



Welfare Law for Senior Advocates

October 22, 2020

With: Andrew Robb, lawyer, Disability Law Clinic, Disability Alliance BC (DABC)
Thea McDonagh, director of advocacy, Together Against Poverty Society (TAPS)
Daniel Jackson, lawyer, (TAPS)
Alison Ward, lawyer, Community Advocate Support Line, Community Legal Assistance Society (CLAS)



Monthly Nutritional Supplement case

<https://decisia.lexum.com/bceaatsdpr/en/item/485563/index.do>

Summary of Legal Issue



- How much detail is required from the practitioner who fills out the Application for Monthly Nutritional Supplement form?
- The form asks the practitioner to answer questions about the applicant's medical conditions and symptoms "in detail" but gives the practitioner limited space to do so.
- At Reconsideration the application was denied, partly on the basis that the practitioner provided insufficient detail.

Summary of Facts



- Diagnoses included IBS, migraines, and disc problems causing severe, chronic pain.
- Application form said applicant had symptoms including malnutrition, muscle mass loss, significant neurological degeneration related to chronic migraines, and had lost 15kg in past two years.
- The doctor wrote:
 - "In addition to regular dietary intake, requires daily intake of extra calories in the form of fresh produce, fish, poultry and lean red meat"
 - "medical condition is at a stage where nutritional intervention is required to alleviate the wasting symptoms and reduce rate of further deterioration and health risks."

Steps Taken: Reconsideration



- Reconsideration decision:
 - “Based on the information provided, you have a severe medical condition; however, it is unclear that you are being treated for a chronic progressive deterioration of health.”
 - “evidence of wasting is not clearly indicated on the MNS application”
- The Reconsideration decision found there was no evidence of significant weight loss, and did not refer at all to the Doctor’s statement that the applicant “lost 15kg in past two years”

Steps Taken: EAAT



- EAAT rescinded Ministry decision, saying:
 - “Given the Physician’s evidence in the MNS Form where he responds in the positive in numerous places on the MNS Form to the question “is the applicant being treated for a chronic, progressive deterioration of health”, the panel finds that it was not reasonable for the Ministry to determine that in the opinion of this physician there was not evidence of chronic progressive deterioration of health.”
 - “The MNS Form states that the Physician should describe how the appellant meets the symptoms “in detail” but only ¾ of a line is given for the Physician to provide comments.”

More from the EAAT decision



- “The Ministry makes no notation of the 15 kg weight loss in their decision. When asked about this at the hearing the Ministry representative explained that weight loss and muscle mass loss were not the same thing. The Ministry representative was not able to point to any medical evidence that supported this statement...it was not reasonable for the Ministry to determine that the Physician had not confirmed that this appellant had suffered from significant muscle mass loss.”
- “With respect to significant deterioration of a vital organ, the Ministry wrote that the stomach was not a vital organ and that there were only five vital organs. There was no medical evidence supporting the Ministry’s determination that the stomach is not considered a vital organ.”
- “The Ministry relies on the fact that the appellant is overweight according to a Body Mass Index (“BMI”) calculation. The source of how this calculation was conducted was not provided as evidence in the hearing.”

What was challenging about this case



- I understand the same terminology used by the doctor in this case had previously been effective in securing the MNS for applicants in other cases.
- The Reconsideration decision was unambiguous in rejecting the request. It said the applicant did not meet any of the requirements for the MNS.
- But the Ministry had completely overlooked important evidence.

Lessons learned



- When the Ministry's decision does not even refer to important evidence, it is probably unreasonable.
- An oral hearing with written submissions gives you multiple opportunities to make your point.
 - Aggressive written submissions put the Ministry's representative on the defensive.
 - Go through the evidence in painstaking detail during oral submissions.



July 29, 2020

By email to eaat@eaat.ca

To the Employment and Assistance Appeal Tribunal,

Re: **NAME, EAAT appeal file number 2020-00180**
Hearing date: August 6, 2020, 10am, by teleconference

I represent NAME in her appeal of the Reconsideration Decision dated July 7, 2020. I am writing to provide written submissions in support of NAME's appeal. I plan to refer to these written submissions during the appeal hearing.

The issue in this appeal is NAME's request for a monthly nutritional supplement (MNS) for vitamin/mineral supplements and additional nutritional items for caloric supplementation. The Ministry of Social Development and Poverty Reduction denied the request, in a Reconsideration Decision dated July 7, 2020. NAME submits the decision to deny her request should be rescinded because it was not reasonably supported by the evidence, and was not a reasonable application of the applicable provisions of the Employment and Assistance for People with Disabilities Regulation, BC Reg 265/2002 (EAPDR), in NAME's circumstances.

In this written submission, all references to section numbers refer to the EAPDR, unless otherwise noted. All references to page numbers refer to the 59-page Appeal Record prepared by the EAAT, dated July 21, 2020.

1. Chronic, progressive deterioration of health on account of a severe medical condition

The specific issue to be decided in this appeal is whether NAME's request for the MNS complies with the requirements listed in section 67(1.1) of the EAPDR.

Section 67(1.1)(a) says one of the requirements to receive the MNS is "the person with disabilities to whom the request relates is being treated by a medical practitioner or nurse practitioner for a chronic, progressive deterioration of health on account of a severe medical condition."

The Reconsideration Decision (at page 15) says:

Based on the information provided, you have a severe medical condition; however, is unclear that you are being treated for a chronic progressive deterioration of health. The ministry acknowledges that in section 5 and 6 of the MNS Application your physician reports the MNS will prevent or alleviate further wasting and deterioration however evidence of wasting is not clearly indicated on the MNS application. In other words, the evidence provided by Dr DOCTOR does not suggest you are experiencing a continual worsening of your medical condition. There is no indication that the migraines, stenosis, disc herniation, and IBS are progressive and deteriorating conditions. [underlining added]

That paragraph of the Reconsideration Decision includes at least two findings that are not reasonably supported by the evidence.

- a. The doctor clearly indicates NAME is being treated for a chronic progressive deterioration of health on account of severe medical conditions, including the migraines, stenosis, disc herniation, and IBS.

b. The application form includes clear evidence of wasting.

a. **The doctor clearly indicates NAME is being treated for a chronic progressive deterioration of health**

The form filled out by the doctor (on page 54) includes the following instructions, at question 2:

“As a direct result of the severe medical condition(s) noted above, is the applicant being treated for a chronic, progressive deterioration of health? If so, please provide details and any information on treatments including any relevant clinical or diagnostic reports.” [underlining added]

The form requests information on treatments only if the applicant is being treated for a chronic, progressive deterioration of health; it does not ask the doctor to reconfirm the person’s conditions are chronic and progressive, but only to describe treatments if they are. NAME’s doctor responds by providing some details and information about treatments prescribed, thereby indicating NAME’s conditions result in a chronic, progressive deterioration of health.

NAME’s doctor also provides additional confirmation that NAME is being treated for a chronic, progressive deterioration of health, especially where he writes that her “medical condition is at a stage where nutritional intervention is required to alleviate the wasting symptoms and reduce rate of further deterioration and health risks.” (page 56) The doctor also refers to the need “to prevent or alleviate further wasting and deterioration” (page 55) and to NAME’s “neurological deterioration” (page 56). This is ample evidence that he is treating her for a chronic, progressive deterioration of health.

b. **The application includes clear evidence of wasting**

The form filled out by NAME’s doctor shows NAME is affected by malnutrition, chronic diarrhea, poor absorption of nutrients, muscle weakness, and ongoing digestive problems. It’s difficult to imagine better evidence of wasting. Moreover NAME’s doctor repeatedly refers to her muscle wasting and says she requires nutritional items in order to prevent further wasting. The Reconsideration Decision’s finding that there is no evidence of wasting is inexplicable.

2. **Two or more symptoms caused by chronic, progressive deterioration of health**

Section 67(1.1)(b) of the EAPDR says one of the requirements to receive the MNS is that, as a direct result of a chronic, progressive deterioration of health, the person displays two or more symptoms listed in that section. The Reconsideration Decision accepts that NAME displays the symptom of malnutrition (on page 16) but does not accept that she displays the other symptoms described by her doctor, namely significant muscle mass loss, significant neurological degeneration, and significant deterioration of a vital organ.

a. **Muscle mass loss**

The Reconsideration Decision says “Dr. DOCTOR describes generalized muscle weakness however no further explanation was provided in respect to the amount of muscle mass that has been lost and over what period of time the loss has occurred.” (page 16) This is incorrect: in response to question 4 of the application form (on page 55) NAME’s doctor writes “lost 15kg in past two years”. It appears the Ministry completely overlooked this information provided by NAME’s doctor—it is not referred to anywhere in the Reconsideration Decision.

The doctor writes that NAME's current weight is 76k. The degree of muscle mass loss indicated by the doctor—15 kg in two years—is clearly significant, accounting for about 20% of NAME's total body weight.

b. Significant deterioration of a vital organ

The Reconsideration Decision “acknowledges that in section 6 of the MNS application the physician indicates that getting extra calories will address ‘damage to stomach’” but goes on to say “this is insufficient to confirm you are already displaying significant deterioration of the stomach.” (page 16) This ignores the fact that the doctor responded to question 3 (on page 55) which says “As a direct result of the chronic, progressive deterioration of health noted above, does the applicant display two or more of the following symptoms? If so, please describe in detail” by providing details about the deterioration of NAME's stomach. Once again, the form asks for these details only if the doctor can confirm the applicant displays one of the listed symptoms. By providing detail about the deterioration of NAME's stomach, the doctor clearly indicates that he believes NAME is suffering from significant deterioration of her stomach.

NAME's doctor goes on to explain the deterioration of NAME's stomach, referring to her stomach ulcer and ongoing digestive problem (page 55). He also refers to the history of her stomach's deterioration, referring to surgery on her stomach in 2017 (page 54). The Reconsideration Decision ignores this evidence of significant and ongoing deterioration.

3. Requires additional nutritional supplements and vitamins and minerals for the purpose of alleviating a symptom

Section 67(1.1)(c) of the EAPDR says one of the requirements to receive the MNS is that the applicant must require an item listed in section 7 of Schedule C to the EAPDR, “for the purpose of alleviating a symptom listed in section 67(1.1)(b).” The Reconsideration Decision informs NAME that “the ministry is satisfied that you require vitamin/mineral supplementation to alleviate a symptom.” (page 16) But the Reconsideration Decision does not accept that NAME requires nutritional items as part of a caloric supplementation to a regular dietary intake. The reasons listed on page 18 repeat the incorrect assertion that NAME's doctor did not provide evidence of NAME's weight loss (“15kg in past two years” as noted above).

The reasons on page 18 also state that NAME's height and weight indicate she is overweight, and she needs to eat a healthier diet instead of receiving caloric supplementation. Underpinning this statement is a troubling and unreasonable assumption that NAME's height and weight, on their own, reveal more about her health than the rest of the information provided by the doctor. NAME's doctor repeatedly explains that NAME requires caloric supplementation in order to address her malnutrition and improve absorption of nutrients, to avoid continued wasting. The evidence of NAME's recent weight loss and the doctor's comments on her inability to absorb nutrients show that she requires caloric supplementation in order to alleviate her malnutrition.

4. Imminent danger to life

Finally, section 67(1.1)(d) of the EAPDR says one of the requirements to receive the MNS is that failure to receive an item referred to in section 67(1.1)(c) will result in imminent danger to the person's life.

The Reconsideration Decision says “The ministry is not satisfied the information provided in your MNS application and Request for Reconsideration confirms that you require additional nutritional items as part

of caloric supplementation to a regular dietary intake and to prevent imminent danger to life.” (page 18) In reaching this conclusion, the Reconsideration Decision completely ignores 1) the doctor’s indication that NAME has lost about 20% of her body weight in the past two years, and 2) the doctor’s repeated references to NAME’s inability to absorb calories and consequent wasting. These factors suggest NAME’s life is at risk if she does not receive caloric supplementation. The doctor provides ample information to explain the imminence of the risk to NAME’s life arising from the chronic, progressive deterioration of her health condition.

Conclusion

NAME’s request for the MNS complies with all the requirements in section 67(1.1):

- Her doctor repeatedly confirms that NAME is being treated for a chronic, progressive deterioration of health on account of her medical conditions. He confirms it by implication, by providing information in response to question 2 on the form. And he confirms it by repeatedly referring to NAME’s “wasting”.
- NAME displays two or more symptoms listed in section 67(1.1)(b):
 - The Reconsideration Decision accepts that she displays malnutrition.
 - There is clear evidence of significant muscle mass loss, especially where the doctor states that NAME has lost 15kg, about 20% of her body mass, in the past two years.
 - NAME also suffers from significant deterioration of her stomach, as shown by the doctor’s comments on her history (gastric banding and antireflux surgery in 2017), her ulcer, and her ongoing digestive problem.
- The Reconsideration Decision accepts that NAME requires vitamin/mineral supplementation to alleviate the symptoms listed above.
- The doctor repeatedly explains how failure to obtain additional nutritional items as part of a caloric supplementation will result in imminent danger to NAME’s life, with reference to NAME’s poor absorption of nutrients and consequent wasting.

In denying NAME’s request for the MNS, the Reconsideration Decision includes numerous findings not supported by the evidence, and in fact completely ignores important parts of the evidence provided by NAME’s doctor. The Reconsideration Decision applies section 67(1.1) in a manner that is not reasonable in NAME’s circumstances, and should be rescinded.

All of which is respectfully submitted,

Andrew Robb
Staff Lawyer, Disability Law Clinic
Disability Alliance BC

Reply to: andrew@disabilityalliancebc.org

Moving Supplement R4R

Presented by Thea McDonagh of Together Against
Poverty Society (TAPS)



Summary of Legal Issue:

The client was denied additional funds to cover the costs of storing her belongings during a move. The ministry cited the following reasons:

- 1) She already received funding from the ministry for moving and storage costs and therefore had resources and,
- 2) She did not obtain prior approval from the ministry before incurring the costs



Summary of Facts:

1. The client left an abusive relationship in May 2019.
2. In March 2020, the client received a letter from the owners of the house she lived in naming her ex-spouse as the rightful tenant and asking her to vacate the premises immediately.
3. The client left the property and contacted the Ministry the next day to request a moving supplement. The client requested approval of funds to both move and store her belongings and was told they would pay for the moving costs plus two months storage.
4. Due to a number of circumstances outside of her control, the client had to request additional costs, twice. The third time she was denied.



Steps taken and outcome at each step:

1. Established background facts, timeline and determined merit
2. Submitted service request for subsequent storage costs
3. Gathered evidence – letter from psychiatrist and invoices from storage facility
4. Submitted request for reconsideration



What was challenging about this case:

1. Complicated file, difficult to nail down a timeline and discern facts, notes on ministry file were unclear
2. Had to address ongoing storage costs on first locker which involved a lot of back and forth communication with storage company and MSDPR
3. COVID
4. Had to address ongoing storage costs after R4R



Lessons learned from this case:

1. Prior approval is not necessary in extraordinary circumstances.
2. Be aware of the potential for errors in the ministry denial decision.
3. Other factors such as how \$ much a client has already received, other supplements, etc. are not necessarily relevant.
4. There is currently no established limit on how long storage can be covered for nor how much can be provided.



Questions?





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May 20, 2020

Request for Reconsideration: Moira Rose SR# 1-0000000000

Issue:

Ms. Rose submits that she meets the eligibility criteria for a Moving, Transportation and Living Costs Supplement pursuant to s. 55 of the *Employment and Assistance for Persons with Disabilities Regulation* (the "Regulation"). Ms. Rose requests that the Ministry of Social Development & Poverty Reduction (the "Ministry") reconsider its decision to deny her request for the same.

Relevant Legislation:

Employment and Assistance for Persons with Disabilities Regulation

Supplements for moving, transportation and living costs

55 (1) In this section:

"living cost" means the cost of accommodation and meals;

"moving cost" means the cost of

(a) moving a family unit and the family unit's personal effects from one place to another, and

(b) storing the family unit's personal effects while the family unit is moving if the minister is satisfied that storing the personal effects is necessary to preserve the personal effects;

"transportation cost" means the cost of travelling from one place to another.

(2) Subject to subsections (3) and (4), the minister may provide a supplement to or for a family unit that is eligible for disability assistance or hardship assistance to assist with one or more of the following:

(a) moving costs required to move anywhere in Canada, if a recipient in the family unit is not working but has arranged confirmed employment that would significantly promote the financial independence of the family unit and the recipient is required to move to begin that employment;

(b) moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances;

(c) moving costs required to move anywhere in British Columbia because the family unit is being compelled to vacate the family unit's rented residential accommodation for any reason, including the following:

(i) the accommodation is being sold;



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- (ii) the accommodation is being demolished;
- (iii) the accommodation has been condemned;
- (d) moving costs required to move anywhere in British Columbia if the family unit's shelter costs would be significantly reduced as a result of the move;
- (e) moving costs required to move anywhere in British Columbia to avoid an imminent threat to the physical safety of any person in the family unit;
- (f) transportation costs and living costs required to attend a hearing relating to a child protection proceeding under the *Child, Family and Community Service Act*, if a recipient is given notice of the hearing and is a party to the proceeding;
- (g) transportation costs, living costs, child care costs and fees resulting from
 - (i) the required attendance of a recipient in the family unit at a hearing, or
 - (ii) other requirements a recipient in the family unit must fulfil in connection with the exercise of a maintenance right assigned to the minister under section 17 [assignment of maintenance rights].
- (3) A family unit is eligible for a supplement under this section only if
 - (a) there are no resources available to the family unit to cover the costs for which the supplement may be provided, and
 - (b) subject to subsection (3.1), a recipient in the family unit receives the minister's approval before incurring those costs.
- (3.1) A supplement may be provided even if the family unit did not receive the minister's approval before incurring the costs if the minister is satisfied that exceptional circumstances exist.
- (4) A supplement may be provided under this section only to assist with
 - (a) in the case of a supplement under subsection (2) (a) to (e), the least expensive appropriate moving costs, and
 - (b) in the case of a supplement under subsection (2) (f) or (g), the least expensive appropriate transportation costs and the least expensive appropriate living costs.

Background:

1. Ms. Rose is designated a Person with a Disability ("PWD") with the Ministry and currently receives PWD assistance.
2. Ms. Rose has been diagnosed with generalized social phobia, attention deficit hyperactivity disorder, pain disorder with related psychological factors, and adjustment disorder with mixed anxiety and depression. Her mental health impairments are severe as confirmed by her psychiatrist, Dr. Roland Schitt, in the attached letter dated May 12, 2020.



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3. In May 2019, Ms. Rose left an abusive relationship in which she was physically assaulted on multiple occasions. After obtaining a restraining order against her common-law spouse, Ms. Rose moved back into the home they had shared at 464 Elmdale Road.
4. On March 10, 2020, Ms. Rose received a letter from the owners of the house she lived in. The letter named her ex-spouse as the rightful tenant of the property and asked Ms. Rose to vacate the premises immediately. Ms. Rose was advised that she had three hours to leave.
5. Ms. Rose left the property and contacted the Ministry on March 11, 2020 to request a moving supplement. Due to the short notice, Ms. Rose was unable to secure new housing and planned to move in with her father in Schitts Creek, BC.
6. On March 12, 2020, Ms. Rose provided the Ministry with quotes to cover the cost of moving and storage for her belongings. The Ministry advised Ms. Rose that they would provide her with funds to pay for two months storage.
7. On March 13, 2020, Ms. Rose contacted the Ministry and advised that she was unable to move in with her father and was staying at the Rosedale Motel at 123 Highway 1.
8. On March 17, 2020, Ms. Rose rented a storage locker from Target Storage at 505 Tolmie Lane. She rented an 8x11 locker (#9999) for \$303.73 per month (\$318.92 with tax). She also rented a UHaul truck and returned to 464 Elmdale Road to collect the remainder of her belongings.
9. While packing her belongings, the owner came to the house and told Ms. Rose she had until 5:30pm to leave the property. Ms. Rose contacted the Ministry to request additional funds to rent the UHaul for an additional day so she could return and finish packing her belongings. Ms. Rose's request was approved and on March 18, 2020, she returned to 464 Elmdale Road to collect the remainder of her belongings.
10. On March 19, 2020, while unloading her possessions at the storage facility, Ms. Rose was approached by staff of the facility and asked to leave. They advised that they had received instructions to close the facility due to public health announcements regarding COVID-19. Ms. Rose contacted the Ministry to request additional funds to keep the UHaul truck for another day however, rather than approve the funds, the Ministry contacted the storage facility and requested that they stay open so Ms. Rose could continue to unload her belongings. The storage facility agreed to remain open until 7pm.
11. At approximately 5pm on March 19, 2020, Ms. Rose realized that all of her belongings would not fit into one storage locker. The storage facility had one locker left (#8888), a 6x8 for \$155.96 per month (\$163.76 with tax). Ms. Rose was unable to contact the Ministry to



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request approval for funds to rent the second locker as it was after office hours. Not wanting to keep the rental truck for another day, Ms. Rose agreed to rent the second locker and finished unloading the truck.

12. On March 20, 2020, Ms. Rose contacted the Ministry and requested an additional \$163.77 to pay for the second storage locker.
13. The Ministry denied Ms. Rose's request on March 23, 2020 after determining that Ms. Rose did not meet eligibility criteria in s. 55(3) as she "did not obtain pre-approval before incurring the additional expenses" and was "provided resources from the Ministry to pay [her] moving expenses and storage."
14. Ms. Rose subsequently requested a reconsideration of the Ministry's decision.

Submission:

Ms. Rose's move is to avoid an imminent threat to her physical safety:

15. Ms. Rose has experienced significant trauma in her life. Most recently, she was the victim of serious domestic violence from her common-law spouse that continued even after she ended the relationship in May 2019.
16. On March 10, 2020, Ms. Rose was advised that her ex-spouse was the legal tenant of the property and she needed to vacate so that he could return to it. Ms. Rose faced an imminent and severe threat to her physical safety were she to remain on the property and come into contact with her ex-spouse.
17. Ms. Rose's mental health impairments have been exacerbated by the unexpected nature of her move, the fear of meeting her ex-spouse, and the lack of stable housing. Ms. Rose is currently under the care of psychiatrist Dr. Roland Schitt. Dr. Schitt has advised her to maintain her current housing and focus on improving both her mental and physical well-being before seeking a more permanent housing arrangement.
18. Ms. Rose is currently residing at the Rosedale Motel at 123 Highway 1. The hotel has been converted into a COVID-19 Emergency Response Centre (ERC) and Ms. Rose has been integrated into the ERC program. She is currently receiving a temporary rent supplement, a private room to maintain physical distancing, and various other health supports. Ms. Rose is at imminent risk of homelessness should she leave her current housing.



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19. It is therefore submitted that Ms. Rose was required to vacate 464 Elmdale Road to avoid an imminent threat to her physical safety. It is further submitted that Ms. Rose must maintain her current living arrangement to avoid any additional threat to her physical safety.

No Resources

20. Although the Ministry has provided some resources to Ms. Rose for moving and storage expenses, there remains \$304.58 outstanding. As a recipient of PWD benefits, Ms. Rose cannot afford to pay the additional cost of storing her belongings until such time as she is able to obtain more permanent accommodation. She has exhausted all personal resources, and has no family or friends that can cover the cost.

21. It is therefore submitted that Ms. Rose has no other resources available to cover the cost of storing her belongings.

Prior Approval

22. Ms. Rose has been diligent in communicating with the Ministry about her move. She contacted the Ministry seven times between March 11th and March 20th to obtain pre-approval for all the costs incurred over the course of her move.

23. Section 55(3.1) of the *Employment and Assistance for Persons with Disabilities Regulation* allows the Minister to provide a supplement even if the family unit did not receive the Minister's approval before incurring the costs if the Minister is satisfied that exceptional circumstances exist.

24. Ms. Rose was unable to obtain pre-approval to rent a second locker as she was forced to make this decision at a time of day when the Ministry offices were closed. Had Ms. Rose waited to obtain prior approval for the storage locker, she would have had to incur additional truck rental fees also without pre-approval from the Ministry.

25. In addition, Ms. Rose's move occurred during the rapid escalation of the COVID-19 health pandemic. On March 18, 2020, the BC government declared a state of emergency and the Provincial Health Officer advised British Columbians to practice social distancing. All of these factors contributed to the exceptional circumstances Ms. Rose faced during her move.

26. It is therefore submitted that Ms. Rose was unable to obtain prior approval for the additional costs related to storing her belongings due to the inability to contact the Ministry after office hours. Furthermore, it is submitted that the COVID-19 health pandemic contributed to the



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unique situation that Ms. Rose was in and that she acted prudently given the extraordinary circumstances she faced.

Preservation of Belongings

27. Ms. Rose is currently living in a hotel room and is unable to store her belongings due to lack of space. At the advice of her psychiatrist, Dr. Schitt, and due to the ongoing health pandemic, it is in Ms. Rose's best interest to continue to reside at 123 Highway 1. Should she be required to move again, Ms. Rose would face imminent homelessness and would not be able to preserve her belongings.

28. It is therefore submitted that storing Ms. Rose's personal effects is necessary to preserve the personal effects. It is further submitted that Ms. Rose requires support to preserve her belongings until such time as she is able to secure more permanent housing.

Conclusion:

29. We submit that the evidence provided by Ms. Rose clearly establishes that she had to vacate her previous residence to avoid an imminent threat to her physical safety; that her current living situation continues to protect her from imminent threat to her safety; that she has no resources to cover the cost of storing her belongings; and that exceptional circumstances exist therefore allowing the Minister to provide a supplement to pay for storage costs without Ms. Rose obtaining pre-approval before incurring the costs.

30. We therefore submit that Ms. Rose's circumstances satisfy all eligibility criteria for a moving supplement. We respectfully request she be issued a moving supplement in accordance with s. 55(1)(b).

Sincerely,

Thea McDonagh – Legal Advocate
Together Against Poverty Society
(250) 361-3521
thea@tapsbc.ca

SECTION 1 and 2 TO BE COMPLETED BY WORKER

SR NUMBER

SECTION 1 REQUESTOR INFORMATION

1- [REDACTED]

REQUESTOR'S NAME

CASE NUMBER

1- [REDACTED]

REQUESTOR'S ADDRESS

NFA, NFA

SECTION 2 DECISION TO BE RECONSIDERED

The Ministry has reviewed your request and considered all of the factors relevant to the eligibility criteria for a Moving, Transportation and Living Costs Supplement.

A family unit may be eligible for this supplement only if both of the following apply:

- there are no resources available to the family unit to cover the costs for which the supplement may be provided
- a recipient in the family unit receives approval from the ministry before incurring those costs, unless exceptional circumstances exist.

In order to receive this supplement, you must be found eligible under the following legislation:

- Section 55 of the Employment and Assistance for Persons with Disabilities Regulation

On March 11, 20220 you contacted the Ministry to request a Moving, Transportation and Living Costs Supplement. You indicated that you were compelled to vacate a property on [REDACTED] You intended to move in with your father in [REDACTED], but were required to put your belongings in storage temporarily.

On March 12, 2020 you verbally provided moving quotes. You stated that \$398.00 would cover your move (\$46 rental; \$80 mileage; \$112 gas; \$10 dolly; \$150 movers) and \$440.00 would cover your storage. You were advised that only 2 months of storage can be provided, and that you are required to provide receipts.

On March 12, 2020 you were issued \$398.00 for your move

On March 12, 2020 you were issued \$440.00 for your storage

On March 13, 2020 you contacted the Ministry and stated that you were unable to move in with your father right away due to his health issues. You stated that you were staying at the [REDACTED]

On March 16, 2020 you contacted the Ministry and stated that you were robbed. You stated that you were fleeing an abusive relationship and staying in a hotel. You stated that all the money for moving was stolen. Quotes were provided over the phone for Target Storage and U-Haul moving. storage was quoted at \$318.92 per month, moving was quoted at \$186.35 (\$39.95 per day plus \$.68 per km (80km round trip) \$1/km for gas, \$5 for dolly, \$7 for blankets)

On March 16, 2020 you were provided \$186.35 for your move

On March 16, 2020 you were provided \$318.92, issued directly to Target Storage

On March 18, 2020 you contacted the Ministry and stated that you required more time with the U-Haul. You stated that you still had belongings to move and only had the U-Haul booked from 3 to 9. You stated that you were unable to complete the move the previous night as the [REDACTED] made you leave at 5:30pm. You stated that you have half your U-Haul loaded, but require more gas and additional time. The Ministry confirmed the costs with U-Haul.

On March 18, 2020 you were provided and additional \$185.70 for your move. You were advised that it was the full and final payment and that no further funding would be issued. A worker noted that you had also received the maximum for crisis supplements (food/shelter) as well.

On March 19, 2020 you contacted the Ministry and stated that you require more time with the U-Haul. You stated that the storage facility was closed. A worker contacted Target Storage who confirmed that they were still open until 7:00pm, but would be temporarily closing due to COVID19. You were advised to bring your belongings to the storage unit prior to closing.

On March 20, 2020 a worker contacted you regarding your request, you stated that you were able to move your things in and



you will move your remaining belongings at the end of the month with the help of your son.

On March 20, 2020 you contacted the Ministry and requested an additional \$163.77 for moving expenses. You stated that you were not provided enough for your move.

On March 23, 2020 you were informed that your request was denied as the information provided does not meet all regulatory criteria. Based on the information provided, your request was denied for the following reasons:

- You did not obtain pre-approval before incurring additional expenses.
- You were provided resources from the Ministry to pay you moving expenses and storage.

A Reconsideration package has been prepared for you as requested. The following attachments have been included which complete this reconsideration package:

- Request for Reconsideration, HR0100
- Relevant Legislation
- Reconsideration and Appeal Process Brochure
- My Self-Serve Brochure
- Advocacy Information

ADVOCATE:

You have the right to an advocate to help you with your reconsideration. Attached to this reconsideration is a list of advocates in your area.

RETURN DATE:

This Request for Reconsideration form must be signed and returned by the date in Section 2, "Date requestor must submit form by".

If you can provide reasons and/or evidence why the Ministry's decision should be changed by this deadline, do so.

EXTENSION:

1. If you need more time to provide reasons or evidence, you may ask for an extension (more time).

To ask for an extension, write on this form that you need an extension, then sign and return it to the Ministry by the date in Section 2, "Date requestor must submit form by". To maximize the amount of time you have to provide reasons or evidence, submit the form on or just before that date. You may contact the reconsideration office to confirm the extension was approved, 778-698-7750.

2. Once the Ministry receives your signed Request for Reconsideration form, it will write its reconsideration decision within 10 business days (if no extension is requested) or 20 business days (if an extension is requested).

3. The reconsideration decision will be mailed to you, sent by MySelfServe or available for pick up in a Ministry office.



THE ACT AND / OR REGULATIONS THAT APPLY TO THIS DECISION ARE:

- Moving, Transportation and Living Costs Supplement – EAPWD Act Section 1 and Section 5 and EAPWD Regulation, Section 1 and Section 55

MONTH DECISION EFFECTIVE (MMMM YYYY)

March 2020

RELEVANT DATES:

DATE REQUESTOR INFORMED OF DECISION (EEEE, MMMM DD, YYYY)

Monday, March 23, 2020

DATE REQUESTOR MUST SUBMIT FORM BY (EEEE, MMMM DD, YYYY)

Wednesday, April 22, 2020



SECTION 3 REASON FOR REQUEST FOR RECONSIDERATION

(TO BE COMPLETED BY THE REQUESTOR ONLY AFTER SECTIONS 1 AND 2 HAVE BEEN COMPLETED BY WORKER)



EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

SECTION 4 NOTICE OF REQUEST FOR RECONSIDERATION

(ATTACH ADDITIONAL PAGES IF REQUIRED)

(TO BE COMPLETED BY THE REQUESTOR)

IMPORTANT: The request to have the Ministry decision reconsidered must be submitted to your Employment and Assistance Office within 20 business days of when you receive the decision concerning eligibility. (see "Date Client Informed of Decision" box on page 1)

I hereby give notice that I am dissatisfied with the Ministry decision regarding my request for assistance or supplement and wish to exercise my right to request a reconsideration of this decision. I have attached all relevant documents I wish to have considered.

REQUESTOR'S SIGNATURE

DATE (YYYY-MM-DD)

TELEPHONE

FOR MINISTRY USE ONLY:

Personal information on this form is collected under the authority of the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act* and the *Child Care Subsidy Act*. This information will be used to assess your request for a reconsideration of a decision. The disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. For more information about the collection, use and disclosure of this information, please contact your local Employment and Assistance Office.



**EMPLOYMENT AND ASSISTANCE
REQUEST FOR RECONSIDERATION**

If you are dissatisfied with a ministry decision, you may request a reconsideration of the decision.

To notify the ministry that you want to have the decision reconsidered you must submit an *Employment and Assistance Request for Reconsideration* form. Your Employment and Assistance Worker will complete sections 1 and 2 of the form. Section 2 explains what the ministry decision is, states the month it is effective and the legislative authority on which it was based. You must complete sections 3 and 4 and return the form, along with all relevant documents you wish to have considered, to your Employment and Assistance Office within 20 business days of being notified of the ministry decision.

Upon submitting your Request for Reconsideration, the ministry will reconsider the decision. The reconsideration decision will be made within 10 business days from the date the ministry receives the completed *Employment and Assistance Request for Reconsideration* form. You will be informed in writing of the ministry's decision.

It is important that you submit all relevant documents relating to your request along with your *Employment and Assistance Request for Reconsideration* in order to ensure that all pertinent information is considered by the ministry. You are encouraged to attach a written submission with your request. If you need assistance in preparing your submission, you may contact your local Employment and Assistance Centre for a list of local community law offices or community advocacy groups.

The written submission should include:

- ☐ the issue (as you see it) that you are asking the Ministry to reconsider.
- ☐ reasons why you think the ministry decision is incorrect.
- ☐ any provision of an Act or regulation you feel is relevant to your request.
- ☐ copies of any documents supporting your request.

If you are dissatisfied with the outcome of the reconsideration, you may appeal to the Employment and Assistance Appeal Tribunal. The ministry will indicate on your Reconsideration Decision whether or not the decision may be appealed.

The ministry decision stands until a final decision is made. If the ministry decision is to reduce or discontinue your assistance, you may be eligible to receive a reconsideration/appeal supplement during the reconsideration/appeal. However, you must agree in writing to repay the amount if the final decision is in the ministry's favour. If the final decision is in your favour, you do not have to repay the reconsideration/appeal supplement.

Pursuant to subsection 22(4) of the *Employment and Assistance Act*, a tribunal panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision being appealed was made, and**
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).**

CONSEQUENTLY, IT IS IMPORTANT THAT YOU SUBMIT ALL RELEVANT INFORMATION WITH YOUR REQUEST FOR RECONSIDERATION.



Disability Assistance and Supplements EAPWD Act Section 1

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"business day" means a day other than Saturday or a holiday;

"child" means an unmarried person under 19 years of age;

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental role for the person's dependent child;

"dependent child", with respect to a parent, means a child, other than a child who is 18 years of age and is a person with disabilities, who resides in the parent's place of residence for more than 50% of each month and relies on that parent for the necessities of life, and includes a child in circumstances prescribed under subsection (2);

"dependent youth" means a dependent child who has reached 16 years of age;

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];

"employment plan" means a plan required under section 9 [*employment plan*] and includes an amended employment plan;

"family unit" means an applicant or a recipient and his or her dependants;

"former Act" means

- (a) the *Disability Benefits Program Act*, or
- (b) the *BC Benefits (Income Assistance) Act*;

"hardship assistance" means an amount for shelter and support provided under section 6 (1) [*hardship assistance*];

"person with disabilities" means a person designated under section 2 [*persons with disabilities*];

"recipient" means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

(a) the person's spouse, if the spouse is a dependant, and

(b) the person's adult dependants;

"spouse" has the meaning in section 1.1;

"supplement" means any form of assistance specified by regulation, other than disability assistance, hardship assistance or financial assistance provided under section 7 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act;

"tribunal" means the Employment and Assistance Appeal Tribunal established under section 19 of the *Employment and Assistance Act*.

(2) The Lieutenant Governor in Council may prescribe other circumstances in which a child is a dependent child of a parent for the purposes of this Act.

(3) For the purpose of the definition of "dependant", spouses do not reside apart by reason only that a spouse is employed or self-employed in a position that requires the spouse to be away from the residence of the family unit for periods longer than a day.

Disability Assistance and Supplements EAPWD Act Section 5

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

Disability Assistance and Supplements EAPWD Regulations, Section 1

1 (1) In this regulation:

"Act" means the *Employment and Assistance for Persons with Disabilities Act*;

"alternate application for disability assistance form" means a report submitted to the minister under section 4.21 (2) using the same form as in section 29 [*reporting requirement*]; [B.C. Reg. 151/2018]

"application for disability assistance (part 1) form" means an application for disability assistance (part 1) form specified by the minister;

"application for disability assistance (part 2) form" means an application for disability assistance (part 2) form specified by the minister;

"asset" means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

"assistance" means disability assistance, hardship assistance or a supplement;

"basic child tax benefit" means the Canada child tax benefit minus the national child benefit supplement;

"BC basic family bonus" means an amount calculated for the purposes of section 10 (3) (a) of the *Income Tax Act*;

"BC child adjustment amount", in relation to a dependent child in a family unit, means the amount of

- (a) \$195.02 for the first dependent child in the family unit,
- (b) \$172.54 for the second dependent child in the family unit, or
- (c) \$164.18 for each additional dependent child in the family unit,

and each of these amounts is adjusted every year on July 1, beginning on July 1, 2018, by the percentage increase, if any, of the consumer price index for the 12 month period ending September 30 of the previous year;

"BC early childhood tax benefit" means an amount deemed to be an overpayment on account of an individual's liability for the taxation year determined under section 13.071 [*BC early childhood tax benefit*] of the *Income Tax Act*;

"BC earned income benefit" means an amount calculated for the purposes of section 10 (3) (b) of the *Income Tax Act*;

"Canada child benefit" means an amount deemed to be an overpayment on account of a person's liability for the taxation year determined under section 122.61 of the *Income Tax Act (Canada)* as it read on or after July 1, 2016;

"Canada child tax benefit" means an amount deemed to be an overpayment on account of a person's liability for the taxation year determined under section 122.61 of the *Income Tax Act (Canada)* as it read before July 1, 2016 and includes the child disability benefit;

"cash assets" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party

that must pay it to the person or the dependant on demand,

- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

"child benefits cheque" means a cheque for one, or the sum of two or more, of the following:

- (a) the BC basic family bonus;
- (b) the BC earned income benefit;
- (c) the basic child tax benefit;
- (d) the national child benefit supplement;
- (e) the BC early childhood tax benefit;
- (f) the Canada child benefit;

"child disability benefit" means a supplement to the Canada Child Tax Benefit received by families with a child who meets the criteria for the Disability Tax Credit provided under the *Income Tax Act (Canada)*;

"child in care" has the same meaning as in the *Child, Family and Community Service Act*;

"Community Living BC" means Community Living British Columbia established under the *Community Living Authority Act*;

"consumer price index" means the Consumer Price Index for Canada, as published by Statistics Canada under the authority of the *Statistics Act (Canada)*;

"disability assistance application date" means the date of an applicant's submission of

- (a) an application for disability assistance (part 2) form, or
- (b) an alternate application for disability assistance form; [B.C. Reg. 151/2018]

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

"employment-related program" means any of the following categories of programs that are established or funded under section 8 of the Act:

- (a) employment search;
- (b) training;
- (c) job placement;
- (d) self-employment;
- (e) volunteer;

"family bonus" means an amount consisting of the sum of the BC basic family bonus and the national child benefit supplement;

"gift" does not include

- (a) money or other value received, by will or as the result of intestacy, from the estate of a deceased person, or
- (b) money or other value received from a trust;

"income assistance" has the same meaning as in the *Employment and Assistance Act*;

"legal proceeding" includes a civil, criminal, quasi-criminal, administrative or regulatory action or proceeding;

"minister", in relation to a power, duty or function that the minister has delegated under section 25 of the Act to another person, includes that other person;

"national child benefit supplement" means the amount that is 1/12 the value of "C" in the formula calculated under section 122.61 of the *Income Tax Act* (Canada) as it read before July 2, 2016;

"nurse practitioner" has the same meaning as in the Nurses (Registered) and Nurse Practitioners Regulation;

"parent", in relation to a dependent child, includes the following other than for the purposes of section 17 [assignment of maintenance rights] of this regulation and section 6 [people receiving room and board] of Schedule A of this regulation:

- (a) a guardian of the person of the child, other than
 - (i) a director under the *Child, Family and Community Service Act*, or
 - (ii) an administrator or director under the *Adoption Act*;

(b) a person legally entitled to custody of a child, other than an official referred to in paragraph (a) (i) or (ii);

(c) if the child is a dependent child of a parenting dependent child, a person who is the parent of the parenting dependent child;

"parenting dependent child" means a dependent child who is the parent of a dependent child;

"private hospital" means a private hospital licensed under the *Hospital Act*;

"registered education savings plan" means a registered education savings plan as defined by section 146.1 of the *Income Tax Act* (Canada);

"sole", in relation to an applicant or a recipient, means the applicant's or recipient's family unit includes no other applicant, recipient or adult dependant;

"special care facility" means a facility that is a licensed community care facility under the *Community Care and Assisted Living Act* or a specialized adult residential care setting approved by the minister under subsection (3);

"student financial assistance" means funding provided to students under

- (a) the British Columbia Student Assistance Program,
- (b) the *Canada Student Financial Assistance Act*, or
- (c) a similar program provided by another province or jurisdiction;

"supported child" means any of the following:

- (a) a child in care;
- (b) a child who is described in section 1 (a) or (b) of the Child in the Home of a Relative Transition Regulation, B.C. Reg. 48/2010;
- (c) a child who is subject to an agreement under section 8 or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*;

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;

- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*;
- (w) tax refunds;
- (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (y) gifts in the form of payment by another person of a debt or obligation.

(2) For the purposes of the Act and this regulation, if a child resides with each parent for 50% of each month under

- (a) an order of a court in British Columbia,
- (b) an order that is recognized by and deemed to be an order of a court in British Columbia, or
- (c) an agreement filed in a court in British Columbia,

the child is a dependent child of the parent who is designated in writing by both parents.

(3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a licence under the *Community Care and Assisted Living Act* is not required.

[am. B.C. Regs. 461/2003, s. 2 (a); 256/2004, s. (b); 345/2004; 518/2004, s. 7; 93/2005; 305/2005, Sch. 2, s. 1; 306/2005, s. 1; 192/2006, s. 6; 317/2008, s. 6; 48/2010, Sch. 1, s. 2 (a); 84/2012, Sch. 2, s. 1; 197/2012, Sch. 2, s. 1; 364/2012, s. 1; 41/2015, Sch. 2, s. 1; 145/2015, Sch. 2, s. 1; 204/2015, App. 2, s. 1; 175/2016, App. 1, s.1; 283/2016, Sch. 2, s. 1; 34/2017, App. 2, s. 1; 193/2017, s. 1.]

Disability Assistance and Supplements EAPWD Regulations, Section 55

55 (1) In this section:

"**living cost**" means the cost of accommodation and meals;

"**moving cost**" means the cost of

- (a) moving a family unit and the family unit's personal effects from one place to another, and

(b) storing the family unit's personal effects while the family unit is moving if the minister is satisfied that storing the personal effects is necessary to preserve the personal effects;

"transportation cost" means the cost of travelling from one place to another.

(2) Subject to subsections (3) and (4), the minister may provide a supplement to or for a family unit that is eligible for disability assistance or hardship assistance to assist with one or more of the following:

(a) moving costs required to move anywhere in Canada, if a recipient in the family unit is not working but has arranged confirmed employment that would significantly promote the financial independence of the family unit and the recipient is required to move to begin that employment;

(b) moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances;

(c) moving costs required to move anywhere in British Columbia because the family unit is being compelled to vacate the family unit's rented residential accommodation for any reason, including the following:

(i) the accommodation is being sold;

(ii) the accommodation is being demolished;

(iii) the accommodation has been condemned;

(d) moving costs required to move anywhere in British Columbia if the family unit's shelter costs would be significantly reduced as a result of the move;

(e) moving costs required to move anywhere in British Columbia to avoid an imminent threat to the physical safety of any person in the family unit;

(f) transportation costs and living costs required to attend a hearing relating to a child protection proceeding under the *Child, Family and Community Service Act*, if a recipient is given notice of the hearing and is a party to the proceeding;

(g) transportation costs, living costs, child care costs and fees resulting from

(i) the required attendance of a recipient in the family unit at a hearing, or

(ii) other requirements a recipient in the family unit must fulfill

in connection with the exercise of a maintenance right assigned to the minister under section 17 [*assignment of maintenance rights*].

(3) A family unit is eligible for a supplement under this section only if

(a) there are no resources available to the family unit to cover the costs for which the supplement may be provided, and

(b) subject to subsection (3.1), a recipient in the family unit receives the minister's approval before incurring those costs.

(3.1) A supplement may be provided even if the family unit did not receive the minister's approval before incurring the costs if the minister is satisfied that exceptional circumstances exist.

(4) A supplement may be provided under this section only to assist with

(a) in the case of a supplement under subsection (2) (a) to (e), the least expensive appropriate moving costs, and

(b) in the case of a supplement under subsection (2) (f) or (g), the least expensive appropriate transportation costs and the least expensive appropriate living costs.

[am. B.C. Reg. 275/2004, s. 2.]

Crisis Supplement - EAAT

Presented by Daniel Jackson of Together Against
Poverty Society (TAPS)



Summary of Legal Issue:

Application for a crisis supplement to repair/replace home
furnace

1. Need is Unexpected
2. No Resources Available
3. Failure to meet need/obtain item will result in imminent
danger to physical health



Summary of Facts:

- Applicant receives PWD assistance and has physical limitations
- Lives in remote location.
- Furnace fails in late November.
- Furnace company no longer in operation; cannot be repaired.
- New furnace will cost ~ \$15,000.
- Applicant does have a small wood stove in one room.



Initial Decision

Needing to upgrade your home is not considered unforeseen or unexpected. Normal maintenance due to aging equipment and home updates required over time are considered expected expenses.



R4R Decision

- The minister finds you could not reasonably anticipate that your furnace manufacturer would no longer be in business resulting in your need for a replacement furnace. Although a homeowner can expect that household appliances will need replacing at some point, it is difficult to predict exactly when this will occur which makes it reasonable that you were unable to budget for this expense. The minister is satisfied that you have an unexpected need.
- However, you have a woodstove and a review of your file history confirms that in the past you have indicated to ministry staff that your woodstove is your primary heat source because it is cheaper than oil. As you have not indicated that you are no longer able to use your woodstove or that it does not adequately heat your mobile home, the minister is unable to establish that failure to purchase a replacement furnace will result in an imminent danger to your physical health.



EAAT Decision

- In the reconsideration decision, the ministry notes that the appellant is in receipt of disability assistance and indicates that the appellant's file history was reviewed. However, there is no mention in the reconsideration decision of any consideration of the appellant's disability.
- The panel finds it unreasonable for the ministry not to have considered and discussed the appellant's physical capacity in relation to the woodstove in its reconsideration decision.
- The panel also finds it unreasonable for the appellant to be required to rely on the goodwill of others as a means to maintain a safe level of heat in their home over winter, as they testified they have been forced to do.



Challenges and Lessons

- “Unexpected” Need – room for argument
-
- The panel finds it unreasonable for the ministry not to have considered and discussed the appellant’s physical capacity in relation to the woodstove in its reconsideration decision



Questions?



APPENDIX A – RECONSIDERATION DECISION

After review of all the information, the ministry has denied your request for a crisis supplement to replace your furnace.

Our records show:

- You are a sole recipient with Persons with Disabilities designation. Your file has been open since September 5, 1985.
- You receive \$1440.42 per month for disability assistance. This amount includes \$808.42 for a support allowance, \$375 for a shelter allowance, \$205 for nutritional supplements and \$52 for a transportation supplement.
- On September 5, 2019 you requested assistance to replace your furnace. You indicated the valve and furnace stack are rusted out.
- On September 24, 2019 you advised that the person who came out to look at your furnace said it would be cheaper to replace your furnace than to repair it.
- On October 2, 2019 you explained that you became aware of the problem when your friend came out to clean your woodstove pipes and you are having trouble getting estimates because of where you live. You provided an estimate for \$13083.42 for a ductless heat pump and \$6840.62 for a heat pump to serve the main living area only.
- On October 8, 2019 the ministry denied your request because your need was not unexpected, and you also have a woodstove as another source of heat.
- On November 5, 2019 you submitted your request for reconsideration and requested an extension. You indicated your Coleman oil furnace cannot be repaired as the company no longer makes them or replacement parts. You provided a quote from LD Plumbing and Heating for a new oil furnace with chimney, tank and duct cleaning and repair for \$13576.50.
- On November 28, 2019 you indicated that you also have an option to replace the oil furnace with an Amana electric furnace which you would prefer as they may ban oil furnaces in the future, and it would require less maintenance than the Fujitsu. You noted it is starting to get cold and you just got over a cold/ flu and you can't manage without heat.

Legislation:

Crisis supplements are to address urgent situations that cannot reasonably be planned for or anticipated. Section 57(1) of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation states a crisis supplement request must meet **all three** of the following criteria.

1. The need for the item is unexpected or there is an unexpected expense **and**
2. There are no resources available **and**
3. Failure to obtain the item or meet the expense will result in imminent danger to physical health

Decision:

The minister finds you could not reasonably anticipate that your furnace manufacturer would no longer be in business resulting in your need for a replacement furnace. Although a homeowner can expect that household appliances will need replacing at some point, it is difficult to predict exactly when this will occur which makes it reasonable that you were unable to budget for this expense. The minister is satisfied that you have an unexpected need. ***You meet requirement #1***

You have indicated you do not have any money to purchase the furnace. The minister is satisfied that you do not have resources available to you. ***You meet requirement #2***

However, you have a woodstove and a review of your file history confirms that in the past you have indicated to ministry staff that your woodstove is your primary heat source because it is cheaper than oil. As you have not indicated that you are no longer able to use your woodstove or that it does not adequately heat your mobile home, the minister is unable to establish that failure to purchase a replacement furnace will result in an *imminent* danger to your physical health. ***You do not meet requirement #3***

As your request does not meet all the eligibility requirements as described in Section 57(1) of the EAPWD Regulation, the minister is unable to approve your request for a crisis supplement to replace your furnace.

I trust the information provided will assist in understanding the ministry decision.

APPENDIX B – APPLICABLE LEGISLATION

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION:

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 maximum set out in section 4 of Schedule A or 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 REQUEST FOR RECONSIDERATION

SECTION 1 and 2 TO BE COMPLETED BY WORKER

SR NUMBER

SECTION 1 REQUESTOR INFORMATION

REQUESTOR'S NAME

CASE NUMBER

REQUESTOR'S ADDRESS

SECTION 2 DECISION TO BE RECONSIDERED

The Ministry has reviewed your request and considered all of the factors relevant to the eligibility criteria for a Crisis Supplement for Home Repair.

In order to receive a crisis supplement, you must be found eligible under the following legislation:

- Section 57 of the Employment and Assistance for Persons with Disabilities

The above legislation specifies that a crisis supplement may be issued under the following circumstances:

- (a) 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, and
- (b) failure to meet the expense or obtain the item will result in
 - (i) imminent danger to physical health, or
 - (ii) removal of a child.

On September 5, 2019 you contacted the Ministry to request a Crisis Supplement for home repair. You indicated that your chimney stack and cap were rusted out and falling apart. You also stated that the valve on your oil tank was rusted and needed to be replaced. You stated that you would bring a quote in to the Ministry regarding the repairs.

On September 24, 2019 you contacted the Ministry and stated that you were advised it would be cheaper to replace your furnace than to repair it.

On October 2, 2019 you submitted 2 quotes from Comfort Systems Heating and Cooling. The first quote is for \$6,840.62 to install heat pumps to the main living area of the home. The second quote is for \$13,083.42 to install heat pumps to the entire home. You also submitted a note explaining that you currently have a 2001 Coleman oil furnace and tank. You stated that your chimney pipes and stack are rusted out and the duct work under your mobile home is at its end of life. You stated that your oil filter casing needs to be replaced as well. You stated that you are in an area with limited service and you have been recommended to update your home to gas or electric.

On October 8, 2019 you contacted the Ministry and you were informed that your request was denied as the information provided does not meet all regulatory criteria. Based on the information provided, your request was denied for the following reasons:

- your request is not to meet an unexpected expense or obtain an item unexpectedly needed
- Needing to upgrade your home is not considered unforeseen or unexpected. Normal maintenance due to aging equipment and home updates required over time are considered expected expenses.

A Reconsideration package has been prepared for you as requested. The following attachments have been included which complete this reconsideration package:

- Request for Reconsideration, HR0100
- Note
- Quotes
- Relevant Legislation
- Reconsideration and Appeal Process Brochure
- Advocacy Information

ADVOCATE:

You have the right to an advocate to help you with your reconsideration. Attached to this reconsideration is a list of





EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

advocates in your area.

RETURN DATE:

This Request for Reconsideration form must be signed and returned by the date in Section 2, "Date requestor must submit form by".

If you can provide reasons and/or evidence why the Ministry's decision should be changed by this deadline, do so.

EXTENSION:

1. If you need more time to provide reasons or evidence, you may ask for an extension (more time).

To ask for an extension, write on this form that you need an extension, then sign and return it to the Ministry by the date in Section 2, "Date requestor must submit form by". To maximize the amount of time you have to provide reasons or evidence, submit the form on or just before that date. You may contact the reconsideration office to confirm the extension was approved, 778-698-7750.

2. Once the Ministry receives your signed Request for Reconsideration form, it will write its reconsideration decision within 10 business days (if no extension is requested) or 20 business days (if an extension is requested).

3. The reconsideration decision will be mailed to you, sent by MySelfServe or available for pick up in a Ministry office.





EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

THE ACT AND / OR REGULATIONS THAT APPLY TO THIS DECISION ARE:

- Disability Assistance and Supplements – EAPWD Act, Section 1 and Section 5
- Crisis Supplements – EAPWD Regulation, Section 57

Nov 5, 2019

I am trying to get more quotes, and I have a Advocate, but we need an Extension for more time to prepare. The Coleman Oil Furnace I have can not be repaired as there Oil Furnaces were banned in Canada a lot of recalls, and the Coleman Company went out of Business and only makes Electric Furnaces. This is why I keep getting (End of Life) I have called everyone I can for quotes, parts etc. Attached to this is one more. I was not informed that Coleman Oil Furnaces are out of Business for Oil Furnaces, and there are NO PARTS in Canada to Fix. I hope you can give me more time as I am trying, trying to get more info. Thank-you
On Computer it does explain Coleman went out of Business on Oil Furnace.
L.D plumbing forgot on Estimate to mention this I will be getting a letter from them. →

MONTH DECISION EFFECTIVE (MMMM YYYY)	RELEVANT DATES:	DATE REQUESTOR INFORMED OF DECISION (EEEE, MMMM DD, YYYY)
October 2019		Tuesday, October 8, 2019
		DATE REQUESTOR MUST SUBMIT FORM BY (EEEE, MMMM DD, YYYY)
		Tuesday, November 5, 2019





EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

SECTION 3 REASON FOR REQUEST FOR RECONSIDERATION

(TO BE COMPLETED BY THE REQUESTOR ONLY AFTER SECTIONS 1 AND 2 HAVE BEEN COMPLETED BY WORKER)

also I did not know Rust was on Roof
Chiming as I can not get on roof. Found
out in Sept when Woodstove pipes needed
cleaned. So I have been looking for parts
that I can not get anymore, because of
Company. Folding out of Business. Been
looking Everywhere for free furnace, Help
with costs and I am getting Nowhere
with help, I hope you reconsider or
give me more time in an Extension.





EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

SECTION 4 NOTICE OF REQUEST FOR RECONSIDERATION

(ATTACH ADDITIONAL PAGES IF REQUIRED)

(TO BE COMPLETED BY THE REQUESTOR)

IMPORTANT: The request to have the Ministry decision reconsidered must be submitted to your Employment and Assistance Office within 20 business days of when you receive the decision concerning eligibility. (see "Date Client Informed of Decision" box on page 1)

I hereby give notice that I am dissatisfied with the Ministry decision regarding my request for assistance or supplement and wish to exercise my right to request a reconsideration of this decision. I have attached all relevant documents I wish to have considered.

FOR MINISTRY USE ONLY:

Personal information on this form is collected under the authority of the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act* and the *Child Care Subsidy Act*. This information will be used to assess your request for a reconsideration of a decision. The disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. For more information about the collection, use and disclosure of this information, please contact your local Employment and Assistance Office.



EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

If you are dissatisfied with a ministry decision, you may request a reconsideration of the decision.

To notify the ministry that you want to have the decision reconsidered you must submit an *Employment and Assistance Request for Reconsideration* form. Your Employment and Assistance Worker will complete sections 1 and 2 of the form. Section 2 explains what the ministry decision is, states the month it is effective and the legislative authority on which it was based. You must complete sections 3 and 4 and return the form, along with all relevant documents you wish to have considered, to your Employment and Assistance Office within 20 business days of being notified of the ministry decision.

Upon submitting your Request for Reconsideration, the ministry will reconsider the decision. The reconsideration decision will be made within 10 business days from the date the ministry receives the completed *Employment and Assistance Request for Reconsideration* form. You will be informed in writing of the ministry's decision.

It is important that you submit all relevant documents relating to your request along with your *Employment and Assistance Request for Reconsideration* in order to ensure that all pertinent information is considered by the ministry. You are encouraged to attach a written submission with your request. If you need assistance in preparing your submission, you may contact your local Employment and Assistance Centre for a list of local community law offices or community advocacy groups.

The written submission should include:

- ☐ the issue (as you see it) that you are asking the Ministry to reconsider.
- ☐ reasons why you think the ministry decision is incorrect.
- ☐ any provision of an Act or regulation you feel is relevant to your request.
- ☐ copies of any documents supporting your request.

If you are dissatisfied with the outcome of the reconsideration, you may appeal to the Employment and Assistance Appeal Tribunal. The ministry will indicate on your Reconsideration Decision whether or not the decision may be appealed.

The ministry decision stands until a final decision is made. If the ministry decision is to reduce or discontinue your assistance, you may be eligible to receive a reconsideration/appeal supplement during the reconsideration/appeal. However, you must agree in writing to repay the amount if the final decision is in the ministry's favour. If the final decision is in your favour, you do not have to repay the reconsideration/appeal supplement.

Pursuant to subsection 22(4) of the *Employment and Assistance Act*, a tribunal panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision being appealed was made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

CONSEQUENTLY, IT IS IMPORTANT THAT YOU SUBMIT ALL RELEVANT INFORMATION WITH YOUR REQUEST FOR RECONSIDERATION.





810 Esplanade (Hwy.) Box 1800, Ladysmith, BC V9G 1B3

Email: ldheat@shaw.ca - www.ldheating.ca

Ladysmith Ph: (250) 245-8858

Duncan Ph: (250) 748-1611

INVOICE # 00527

DATE: OCT. 23/19

☐ ANNUAL SERVICE

Name: _____

Address _____

City: _____

Email: _____

Phone: _____

REASON FOR CALL: QUOTE ON
SUPPLYING OIL FURNACE
CHIMNEY + OIL TANK

MAKE: _____ M: _____ S#: _____

MAKE: _____ M: _____ S#: _____

WORK PERFORMED: Filter Size _____ x _____ x _____ Filter Type _____

Heating Appliance

- ☐ Check T-Stat Operation
- ☐ Check Air Filter
- ☐ Check Burners
- ☐ Check Heat Exchanger
- ☐ Check Safety Controls
- ☐ Check Electrical/Voltage
- ☐ Vent to Code P. F. _____
- ☐ Flue Temp _____
- ☐ Lubricate Motor/Bearings
- ☐ Check Bolts/Pulley (if applic.)
- ☐ Check Gas Leak
- ☐ Blower Motor Amps _____

Fireplace Service

- ☐ Clean Glass
- ☐ Clean Pilot and Burner
- ☐ Check Door Gasket
- ☐ Check Venting
- ☐ Vacuum Inside Unit

AC/Heat Pump

- ☐ Check Contractor
- ☐ Check Condensate
- ☐ Check OD Coil
- ☐ Check ID Coil
- ☐ Cond. Motor Amps _____
- ☐ Δ T _____
- ☐ OA Temp _____
- ☐ Head PSIG _____
- ☐ Suction PSIG _____
- ☐ Check REFR. Leak
- ☐ Adjust REFR. Charge
- ☐ Clean Equipment Exterior

PLUMBING

- ☐ Check All Toilets
- ☐ Check All Faucets
- ☐ Check All Drains
- ☐ Check Exposed Water Supply Pipes
- ☐ Check Outside Hose Bibbs
- ☐ Safety Check Water Heater
- ☐ House Pressure _____
- ☐ Check PRV Operation
- ☐ Check Water Temp _____

MISCELLANEOUS

- ☐ HRV
- ☐ Water Filter
- ☐ IJV Light

Description of Work Performed:

SUPPLY NEW OIL FURNACE

Parts Description Quantity Amount

NEW MOBILE OIL CHIMNEY

5,900

NEW OIL TANK CERTIFIED 600 L

1,200

DUST CLEANING & REPAIRS

2,800

DISPOSAL OF OLD EQUIPMENT

2,000

800

30 DAY QUOTE

Truck Supplies 200.00

Fuel Surcharge 300.00

Technician Recommendations:

(MIN. CALL 1 HR., 1.5 HR RURAL)

Labour \$/hr. _____ Hours _____

Labour \$/hr. _____ Hours _____

Senior Discount _____

Subtotal: 12,930

GST # 86367597 FT0001

Total Due & Payable: 13,576.50

☐ Cash ☐ Cheque ☐ Credit Card

CC# _____

Exp. Date: _____

CCV: _____

Technician Name: _____

(Print Only)

☐ COMPLETE☐ NOT COMPLETE☐ ONGOING

Customer Signature: _____

☐ WARRANTY☐ PARTS ORDERED

**BEFORE THE BRITISH COLUMBIA EMPLOYMENT AND ASSISTANCE
APPEAL TRIBUNAL**

IN THE MATTER of the *Employment and Assistance for Persons with Disabilities Act*

BETWEEN:

ALEXIS ROSE

APPELLANT

MINISTER OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION

RESPONDENT

APPELLANT'S SUBMISSION

Summary

The issue in this appeal is whether the Minister's decision to deny Ms. Rose's request for a crisis supplement to replace her furnace, pursuant to s.57 of the Employment and Assistance for Persons with Disabilities Regulation (the "Regulation"), was reasonable.

Overview

1. Ms. Rose is a recipient of PWD assistance.
2. Ms. Rose lives in a two bedroom hotel room at the Rosebud hotel..
3. In September, 2019, Ms. Rose approached the Ministry for assistance repairing her furnace.
4. This request was denied in October, 2019. Ms. Rose requested a reconsideration. By this time, Ms. Rose had been informed that the manufacturer of her furnace no longer operated, and that a repair was not possible. Her request was amended to cover the cost of either a replacement oil furnace or new electric furnace/heat pump.
5. Ms. Rose has provided multiple quotes.¹ The majority of these are between \$13,000 and \$13,600.
6. This request was denied on December 4th, 2019.

¹ Appeal Record Pages 11, 24, 48, 49.

7. In that denial, the Minister found that Ms. Rose's request met the first two criteria for a crisis supplement (unexpected need and no other resources).² The Minister denied the request because they determined that Ms. Rose did not face an imminent threat to her physical health because her home was equipped with an alternative form of heating.
8. Ms. Rose agrees with the Minister's findings regarding her unexpected need and her lack of resources. Ms. Rose appeals the Minister's denial on the basis of no imminent threat to this Tribunal.

Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002

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*](#).

Legal Issue

9. Pursuant to s. 24(1) of the *Employment and Assistance Act* ("Decision of panel"), the EAAT panel members must determine whether the decision being appealed is either reasonably supported by the evidence or a reasonable application of the Regulation in the appellant's circumstances.
10. The Minister has acknowledged that Ms. Rose's request meets both criteria in s.57(1)(a). The issue in this appeal is whether Ms. Rose's request meets the criteria in s.57(1)(b)(i).

Submission

11. We submit that Ms. Rose's initial application, combined with the information that the Ministry already had on file, and the additional evidence she has provided with this

² Reconsideration Decision – Appendix A, Appeal Record Page 3

submission, establish Ms. Rose faces an imminent danger to her physical health if her furnace is not replaced.

Additional evidence

12. Ms. Rose is providing an updated letter from her family physician in addition to evidence that she will provide in direct testimony to the Tribunal.

The panel should admit additional evidence

13. In order to determine whether the Minister's decision is reasonably supported by the evidence, the Tribunal must first determine whether the additional evidence provided by Ms. Rose is admissible.
14. 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.³
15. The Tribunal's Considering New Evidence Guideline (the "Guideline") states that, "Generally speaking, new evidence will meet this test if it is relevant to the issue(s) on appeal. This includes evidence that may contradict evidence in the appeal record. Evidence that is not relevant to the issue is inadmissible."⁴
16. The Guideline also provides guidance to panel members on how s. 24(1) of the *Employment and Assistance Act* ought to be applied. Specifically, it states:

"When new evidence is admitted, the appeal is not strictly a review on the record below but rather a review on the basis of all admissible evidence. Accordingly, instead of asking whether the decision under appeal was reasonable at the time it was made, panels should ask themselves whether the decision under appeal was reasonable based on all admissible evidence, including any new evidence admitted under s.22(4) of the Act." (page 1, para. 3 of the Guideline).
17. The reason provided by the Minister for their denial was that Ms. Rose's health was not in danger because she could rely on her woodstove for heat.
18. The evidence provided by Ms. Rose directly addresses her ability to use her woodstove to heat her home, and is therefore highly relevant to the matter before the Tribunal.

Imminent Danger to Physical Health

19. Ms. Rose's woodstove is not designed to, nor capable of, heating her home. The woodstove is not connected to her home's ducting, nor can it be.

³ *Employment and Assistance Act* s.22(4)

⁴ "Considering New Evidence", Employment & Assistance Appeals Tribunal, <http://eaat.ca/view.asp?ccid=608>

20. The woodstove is small. When fully fuelled, this stove can adequately heat the room that it is in and little more. We anticipate that Ms. Rose will guide the Tribunal through understanding the limitations of this stove relative to her living area.
21. The woodstove does not provide heat to Ms. Rose's kitchen or to her bedroom.
22. In addition, due to its size and design, the woodstove burns for a maximum of four hours when fully fuelled and properly damped.
23. Ms. Rose's physical limitations make the manual labour associated with relying on a woodstove as a primary source of heat impossible, even if the stove were able to adequately heat her living area.
24. These limitations have been confirmed by her physician in the included letter. We expect that Ms. Rose will provide further details to the Tribunal as necessary.
25. For these reasons, Ms. Rose cannot rely on her woodstove to heat her home.
26. Ms. Rose has no other way to heat her home. Living in a home without heat poses an imminent threat to Ms. Rose's physical health.

Conclusion

27. Ms. Rose lives in a relatively isolated location, which experiences significant snowfall and winter conditions. She requires heat throughout her home, particularly in her bedroom and kitchen. For the reasons outlined above, the woodstove in her home is not able to fulfill that function. It is our submission that only a replacement furnace can heat Ms. Rose's home through the winter, and that without this replacement, her physical health is in imminent danger.
28. The Minister has already verified that Ms. Rose's request meets the two criteria in s.57(1)(a). We submit that the evidence clearly establishes that Ms. Rose satisfies the criteria in s.57(1)(b)(i), and that the Minister's decision that she is not eligible for a crisis supplement was unreasonable.

All of which is respectfully submitted,
January 15, 2019

Daniel Jackson
Together Against Poverty Society

Encl.

Letter, January 9th 2019, Dr. Schitt

January 9th, 2019

Attention: Employment and Assistance Appeal Tribunal

RE:

To Whom It May Concern:

I am family physician. I am writing to confirm that faces various physical limitations, largely resulting from a car accident, that preclude her from chopping or hauling sufficient wood to heat her home. She is not able to rely on this source of heat through winter.

Sincerely,

0. A

APPEAL NUMBER
2019-00412

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“ministry”) reconsideration decision, dated 4 December 2019, in which the ministry determined that the Appellant was not eligible for a crisis supplement because they had not demonstrated imminent danger to their physical health as required by section 57 of the Employment and Assistance for Persons with Disabilities Regulation (“Regulation”).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation, Section 57.

PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included the following:

The appellant is a person with disabilities and is in receipt of receipt of provincial disability assistance.

The appellant contacted the ministry on 5 September 2019 to request assistance to replace their furnace. Documentation and information to support this request was provided to the ministry on 24 September 2019 and 2 October 2019. This information included estimates for 2 different heat pumps. On 5 October 2019 the ministry denied the appellant's request for a crisis supplement.

On 5 November 2019 the appellant filed a request for reconsideration, sought an extension of time and provided supporting information and documentation. This information included the appellant's written argument detailing the reasons for the request and an estimate for a new oil furnace. The ministry determined, in a reconsideration decision dated 4 December 2019, that the appellant was not eligible for a crisis supplement for furnace replacement because they had not met one of the required criteria set out in the legislation.

Additional information before the panel on appeal consisted of the following:

Notice of Appeal

In the Notice of Appeal, the appellant indicated that the ministry's decision was causing undue hardship. They indicated that they are a person in receipt of disability assistance with many health conditions. They also argued that the ministry had never mentioned the woodstove prior to the reconsideration decision and did not allow them to explain. They also indicated that their woodstove does not heat their whole home.

Appeal Submissions

The appellant provided 2 sets of advocate submissions and a letter from their family physician prior to the hearing.

The first advocate submission (undated) was prepared by the appellant's MLA constituency office.

The second advocate submission, dated 15 January 2019, was prepared by a community advocacy organization.

The family physician's letter, dated 9 January 2019, stated that the appellant faces various physical limitations that prevent them from chopping and hauling wood sufficient to heat their home and they cannot rely on this heat source through winter.

At the Hearing

Appellant

The appellant argued that their physical health is in imminent danger as they live at a high elevation where winter temperatures are low and their home is without heat, except for one room. The appellant indicated that they do have a woodstove but that woodstove is not capable of heating their whole home, as it is located in an addition outside of their main residence and heats only that one room addition. The addition does not contain a bedroom, kitchen or bathroom. Furthermore, the woodstove is small and is only capable of burning for 4 hours. The appellant has been staying with a friend when possible. When they are at home, they stay in the one room addition, sleeping on a couch in front of the woodstove to keep warm and with an alarm set to wake them to maintain the fire in the wood stove through the night. As a person with disabilities, the appellant argues that they are not capable of doing the physical labour required to maintain a woodstove without assistance. They have relied upon the assistance of family,

friends and neighbours to chop and carry firewood and supply kindling. The appellant estimates that they have approximately 5 days of wood left at the time of the hearing.

Ministry

The ministry relied on the reconsideration decision.

Admissibility of Additional Information

The panel finds that the information presented in the appellant's Notice of Hearing, their testimony at the hearing and the physician's letter is admissible in accordance with s. 22(4) of the *Employment and Assistance Act*. While this information was not before the ministry at reconsideration, and not part of the record, the panel finds that consideration of this evidence is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. In reaching this determination, the panel notes that the ministry did not object to the admission of this information.

The panel finds that both advocate submissions consist of argument and do not required an admissibility determination under s. 22(4) of the *Employment and Assistance Act*.

Panel Note: the appellant testified that the letter from the family physician was written and provided in January 2020 and not January 2019. All parties agreed that this was a typographical error and the panel accepts that the letter should properly be dated January 9, 2020.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's reconsideration decision, dated 4 December 2019, was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

In the reconsideration decision, the ministry found that the appellant had demonstrated an unexpected need and that there were no resources available to cover the cost, but that the appellant had not demonstrated that failure to meet the expense would result in imminent danger to their physical health.

The relevant section of Regulation provides:

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*.

Section 57(1) of the Regulation allows the minister to provide a crisis supplement to a family unit that is eligible for disability assistance if the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed. There is no dispute regarding the appellant's eligibility for disability assistance. The Regulation requires that the following three criteria be met: 1) the item or expense is unexpected, 2) there are no resources available to meet the expense, and 3) failure to meet the expense will result in imminent danger to physical health or removal of a child. In this appeal, the first two criteria are not at issue as they have been met. Therefore, only issue in this appeal is the third criterion.

Imminent Danger

Section 57(1)(b) states that in order for a crisis supplement to be granted it must be demonstrated that the failure to meet the expense or obtain the item will result in the imminent danger to the physical health of the person or removal of a child. The panel finds that there is no suggestion in this appeal that removal of a child under the *Child, Family and Community Service Act* is a possibility.

In the reconsideration decision, the ministry determined that the appellant had not established that failure to replace their furnace would result in imminent danger to their physical health. The ministry's rationale for this conclusion was that their review of the appellant's file indicated that there was a woodstove in the appellant's home and the appellant had previously communicated to ministry staff that this wood stove was their primary heat source as it was cheaper than oil. The ministry found that the appellant had not indicated that they were unable to use the woodstove or that it did not adequately heat their home.

The appellant, through their testimony and advocate's arguments, stated that the ministry's decision is unreasonable for three reasons. First, the appellant is not physically capable of maintaining a woodstove

due to their disabilities. The appellant argues that they have relied upon the assistance and good will of others in order to use this heat source. The appellant refers to the physician's letter in support of this argument. Second, the appellant has only about 1 week's supply of wood and cannot obtain more given the current shortage of seasoned firewood, the increasing cost due to this shortage and difficulty having firewood delivered in winter conditions. Third, the woodstove is a secondary heat source at best as it only burns for 4 hours and heats less than $\frac{1}{4}$ of the appellant's home. The appellant argues that the woodstove does not heat the kitchen, bedroom or bathroom areas of the home.

In addition to the three substantive arguments regarding imminent harm, the appellant also made a procedural argument regarding the reasonableness of the ministry's reconsideration decision. The appellant argued, that because there was no mention of the woodstove in the original 5 October 2019 decision, it was unfair and unreasonable for the ministry not to have allowed the appellant to explain the situation with their woodstove prior to the reconsideration decision.

The panel finds, based on the information provided, that the ministry's conclusion that the appellant has not established an imminent danger to their physical health as required under Section 57(1) was not reasonably supported by the evidence nor a reasonable application of the legislation in the appellant's circumstances. The panel finds that the appellant has provided sufficient admissible evidence to establish that their woodstove does not heat their home sufficiently given its size and location. The panel finds that living in a home without heat in sleeping, bathing and cooking areas will result in imminent danger to the appellant's physical health.

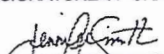
Furthermore, with the panel finds that the physician's letter and testimony establish that the appellant is not physically capable of maintaining the woodstove and cannot rely on this heat source. In the reconsideration decision, the ministry notes that the appellant is in receipt of disability assistance and indicates that the appellant's file history was reviewed. However, there is no mention in the reconsideration decision of any consideration of the appellant's disability. The panel finds it unreasonable for the ministry not to have considered and discussed the appellant's physical capacity in relation to the woodstove in its reconsideration decision. The panel also finds it unreasonable for the appellant to be required to rely on the goodwill of others as a means to maintain a safe level of heat in their home over winter, as they testified they have been forced to do. In light of these findings, the panel finds that the appellant has demonstrated imminent danger to their physical health and the ministry's determination on this criterion is not reasonable.

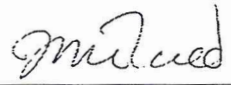

In light of its findings regarding the ministry's reconsideration decision, the panel has not addressed the appellant's procedural fairness argument.

Conclusion

The panel finds upon review of all of the admissible evidence including the information not before the ministry at reconsideration that the ministry's reconsideration decision, which held that the appellant was not eligible for a crisis supplement is not a reasonable application of the legislation in the circumstances of the appellant nor reasonably supported by the evidence. The panel rescinds the ministry's reconsideration decision. The appellant is successful on appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input checked="" type="checkbox"/> 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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION: <i>Employment and Assistance Act</i> Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/> and Section 24(2)(a) <input type="checkbox"/> or Section 24(2)(b) <input checked="" type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Jennifer Smith	
SIGNATURE OF CHAIR 	DATE (YEAR/MONTH/DAY) 2019/01/18

PRINT NAME Anne Richmond	
SIGNATURE OF MEMBER 	DATE (YEAR/MONTH/DAY)
PRINT NAME Robert Fenske	
SIGNATURE OF MEMBER 	DATE (YEAR/MONTH/DAY)

APPEAL NUMBER
2019-00412

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The appellant contacted the ministry on 5 September 2019 to request assistance to replace their furnace. Documentation and information to support this request was provided to the ministry on 24 September 2019 and 2 October 2019. This information included estimates for 2 different heat pumps. On 5 October 2019 the ministry denied the appellant's request for a crisis supplement.

On 5 November 2019 the appellant filed a request for reconsideration, sought an extension of time and provided supporting information and documentation. This information included the appellant's written argument detailing the reasons for the request and an estimate for a new oil furnace. The ministry determined, in a reconsideration decision dated 4 December 2019, that the appellant was not eligible for a crisis supplement for furnace replacement because they had not met one of the required criteria set out in the legislation.

Additional information before the panel on appeal consisted of the following:

Notice of Appeal

In the Notice of Appeal, the appellant indicated that the ministry's decision was causing undue hardship. They indicated that they are a person in receipt of disability assistance with many health conditions. They also argued that the ministry had never mentioned the woodstove prior to the reconsideration decision and did not allow them to explain. They also indicated that their woodstove does not heat their whole home.

Appeal Submissions

The appellant provided 2 sets of advocate submissions and a letter from their family physician prior to the hearing.

The first advocate submission (undated) was prepared by the appellant's MLA constituency office.

The second advocate submission, dated 15 January 2019, was prepared by a community advocacy organization.

The family physician's letter, dated 9 January 2019, stated that the appellant faces various physical limitations that prevent them from chopping and hauling wood sufficient to heat their home and they cannot rely on this heat source through winter.

At the Hearing

Appellant

The appellant argued that their physical health is in imminent danger as they live at a high elevation where winter temperatures are low and their home is without heat, except for one room. The appellant indicated that they do have a woodstove but that woodstove is not capable of heating their whole home, as it is located in an addition outside of their main residence and heats only that one room addition. The addition does not contain a bedroom, kitchen or bathroom. Furthermore, the woodstove is small and is only capable of burning for 4 hours. The appellant has been staying with a friend when possible. When they are at home, they stay in the one room addition, sleeping on a couch in front of the woodstove to keep warm and with an alarm set to wake them to maintain the fire in the wood stove through the night. As a person with disabilities, the appellant argues that they are not capable of doing the physical labour required to maintain a woodstove without assistance. They have relied upon the assistance of family,

friends and neighbours to chop and carry firewood and supply kindling. The appellant estimates that they have approximately 5 days of wood left at the time of the hearing.

Ministry

The ministry relied on the reconsideration decision.

Admissibility of Additional Information

The panel finds that the information presented in the appellant's Notice of Hearing, their testimony at the hearing and the physician's letter is admissible in accordance with s. 22(4) of the *Employment and Assistance Act*. While this information was not before the ministry at reconsideration, and not part of the record, the panel finds that consideration of this evidence is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. In reaching this determination, the panel notes that the ministry did not object to the admission of this information.

The panel finds that both advocate submissions consist of argument and do not required an admissibility determination under s. 22(4) of the *Employment and Assistance Act*.

Panel Note: the appellant testified that the letter from the family physician was written and provided in January 2020 and not January 2019. All parties agreed that this was a typographical error and the panel accepts that the letter should properly be dated January 9, 2020.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's reconsideration decision, dated 4 December 2019, was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstances.

In the reconsideration decision, the ministry found that the appellant had demonstrated an unexpected need and that there were no resources available to cover the cost, but that the appellant had not demonstrated that failure to meet the expense would result in imminent danger to their physical health.

The relevant section of Regulation provides:

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*.

Section 57(1) of the Regulation allows the minister to provide a crisis supplement to a family unit that is eligible for disability assistance if the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed. There is no dispute regarding the appellant's eligibility for disability assistance. The Regulation requires that the following three criteria be met: 1) the item or expense is unexpected, 2) there are no resources available to meet the expense, and 3) failure to meet the expense will result in imminent danger to physical health or removal of a child. In this appeal, the first two criteria are not at issue as they have been met. Therefore, only issue in this appeal is the third criterion.

Imminent Danger

Section 57(1)(b) states that in order for a crisis supplement to be granted it must be demonstrated that the failure to meet the expense or obtain the item will result in the imminent danger to the physical health of the person or removal of a child. The panel finds that there is no suggestion in this appeal that removal of a child under the *Child, Family and Community Service Act* is a possibility.

In the reconsideration decision, the ministry determined that the appellant had not established that failure to replace their furnace would result in imminent danger to their physical health. The ministry's rationale for this conclusion was that their review of the appellant's file indicated that there was a woodstove in the appellant's home and the appellant had previously communicated to ministry staff that this wood stove was their primary heat source as it was cheaper than oil. The ministry found that the appellant had not indicated that they were unable to use the woodstove or that it did not adequately heat their home.

The appellant, through their testimony and advocate's arguments, stated that the ministry's decision is unreasonable for three reasons. First, the appellant is not physically capable of maintaining a woodstove

due to their disabilities. The appellant argues that they have relied upon the assistance and good will of others in order to use this heat source. The appellant refers to the physician's letter in support of this argument. Second, the appellant has only about 1 week's supply of wood and cannot obtain more given the current shortage of seasoned firewood, the increasing cost due to this shortage and difficulty having firewood delivered in winter conditions. Third, the woodstove is a secondary heat source at best as it only burns for 4 hours and heats less than $\frac{1}{4}$ of the appellant's home. The appellant argues that the woodstove does not heat the kitchen, bedroom or bathroom areas of the home.

In addition to the three substantive arguments regarding imminent harm, the appellant also made a procedural argument regarding the reasonableness of the ministry's reconsideration decision. The appellant argued, that because there was no mention of the woodstove in the original 5 October 2019 decision, it was unfair and unreasonable for the ministry not to have allowed the appellant to explain the situation with their woodstove prior to the reconsideration decision.

The panel finds, based on the information provided, that the ministry's conclusion that the appellant has not established an imminent danger to their physical health as required under Section 57(1) was not reasonably supported by the evidence nor a reasonable application of the legislation in the appellant's circumstances. The panel finds that the appellant has provided sufficient admissible evidence to establish that their woodstove does not heat their home sufficiently given its size and location. The panel finds that living in a home without heat in sleeping, bathing and cooking areas will result in imminent danger to the appellant's physical health.

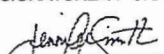
Furthermore, with the panel finds that the physician's letter and testimony establish that the appellant is not physically capable of maintaining the woodstove and cannot rely on this heat source. In the reconsideration decision, the ministry notes that the appellant is in receipt of disability assistance and indicates that the appellant's file history was reviewed. However, there is no mention in the reconsideration decision of any consideration of the appellant's disability. The panel finds it unreasonable for the ministry not to have considered and discussed the appellant's physical capacity in relation to the woodstove in its reconsideration decision. The panel also finds it unreasonable for the appellant to be required to rely on the goodwill of others as a means to maintain a safe level of heat in their home over winter, as they testified they have been forced to do. In light of these findings, the panel finds that the appellant has demonstrated imminent danger to their physical health and the ministry's determination on this criterion is not reasonable.

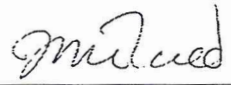

In light of its findings regarding the ministry's reconsideration decision, the panel has not addressed the appellant's procedural fairness argument.

Conclusion

The panel finds upon review of all of the admissible evidence including the information not before the ministry at reconsideration that the ministry's reconsideration decision, which held that the appellant was not eligible for a crisis supplement is not a reasonable application of the legislation in the circumstances of the appellant nor reasonably supported by the evidence. The panel rescinds the ministry's reconsideration decision. The appellant is successful on appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input checked="" type="checkbox"/> 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? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION: <i>Employment and Assistance Act</i> Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/> and Section 24(2)(a) <input type="checkbox"/> or Section 24(2)(b) <input checked="" type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Jennifer Smith	
SIGNATURE OF CHAIR 	DATE (YEAR/MONTH/DAY) 2019/01/18

PRINT NAME Anne Richmond	
SIGNATURE OF MEMBER 	DATE (YEAR/MONTH/DAY)
PRINT NAME Robert Fenske	
SIGNATURE OF MEMBER 	DATE (YEAR/MONTH/DAY)

APPENDIX A – RECONSIDERATION DECISION

After review of all the information, the ministry has denied your request for a crisis supplement to replace your furnace.

Our records show:

- You are a sole recipient with Persons with Disabilities designation. Your file has been open since September 5, 1985.
- You receive \$1440.42 per month for disability assistance. This amount includes \$808.42 for a support allowance, \$375 for a shelter allowance, \$205 for nutritional supplements and \$52 for a transportation supplement.
- On September 5, 2019 you requested assistance to replace your furnace. You indicated the valve and furnace stack are rusted out.
- On September 24, 2019 you advised that the person who came out to look at your furnace said it would be cheaper to replace your furnace than to repair it.
- On October 2, 2019 you explained that you became aware of the problem when your friend came out to clean your woodstove pipes and you are having trouble getting estimates because of where you live. You provided an estimate for \$13083.42 for a ductless heat pump and \$6840.62 for a heat pump to serve the main living area only.
- On October 8, 2019 the ministry denied your request because your need was not unexpected, and you also have a woodstove as another source of heat.
- On November 5, 2019 you submitted your request for reconsideration and requested an extension. You indicated your Coleman oil furnace cannot be repaired as the company no longer makes them or replacement parts. You provided a quote from LD Plumbing and Heating for a new oil furnace with chimney, tank and duct cleaning and repair for \$13576.50.
- On November 28, 2019 you indicated that you also have an option to replace the oil furnace with an Amana electric furnace which you would prefer as they may ban oil furnaces in the future, and it would require less maintenance than the Fujitsu. You noted it is starting to get cold and you just got over a cold/ flu and you can't manage without heat.

Legislation:

Crisis supplements are to address urgent situations that cannot reasonably be planned for or anticipated. Section 57(1) of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation states a crisis supplement request must meet **all three** of the following criteria.

1. The need for the item is unexpected or there is an unexpected expense **and**
2. There are no resources available **and**
3. Failure to obtain the item or meet the expense will result in imminent danger to physical health

Decision:

The minister finds you could not reasonably anticipate that your furnace manufacturer would no longer be in business resulting in your need for a replacement furnace. Although a homeowner can expect that household appliances will need replacing at some point, it is difficult to predict exactly when this will occur which makes it reasonable that you were unable to budget for this expense. The minister is satisfied that you have an unexpected need. ***You meet requirement #1***

You have indicated you do not have any money to purchase the furnace. The minister is satisfied that you do not have resources available to you. ***You meet requirement #2***

However, you have a woodstove and a review of your file history confirms that in the past you have indicated to ministry staff that your woodstove is your primary heat source because it is cheaper than oil. As you have not indicated that you are no longer able to use your woodstove or that it does not adequately heat your mobile home, the minister is unable to establish that failure to purchase a replacement furnace will result in an *imminent* danger to your physical health. ***You do not meet requirement #3***

As your request does not meet all the eligibility requirements as described in Section 57(1) of the EAPWD Regulation, the minister is unable to approve your request for a crisis supplement to replace your furnace.

I trust the information provided will assist in understanding the ministry decision.

APPENDIX B – APPLICABLE LEGISLATION

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION:

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 maximum set out in section 4 of Schedule A or 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 REQUEST FOR RECONSIDERATION

SECTION 1 and 2 TO BE COMPLETED BY WORKER

SR NUMBER

SECTION 1 REQUESTOR INFORMATION

REQUESTOR'S NAME

CASE NUMBER

REQUESTOR'S ADDRESS

SECTION 2 DECISION TO BE RECONSIDERED

The Ministry has reviewed your request and considered all of the factors relevant to the eligibility criteria for a Crisis Supplement for Home Repair.

In order to receive a crisis supplement, you must be found eligible under the following legislation:

- Section 57 of the Employment and Assistance for Persons with Disabilities

The above legislation specifies that a crisis supplement may be issued under the following circumstances:

- (a) 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, and
- (b) failure to meet the expense or obtain the item will result in
 - (i) imminent danger to physical health, or
 - (ii) removal of a child.

On September 5, 2019 you contacted the Ministry to request a Crisis Supplement for home repair. You indicated that your chimney stack and cap were rusted out and falling apart. You also stated that the valve on your oil tank was rusted and needed to be replaced. You stated that you would bring a quote in to the Ministry regarding the repairs.

On September 24, 2019 you contacted the Ministry and stated that you were advised it would be cheaper to replace your furnace than to repair it.

On October 2, 2019 you submitted 2 quotes from Comfort Systems Heating and Cooling. The first quote is for \$6,840.62 to install heat pumps to the main living area of the home. The second quote is for \$13,083.42 to install heat pumps to the entire home. You also submitted a note explaining that you currently have a 2001 Coleman oil furnace and tank. You stated that your chimney pipes and stack are rusted out and the duct work under your mobile home is at its end of life. You stated that your oil filter casing needs to be replaced as well. You stated that you are in an area with limited service and you have been recommended to update your home to gas or electric.

On October 8, 2019 you contacted the Ministry and you were informed that your request was denied as the information provided does not meet all regulatory criteria. Based on the information provided, your request was denied for the following reasons:

- your request is not to meet an unexpected expense or obtain an item unexpectedly needed
- Needing to upgrade your home is not considered unforeseen or unexpected. Normal maintenance due to aging equipment and home updates required over time are considered expected expenses.

A Reconsideration package has been prepared for you as requested. The following attachments have been included which complete this reconsideration package:

- Request for Reconsideration, HR0100
- Note
- Quotes
- Relevant Legislation
- Reconsideration and Appeal Process Brochure
- Advocacy Information

ADVOCATE:

You have the right to an advocate to help you with your reconsideration. Attached to this reconsideration is a list of





EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

advocates in your area.

RETURN DATE:

This Request for Reconsideration form must be signed and returned by the date in Section 2, "Date requestor must submit form by".

If you can provide reasons and/or evidence why the Ministry's decision should be changed by this deadline, do so.

EXTENSION:

1. If you need more time to provide reasons or evidence, you may ask for an extension (more time).

To ask for an extension, write on this form that you need an extension, then sign and return it to the Ministry by the date in Section 2, "Date requestor must submit form by". To maximize the amount of time you have to provide reasons or evidence, submit the form on or just before that date. You may contact the reconsideration office to confirm the extension was approved, 778-698-7750.

2. Once the Ministry receives your signed Request for Reconsideration form, it will write its reconsideration decision within 10 business days (if no extension is requested) or 20 business days (if an extension is requested).

3. The reconsideration decision will be mailed to you, sent by MySelfServe or available for pick up in a Ministry office.





EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

THE ACT AND / OR REGULATIONS THAT APPLY TO THIS DECISION ARE:

- Disability Assistance and Supplements – EAPWD Act, Section 1 and Section 5
- Crisis Supplements – EAPWD Regulation, Section 57

Nov 5, 2019

I am trying to get more quotes, and I have a Advocate, but We need an Extension for more time to prepare. The Coleman Oil Furnace I have can not be repaired as there Oil Furnaces were banned in Canada alot of recalls, and the Coleman Company went out of Business and only makes Electric Furnaces. This is why I keep getting (End of Life) I have called everyone I can for quotes, parts etc. Attached to this is one more. I was not informed that Coleman Oil Furnaces are out of Business for Oil Furnaces, and there are NO PARTS in Canada to Fix. I hope you can give me more time as I am trying, trying to get more info. Thank-you
On Computer it does explain Coleman went out of Business on Oil Furnace.
L.D plumbing forgot on Estimate to mention this I will be getting a letter from them. →

MONTH DECISION EFFECTIVE (MMMM YYYY)	RELEVANT DATES:	DATE REQUESTOR INFORMED OF DECISION (EEEE, MMMM DD, YYYY)
October 2019		Tuesday, October 8, 2019
		DATE REQUESTOR MUST SUBMIT FORM BY (EEEE, MMMM DD, YYYY)
		Tuesday, November 5, 2019





EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

SECTION 3 REASON FOR REQUEST FOR RECONSIDERATION

(TO BE COMPLETED BY THE REQUESTOR ONLY AFTER SECTIONS 1 AND 2 HAVE BEEN COMPLETED BY WORKER)

also I did not know Rust was on Roof
Chiming as I can not get on roof. Found
out in Sept when Woodstove pipes needed
cleaned. So I have been looking for parts
that I can not get anymore, because of
Company. Folding out of Business. Been
looking Everywhere for free furnace, Help
with costs and I am getting Nowhere
with help, I hope you reconsider or
give me more time in an Extension.





EMPLOYMENT AND ASSISTANCE REQUEST FOR RECONSIDERATION

SECTION 4 NOTICE OF REQUEST FOR RECONSIDERATION

(ATTACH ADDITIONAL PAGES IF REQUIRED)

(TO BE COMPLETED BY THE REQUESTOR)

IMPORTANT: The request to have the Ministry decision reconsidered must be submitted to your Employment and Assistance Office within 20 business days of when you receive the decision concerning eligibility. (see "Date Client Informed of Decision" box on page 1)

I hereby give notice that I am dissatisfied with the Ministry decision regarding my request for assistance or supplement and wish to exercise my right to request a reconsideration of this decision. I have attached all relevant documents I wish to have considered.

FOR MINISTRY USE ONLY:

Personal information on this form is collected under the authority of the *Employment and Assistance Act* and the *Employment and Assistance for Persons with Disabilities Act* and the *Child Care Subsidy Act*. This information will be used to assess your request for a reconsideration of a decision. The disclosure of personal information is subject to the provisions of the *Freedom of Information and Protection of Privacy Act*. For more information about the collection, use and disclosure of this information, please contact your local Employment and Assistance Office.





**EMPLOYMENT AND ASSISTANCE
REQUEST FOR RECONSIDERATION**

If you are dissatisfied with a ministry decision, you may request a reconsideration of the decision.

To notify the ministry that you want to have the decision reconsidered you must submit an *Employment and Assistance Request for Reconsideration* form. Your Employment and Assistance Worker will complete sections 1 and 2 of the form. Section 2 explains what the ministry decision is, states the month it is effective and the legislative authority on which it was based. You must complete sections 3 and 4 and return the form, along with all relevant documents you wish to have considered, to your Employment and Assistance Office within 20 business days of being notified of the ministry decision.

Upon submitting your Request for Reconsideration, the ministry will reconsider the decision. The reconsideration decision will be made within 10 business days from the date the ministry receives the completed *Employment and Assistance Request for Reconsideration* form. You will be informed in writing of the ministry's decision.

It is important that you submit all relevant documents relating to your request along with your *Employment and Assistance Request for Reconsideration* in order to ensure that all pertinent information is considered by the ministry. You are encouraged to attach a written submission with your request. If you need assistance in preparing your submission, you may contact your local Employment and Assistance Centre for a list of local community law offices or community advocacy groups.

The written submission should include:

- ☐ the issue (as you see it) that you are asking the Ministry to reconsider.
- ☐ reasons why you think the ministry decision is incorrect.
- ☐ any provision of an Act or regulation you feel is relevant to your request.
- ☐ copies of any documents supporting your request.

If you are dissatisfied with the outcome of the reconsideration, you may appeal to the Employment and Assistance Appeal Tribunal. The ministry will indicate on your Reconsideration Decision whether or not the decision may be appealed.

The ministry decision stands until a final decision is made. If the ministry decision is to reduce or discontinue your assistance, you may be eligible to receive a reconsideration/appeal supplement during the reconsideration/appeal. However, you must agree in writing to repay the amount if the final decision is in the ministry's favour. If the final decision is in your favour, you do not have to repay the reconsideration/appeal supplement.

Pursuant to subsection 22(4) of the *Employment and Assistance Act*, a tribunal panel may admit as evidence only:

- (a) the information and records that were before the minister when the decision being appealed was made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a).

CONSEQUENTLY, IT IS IMPORTANT THAT YOU SUBMIT ALL RELEVANT INFORMATION WITH YOUR REQUEST FOR RECONSIDERATION.





810 Esplanade (Hwy.) Box 1800, Ladysmith, BC V9G 1B3

Email: ldheat@shaw.ca - www.ldheating.ca

Ladysmith Ph: (250) 245-8858

Duncan Ph: (250) 748-1611

INVOICE # 00527

DATE: OCT. 23/19

☐ ANNUAL SERVICE

Name: _____

Address _____

City: _____

Email: _____

Phone: _____

REASON FOR CALL: QUOTE ON
SUPPLYING OIL FURNACE
CHIMNEY + OIL TANK

MAKE: _____ M: _____ S#: _____

MAKE: _____ M: _____ S#: _____

WORK PERFORMED: Filter Size _____ x _____ x _____ Filter Type _____

Heating Appliance

- ☐ Check T-Stat Operation
- ☐ Check Air Filter
- ☐ Check Burners
- ☐ Check Heat Exchanger
- ☐ Check Safety Controls
- ☐ Check Electrical/Voltage
- ☐ Vent to Code P. F. _____
- ☐ Flue Temp _____
- ☐ Lubricate Motor/Bearings
- ☐ Check Bolts/Pulley (if applic.)
- ☐ Check Gas Leak
- ☐ Blower Motor Amps _____

Fireplace Service

- ☐ Clean Glass
- ☐ Clean Pilot and Burner
- ☐ Check Door Gasket
- ☐ Check Venting
- ☐ Vacuum Inside Unit

AC/Heat Pump

- ☐ Check Contractor
- ☐ Check Condensate
- ☐ Check OD Coil
- ☐ Check ID Coil
- ☐ Cond. Motor Amps _____
- ☐ Δ T _____
- ☐ OA Temp _____
- ☐ Head PSIG _____
- ☐ Suction PSIG _____
- ☐ Check REFR. Leak
- ☐ Adjust REFR. Charge
- ☐ Clean Equipment Exterior

PLUMBING

- ☐ Check All Toilets
- ☐ Check All Faucets
- ☐ Check All Drains
- ☐ Check Exposed Water Supply Pipes
- ☐ Check Outside Hose Bibbs
- ☐ Safety Check Water Heater
- ☐ House Pressure _____
- ☐ Check PRV Operation
- ☐ Check Water Temp _____

MISCELLANEOUS

- ☐ HAV
- ☐ Water Filter
- ☐ IJV Light

Description of Work Performed:SUPPLY NEW OIL FURNACE

Parts Description

Quantity

Amount

NEW MOBILE OIL CHIMNEY

5,900

NEW OIL TANK CERTIFIED 600 L

1,200

DUCT CLEANING + REPAIRS

2,800

DISPOSAL OF OLD EQUIPMENT

2,000

800

30 DAY QUOTE

Truck Supplies

200.00

Fuel Surcharge

3000

Technician Recommendations:

(MIN. CALL 1 HR., 1.5 HR RURAL)

Labour \$/hr. _____ Hours _____

Labour \$/hr. _____ Hours _____

Senior Discount _____

Subtotal:

12,930

GST # 86367597 FT0001

646.50

Total Due & Payable

13,576.50

☐ Cash☐ Cheque☐ Credit Card

CC# _____

Exp. Date: _____

CCV: _____

Technician Name: _____

(Print Only)

☐ COMPLETE☐ NOT COMPLETE☐ ONGOING

Customer Signature: _____

☐ WARRANTY☐ PARTS ORDERED

**BEFORE THE BRITISH COLUMBIA EMPLOYMENT AND ASSISTANCE
APPEAL TRIBUNAL**

IN THE MATTER of the *Employment and Assistance for Persons with Disabilities Act*

BETWEEN:

ALEXIS ROSE

APPELLANT

MINISTER OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION

RESPONDENT

APPELLANT'S SUBMISSION

Summary

The issue in this appeal is whether the Minister's decision to deny Ms. Rose's request for a crisis supplement to replace her furnace, pursuant to s.57 of the Employment and Assistance for Persons with Disabilities Regulation (the "Regulation"), was reasonable.

Overview

1. Ms. Rose is a recipient of PWD assistance.
2. Ms. Rose lives in a two bedroom hotel room at the Rosebud hotel..
3. In September, 2019, Ms. Rose approached the Ministry for assistance repairing her furnace.
4. This request was denied in October, 2019. Ms. Rose requested a reconsideration. By this time, Ms. Rose had been informed that the manufacturer of her furnace no longer operated, and that a repair was not possible. Her request was amended to cover the cost of either a replacement oil furnace or new electric furnace/heat pump.
5. Ms. Rose has provided multiple quotes.¹ The majority of these are between \$13,000 and \$13,600.
6. This request was denied on December 4th, 2019.

¹ Appeal Record Pages 11, 24, 48, 49.

7. In that denial, the Minister found that Ms. Rose's request met the first two criteria for a crisis supplement (unexpected need and no other resources).² The Minister denied the request because they determined that Ms. Rose did not face an imminent threat to her physical health because her home was equipped with an alternative form of heating.
8. Ms. Rose agrees with the Minister's findings regarding her unexpected need and her lack of resources. Ms. Rose appeals the Minister's denial on the basis of no imminent threat to this Tribunal.

Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation, B.C. Reg. 265/2002

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*](#).

Legal Issue

9. Pursuant to s. 24(1) of the *Employment and Assistance Act* ("Decision of panel"), the EAAT panel members must determine whether the decision being appealed is either reasonably supported by the evidence or a reasonable application of the Regulation in the appellant's circumstances.
10. The Minister has acknowledged that Ms. Rose's request meets both criteria in s.57(1)(a). The issue in this appeal is whether Ms. Rose's request meets the criteria in s.57(1)(b)(i).

Submission

11. We submit that Ms. Rose's initial application, combined with the information that the Ministry already had on file, and the additional evidence she has provided with this

² Reconsideration Decision – Appendix A, Appeal Record Page 3

submission, establish Ms. Rose faces an imminent danger to her physical health if her furnace is not replaced.

Additional evidence

12. Ms. Rose is providing an updated letter from her family physician in addition to evidence that she will provide in direct testimony to the Tribunal.

The panel should admit additional evidence

13. In order to determine whether the Minister's decision is reasonably supported by the evidence, the Tribunal must first determine whether the additional evidence provided by Ms. Rose is admissible.
14. 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.³
15. The Tribunal's Considering New Evidence Guideline (the "Guideline") states that, "Generally speaking, new evidence will meet this test if it is relevant to the issue(s) on appeal. This includes evidence that may contradict evidence in the appeal record. Evidence that is not relevant to the issue is inadmissible."⁴
16. The Guideline also provides guidance to panel members on how s. 24(1) of the *Employment and Assistance Act* ought to be applied. Specifically, it states:

"When new evidence is admitted, the appeal is not strictly a review on the record below but rather a review on the basis of all admissible evidence. Accordingly, instead of asking whether the decision under appeal was reasonable at the time it was made, panels should ask themselves whether the decision under appeal was reasonable based on all admissible evidence, including any new evidence admitted under s.22(4) of the Act." (page 1, para. 3 of the Guideline).
17. The reason provided by the Minister for their denial was that Ms. Rose's health was not in danger because she could rely on her woodstove for heat.
18. The evidence provided by Ms. Rose directly addresses her ability to use her woodstove to heat her home, and is therefore highly relevant to the matter before the Tribunal.

Imminent Danger to Physical Health

19. Ms. Rose's woodstove is not designed to, nor capable of, heating her home. The woodstove is not connected to her home's ducting, nor can it be.

³ *Employment and Assistance Act* s.22(4)

⁴ "Considering New Evidence", Employment & Assistance Appeals Tribunal, <http://eaat.ca/view.asp?ccid=608>

20. The woodstove is small. When fully fuelled, this stove can adequately heat the room that it is in and little more. We anticipate that Ms. Rose will guide the Tribunal through understanding the limitations of this stove relative to her living area.
21. The woodstove does not provide heat to Ms. Rose's kitchen or to her bedroom.
22. In addition, due to its size and design, the woodstove burns for a maximum of four hours when fully fuelled and properly damped.
23. Ms. Rose's physical limitations make the manual labour associated with relying on a woodstove as a primary source of heat impossible, even if the stove were able to adequately heat her living area.
24. These limitations have been confirmed by her physician in the included letter. We expect that Ms. Rose will provide further details to the Tribunal as necessary.
25. For these reasons, Ms. Rose cannot rely on her woodstove to heat her home.
26. Ms. Rose has no other way to heat her home. Living in a home without heat poses an imminent threat to Ms. Rose's physical health.

Conclusion

27. Ms. Rose lives in a relatively isolated location, which experiences significant snowfall and winter conditions. She requires heat throughout her home, particularly in her bedroom and kitchen. For the reasons outlined above, the woodstove in her home is not able to fulfill that function. It is our submission that only a replacement furnace can heat Ms. Rose's home through the winter, and that without this replacement, her physical health is in imminent danger.
28. The Minister has already verified that Ms. Rose's request meets the two criteria in s.57(1)(a). We submit that the evidence clearly establishes that Ms. Rose satisfies the criteria in s.57(1)(b)(i), and that the Minister's decision that she is not eligible for a crisis supplement was unreasonable.

All of which is respectfully submitted,
January 15, 2019

Daniel Jackson
Together Against Poverty Society

Encl.
Letter, January 9th 2019, Dr. Schitt

January 9th, 2019

Attention: Employment and Assistance Appeal Tribunal

RE:

To Whom It May Concern:

I am family physician. I am writing to confirm that faces various physical limitations, largely resulting from a car accident, that preclude her from chopping or hauling sufficient wood to heat her home. She is not able to rely on this source of heat through winter.

Sincerely,

0.1

Section 10 issue: information and verification

Presented by Alison Ward, lawyer, CLAS
on behalf of Paul Lagace, advocate,
Prince Rupert Unemployed Action Centre

Summary of Legal Issue

A client with the PWD designation was cut off assistance under section 10 as they had not responded to any Ministry letters.

- Section 10 of the EA and EAPD Acts allows the Ministry to request information and verification of anything relevant to eligibility for welfare benefits or supplements
- If the Ministry is not satisfied with the information and verification supplied, it can sanction the family unit until information and verification is supplied.

Section 10 sanctions

- Until December 31, 2019, the only sanction available to the Ministry was to cut a family unit off benefits until it complied with section 10.
- On January 1, 2020, the legislation was amended (see EA Regulation section 32 and EAPD Regulation section 28) Now, the Ministry may:
 - reduce a family unit's benefits by \$25 per month: OR
 - declare them ineligible until they comply.
- Further, if satisfied that someone is homeless or at imminent risk of homelessness, the Ministry does not have the option of cutting them off under section 10.
- This case happened in 2018, before that change.

Summary of Facts

- The client ("David") was cut off disability assistance in August 2017 because he had not responded to letters from the Ministry's Prevention Loss Management Services ("PLMS") branch.
- After being cut off, he immediately became homeless.
- David is an Indigenous man who lives with serious cognitive impairment. He could not understand the letters PLMS sent him.
- He first went to see an advocate in June 2018, 10 months after being cut off. He was homeless for that entire 10 months.

June 22, 2018

SR #:
Case #:
MIS Case #

Prince Rupert, BC

Dear :

The ministry conducts file reviews for the purpose of reviewing eligibility for assistance under the BC Employment and Assistance program. These reviews ensure your information is up to date and accurate so that the correct amount of assistance is provided to recipients. Please note that under Section 10 of the *Employment and Assistance for Persons with Disabilities Act*, the ministry may request information or verification of information for this review.

On August 8, September 8 and October 3, 2017, you were sent a letter requesting information. Our records indicate that you have not provided all of the information.

Please see the attached Review Checklist and submit the documents by the earliest possible date, as your current eligibility cannot be determined until the documents have been submitted. If you have a spouse or dependent children, also provide their documents, as applicable. If additional information is required, you may be contacted to provide additional documents or to discuss the information you submit.

Under Section 10 of the *Employment and Assistance for Persons with Disabilities Act*, if a person is directed to provide verification of information and does not comply, they may be declared ineligible for assistance. If you do not provide the requested information by the earliest possible date, as your current eligibility cannot be determined until the documents have been submitted, the ministry will complete its review without your input and may discontinue or reduce your assistance or may determine that an overpayment has occurred.

You will be advised in writing of any decision that results in changes to your eligibility and will be offered the opportunity to discuss the decision and request a reconsideration of the decision. If there are no changes, your monthly assistance will remain the same and you will be contacted when the review has concluded.

© Ministry of Social Development and Poverty Reduction operates under the authority of the *Employment and Assistance Act* and Regulations, and the *Employment and Assistance for Persons with Disabilities Act* and Regulations.
Ministry of Social Development and Poverty Reduction
X31 - FRASER PLMS - 102-6180 King George Blvd
EAST Surrey, BC V0V 0V0
Phone: 1-866-217-1117
Fax: 1-866-696-5002

If you have questions, wish to discuss further, or are unable to provide the requested documents by the date indicated, please contact me at 1-866-217-1117 or my direct line at 778-609-2120

Sincerely,

Investigative Officer

Enclosure(s):

SR #: _____
Case #: _____
MIS Case #: _____

Review Checklist

Please submit this checklist with the requested information.

If you have questions, wish to discuss further, or are unable to provide the requested documents by the date indicated, please contact me at 1-866-217-1117 or my direct line at 778-609-2120.

- If renting: Residential Tenancy Agreement, Rental Agreement, current Rent receipt(s) and current utility bills
- If you own a home: Home owner shelter costs: mortgage documents, current proof of mortgage payments, house insurance, property taxes and all utilities
- Proof of all sources of income that your family (spouse and dependents) received from all employers and all sources of income (fishing industry) for the period of January 2017 to Present
(Note: "income" includes earnings, EI, pensions, or any/all money received from any source)
- Record of employment from all employers (please include same for spouse and/or dependents) January 2017 to Present
- Statements for all bank accounts, sole or joint, for the last 90 days (please include same for spouse and/or dependents) and for the period of January 1, 2017 to November 30, 2017
- Confirmation of all accounts, assets, or investments (including RRSPs, RDSPs, RESPs, pension funds, stocks, and any other type of asset or holdings) from each Financial Institution where you have an account, showing current balance and all transactions in the last 90 days (please include same for spouse and/or dependents) and for the period of January 1, 2017 to November 30, 2017

Steps taken

Interviewed the client and found out

- the severity of the client's cognitive issues.
- in the summer of 2017, the client mentioned while in the Ministry office that he had some work lined up on a fishing boat that summer. He didn't report any earnings that summer.
- the client did some work on crab traps that summer, but was not paid. The work on the boat never materialized.
- the client received 4 letter from PLMS between August 2017 and June 2018. He had none of the documents the PLMS letters asked for. The PLMS letters were wordy, unclear and asked for irrelevant documents.

Spoke with PLMS:

- explained the client's cognitive barriers, living situation and absence of any income or documents
- PLMS narrowed down its request to 3 things: whether the client had any income, Records of Employment, or wages from (specifically) fishing work in the period concerned.

June 28, 2018

To: Ministry of Social Development

1. I, _____, affirm that I have not received any income between January 1, 2017 and June 28, 2018.

Sig. _____ Date June 28/18

2. I, _____, affirm that I have not received any Record of Employment between January 1, 2017 and June 28, 2018.

Sig. _____ Date June 28/18

3. I, _____, affirm that between June 2017 and August 2017, I worked on crab traps and did not receive any payments for working on crab traps. I was promised work on a boat for working on crab traps, but did not get any work. I do not remember the man's name that promised me work, only that it started with a letter 'T', and I could not pronounce it.

Sig. _____ Date June 28/18

What was challenging about this case

- the client had been homeless and without any income for 10 months because of information and verification, when in fact he was otherwise eligible in those months
- the client was on PWD with cognitive limitations but PLMS had not provided the client with any accommodation for his disability
- the letters from PLMS were unclear and hard to read/understand. They asked for information that was not relevant to the client's situation (e.g. rent receipts when homeless, investment accounts) The letters did not set out clear deadlines when things needed to be received.

Lessons learned from this case

- The advocate saw the issues in this case to reflect greater problems with PLMS policy and communication
- Advocate decided to join the Moving Forward Steering Committee, part of the consultation process between advocates and MSDPR
- Advocate also joined the PLMS subcommittee, part of the consultation process - working on plain language versions of PLMS letters, working on clear policy and procedure for PLMS staff. Both were updated April 2019.

MSDPR/Advocate Consultation Structure

Moving Forward Steering Committee

Advocate co-chair: Tish Lakes lakestish@gmail.com

- Several sub-committees:
 - a) PLMS Compliance Review group: advocate contact Sonia Marino smarino@firstunited.ca
 - b) CPP disability working group: advocate co-chair Paul Lagace advocate.pruac@citywest.ca
 - c)
 - i. Reconsideration and Appeal rights: advocate co-chair Alison Ward
 - ii. Dental issues: advocate co-chair Alison Ward award@clasbc.ca
 - d) Health Benefits working group: Annette Murray annette@disabilityalliancebc.org
- Quarterly regional consultation calls between the Community Relations and Service Quality ("CRSQ") manager for each Ministry region, and advocates in that region. To sign up, contact your CRSQ.

Questions?



Dentures Case

<https://decisia.lexum.com/bceaat/sdpr/en/item/458872/index.do>

Summary of Legal Issue



- What is the effect of a decision by the EAAT to rescind the Ministry's decision denying a supplement?
- The applicant's initial request for a supplement was denied at Reconsideration. On appeal, the EAAT rescinded the Reconsideration decision on a technicality, because the Reconsideration decision cited the wrong provisions of the Regulation.
- After the EAAT rescinded the Reconsideration decision, the Ministry still found the Appellant was not entitled to the supplement. So the Appellant had to return to the EAAT.

Summary of Facts



- In 2017 the Appellant received funding from the Ministry for dentures. In 2018 he lost the dentures, through no fault of his own, so the Ministry funded another set. The EAPDR (Regulation) only appears to allow replacement dentures every 5 years (see Schedule C, s4(2), but the Ministry had a policy allowing a one-time exemption to the 5-year replacement rule.
- In 2019 he lost his dentures again and requested funding for new ones. The Ministry accepted that the loss was not his fault, but refused to fund new ones, citing s4(2).

Steps Taken: Reconsideration



- At Reconsideration, the Ministry denied the Appellant's request, citing:
 - s63 of the Regulation, which says the Ministry may provide health supplements set out in Schedule C, s4.
 - Schedule C, s4(2), which says dentures may be provided as a basic dental service, but only once every 5 years.
 - Schedule C, s1, definition of "basic dental services", sub-section (a), which refers to services provided by a dentist.
- The Reconsideration decision did not refer to the Appellant's request for consideration of s64 of the Regulation, which refers to emergency dental and denture supplements.

Steps Taken: EAAT (take 1)



- The EAAT rescinded the Reconsideration decision because it cited the wrong provision of the Regulation. Instead of sub-section (a) of the definition of “basic dental services”, which refers to services provided by a dentist, the Ministry should have cited sub-section (b), which refers to services provided by a denturist.
- The EAAT also criticized the Reconsideration decision because it did not consider s64 of the Regulation.
- “Whether anything turns on these flaws is not for the panel to determine. But unless the ministry fully considers the appellant’s request in light of all the relevant legislation, its decision cannot be considered reasonable.”
- Nothing actually turned on those flaws.

Steps Taken: Re-Reconsideration



- After the EAAT hearing, the Ministry made a new decision, but it was the same as the Ministry’s first decision. The Ministry said it had no discretion to fund new dentures in the appellant’s circumstances.
- The Ministry said: “The EAAT did not disagree with the reconsideration decision, but rather rescinded the decision as they were not satisfied the ministry took all relevant legislation into consideration. The ministry then provided a new decision...taking all legislation into consideration, and still found [the Appellant] ineligible for the reasons provided in that decision.”

Steps Taken: EAAT (take 2)



- The Ministry's written submission to the EAAT referred to a "new" Ministry policy to immediately provide a supplement if the EAAT rescinded a decision to deny it, based on s23(3.1) of the Regulation, which says: **"If the Tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in s-s(3.01)."** [i.e. the date of the Reconsideration decision or 10 business days after the request for Reconsideration was received]
- But the Ministry suggested this policy did not help the Appellant, because it only recently came into effect.

Steps Taken: EAAT (take 2)



- The Appellant provided **Reply** submissions arguing that the new policy cited by the Ministry was no different from its old policy, and the Appellant is entitled to the supplement under either policy.
- The EAAT rescinded the Re-Reconsideration decision based on s23(3.1) of the Regulation.
- The EAAT held that the plain language of s23(3.1) shows the ministry must provide a supplement when the EAAT rescinds a decision to deny the supplement, **"regardless of whether eligibility criteria have been met."**

What was challenging about this case



- The Regulation is poorly drafted and unnecessarily complex.
- The Ministry violated its own policy when it made a second decision to deny the supplement, despite the EAAT decision rescinding the first decision. This resulted in the appellant having to go through Reconsideration and the EAAT twice on the same issue.
- The appellant was cantankerous.

Lessons learned



- When the Ministry brings up a new issue in its response to the appellant's submissions, the appellant has a right to make **reply** submissions.
- It appears that if the EAAT rescinds a decision denying a supplement, for any reason, the Ministry must provide the supplement. **Even if the appellant is not entitled to it.**
- If the evidence in favour of funding a supplement is not strong, but the Reconsideration decision includes any error or raises any fairness issue, no matter how minor, it's worth appealing to the EAAT.

Staying in touch



Andrew Robb (DABC): andrew@disabilityalliancebc.org

Thea McDonagh (TAPS): thea@tapsbc.ca

Daniel Jackson (TAPS): djackson@tapsbc.ca

Alison Ward (CLAS): casl@clasbc.net (or award@clasbc.net)

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“ministry”) Reconsideration Decision dated August 29, 2019, which denied the appellant’s application for replacement of full upper dentures. The ministry found that there is no authorization to provide coverage for dentures if coverage for dentures has been provided within the past five years. The ministry determined that the appellant received dentures in 2017 and was provided a replacement denture in 2018 as a one-time exemption to the five year replacement period, however there is no provision in ministry policy for a further exemption. The first appeal of this decision resulted in a decision by a Panel of the Employment and Assistance Appeal Tribunal (“EAAT”) to rescind the ministry decision on the basis that the ministry did not take all relevant legislation into account. The ministry then provided a subsequent decision finding the appellant ineligible for the supplement on the original grounds that the appellant still did not meet the eligibility criteria, and stating that the rescinded decision did not mean that the appellant was approved for the supplement, but that a new decision was required.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 23, 62, 63, 63.1, 64, 69; Schedule C, sections 1, 4, 4.1, 5; Schedule of Fee Allowances – Dentist, Emergency Dental – Dentist, Crown & Bridgework.

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- The appellant's Request for Reconsideration, dated June 17, 2019.
- The ministry's original Reconsideration Decision dated July 8, 2019.
- The appellant's original Notice of Appeal to the Tribunal, undated.
- An EAAT decision dated August 16, 2019, which rescinded the ministry decision "because it did not correctly and completely consider the appellant's request in light of all of the relevant legislation".

The appellant provided additional submissions before the appeal was heard:

- Written argument.
- A questionnaire completed by a physician dated October 16, 2019.
- A letter from the appellant dated October 24, 2019.
- A letter from the appellant's landlord "To Whom it May Concern" undated.
- Copies of ministry policy.

The ministry provided an additional submission before the appeal was heard:

- A letter from the Manager, Reconsideration, Appeals and Administrative Fairness Branch dated November 18, 2019, stating that ministry policy with respect to section 23(3.1) recently changed to provide a previously denied supplement if the EAAT rescinds a ministry decision to deny a supplement for any reason.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry reconsideration decision dated August 29, 2019, which denied the appellant's application for replacement of full upper dentures. The ministry found that there is no authorization to provide coverage for dentures if coverage for dentures has been provided within the past five years. The ministry determined that the appellant received dentures in 2017 and was provided a replacement denture in 2018 as a one-time exemption to the five year replacement period, however there is no provision in ministry policy for a further exemption.

Legislation

EAPWDR

Effective date of eligibility

23

(3.01) If the minister decides, on a request made under section 16 (1) [*reconsideration and appeal rights*] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

- (a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and
- (b) the applicable of the dates referred to in section 72 of this regulation.

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).

General health supplements

62 The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Dental supplements

63 The minister may provide any health supplement set out in section 4 [*dental supplements*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Crown and bridgework supplement

63.1 The minister may provide a crown and bridgework supplement under section 4.1 of Schedule C to or for

- (a) a family unit in receipt of disability assistance, if the supplement is provided to or for a person in the family unit who is a person with disabilities, or
- (b) a family unit, if the supplement is provided to or for a person in the family unit who
 - (i) is a continued person, and
 - (ii) was, on the person's continuation date, a person with disabilities.

Emergency dental and denture supplement

64 The minister may provide any health supplement set out in section 5 [*emergency dental supplements*] of Schedule C to or for

- (a) a family unit in receipt of disability assistance,

- (b) a family unit in receipt of hardship assistance, or
- (c) a family unit, if the health supplement is provided to or for a person in the family unit who is a continued person.

Orthodontic supplement

- 65** (1) Subject to subsection (2), the minister may provide orthodontic supplements to or for
- (a) a family unit in receipt of disability assistance, if the orthodontic supplements are provided to or for a person in the family unit who is
 - (i) under 19 years of age, or
 - (ii) a person with disabilities, or
 - (b) a family unit, if the orthodontic supplements are provided to or for a person in the family unit who
 - (i) is a continued person, and
 - (ii) meets any of the following criteria:
 - (A) the person is under 19 years of age;
 - (B) the person was, on the person's continuation date, a person with disabilities.
- (2) For a person referred to in subsection (1) to be eligible for orthodontic supplements, the person's family unit must have no resources available to cover the cost of the orthodontic supplements and the person must
- (a) have severe skeletal dysplasia with jaw misalignment by 2 or more standard deviations, and
 - (b) obtain prior authorization from the minister for the orthodontic supplements.

Health supplement for persons facing direct and imminent life threatening health need

- 69** The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that
- (a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,
 - (b) the health supplement is necessary to meet that need,
 - (c) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and
 - (d) the requirements specified in the following provisions of Schedule C, as applicable, are met:
 - (i) paragraph (a) or (f) of section (2) (1);
 - (ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

Schedule C

Definitions

1 In this Schedule:

"basic dental service" means a dental service that

- (a) if provided by a dentist,
 - (i) is set out in the Schedule of Fee Allowances — Dentist that is effective September 1, 2017 and is published on the website of the ministry of the minister, and
 - (ii) is provided at the rate set out in that Schedule for the service and the category of person receiving the service,
- (b) if provided by a denturist,
 - (i) is set out in the Schedule of Fee Allowances — Denturist that is effective September 1, 2017 and is published on the website of the ministry of the minister, and
 - (ii) is provided at the rate set out in that Schedule for the service and the category of person receiving the service, and
- (c) if provided by a dental hygienist,
 - (i) is set out in the Schedule of Fee Allowances — Dental Hygienist that is effective September

1, 2017 and is published on the website of the ministry of the minister, and
(ii) is provided at the rate set out in that Schedule for the service and the category of person receiving the service;

Dental supplements

4 (1) In this section, "**period**" means

- (a) in respect of a person under 19 years of age, a 2 year period beginning on January 1, 2017, and on each subsequent January 1 in an odd numbered year, and
- (b) in respect of a person not referred to in paragraph (a), a 2 year period beginning on January 1, 2003 and on each subsequent January 1 in an odd numbered year.

(1.1) The health supplements that may be paid under section 63 [*dental supplements*] of this regulation are basic dental services to a maximum of

- (a) \$2 000 each period, if provided to a person under 19 years of age, and
- (b) \$1 000 each period, if provided to a person not referred to in paragraph (a).
- (c) Repealed. [B.C. Reg. 163/2005, s. (b).]

(2) Dentures may be provided as a basic dental service only to a person

- (a) who has never worn dentures, or
- (b) whose dentures are more than 5 years old.

(3) The limits under subsection (1.1) may be exceeded by an amount necessary to provide dentures, taking into account the amount remaining to the person under those limits at the time the dentures are to be provided, if

- (a) a person requires a full upper denture, a full lower denture or both because of extractions made in the previous 6 months to relieve pain,
- (b) a person requires a partial denture to replace at least 3 contiguous missing teeth on the same arch, at least one of which was extracted in the previous 6 months to relieve pain, or
- (c) a person who has been a recipient of disability assistance or income assistance for at least 2 years or a dependant of that person requires replacement dentures.

(4) Subsection (2) (b) does not apply with respect to a person described in subsection (3) (a) who has previously had a partial denture.

(5) The dental supplements that may be provided to a person described in subsection (3) (b), or to a person described in subsection (3) (c) who requires a partial denture, are limited to services under

- (a) fee numbers 52101 to 52402 in the Schedule of Fee Allowances — Dentist referred to in paragraph (a) of the definition "basic dental service" in section 1 of this Schedule, or
- (b) fee numbers 41610, 41612, 41620 and 41622 in the Schedule of Fee Allowances — Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule.

(6) The dental supplements that may be provided to a person described in subsection (3) (c) who requires the replacement of a full upper, a full lower denture or both are limited to services under

- (a) fee numbers 51101 and 51102 in the Schedule of Fee Allowances — Dentist referred to in paragraph (a) of the definition "basic dental service" in section 1 of this Schedule, or
- (b) fee numbers 31310, 31320 or 31330 in the Schedule of Fee Allowances — Denturist referred to in paragraph (b) of the definition "basic dental service" in section 1 of this Schedule.

(7) A reline or a rebase of dentures may be provided as a basic dental service only to a person who has not had a reline or rebase of dentures for at least 2 years.

Crown and bridgework supplement

4.1 (1) In this section, "**crown and bridgework**" means a dental service

- (a) that is provided by a dentist,
- (b) that is set out in the Schedule of Fee Allowances — Crown and Bridgework, that is effective April 1, 2010 and is published on the website of the ministry of the minister,
- (c) that is provided at the rate set out for the service in that Schedule, and
- (d) for which a person has received the pre-authorization of the minister.

(2)A health supplement may be paid under section 63.1 of this regulation for crown and bridgework but only if the minister is of the opinion that the person has a dental condition that cannot be corrected through the provision of basic dental services because

(a)the dental condition precludes the provision of the restorative services set out under the Restorative Services section of the Schedule of Fee Allowances — Dentist, and

(b)one of the following circumstances exists:

(i)the dental condition precludes the use of a removable prosthetic;

(ii)the person has a physical impairment that makes it impossible for him or her to place a removable prosthetic;

(iii)the person has an allergic reaction or other intolerance to the composition or materials used in a removable prosthetic;

(iv)the person has a mental condition that makes it impossible for him or her to assume responsibility for a removable prosthetic.

(3)The minister must also be satisfied that a health supplement for crown and bridgework will be adequate to correct the dental condition.

(4)A health supplement for crown and bridgework may not be provided in respect of the same tooth more than once in any period of 60 calendar months.

Emergency dental supplements

5 The health supplements that may be paid for under section 64 [*emergency dental and denture supplements*] of this regulation are emergency dental services.

Dental Supplement – Dental – Dentist, Emergency Dental, Crown and Bridgework

Note: Relevant sections not reproduced here for brevity.

The appellant's position is that his appeal should be considered successful because the previous EAAT panel rescinded the ministry decision and he should be provided with the supplement.

The ministry's position is that the appellant is still ineligible for the requested supplement, however their policy has recently changed to interpret section 23(3.01) EAPWDR so that if the EAAT rescinds a ministry decision to deny a supplement, the ministry shall provide the supplement under s.23(3.1) EAPWDR regardless of whether eligibility criteria have been met.

The panel will not deal with the question of whether the appellant met the eligibility criteria for provision of the requested dental supplement nor the appellant's arguments concerning the application of discretion by the ministry but the matter of whether the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel notes the language of section 23(3.1) EAPWDR: "(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01)". There is no reference to the reasons for a tribunal rescinding a decision. The panel also notes that the ministry has changed their interpretation and the effect of a tribunal rescinding a decision of the minister refusing a supplement to the provision of the supplement under that circumstance.

The panel finds that the ministry's denial of the appellant's application for a dental supplement after an EAAT Panel had rescinded their decision was not a reasonable application of s. 23(3.1) EAPWDR in the circumstances of the appellant. The plain language reading of that section supports the recent ministry policy of providing a supplement when the EAAT rescinds the decision regardless of whether eligibility criteria have been met.

The panel rescinds the ministry decision.

The appeal is successful.

APPEAL NUMBER

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) ☒

and

Section 24(2)(a) ☐ or Section 24(2)(b) ☒

PART H – SIGNATURES

PRINT NAME

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 DEC 4

PRINT NAME

David Roberts

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 DEC 4

PRINT NAME

Adam Rollins

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 DEC 4

Reply Submission of the Appellant [REDACTED] to the Employment and Assistance Appeal Tribunal

This is the Appellant [REDACTED] reply to the Ministry's submissions contained in a letter to the Tribunal dated November 18, 2019 from Melissa Ross of the Ministry's Reconsideration Branch.

The Ministry raised a new issue in its November 18, 2019 submissions, to which the Appellant replies as follows.

Interpretation of section 23 (3.1) of the EAPD Regulation

In its November 18th submission, the Ministry advises that it has received direction about the interpretation of section 23(3.1) of the *Employment and Assistance for Persons with Disabilities* ("EAPD") Regulation.

Specifically, the Ministry states it has "*received direction that if the EAAT rescinds a ministry decision to deny a supplement, the ministry shall provide the supplement under section 23(2.1) (regardless of whether the eligibility criteria has been met)*" [emphasis added]. The Ministry does not say when it received that direction or where it came from.

Section 23(2.1) of the EAPD Regulation says:

If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01) [emphasis added].

In the Appellant's case, the Tribunal previously (on August 16, 2019) rescinded a decision of the minister refusing the Appellant the dental supplement he requested. According to the direction cited by the Ministry in its own submission, the Appellant submits he therefore "*is eligible for the supplement (regardless of whether the eligibility criteria has been met).*"

The only reason the Ministry has given for not following that direction in this case is that "*the ministry only recently received that direction.*" The Ministry did not state when it received this direction.

The Appellant submits that the Ministry's position in this regards is unreasonable given that the wording of section 23(3.1) of the EAPD Regulation has not changed in many years, and certainly not since the Tribunal's previous decision in this case on August 16,

2019. It is not a reasonable application of the legislation to say that section 23(3.1) is to be interpreted one way in August, and another way in December, when section 23(3.1) has in fact not changed, nor have there been any court decisions regarding the interpretation of section 23(3.1) in that period.

Indeed, if we look at the Ministry's policy and procedures manual, in the "Appeal" topic, we find the following under the "*Effective Date of Eligibility - Tribunal Decision*" subtopic (copy attached as Appendix 1):

Effective Date of Eligibility – Tribunal Decision

Effective: December 13, 2013

Under the policy, when the Tribunal rescinds the ministry's reconsideration decision, the effective date of eligibility is dependent on the type of assistance applied for.....

- *New applicants for a supplement are eligible for the supplement retroactive to the date of the reconsideration decision [emphasis added].*
 - *In cases where the reconsideration decision has been made after the due date, staff will determine eligibility as of the date the reconsideration decision was due.*

In other words, the 2013 policy says that where the Tribunal rescinds a reconsideration decision that deals with an initial application for a supplement, the person is eligible for the supplement as of the date of the reconsideration decision.

The Appellant submits this policy from 2013 says the Ministry is to act in the same way as the direction the Ministry cited in its November 18th submission to the Tribunal. The policy cited above is not recent, and predates the Appellant's initial application for the dental supplement requested.

Based on all of the above, the Appellant says the Reconsideration Decision was an unreasonable application of the legislation in the Appellant's circumstances.

Remedy Sought

The Appellant asks that the Tribunal reverse the Reconsideration Decision, and find that the Appellant is entitled to the dental supplement requested, based on section 23(3.1) of the EAPD Regulation.

In the alternative, if the Tribunal is not prepared to find the Appellant entitled to the dental supplement under section 23(3.1) of the EAPD Regulation, the Appellant relies

on the arguments set out in his initial submission to this Tribunal, and maintains that the Reconsideration Decision dated August 29, 2019 was not a reasonable application of the legislation in his circumstances for the reasons set out in that initial submission.

All of which is respectfully submitted, this 6th of December, 2019.

Annette Murray

Annette Murray

Advocate for the Appellant

