

PART C – Decision under Appeal

The decision under appeal is the ministry's decision at reconsideration on July 20, 2012. In that decision the ministry denied the appellant's request for a crisis supplement to cover the cost of the annual adjustment fee for BC Hydro and late payment charges owing to BC Hydro. The ministry considered the criteria set out in the legislation governing the granting of crisis supplements in the *Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 5 and the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 57*, namely that the requested item must be required:

- to meet an unexpected expense or obtain an item unexpectedly needed; and
- [the appellant has] no resources available to purchase the item on his own, and
- failure to provide the item will result in imminent danger to the appellant's physical health.

The Ministry found that failure to provide the item may result in imminent danger to the appellant's physical health. However they found that the annual adjustment fee was not an unexpected expense, nor an item that is unexpectedly needed, and further that there is no indication that the appellant had exhausted all the resources available to him.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 57

PART E – Summary of Facts

At reconsideration the documents before the ministry included the following:

- the appellant's Request for Reconsideration which consisted of a three page submission from the appellant, signed on July 17, 2012 by the Committee and the following attachments:
- A Declaration of the Supreme Court of British Columbia on December 18, 2007, ordering that the father of the appellant be appointed Committee of the person and the estate of the appellant;
- BC Hydro's Invoice of March 1, 2011 requiring payment of \$395.21 as Annual Adjustment payable by March 23, 2011;
- Copy of a cheque made out to the appellant from the BC Employment and Assistance Imprest Account for \$395.21 re BC Hydro – Outstanding Balance and dated March 8, 2011;
- A decision of the Employment and Assistance Appeal Tribunal, dated May 10, 2012;
- a letter dated June 25, 2012 to the District Supervisor – Employment and Assistance Centre from the Committee, requesting that the ministry provide the appellant with a Crisis Supplement Cheque of \$414.97 to pay for the BC Hydro Annual Adjustment Bill as well as the updated late payment fee;
- Invoice from BC Hydro dated May 29, 2012, which demanded \$412.62 as the balance due from their previous bill and \$2.35 as Late Payment Charges;
- Invoice from BC Hydro dated June 27, 2012, demanding payment of \$414.97 as balance past due from the previous bill and Late payment charges of \$4.31; and,
- Final Notice of Disconnection from BC Hydro dated June 19, 2012.

The appellant's father in his capacity as Committee for the person and estate of the appellant attended the hearing on behalf of the appellant. He was assisted by the appellant's mother.

At the start of the hearing the Committee presented a 93-page document consisting of a mix of submissions and evidence which he requested the panel to accept. The Committee advised the panel that he had been unable to provide this document in compliance with the Employment and Assistance Appeal Tribunal's (the Tribunal) rule requiring documents to be presented at least 3 business days before the hearing date. He said this was due to problems with his sight following recent eye surgery. This had made work on papers difficult and time consuming.

The representative from the ministry was in agreement that there should be a twenty-minute break during which she and the panel would be able to read through the presented documents. Having read through the documents, and there being no objections from the ministry's representative, the panel accepted the document.

The 93-page document included the following, together with submissions from the Committee:

- BC Hydro's Invoice dated July 27, 2012 which includes a note that, "this bill includes an amount of \$419.28 which has been deferred until Nov 30, 2012";
- Letter dated April 10, 2012 from the Committee to the District Supervisor – Employment and Assistance Centre, Ministry of Social Development with attachments;
- The Reconsideration Decision of the ministry dated April 20, 2012 denying the appellant's request for funds for his Hydro bill;
- The Committee's Notice of Appeal of the ministry's April 20, 2012 Reconsideration Decision,

- signed by the Committee on April 24, 2012;
- Letter from the Committee to the Tribunal, providing the following documents for consideration at the Tribunal's May 10, 2012 hearing of the appellant's appeal : Letter from the manager of a Community Services Group, dated April 19, 2006 regarding the appellant's residence; Letter dated September 7, 2005 from CMHC regarding a review of Market Rents for the 2006 fiscal year; A Utility Schedule – Heat Tables dated December 2003; a letter dated February 12, 2004 regarding rent; a Release of Personal Information Form completed and signed by the Committee regarding shelter amount and breakdown; BC Hydro's Invoice to the Committee dated April 30, 2012;
 - A To Whom It May Concern letter from the appellant's physician regarding the appellant's dental situation and needs dated April 26, 2012;
 - The Tribunal's decision dated May 10, 2012 of the appellant's appeal;
 - A Disability Tax Credit Certificate together with a Review of the appellant's health completed by a physician and signed by the physician on April 14, 2004;
 - A Canada Child Tax Benefit and BC Family Bonus Notice addressed to the appellant's mother giving details of the family's income and the Child supplement re the appellant dated September 20, 2004;
 - A letter dated September 29, 2003 from the Tribunal granting adjournment until October 31, 2003 of a hearing as requested by the Committee;
 - Employment and Assistance Review document signed by the Committee on October 5, 2004, six pages of Addendum to the 2004/2005 Annual Review regarding the Committee together with a one page decision of a G.A.I.N. tribunal and a two page Application for Handicapped Benefits signed by the Committee's physician on November 29, 1991;
 - A Persons with Disabilities Application Form on behalf of the appellant signed by the Committee on October 19, 2004;
 - Letter from the ministry confirming the appellant's designation as a Person with Disabilities effective February 9, 2005;
 - Monthly report in terms of need of income assistance by the Committee and the Committee's wife with copies of cheques issued to them, July 2012;
 - Pages from the Notice of Assessment for the appellant's brother dated May 22, 2012.

It is the panel's finding, that the documents relating to BC Hydro's charges to the appellant and Committee are clearly in support of the BC Hydro documents that were before the ministry at reconsideration. They formed the heart of the matter that the ministry was then considering. Similarly the documents relating to the appellant's health and subsequent needs speak to a matter that was before the ministry at reconsideration and simply support the situation, accepted by the ministry at reconsideration, that failure to meet the utility expenses may result in imminent danger to his physical health. The matter of the appellant's resources was squarely before the ministry at reconsideration and evidence attesting to this was included in the Tribunal's decision dated May 10, 2012, which was itself before the ministry at reconsideration. Accordingly, and based on section 22 (4) of the *Employment and Assistance Act (EAA)*, the panel admitted these documents as evidence.

At the hearing the position of the Committee and the appellant's mother was that the ministry's decision at reconsideration was not reasonable in that although an Annual Adjustment Fee from BC Hydro was not unexpected as it is the result of having an Equal Payment Plan with BC Hydro, the expectation that the appellant would have to pay this Fee was unexpected. This was because in the

past the ministry had picked up this charge and so there could be no expectation on the part of the appellant that he would have to cover this charge. It was therefore an unexpected expense for the appellant. They provided documents in support of their lack of resources with which to cover the Annual Adjustment Fee, namely that they are in receipt of Senior's Supplement Program Benefits. The appellant they said is totally dependent on them and on the allowances he receives from the Ministry. And, they told of having heard from BC Hydro that there was an arrangement by which the ministry would come to an agreement with BC Hydro to ensure that service was maintained in circumstances such as that of the appellant.

The Committee and the appellant's mother told of the appellant's living arrangements. He lived in their residence, along with a brother. He needed to be cared for at all times. He needed heat because otherwise his life was in jeopardy. They told of needing to cover the cost of supplements needed by the appellant together with dental care and of having no additional resources.

The position of the representative from the ministry was that the Annual Adjustment Fee from BC Hydro was not an unexpected expense for the appellant. She pointed out that the legislation speaks of a "family unit" and said that as of February 9, 2005 the appellant's family unit had been solely himself. Prior to that time he had been part of the Committee's family unit. Given that the appellant lived in the same residence as his brother, mother and the Committee, she suggested that a more reasonable claim would be for the ministry to cover one quarter of the Annual Adjustment Fee rather than the entire amount. She did not express a view on the appellant's ability to cover the BC Hydro charge.

The representative from the ministry said that she had not seen copies of the previous cheques allegedly issued by the ministry covering the Annual Adjustment Fee. She told of changes to the ministry's computer system. She was not in a position to say whether or not such cheques had been issued prior to the cheque that was issued on March 8, 2011.

Based on the documents before it and the testimony given at the hearing the panel's finding of facts are as follows:

1. The appellant is a 25 year old male who has been designated as a Person with Disabilities by the ministry, effective February 9, 2005.
2. The appellant's father is Committee of the person and estate of the appellant.
3. The appellant lives in the same residence as his brother, mother and the Committee;
4. Both the Committee and the appellant's mother are in receipt of Senior's Supplement Program Benefits.
5. The ministry issued a cheque from its Imprest Account in the amount of \$395.21, made out to the appellant on March 8, 2011 to completely cover the Annual Adjustment Fee charged by BC Hydro.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision at reconsideration was a reasonable application of the applicable legislation in the circumstances of the appellant. At reconsideration the ministry denied the appellant's request for a crisis supplement to cover the cost of the annual adjustment fee for BC Hydro and late payment charges owing to BC Hydro.

The ministry considered the criteria set out in the legislation governing the granting of crisis supplements in the *Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 5 and the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 57*, namely that the requested item must be required:

- to meet an unexpected expense or obtain an item unexpectedly needed; and
- [the appellant has] no resources available to purchase the item on his own, and
- failure to provide the item will result in imminent danger to the appellant's physical health.

The Ministry found that failure to provide the item may result in imminent danger to the appellant's physical health. However they found that the annual adjustment fee was not an unexpected expense, nor an item that is unexpectedly needed, and further that there is no indication that the appellant had exhausted all the resources available to him.

Section 5 of the *EAPWDA* states that, "*subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.*"

Section 57 (1) of the *EAPWDR* states that, "*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 59 (7) of the *EAPWDR* states that, "*Despite subsection (4) 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.*"

Regarding the "unexpected" nature of the BC Hydro Annual Adjustment Fee, the evidence of the Committee is that for years this has been covered by the ministry. The Committee said that he had been unable to find copies of the ministry's cheques covering these charges because of the number and disarray of many of his documents together with his poor sight which made search difficult. He told of problems faced in his attempts to gain access to the ministry's own files. However he pointed the panel to the cheque issued by the ministry in March, 2011, totally covering the then charged BC Hydro Annual Adjustment Fee.

The position of the representative from the ministry was that she had not seen copies of the previous cheques allegedly issued by the ministry covering the Annual Adjustment Fee. She told of changes to the ministry's computer system. She was not in a position to say whether or not such cheques had been issued prior to the cheque that was issued on March 8, 2011.

There is no evidence before the panel to put into question the Committee's assertion that for years the ministry had issued cheques to cover BC Hydro's Annual Adjustment Fee. The evidence of the representative from the ministry was simply that she had not seen them and her evidence as to changes to the ministry's computer system and difficulties arising from that. The panel accepts the Committee's explanation for his inability to produce copies of these cheques. The panel had before it the ministry's cheque covering this charge in March 2011. There is no evidence before the panel that when issuing the cheque in March 2011 the ministry had given notice to the appellant that this was a "one off" payment, or issued any warning that despite covering the charge at that time, it would not be covering it in the future. As such the panel finds that the ministry gave the appellant reason to believe that this cost would be covered by it in the future. The ministry put the appellant in a situation where the charge was an unexpected expense for the appellant. Expense does not exist in a vacuum, it is charged against an individual – in this case the appellant. The panel therefore does not find reasonable the ministry's decision at reconsideration that the Annual Adjustment Fee was not an unexpected expense or that it was unexpectedly needed. For them so to find they would need to have advised the appellant that their payment of March 2011, following their payments to the committee in earlier years, did not indicate that they would in the future be covering BC Hydro's Annual Adjustment Fee.

Regarding the resources available to the appellant to cover these charges, the evidence before the panel is that the appellant is not employed. The Supreme Court of British Columbia found the appellant to be incapable of managing himself or his affairs. His physician describes the appellant in a letter dated April 26, 2012 as living with cognitive/behavioral problems which make it difficult for him to clean his teeth and having frequent generalized tonic-clonic seizures/month. The evidence of the Committee is that the appellant's health is so fragile that he cannot be left alone in their residence. The appellant was described as dependent on the financial assistance he receives as a person with disabilities. The appellant was also described as being a person requiring, for the sake of his health, a high degree of warmth in the home, thus making it deleterious to his health to cut back on heating as a way of cutting back on energy use and therefore fees from BC Hydro. In that situation the panel finds that the appellant, as a family unit, lacks resources to cover the higher than normal use of electrical power that he needs. We find the ministry's decision at reconsideration on the issue of resources available to the appellant to be unreasonable.

The suggestion of the ministry's representative at the hearing that the ministry be asked to cover one quarter of the Annual Adjustment Fee, given that the appellant shares his residence with three other persons, was not before the ministry at reconsideration and is not suggested by the ministry in their decision at reconsideration. Therefore the panel will make no finding on the reasonableness or not of this suggestion.

The ministry having found at reconsideration that failure to meet the appellant's expense for utilities may result in imminent danger to his physical health, the panel finds that the ministry's decision at reconsideration was not a reasonable application of the applicable enactment in the circumstances of the appellant as all the criteria set out in the legislation are met.

Accordingly the panel rescinds the ministry's decision.