

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of September 14th, 2012 wherein the ministry denied the appellant a crisis supplement under section 59 Employment and Assistance Regulation (EAR) to pay her outstanding utility bills (hydro and gas), the reconnection fees as well as funds to cover the remaining outstanding balances on the hydro and gas bill because the ministry determined that: (1) that these debts had been incurred prior to the appellant being on assistance and therefore the appellant is not eligible for assistance or supplements for debts that were incurred before the appellant was eligible for assistance as set out in section 26(1) EAR; and 2) that the appellant did not meet the all criteria – that the appellant does not have resources available to meet the expense (pay the outstanding bills on her own] – as set out in section 59(1)(a) EAR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 4
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 26, 59

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- Fortis BC statement for August 2012 showing an opening balance of \$974.91 with payments of \$250 and \$350 leaving an immediate balance due of \$355.16 and a balance of \$385.65.
- Notice of disconnection from Fortis BC dated July 4th, 2012
- BC Hydro statement dated July 11th, 2012 showing a previous balance of \$571.12 and a balance payable of \$645.88.
- Notice of Default letter dated July 24th, 2012 from the credit bureau regarding the BC Hydro account.

In September 2011, on a previous application for assistance, the appellant received a crisis supplement for the Fortis BC reconnection fee and the outstanding hydro amounts were deferred. In October 2011 the ministry paid a utility deposit to Fortis BC. On June 30th, 2012 the appellant became unemployed but was not eligible for Unemployment Insurance (EI) benefits. On July 31st, 2012 the appellant signed an application to reopen her file for income assistance. The appellant had paid her rent for two months, other household expenses and had now exhausted all her savings. To assist, the ministry paid the appellant's August shelter benefit directly to Fortis BC. On August 9th, 2012 the appellant requested a crisis supplement to pay the outstanding BC Hydro bill, a BC Hydro reconnection fee and the outstanding bill with Fortis BC. The ministry contacted BC Hydro and determined the electricity (BC Hydro) had been disconnected since May 2012 and that the outstanding utility debts for hydro and gas were incurred prior to the appellant applying for and being eligible for income benefits and supplements. The ministry also determined that the appellant's shelter cost exceeds her income entitlement but the appellant does not wish to move.

The hearing commenced at 1:05pm with all parties present. At 1:50pm there was a disturbance on the line and a conference recording came on. The parties were instructed to disconnect and reconnect using the teleconference system. This was done and the hearing continued. The disconnection was less than 2 minutes.

At the hearing the ministry relied on the facts as stated in the reconsideration decision. The ministry testified that an offer had been made to the appellant to provide the reconnection fee for hydro and arrange for the deferred payment plan but the appellant refused the offer wanting the ministry to pay the outstanding bill. The ministry testified that only ½ the debt can be deferred and put to a deferral payment plan which is paid back by a low monthly payment but that the person must be on assistance with the agreement is signed. The ministry testified that BC Hydro is the only branch that will enter into this type of agreement. The deferral of debt plan is not offered by Fortis BC. The ministry testified that all the appellant's debts were incurred prior to the appellant applying and receiving assistance and the ministry is not legislated to provide supplements for these debts. The ministry clarified that in the reconsideration decision it states that "Information has been provided to establish you require a crisis supplement for utilities to meet and unexpected expense, or obtain an item unexpectedly needed", however, it is the ministry's position that this would apply only to the current month that an applicant would make application for the supplement and would not cover the months preceding the time the appellant was not on assistance.

The panel accepts the testimony of the ministry and finds that the ministry's testimony contains information or evidence that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

At the hearing the appellant testified that as of October 1st, 2012 the legislation was changed to allow her to earn an extra \$200 per month as income. The appellant stated that she had attended to the Fortis BC bill and that was no longer an issue as she is on a monthly payment plan. The appellant testified that she has been without hydro for some months and that it is getting cold and she is in crisis. The appellant testified she did not

refuse the BC Hydro reconnection fee and deferral payment plan and didn't understand why the ministry is now saying that she did. The appellant testified that she was only able to find employment for a short time this past spring but during the time she worked she had saved over \$1600 and when she lost her job she used her savings to pay her rent in advance and pay other bills instead of paying down her hydro bill. The appellant acknowledged that the ministry paid \$350 directly to Fortis BC which was her shelter allowance for that month. The appellant testified that she did not refuse the ministry's assistance with hydro and now feels there was a miscommunication between the parties.

The panel accepts the testimony of the appellant and finds that the appellant's testimony contains information or evidence that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

The panel makes the following finding of fact:

1. The BC Hydro bill had an outstanding balance when the appellant applied for assistance.
2. The Fortis BC bill had an outstanding balance when the appellant applied for assistance.
3. The ministry agreed that information has been provided to establish failure to provide funds to pay the outstanding amount will result in imminent danger to the appellant's physical health.
4. BC Hydro disconnected the appellant's power in May 2012 because the account was past due.
5. The appellant received a Notice of Disconnection from Fortis BC dated July 24th, 2012 as the account was past due.
6. The appellant became unemployed on June 15th, 2012.
7. On July 31st the appellant signed an application for income assistance.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration to determine the appellant was not eligible for a crisis supplement under section 59 EAR to pay the appellant's outstanding BC Hydro and Fortis BC bills because these debts had been incurred prior to the appellant being eligible for income assistance as set out in section 26(1) EAR and further, because the appellant did not meet all the legislated criteria set out in section 59(1)(a) EAR.

The legislation considered:

Employment and Assistance Act (EAA)

Income assistance and supplements

Section 4 - Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance Regulation (EAR)

Effective date of eligibility

Section 26

- (1) Except as provided in subsection (2), (2.1) or (3.1), a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the minister determines the family unit is eligible for the income assistance or supplements, as applicable.
- (2) A family unit becomes eligible
- (a) for a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form,
 - (b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for income assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and
 - (c) for income assistance under sections 6 to 10 of Schedule A on the date of the applicant's submission of the application for income assistance (part 2) form.
 - (d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (f).]
- (2.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement from the date of the minister's decision on the applicant's request under section 17 (1) *[reconsideration and appeal rights]* of the Act in relation to the supplement.
- (3) If a family unit includes a person who qualifies as a person who has persistent multiple barriers to employment, the family unit becomes eligible to receive income assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month in which the minister determines that the person qualifies as a person who has persistent multiple barriers to employment.
- (3.1) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person who has persistent multiple barriers to employment, the person's family unit is eligible to receive income assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the date of the minister's decision on the applicant's request under section 17 (1) *[reconsideration and appeal rights]* of the Act in relation to the determination.
- (4) If a family unit that includes a person who qualifies as a person who has persistent multiple barriers to employment does not receive income assistance at the applicable rate under Schedule A from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:
- (a) the date the family unit became eligible under subsection (3) or (3.1), as applicable, for the applicable rate;
 - (b) 12 calendar months before the date of payment.
- (5) A family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

Crisis supplement**Section 59**

- (1) The minister may provide a crisis supplement to or for a family unit that is eligible for income 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 income 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 ministry argued that for the appellant to be eligible for a crisis supplement the applicant must meet all the criteria set out in section 59(1)(a) and (b) EAR. The ministry agreed, in the reconsideration, that the appellant met part of the criteria in section 59(1)(a) EAR that the supplement was needed to meet an unexpected expense or obtain an item unexpectedly needed, however, the panel notes at the hearing the ministry argued a crisis supplement for utilities is a time-sensitive issue and generally utilities cannot reasonably be considered an unexpected expense. Also, the ministry agreed information had been provided to establish that without the supplement imminent danger to appellant's health could occur, the criteria set out in section 59(1)(b)(i) EAR.

The ministry argued the appellant had not provided sufficient information to establish that she had no resources available to pay the outstanding amount owing on the utility bills. The ministry also argued the

appellant does not have a sustainable plan in place to maintain shelter costs including utilities; that the appellant's rent and monthly payments just for natural gas exceed her monthly shelter allowance and after these expenses are addressed there appears to be no money left for other household expenses, i.e. food, telephone, etc. The ministry argued it is not able to continue to issue crisis funds for reoccurring living expenses which have been unmanageable over the past year and these costs (rent and gas payments) puts the appellant \$30 in the arrears each month.

The ministry argued the appellant was offered a number of different options to assist her, i.e. pay the hydro reconnection fee, set up a deferral payment program with hydro (not offered by Fortis BC), provide a security deposit to Fortis BC and the appellant refused these options as she wanted the ministry to cover the reconnection fees and pay the remaining outstanding debts with BC Hydro and Fortis BC. The ministry argued that a crisis supplement under section 59(7) EAR is applied to cover utilities for the current month in which the supplement is requested and does not apply to past debt that was incurred prior to the appellant being on assistance.

The appellant argued she does not expect the ministry to pay her outstanding debts, she only asks that the ministry make the necessary arrangements with BC Hydro to have her power reconnected and set up a deferral payment program. The appellant argued that since she applied for the crisis grant she has made arrangements with Fortis BC to reconnect her gas and she will now be making equal payments (until she is employed again) in the future to address her outstanding bill, that her request for the crisis supplement to pay the remaining balance on the gas bill is no longer an issue. The appellant argued that she did not decline the ministry's offer to pay the hydro reconnection fee and set up a deferral payment program that there has been a miscommunication. The appellant argued she has been without power since May so she needs to heat her home and she is willing to do whatever it takes to see this happen.

The appellant also argued she does not understand the ministry's statement that information has not been provided to establish that she has no resources available to her to pay her outstanding debts on her own. The appellant stated that when she lost her job she had \$1600 in savings but this money has now been exhausted as she paid her rent two months in advance (so she would not default on her rental agreement), made a payment on the Fortis BC gas bill (\$275) and paid other debts she had incurred but did not make a payment BC Hydro bill, a choice she now regrets. The appellant argued all her financial statements were provided to the ministry which shows she has no money. The appellant argued that section 59(7) which states a crisis supplement may be provided for fuel for heating, fuel for cooking meals, and water should have been considered by the ministry and the legislation was not. The appellant argued the crisis supplement should have been provided under section 59(7) EAR for the utility reconnection fees for BC Hydro and Fortis BC as there is no electricity in the home to cook and no heat.

Section 59(1) EAR states that a crisis supplement may be provided to or for a family unit that is eligible for income assistance if:

- a) the supplement is required to meet an unexpected expense or obtain an item unexpectedly needed because there are no resources available to the family unit; and
- b) that 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*.

The panel finds that section 59 EAR sets out that all the criteria stated in that section must be met to be considered for a crisis supplement. The panel finds there are two criteria stated in Section 59(1)(a) which must be met:

- (aa) the supplement is required to meet an unexpected expense or obtain an item unexpectedly; and,
- (bb) that there are no resources available to the family unit to meet that expense;

and under section 59(1)(b) EAR either the criteria in (b)(i) or (ii) must be met but not both.

In the reconsideration decision the ministry agreed the appellant met the criteria in section 59(1)(b)(i) EAR however, failed to meet all the criteria stated in section 59(1)(a) EAR. At reconsideration the ministry also agreed the appellant met the criteria in that the supplement was to meet an unexpected expense or obtain an item unexpectedly needed; but did not meet the criteria that there are no resources available to the family unit to pay for the unexpected expense or obtain the item unexpectedly needed.

The panel finds the utility statements (BC Hydro and Fortis BC) show the overdue balance on each account existed prior to the appellant being eligible for assistance and the appellant stated in her testimony that she was aware of these outstanding balances on both utilities. The evidence is that the BC Hydro balance on the June statement is \$645.88 and previous balance was \$571.12; that in July 2012 the appellant received a letter of collection; and the ministry confirmed the hydro had been disconnected since May 2012. The evidence before the panel is that the Fortis BC account of August 9th, 2012 had a previous balance of \$974.91 and that two payments (\$375 and \$250) were made leaving an immediate balance due and payable of \$355.16. The \$375 payment to Fortis BC was made directly to Fortis BC by the ministry (from the appellant monthly shelter allowance) and the appellant made the \$250 payment. The appellant in her testimony testified she made arrangements with Fortis BC to pay her outstanding bill and have the gas reconnected.

The panel finds the evidence is that when the appellant applied for assistance the rent for July had already been paid, that the appellant's shelter costs exceeded her monthly support allowance by \$30 per month leaving no money for food or other expenses and that the appellant did not want to move to reduce her expenses. The appellant had provided the ministry with all her financial records and she testified that she does not have any money; that her savings were exhausted in paying her rent in advance and other bills, i.e. \$250 payment to Fortis BC and that she is able to sustain herself by growing her own food. There was no new evidence before the panel to support the appellant's position that she does not have resources available to her to pay her outstanding bills and household expenses.

The panel finds there is not sufficient evidence to support the appellant's position that she does not have resources available for unexpected items or items needed unexpectedly because she did address her financial commitments with Fortis BC to reconnect her natural gas.

The panel finds that the evidence supports that the ministry's decision that the appellant did have resources available to pay her outstanding utility bills was reasonable. The panel further finds that the ministry reasonably determined that the appellant did not meet all the criteria set out in section 59(1)(a) EAR and therefore the ministry's decision to deny the appellant a crisis supplement under section 59 EAR to pay her outstanding utilities was reasonable.

In reference to the appellant not being eligible for income assistance or supplements, the ministry argued that section 26 EAR states that a family unit is not eligible for income assistance or supplements in respect to a period that occurred before the date the minister determines the family unit is eligible for assistance or supplements. The ministry argued that the appellant requested a crisis supplement under section 59 EAR to have the ministry pay past debts (BC Hydro bill and the Fortis BC natural gas bill) that were incurred prior to the appellant applying for assistance and being eligible to receive supplements under EAR. The ministry argued the appellant applied for income assistance on July 31st, 2012 and then applied for the supplement (crisis supplement) on August 9th, 2012, however, the ministry confirmed that the debts to BC Hydro and Fortis BC were incurred prior to the appellant applying for assistance which made her ineligible for the supplement.

The appellant argued that she just needs some temporary assistance, i.e. repayable loan, until she is employed again and able to repay the ministry. The appellant argued that she needs assistance and is in crisis

because she had no hydro.

The panel finds section 26 EAR supports the ministry's position; a family unit is not eligible for income assistance or supplements in respect of a period that occurred before the date the ministry determined the family unit eligible for income assistance.

The panel finds that the ministry reasonably applied section 26 EAR in determining the appellant was not eligible for a supplement to cover the hydro and gas utility overdue accounts as these debts were incurred in a period before the appellant was eligible for assistance. Therefore the ministry's decision to deny the appellant a crisis supplement under section 59 EAR was reasonable.

The panel finds that the ministry's reconsideration decision is a reasonable interpretation of the legislation supported by the evidence and confirms the decision pursuant to section 24(1)(b) and 24(2)(a) of the Employment and Assistance Act.