

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry's) Reconsideration Decision dated May 16, 2013 in which the ministry denied the appellant's request for a crisis supplement to pay an outstanding FortisBC electricity bill.

The ministry's decision states that the appellant's request does not meet the criteria set out in Section 57(1)(a) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) in that the requested item is not an unexpected expense or was needed to obtain an item unexpectedly. The reconsideration decision also states that the appellant's request does not meet the criteria of EAPWDR section 57(1)(b) as there is no information to establish that that failure to provide the requested item would result in imminent danger to the physical health of any person in the family unit or removal of a child under the *Child, Family and Community Service Act* (CFCSA).

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 and Schedule A

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) The appellant's Request for Reconsideration dated May 1, 2013 (RFR) stating that the appellant needs an extension of time to provide the reason for the RFR;
- 2) Letter from the appellant's advocate dated May 3, 2013 (the RFR Letter) stating that the appellant and his wife encountered an unexpected expense when their daughter was removed from their home by the Ministry of Children and Families (MCFD) which resulted in their becoming ineligible for the Child Tax Benefit (CTB) and also resulted in a reduction to the appellant's support funds. The RFR Letter states that the temporary removal of their daughter and the resulting discontinued CTB and the reduced support funds was unexpected. In addition, the appellant also experienced an unexpected utility rate increase when the utility company implemented a rate increase as of January 2013. The RFR Letter states that without the crisis supplement the appellant's family unit is in imminent danger to physical health because they require electricity to keep warm and cook meals as a means to survival. The RFR Letter states that the appellant has no other resources and it is unreasonable for the Ministry to deny the crisis supplement;
- 3) Letter from MCFD to the appellant's wife dated March 5, 2013 stating that she is not eligible for CTB as of June 1, 2013, that she should cancel her CTB so it is less likely that she will receive an overpayment, and that if she is overpaid the federal government will require her to repay the money and may deduct an overpayment from future benefits;
- 4) Letter from Goods and Services Tax (GST) Credit/BC Low Income Climate Action Tax Credit and BC HST Credit Notice to the appellant dated April 5, 2013 (the Notice) advising that as of March 8, 2013 the appellant's daughter will no longer be included in the GST/HSTC/BCCATC calculation as of April 2013, as she is no longer an eligible dependant. The Notice shows there will be a quarterly GST/HSTC credit for one child of \$34.25 and a BCCATC quarterly credit for one child of \$8.64;
- 5) Notice from FortisBC, undated, stating that as of January 1, 2013 residential rates have been adjusted by 2.3%, and that a new general rate increase of 4.2% has been approved by the BC Utilities Commission order G-159-12. The notice also states that as of January 1, 2013, residential rates have been adjusted by 2.3% as a result of Commission Order G-196-10 in FortisBC's Rate Design and Cost of Service Application;
- 6) FortisBC bill with a billing date of March 8, 2013 showing that the appellant had an amount due of \$815.44. There are also handwritten notes on the bill indicating "\$410.43 \$105.01 as soon as possible" and handwritten notes indicating "phone back with payment arrangements"; and
- 7) Ministry notes printed May 16, 2013 indicating that the appellant continued to receive the CTB for two children of \$181.41 each for April 2013 and CTB for one child of \$181.41 for May 2013.

In his Notice of Appeal the appellant states that the sudden change to his income and electricity rate increase caused an unexpected need as it became more difficult to pay all of his bills resulting in a need for the crisis supplement.

The ministry did not attend the hearing. Having confirmed that the ministry was notified of the hearing, the panel proceeded with the hearing pursuant to the *Employment and Assistance Regulation* (EAR) section 86(b).

Admissibility of New Information

At the hearing the appellant, his wife, and their advocate provided oral testimony regarding their circumstances and their need for the crisis supplement to pay their FortisBC electricity bill. The appellant and his wife stated that they have a 10 year old special needs daughter and that in February 2013 the MCFD unexpectedly

apprehended her from their home. The appellant testified that they had a meeting with MCFD two weeks before the apprehension at which time the appellant understood that MCFD was satisfied with the care of their daughter and the items in place to address her needs. The appellant states their daughter's apprehension was a shock, and that MCFD returned their daughter to their care in 65 days.

As a result of their daughter's apprehension, the appellant states that they did not receive the CTB of \$513 in April as they normally would and their GST on April 5, 2013 was \$220 instead of \$600. The appellant states that with their regular monthly disability assistance, CTB, and GST they already have difficulty meeting their monthly financial needs but they are able to juggle their income around and "make it all work", even though it "doesn't look good on paper". However, the appellant states that as a result of the decrease to their income and the increase to the electricity rates, they were not able to meet the monthly bills, particularly the FortisBC bill. The appellant stated that they do not have the financial resources to pay the outstanding electricity bill in addition to their other monthly expenses. The appellant states that MCFD made a mistake apprehending their daughter and as a result of that mistake, there was a significant change to their monthly income which has resulted in financial distress and unexpected inability to pay their electricity bill. The appellant states that as it was the ministry's mistake they should compensate the appellant for that mistake.

The appellant states that although he is allowed to make \$800 on disability he has not been able to find any work that he can do to make any extra income.

The appellant's wife stated that they already go to the food bank to supplement their monthly income and as their daughter has special needs and soils herself regularly they have extra laundry to do on a regular basis. She stated that they need the electricity to do laundry, to keep perishable food items, and to cook and heat their rural home which is heated using a wood stove with fan attached. She also stated that their CTB was reduced as a result of their daughter's apprehension and although she has reapplied for the CTB now that their daughter has been returned to their home, she is not sure if her application will be processed in time to receive the June CTB.

The advocate stated that when a family is already on a tight budget and living below the poverty line, any reduction to their income is significant and even a decrease of \$50 to a monthly income and an increase of \$15 per month to an electricity bill is significant but in this case the reduction to the appellant's income was several hundred dollars resulting in severe, unexpected financial hardship.

The panel admits the appellant, the appellant's wife, and the advocate's oral testimony into evidence as it is in support of the information and documentation before the ministry at the time of reconsideration, in accordance with section 22(4) of the EAA.

The appellant's advocate also provided a written submission dated June 17, 2013 (the Submission). As the Submission was argument and did not contain any new evidence the panel accepted this as a Submission.

After the hearing was concluded, a ministry representative arrived advising that she was advised that the hearing was scheduled at 10:30 am, not 9:30 am. The ministry representative had a written submission that she had prepared for the hearing and asked that it be considered. The panel determined that the ministry's written submission should be not accepted into evidence or relied on for the purposes of this appeal as the hearing had already concluded.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision to deny the appellant's crisis supplement on the basis that he did not meet the legislated criteria of EAPWDR section 57(1)(a) and (b) was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant sections of the legislation are as follows:

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, and

(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
for a family unit in a year must not exceed the amount calculated under

or

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.

(BC Reg. 13/2003)

Whether the expense is unexpected or whether the request is required to obtain an item unexpectedly needed

The appellant's position, as set out in the RFR Letter and the Submission, states that the appellant's ineligibility/reduced CTB and BC family bonus resulting from their daughter's unexpected apprehension has caused the unexpected expense. In addition, the Submission states that the FortisBC rate increase also caused the appellant's utility bills to increase from January through March 2013 causing the Fortis BC bill to be more unmanageable in April 2013. The appellant's position is that with the higher electricity rates and reduced income it has caused an unexpected unmanageable FortisBC bill.

The appellant's position is that EAPWDR section 57(7) specifically provides that a crisis supplement may be provided to a family unit for heating, cooking meals and hydro. The appellant's position is that they were already living below the poverty line and the sudden reduced income to their family unit has caused undue hardship and an unexpected spiral of financial hardships, not just with electricity and shelter but also with food and transportation costs to get to additional appointments, etc.

The ministry's position, as set out in the reconsideration decision, is that the information does not establish that there was an unexpected expense, as payments on the FortisBC account are an ongoing monthly expense and not an unexpected expense or an unexpected need. The ministry's position is that the FortisBC rate increase in January 2013 does not establish an unexpected need in April 2013. The ministry's position is that the information does not establish that the removal of the appellant's daughter in February 2013 resulted in a decrease in income that led to an inability to make payments on his FortisBC bill.

The panel accepts the appellant's evidence that it was a shock when his daughter was apprehended. While the evidence of the ministry and the appellant is inconsistent in that the ministry states that there is no reduction to the appellant's income whereas the appellant states that their CTB and shelter were reduced after their daughter was apprehended, the panel finds that it is not necessary to resolve this inconsistency for the purposes of this appeal because as the FortisBC bill is an ongoing monthly expense it is not an unexpected expense or an item unexpectedly needed as required by EAPWDR section 57(1)(a). In addition, the panel finds that the appellant was previously notified of the FortisBC rate increase and four months had passed since the rate increase, the rate increase was not unexpected.

Moreover, the panel finds that if there was a reduction to the appellant's monthly benefits, any such unexpected reduction did not lead to the outstanding FortisBC bill as the appellant already had an amount _____

owing of \$815.44. For example, the FortisBC bill indicates that the appellant previously owed \$1,092.47 and had made payments of \$400 on January 21, 2013 and \$280 on February 22, 2013 which left him with an outstanding balance of \$815.44 as of April 10, 2013. This indicates that the appellant had a significant outstanding bill even before the appellant's daughter was apprehended.

The panel finds that the ministry's decision that the appellant's request for a crisis supplement was not required to meet an unexpected expenses or obtain an item unexpectedly as required by EAPWDR section 57(1)(a) was reasonable.

Whether resources available

The appellant's position is that he has not been able to make any money to make up for the decrease to his income or the electricity rate increase and has no other resources available to him to pay the outstanding balance owed to FortisBC.

The ministry's reconsideration decision does not address whether there are any resources available to the family unit to meet the expense. It appears to the panel that the ministry was satisfied that the appellant met this criteria of EAPWDR section 57(1)(a).

Imminent danger to health

The appellant's position is that without power they cannot cook, do laundry and maintain food in the freezer and fridge, and that sitting in the dark when the sun goes down will mean that they need to use candles. The appellant's position is that this puts the family in jeopardy health wise with physical health being at risk if there are no clean clothes and they are not able to eat meals, or store food in a fridge or freezer. The appellant also argues that there is a risk that their children will be apprehended if there is no power.

The ministry's position is that there was no evidence that there is imminent danger to the physical health of any person in the family unit or removal of a child under the CFCSA. The ministry's position is that the information does not establish the current status of a disconnection of service. The ministry also states that there is no documentation submitted from a medical professional or social worker to establish these criteria.

The panel finds that while it may pose significant difficulties with cooking, heating and laundry without electricity, there is no evidence indicating that the physical health of any person in the family unit is in imminent danger. The word "imminent" means something is impending or likely to take place at any moment and there is no evidence to establish any imminent danger to the physical health of anyone in the appellant's family unit as required by EAPWDR section 57(1)(b)(i).

There is no information to establish that the appellant's failure to pay his outstanding Fortis BC bill will result in the removal of a child under the CFCSA as required by EAPWDR section 57(1)(b)(ii).

Accordingly, the panel finds that the ministry reasonably determined that the appellant's request did not meet the criteria required of EAPWDR section 57(1)(b).

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the appellant a crisis supplement for his outstanding utility bill because he did not meet the criteria under Section 57(1)(a) and (b) of the EAPWDR was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel thus confirms the ministry's decision.