exercise discretion to allow him a higher annual income exemption than the legislation permits. He argues that the annual income exemption is unreasonable, as it does not reflect the actual cost of living or increases in rent and other expenses in recent years. If he was allowed a 10 percent increase to the annual income exemption, he says he would be able to pay his February rent.

The Panel acknowledges that the Appellant is in a difficult situation, knowing that he will not be able to pay his rent next month. However, as the Panel explained at the hearing,

neither the Panel nor the Ministry can change or ignore the legislation, and neither the Panel nor the Ministry has discretion under the legislation to increase the maximum annual earnings exemption for recipients of disability assistance, even on a one-time basis. Nor is there any discretion under the legislation for the Ministry to provide a crisis supplement in the Appellant's circumstances if the legislated criteria are not met.

The Panel does note that, effective January 1, 2024, the base amount for the annual earnings exemption has increased. For a sole recipient of disability assistance, the base amount is now \$1,350 per month, an increase of \$100 per month. While that increase will not help the Appellant in his present circumstances, it may be of some benefit if the same situation arises again next year.

The Appellant also argued that it was unreasonable for the Ministry to refuse to consider a crisis supplement only for the month in which the request is made. He points out that the Ministry requires him to declare his income several months before the disability assistance is paid, and says the different processes are confusing.

Section 57(2) of the Regulation provides that "a crisis supplement may only be made for the month in which the request is made." The Ministry confirmed that, if the request is for a crisis supplement to pay February 2024 rent, the request would have to be made in February 2024. As the Appellant requested the crisis supplement in December 2023, the Ministry would only have been able to provide a supplement for December rent, if all the other criteria were met. There is no evidence that the Appellant needed a crisis supplement for shelter to pay rent in December 2023. Under the legislation the Ministry is not permitted to pay a crisis supplement for a future expense that will be incurred in a calendar month other than the month the request is made. Therefore, the Panel finds that the Ministry was reasonable in determining that it does not have discretion to provide a crisis supplement for shelter for February 2024 rent, if the supplement is requested in December 2023.

Conclusion:

The Panel finds that the Ministry's reconsideration decision, denying the Appellant's request for a crisis supplement to pay February 2024 rent, was a reasonable application of the legislation in the Appellant's circumstances. The Panel confirms the Ministry's decision. The Appellant is not successful in the appeal.

Schedule of Legislation

Employment and Assistance Regulation

Crisis supplement

s. 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, the maximum set out in section 4 of Schedule A and any supplements provided under section 54.3 [*pre-natal shelter supplement*] or Division 7 [*Housing Stability Supplement*] of Part 5 of this regulation, or

(B) the maximum set out in Table 1 of Schedule D, the maximum set out in Table 2 of Schedule D and any supplements provided under section 54.3 or Division 7 of Part 5 of this regulation,

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) and (6) Repealed. [B.C. Reg. 248/2018, App. 2, s. 2.]

(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

Panels of the tribunal to conduct appeals

s. 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.

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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
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2024/02/01

Print Name
Diane O'Connor

Signature of Member

Date (Year/Month/Day)
2024/02/01

Print Name
Edward G. Wong

Signature of Member

Date (Year/Month/Day)
2024/02/01