

## PART C – DECISION UNDER APPEAL

(State the reconsideration decision)

1. The ministry's Reconsideration Decision of February 23, 2009 is the decision under appeal.
2. Citing section 47 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the ministry confirmed its previous decision to neither refuse nor approve a Community volunteer supplement (CVS) at this time, but to place the appellant on a wait list to be evaluated for it in the future.

## PART D – RELEVANT LEGISLATION

(State the relevant Legislation considered)

- Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 47
- Interpretation Act, section 29

## PART E – SUMMARY OF FACTS

Please set out the facts as determined by the panel, based on the evidence at the hearing. Please note that subsection 22(4) of the Employment and Assistance Act states that, in a hearing referred to in subsection (3), a panel may admit as evidence only:

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

1. In neither refusing nor approving the appellant's request for the CVS and placing her on a wait list, the information before the ministry was that the appellant had started volunteering in December 2008 and had requested the CVS in January 2009. The ministry advised her that the CVS was a budgeted program and placed her on the wait list for it.
2. At the hearing, the appellant presented evidence that:
  - a. She had applied for the CVS in late 2007 and had received notification from the ministry that she had been approved for it in early 2008.
  - b. The appellant had become very ill at that time, including being hospitalized as an in-patient for a couple of months in the summer of 2008 followed by out-patient treatment, and that she was too ill to use the CVS.
  - c. As she became well again, she started volunteering in December 2008 and felt this was very beneficial for her. She reported that, as she had already been approved earlier in 2008 for the CVS, she approached the ministry in January 2009 to claim it. She stated that she found it unfair to learn that she must again be placed on a wait list for the CVS. She reported that this approach was discouraging and did not empower people on assistance.
3. At the hearing, the ministry presented evidence that:
  - a. In December 2007, the appellant requested the CVS
  - b. On December 28, 2007, an offer letter for the CVS was sent to the appellant seeking a response from her by January 11, 2008.
  - c. On January 29, 2008, the ministry contacted the appellant as she had not responded by the deadline. She declined the supplement stating that she was too ill.
  - d. On January 31, 2008, the appellant applied for and received a clothing grant.
  - e. On February 12, 2008 a second offer letter for the CVS was sent to the appellant seeking a response from her by March 7, 2008.
  - f. On March 11, 2008, the appellant was removed from the wait list as she had not responded.
  - g. On January 20, 2009, the appellant requested the CVS and she was placed on the wait list.
4. The appellant stated that, though she now understood the process better, it was still an unfair process and discouraging.

## PART F – REASONS FOR PANEL DECISION

(State the reasons for the panel decision)

1. The issue in this case is the reasonableness of the ministry's decision to neither deny nor approve the appellant's request to receive the CVS and placing her on a wait list again, given that she had been approved previously.
2. Section 47 of the EAPWDR states that the minister may provide a supplement (CVS) for up to \$100 for each calendar month that a recipient participates in a community volunteer program.
3. The ministry argues that the appellant has been placed on a wait list as is the ministry's common procedure to ensure a fair distribution of the CVS with many applicants and changing budgeted amounts for the program. The ministry states that applicants are notified of their responsibilities and time frames in an offer letter when their name comes up on the wait list but that their names are not held at the top of the list into the future. If applicants do not take the CVS when offered, they must reapply, often being placed back on a wait list, rather than being placed at the top where they may have been in the past.
4. The appellant argues that her illness disallowed her from taking advantage of the CVS when it was offered. She states that it is unfair and discouraging to wait for it once, only to have to wait for it again when one is well enough to use it.
5. The panel notes the appellant's frustrations and acknowledges the appellant's efforts to contribute through a community volunteer program. The panel heard evidence from the ministry stating that the appellant had been approved for the CVS and, as the appellant had not responded to the ministry within a specified period of time, the ministry had revoked its offer to provide the supplement to the appellant. The ministry also advised that, due to budgetary reasons, it was not able to provide the supplement to the appellant immediately and had placed the appellant on a wait list. The ministry explained that it allocated funds for the CVS on a regional basis and that the current year's budget for the region in which the appellant resides had been used.
6. The majority view is that the CVS is a supplement under the legislation where the minister may grant it to applicants who meet the legislated criteria. Under section 29 of the Interpretation Act, "may" is to be construed as permissive and empowering. There does not appear to be anything in the EAPWDA or EAPWDR that suggests the ministry is required to exercise its authority in any particular way with respect to a CVS, or indeed at all. The panel therefore finds that the ministry's decision to place the appellant on a wait list for the CVS was a reasonable application of the enactment in the circumstances of the appellant and confirms the ministry's decision by majority.
7. The dissenting view is that the action of the ministry to place an approved applicant for a CVS on a wait list is not a reasonable interpretation of the legislation. The dissenting member notes that there is no legislative authority to establish a wait list and by doing so the ministry is granting the supplements inequitably. Putting the appellant on a wait list establishes criteria for the provision of the supplement that is not specified in the legislation. The ministry stated in its Reconsideration decision that it had not refused or denied the CVS to the appellant. The dissenting member considers that putting an approved applicant on a waiting list is a de facto denial or refusal of the applicant's request for a supplement. The dissenting member determines that the ministry's reconsideration decision should accordingly be rescinded.