



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry's) reconsideration decision of December 17, 2013 in which the ministry denied the appellant's request for a crisis supplement to pay for hydro because the ministry determined that the appellant had not met any of the three conditions under section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry determined that the supplement was not needed for an unexpected expense, that there were alternate resources available and that failure to obtain a crisis allowance for hydro would not result in imminent danger to the appellant's health.

PART D – Relevant Legislation

Section 57(1) of the EAPWDR

PART E – Summary of Facts

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

- The summary of facts section of the reconsideration decision dated December 17, 2013, which states:
 - the appellant is currently receiving disability assistance as a sole recipient with no dependent children. His file opened in July, 2005.
 - on November 5, 2013, the appellant submitted a hydro bill to the ministry dated October 25, 2013 in the amount of \$3,525.84 and requested a crisis supplement for utilities.
 - portions of the hydro bill date back to November, 2012, and this matter had been through reconsideration and tribunal processes and denial was upheld. The ministry notes that the appellant's hydro bill has not been paid in full since November, 2012.
- The decision summary section of the reconsideration decision above, which states:
 - The appellant receives monthly disability benefits of \$946.42, of which \$375 is for shelter funds intended to provide rent and utilities.
 - the appellant was aware that the hydro bill with a current balance of \$3,525.84 has not been paid in full since the fall of 2012. He acknowledged to the ministry worker that he had been aware of his accumulating hydro bill for some time.
 - the ministry worker confirmed with the hydro supplier that this current balance was an accumulation back to November 2012.
 - the appellant told the worker that he lived in a 12 by 48 ft mobile home and used motors to run a pond for raising fish. He also informed the worker he used electric power to grow medical marijuana and had a wood burning stove that could be used for heat.

The decision to be reconsidered section of the Request for Reconsideration, dated November 6, 2013 which states:

- the ministry worker was informed by the appellant after the crisis supplement was requested that the appellant planned to challenge the hydro supplier regarding the amount of the hydro bill but was told he would have to hire an electrician. The appellant told the ministry worker that he uses little energy himself but does operate small motors to run a pond in which he raises fish.
- the Reason for Request for Reconsideration section of the Request for Reconsideration dated November 25, 2013 in which the appellant states:
 - the hydro supplier told him they [hydro] will not accept a partial payment.
 - the appellant requires hydro for light, fridge, heater and 3 pumps for his fish tanks. Water is also on a pump.

- he lives in a 12 by 8 ft mobile home.
- he has a license to grow medical marijuana and can grow 30 plants which get heat from a stove pipe from a wood heater.
- he has been making regular payments for hydro but "there is no explanation why the hydro bill has increased so rapidly."
- he states that "the installation of [a] smart meter has caused the bill to raise outrageously."
- the hydro supplier has informed him that the supplier is waiting to hear from the ministry by December 11, 2013
- a hydro bill dated October 25, 2013 to the appellant stating that the total amount owing is \$3,525.84, and that the payment is past due.
- an electric billing history of the appellant from the hydro supplier from January 2010 to November 2012. The history shows the appellant's daily average hydro use as:
 - 35 kWh (kilowatts per hour) for 2010, based on meter readings from January 20 to December 28;
 - 54 kWh for 2011, based on meter readings from January 26 to November 1;
 - 51 kWh for 2012, based on meter readings from February 23 to November 23.
- a copy of the ministry worker's file note on the appellant, with entries from October 3, 2013 to December 12, 2013, stating that the overdue hydro bill of \$3525.84 which the client asked the ministry to pay on November 5 and again on November 6, 2013 is "an accumulation of not fully paid bills back to November, 2012." The file note continues as follows: "Worker notes that Tribunal declined to pay bill in Feb/13 – part of this bill would relate to bill in the Tribunal." The note states that the ministry worker advised the appellant on November 5, 2013 to ask the hydro provider "for an evaluation of where Hydro." [The panel interprets this as a suggestion from the ministry worker that the appellant ask the hydro provider to explain the appellant's hydro charges.] The note also states that the appellant informed the worker on November 6, 2013 that the appellant "uses little hydro, but does have fish pond with motors etc."

After the reconsideration decision of December 17, 2013, the following information was received:

1. The appellant's reasons for appeal dated December 30, 2013, in which the appellant wrote: "I did not expect hydro bill to be as high as it is. Found wire buried in ground two weeks ago, pulled out, since [then] my use has been 40 to 55 K.W. per day with everything running. Not 750." The appellant states that he is sure that it [his high bill] is the result of another family's "doings."
2. A note from the appellant's doctor dated February 3, 2014 stating: "[the appellant] has severe COPD [chronic obstructive pulmonary disease] and should not use a wood stove – avoid all smoke into lungs [including] wood smoke, tobacco, pot, automobile."

3. A submission by the appellant included in the tribunal's appeal record package dated March 31, 2014 that includes a disconnection notice dated March 3, 2014 to the appellant from his hydro supplier, indicating a "total amount owing" of \$4,538.70.

4. A 12-page submission from the appellant's advocate dated March 27 that includes the appellant's hydro bills, with billing dates from May 28, 2013 to February 25, 2014. The following is the result of the panel's summary of the information on the bills. Using that information, the panel calculated the appellant's daily kWh usage for the periods indicated as follows:

- 114 kWh: March 23-March 31, 2013
- 113.7 kWh: April 1-May 24, 2013
- 119.6 kWh: May 25-July 24, 2013
- 78.7 kWh: July 25-September 24, 2013
- 116.6 kWh: September 25-November 21, 2013
- 64.29 kWh: December 21, 2013-February 19, 2014

The bills show the following payments/credits, which total \$1,234.29:

- \$154.29 (credits) April 1-July 24, 2013
- \$400.00 April 24, 2013
- \$100.00 September 10, 2013
- \$100.00 September 13, 2013
- \$100.00 October 3, 2013
- \$200.00 November 22, 2013
- \$80.00 January 10, 2014
- \$100.00 January, 24, 2014

5. A document prepared by the appellant's advocate on his behalf and presented to the panel during the hearing. The document states:

- The appellant uses 2 555-amp motors to run the pump system for his fish pen and 6 250-watt heat lamps to maintain the temperature of the water at 70-74 degrees. The fish will die if they hydro is cut off.

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- The appellant has not been able to sell any of the fish he is raising because he is still awaiting a license to do so.
 - He uses a wood stove for about 20 percent of his heat and the heat rises to the green house where he grows medicinal marijuana under license for personal use for his chronic pain. He does not use hydro for the marijuana.
 - The appellant states his mortgage payment is \$550 per month.
 - In November, 2013, the appellant contracted the hydro provider and requested an investigation regarding what he considered to be the high cost of hydro. The hydro provider was only able to check the hydro meter at the pole on the appellant's property. The appellant informed hydro that in December, 2013 he found a wire sticking out of the ground beneath his trailer but the appellant states "they [hydro] were not able to deal with that."
 - The appellant contacted the RCMP about his suspicion that someone was tapping into his hydro. At the hearing the appellant stated he contacted the RCMP in December, 2013 and the police gave him a file number for their investigation. The panel notes that the appellant did not provide the file number at the hearing.
 - The appellant claims his daily hydro use has been reduced to 54 kWh since he found (and pulled out) the wire under his trailer in December, 2013.
 - The appellant has severe food allergies which restrict him to mainly seafood and fresh vegetables. He relies on the fish he raises for seafood and the byproducts are used in hydroponics to grow vegetables that he states he could not otherwise afford.

The panel finds that the documents comprising #1-5 above contain information in support of the information and records that were before the minister when the decision being appealed was made. The documents provide supporting financial information as well as information related to the circumstance of the appellant relevant to the ministry's determination. The panel therefore finds that they are admissible as evidence in accordance with the Employment and Assistance Act (EAA), Section 22 (4).

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision, which denied the appellant's request for a crisis supplement to pay for hydro, was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence. The ministry determined that the appellant had not met any of the three conditions under section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The ministry determined that the supplement was not needed for an unexpected expense, that there were alternate resources available and that failure to obtain a crisis allowance for hydro would not result in imminent danger to the appellant's health.

Employment and Assistance for Persons With Disabilities Regulation

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 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.

(BC Reg. 13/2003)

With respect to the part of Section 57(1)(a), EAPWDR, dealing with an unexpected expense, the ministry's position is that utilities are an ongoing expense and cannot be considered unexpected. The appellant was aware that his hydro bill has not been paid in full since the fall of 2012. The ministry therefore contends that it cannot reasonably accept that the appellant needs a crisis supplement to pay for an unexpected item or an unexpected expense.

The appellant states that in January, 2010, a neighbor switched the appellant's meter for a meter with a higher hydro reading. The appellant's position is that his hydro bills since the fall of 2012 have been unexpectedly high. In his Reason for Request for Reconsideration, December 25, 2013, he states that the installation of smart meters has caused his hydro bill to increase. In the Reasons for Appeal section of his Notice for Appeal, December 30, 2013, he states that two weeks previously he found a wire buried in the ground and attached under his trailer. The appellant states that he pulled the wire out. Since then his hydro bill has decreased considerably, from an average of 750 kWh daily before he pulled out the wire to 40-55 kWh daily afterwards.

The appellant restated at the hearing that he suspected someone was tapping into his power. He stated that after he discovered the wire under his trailer, he asked the RCMP to investigate his allegation of power theft. He stated that the investigation has uncovered no wrong doing so far. The appellant provided no documentation to confirm that the RCMP was investigating his allegation.

He also stated at the hearing that he caught a neighbor switching his hydro meter to one with a higher reading in January, 2010 and that he lives in a neighborhood where he cannot trust his neighbors. He stated that after he asked hydro to check his meter, the hydro provider informed him that there was no problem with the meter and that he would have to hire an electrician to investigate his power use further. At the hearing the appellant stated that the smart meter was installed in 2012, likely in May or June, he could not remember.

The panel finds that it was reasonable of the ministry to take the position that utilities are an ongoing expense that the appellant should have expected. The panel finds, however, that the issue here is whether *the amount* of the appellant's hydro bill was expected. The panel finds that it was unreasonable of the ministry not to consider the amount of the appellant's hydro bill in its reconsideration decision. The panel finds that the appellant's contention that his hydro bill in 2013 was too high is not inconsistent with the evidence provided. The panel notes that the evidence shows



the last time the appellant's hydro bill was paid in full was November 2012. While the bills provided do not cover the period from December 2012 to March 23, 2013, and from November 21 to December 21, 2013, the bills from March 23, 2013 to November, 21, 2013 average 108.46 kWh daily. In contrast, the bill for the period after the appellant claimed he pulled the wire out from beneath his trailer is significantly lower: 64.29 kWh daily for the period from December 21, 2013 to February 19, 2014. The panel also notes that the appellant's daily power use for 2010 and 2011 was only 35 and 54 kWh respectively, compared with his March 23 to November 21, 2013 average of 108.46 kWh daily. While the panel finds that these numbers alone do not prove the appellant's contention that he was a victim of power theft during 2013, they are not inconsistent with such a contention. The panel finds it is reasonable that these numbers should have been taken under consideration in the ministry's decision with respect to the issue of whether the appellant's power bill was unexpectedly high during 2013 as the appellant claimed. Because they were not, the panel finds to be unreasonable the ministry's decision with respect to Section 57(1)(a), EAPWDR, dealing with an unexpected expense.

With respect to the part of Section 57(1)(a), EAPWDR, dealing with availability of resources, the ministry's position is that the appellant has regular monthly disability benefits to provide for adequate utilities for the appellant's mobile home. The appellant receives a monthly disability benefits of \$946.42, which includes \$375 for rent and utilities. The ministry states that there is no information on income from the appellant's fish pond or from the sale of medicinal marijuana. The panel notes that the appellant states he receives no income from the marijuana, which he grows under license for his personal medical use to treat chronic pain. He also states he has of yet received no income from the fish he raises, though he hopes to obtain a license to sell them. Regarding the adequacy of \$375 for rent and utilities, the panel notes that the appellant states his mortgage payments are \$550 per month and this is not disputed by the ministry. The panel therefore finds to be unreasonable the ministry's decision with respect to the part of Section 57(1)(a), EAPWDR, dealing with availability of resources.

With respect to the Section 57(1)(b), EAPWDR, the ministry's position is that the appellant has a wood burning stove that could be used for heat. According to the ministry, there is no information to substantiate an imminent danger to the appellant's health. The appellant's position is that he has severe impairments including COPD, asthma and emphysema that require he has the ability to keep his home warm; and his chronic pain and restricted joint mobility require that he take long hot showers. Further he needs electricity to maintain the fish and the vegetables he produces. The evidence provided by the appellant includes a note from the appellant's doctor stating: "[the appellant has severe COPD and should not use a wood stove – avoid all smoke into lungs [including] wood smoke, tobacco, pot, automobile." In light of the appellant's statements about his need for electricity and his doctor's note indicating that the appellant should not use a wood stove, the panel finds to be unreasonable the ministry's decision with respect to Section 57(1)(b)(i), EAPWDR, dealing with imminent danger. As the panel finds the ministry's decision to be unreasonable with respect to 57(1)(a) and (b), the panel rescinds the ministry's decision to deny the appellant a crisis supplement for hydro and refers the matter back to the ministry for a decision as to amount. The panel notes that on November 6, 2013, the appellant was denied a crisis supplement for utilities; that decision was upheld on appeal. The reconsideration decision currently under appeal dated December 17, 2013 was based on the appellant's request for a crisis supplement for a hydro bill dated October 25, 2013



(which included amounts owing accumulated up to November, 2012).