APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated April 20, 2012 (though date-stamped April 19, 2012), wherein the ministry denied the appellant a crisis supplement to pay for a year end annual adjustment of the appellant's hydro bill. The basis for the ministry's decision was that the appellant did not satisfy 3 statutory criteria as set out in section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation. The ministry held that the expense was not unexpected, that there were alternate resources available to the family unit, and that failure to meet the expense would not result in imminent danger to physical health or the removal of a child under the *Child, Family and Community Service Act*.

PART D – Relevant Legislation

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

APPEAL #

PART E – Summary of Facts

The appellant is a recipient of disability assistance as a single person while living with his parents. The appellant's committee (the Committee) advised the panel that the appellant cannot speak, has hearing difficulties, and cannot manage himself or his affairs. Accordingly, the Committee and the appellant's mother attended the appeal hearing on behalf of the appellant. The panel proceeded with the hearing in accordance with s. 86(b) of the Employment and Assistance Regulation.

The information before the ministry at the time of reconsideration included the following:

- A decision letter from the ministry, dated March 15, 2012 advising the appellant that he was not eligible for additional funds for utilities on the basis that he was already receiving the maximum amount of shelter allowance under sections 4 and 5 of Schedule A of the EAPWDR, and funds for utilities is a component of shelter allowance.
- A Request for Reconsideration form signed by the Committee on April 10, 2012.
- The appellant's hydro bill of February 28, 2012 which included the appellant's regular monthly billing of $125 under the Equal Payment Plan, and an annual adjustment of $406.52, which represented the difference between the amount the appellant had paid for hydro in 2011 under the Equal Payment Plan and the amount of electricity that the appellant had actually used in 2011.
- A photocopy of a cheque payable by the ministry to the appellant, dated March 8, 2011 in the amount of $395.21 in respect of "BC HYDRO – OUTSTANDING BALANCE".
- A two page type-written submission from the Committee, dated April 10, 2012.

With the Notice of Appeal, the Committee submitted a copy of an order of the BC Supreme Court dated December 18, 2007 declaring the appointment of the appellant's father as committee of the appellant's person and estate.

At the appeal hearing, the Committee submitted the following additional documents:

- A cover letter with written submissions.
- A letter with attachments from the administrators of the subsidized housing complex within which the appellant and his family live, to the Committee dated April 19, 2006. One attachment is a 2005 monthly heating/utility allowance schedule showing typical allowances for utilities costs for various types of housing unit. The allowance for hydro for a housing unit of the type apparently occupied by the appellant and his family was $112. The Committee said that this material had been provided by the administrators to support the annual review of the appellant's file conducted by the ministry.
- A form completed by the ministry October 28, 2010 confirming the appellant's shelter allowance is $375 per month, with $320 being flat rental and $55 for utilities.
- The appellant's hydro bill dated April 30, 2012 showing the $406.52 annual adjustment as

being past due, plus additional late charges of $6.10.

At the appeal hearing the Committee pointed to the March 8, 2011 cheque as evidence that the ministry had paid the appellant's annual hydro bill adjustments in the past – for the past 4 or 5 years according to the Committee - and that the ministry had relied on EAPWDR s. 57 to do so. When asked by the panel as to why the appellant had not provided documentary evidence for years prior to 2011 so as to support the claim that a pattern of payments existed, the Committee replied that he'd recently had eye surgery and couldn't see well enough to locate the other documents. The ministry representative was not able to confirm whether the ministry had provided the appellant with crisis supplements for hydro previously.

The Committee said that the appellant is susceptible to frequent serious ear infections that in the past have led to him suffering brain injury due to meningitis. He said the appellant also recently underwent emergency surgery to deal with a life threatening dental-related infection.

The additional information provided by the appellant through his Committee provided more detail about the claim that was before the ministry at the time of reconsideration. Accordingly, the panel admitted this information as oral and written testimony in support of the information and records that were before the ministry at the time of reconsideration as provided in section 22(4) of the *Employment and Assistance Act*.

The ministry provided evidence that it has an agreement with BC Hydro whereby BC Hydro will notify the ministry of a proposed disconnection of service to a recipient of disability assistance. In such cases the ministry will arrange a payment plan with BC Hydro so as to maintain hydro service. In the appellant's case the ministry said it has not received a notice of disconnection from BC Hydro.

Otherwise, the ministry relied on its reconsideration decision.

The additional information provided by the ministry provided more detail about the issue that was before the ministry at the time of reconsideration. Accordingly, the panel admitted this information as oral testimony in support of the information and records that were before the ministry at the time of reconsideration as provided in section 22(4) of the *Employment and Assistance Act*.

APPEAL #

PART F – Reasons for Panel Decision

The ministry's March 15, 2012 decision was based on the shelter allowance provisions of EAPWDR Schedule A. The appellant did not challenge the rationale for that finding but instead requested reconsideration on the basis that the March 15 decision hadn't addressed the appellant's eligibility for a crisis supplement under EAPWDR section 57. The reconsideration decision was grounded on the applicability of section 57. The issue on appeal, then, is whether the ministry's April 20, 2012 reconsideration decision to deny a crisis supplement for the appellant's annual hydro bill adjustment was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation is as follows:

EAPWDR

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 $20 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) The cumulative amount of crisis supplements that may be provided to or for a family unit in a year must not exceed the amount calculated under subsection (6).

(6) In the calendar month in which the application or request for the supplement is made, the amount under subsection (5) is calculated by multiplying by 2 the maximum amount of disability assistance or hardship assistance that may be provided for the month under Schedule A or Schedule D to a family unit that matches the family unit.

(7) Despite subsection (4) (b) or (5) or both, 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.

The appellant's position as expressed in the Notice of Appeal is that the reconsideration decision was patently unreasonable. He argued through his Committee that he satisfies the statutory criteria to be eligible for a crisis supplement for the hydro bill adjustment.

Unexpected

With respect to the expense being unexpected, the appellant pointed out EAPWDR s. 57(7)(d) to argue that there are circumstances in which hydro expenses can give rise to a crisis supplement. The appellant relied on the March 8, 2011 cheque from the ministry as evidence that the ministry has paid the appellant's annual hydro bill adjustment by means of a crisis supplement for the past 4 or 5 years. He also referred to a decision of a previous panel of this tribunal wherein that panel held that the ministry was unreasonable in deciding not to provide a crisis supplement for food in circumstances in which the ministry had previously routinely provided a crisis supplement. The appellant's position appeared to be that the ministry's departure from past practice was unreasonable and unexpected, so as to make the expense itself unexpected. The appellant argued that the ministry should pay the adjustment amount as well as the late payment fee.

The ministry simply said that utility bills – including the annual adjustment - are ongoing expenses and are not unexpected. The ministry pointed out that despite s. 57(7)(d), a hydro expense must still satisfy the criterion of being "unexpected".

The panel accepts the appellant's argument that notwithstanding the fact that hydro expenses are ongoing and expected, the ministry's actions in repeatedly approving an expense can give rise to an expectation that the ministry will continue to pay for the expense, thereby making the expense "unexpected" to the appellant. The panel acknowledges that previous administrative decisions by the ministry are not binding on future decision makers, and that previous decisions of tribunal panels are not binding on this panel. Nor does the panel consider this a situation where a legitimate expectation improperly gives rise to a substantive benefit. The ministry is not bound in perpetuity to continue paying the appellant's annual hydro adjustments if it gives the appellant appropriate notice that it

won't do so. Section 57(7)(d) does contemplate that hydro can in the appropriate circumstances be an unexpected expense suitable for a crisis supplement. In the circumstances, the panel finds the ministry's decision on the "unexpected" criterion unreasonable.

No Resources Available

The Committee argued that the information from the administrators of the appellant's housing complex, the hydro bills themselves, and the ministry's form dated October 28, 2010 taken together show that the appellant's monthly hydro expenses exceed the amount the ministry provides for utilities. In response to a question from the panel the Committee said that the appellant has no savings and has no other source of funds available to him.

The ministry's position was that since monthly shelter and support allowances are intended in part for ongoing expenses such as utilities, the appellant had these resources available to him and so the criterion in s. 57(1)(a) had not been satisfied.

The legislative scheme is designed so that the shelter allowance includes an allowance for utilities. The general scheme is that each recipient is expected to arrange his affairs so as to live within the statutory limits of the benefits provided. In the appellant's situation, the ministry's past actions have condoned the appellant arranging his affairs so as to end the year with an unpaid hydro balance. The panel accepts the appellant's evidence that he has no other resources available to pay the hydro adjustment and finds the ministry's decision on this criterion unreasonable.

Imminent Danger

With respect to the criterion in EAPWDR s. 57(1)(b)(i), that failure to meet the expense will result in imminent danger to the appellant's physical health, the Committee referred to the evidence of the appellant's physical and mental circumstances and his susceptibility to infection to argue that the appellant's physical health is precarious and that loss of hydro power would put the appellant's life at risk.

The ministry's position was that since BC Hydro has not issued a disconnection notice there can be no imminent danger to the appellant's physical health.

In the panel's view the word "imminent" connotes a degree of immediacy that is not present in the circumstances of the appellant. Given that there are intermediate steps that must occur before disconnection occurs – issuance of a disconnection notice and negotiations between BC Hydro and the ministry – the panel finds that the ministry's decision with respect to the "imminent danger" criterion was reasonable.

Since the criteria in EAPWDR s. 57 have not been satisfied, the panel finds that the ministry's decision to deny the appellant a crisis supplement for the annual hydro adjustment was a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry's decision is confirmed.