

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated June 13, 2014 that denied the appellant's request for a crisis supplement for hydro. The ministry determined that the appellant's request did not meet the criteria set out in section 59 of the Employment and Assistance Regulation.

The ministry is not satisfied that the need for the requested item was required to meet an unexpected expense or to obtain an item unexpectedly needed and that the appellant does not have alternate resources available to her.

The ministry considers that failure to have met the hydro expense would have resulted in imminent danger and/or the removal of a child; however, as the appellant met her expense and her power is reconnected, it is the minister's opinion that there is no current imminent danger and/or risk of child apprehension.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 59

PART E – Summary of Facts

The evidence before the ministry at reconsideration relevant to the issues under appeal included the following:

- A Disconnection Notice for Total Amount Owing of \$977.41 dated March 18, 2014. Past Due.
- A Shelter Information for the appellant indicating rental amount as \$1000 per month, security deposit of \$500, with a start date of August 1, 2013 for 2 adults and 3 children dated July 4, 2013.
- A 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated February 13, 2014, addressed to the tenants - the appellant and her husband because they failed to pay rent in the amount of \$1155 that was due on February 1, 2014.
- A letter from a property management company to the appellant dated February 21, 2014 advising that the family eviction will be pursued unless the outstanding amount for rent with late fees amounting to \$655 is paid shortly. It is also noted that they would prefer that the rent be paid directly from the ministry.
- A copy of a cheque query for the appellant with a breakdown as follows:
Allowances - shared parenting \$90, family bonus top up \$53.24, support \$401.06, shelter \$660, Total \$1204.30
Deductions - admin compensation \$950, CPP \$230.72, and Repayments \$20, Total \$1200.72.
- The appellant's Request for Reconsideration dated June 5, 2014 which included a submission from her advocate. The following statements provided the appellant's reasons for reconsideration:
 - On December 20, 2013, the appellant attended the ministry office looking for support after her hydro was disconnected earlier that day.
 - The ministry supervisor contacted the hydro company after which the appellant left the meeting with the understanding that a plan was in place to secure and budget for her family's hydro account.
 - The appellant was told by this supervisor that there would be a 6 month deferral made of her family's debt to hydro from their previous account and an equal payment plan had been set up for the family's hydro account at a cost of \$42 per month to be paid directly by the ministry.
 - At the request from the hydro company, the appellant faxed them a copy of her rental agreement and then subsequently the power was reconnected that same day.
 - When the appellant received her February assistance cheque on January 22, 2014 she noticed that the ministry had not deducted her equal payment plan payment for that month of \$42, so she paid the amount directly to the hydro company by the end of January.
 - After noticing that that the ministry was not taking the amount off her cheque the appellant continued to pay the amount she understood to have been agreed upon, paying hydro another \$42 for March 2014.
 - The hydro company transferred the amount of \$1598.71 owed from the family's previous account to their charges on May 20, 2014.
 - In December 2013, the appellant underwent surgery following acute illness and while she recovered with limited abilities in areas of daily living around the house and community, the family had to make do and experienced higher costs for meals and household expenses. The family also faced the demands of winter food and clothing expenses as

well as a holiday item for the children. Because of these expenses and their landlord holding the January rent check, the family did not have enough money to pay for their entire rent for January resulting in an eviction notice.

- A crisis grant for a portion of their rent was obtained from the ministry.
- The shelter portion of the assistance does not cover the rent; in fact the \$1000 rent is above the amount that the appellant receives from the ministry every month.
- The appellant's family relies on food banks and community programs to bridge the gap between their income and their food needs.
- The appellant often takes responsibility for purchasing items like school supplies for her other children.
- The appellant with the support of her advocate has inquired into community funds, approached her local MLA and met with an outreach worker from a local community association that also has access to funds for families in crisis, unfortunately, the amount required to reconnect this essential utility is far above what is available through these channels.
- On April 11, 2014, when the appellant brought the hydro disconnection notice to the ministry's attention, she was told that a crisis grant could cover the total due at the time \$977.41 but that a payment plan would have to be set up and the ministry would pay directly to hydro. This was said without reviewing the appellant's file.

On appeal the appellant submitted the following information:

1. Copies of the appellant's Hydro bills for January through May of 2014.
The charges to the appellant for current usage excluding previous amounts owing, service reconnection fees and late payment charges are as follows;
December 21 to January 16 - \$216.37,
January 17 to February 17 - \$224.53,
February 18 to March 17 - \$174.63,
March 18 to April 15 - \$164.48,
April 16 to May 15 - 65.44.
Payments of \$42 were made on January 31 and March 28, 2014.
The appellant's hydro was disconnected May 26, 2014.
2. The past due amount to include previous amounts owing, service reconnection fees and late payment charges are as follows;
December 21 to January 16 - \$1019.41,
January 17 to February 17 - \$1221.94,
February 18 to March 17 - \$1411.24,
March 18 to April 15 - \$1552.06,
April 16 to May 15 - \$1640.81.
3. A submission by the appellant's advocate.

At the hearing, the appellant's testimony was in response to questions posed by her advocate and the panel:

- The appellant stated that in regards to the EPP, she was present and overheard the ministry talking to hydro and the arrangements made were such that the ministry would make the payment directly to the hydro company and deduct the amount agreed upon of \$42 from her

assistance.

- A deferral for 6 months of a previous account's debt of \$ 1500 was also arranged at the same time after which the appellant was directed by the ministry to return to them to make arrangements for another deferral.
- She was to provide a copy of her lease to the hydro company which she did on December 20 by faxing it from one of the ministry's contractor's offices. She did not fax a copy to the ministry.
- She had realized when looking at her January assistance that the ministry had not taken off the \$42 and as she did not want to have her hydro disconnected, she paid it herself.
- The appellant stated that she had surgery 2 weeks before Christmas, has mental health issues, was stressed about the eviction notice, and afraid of losing her children which all contributed to her distraction in February when she did not pay \$42 to hydro.
- Arrangements made directly by herself with hydro for June were that the appellant would pay hydro the debt charge and reconnection fees.
- Arrangements made starting in July indicated that she has to call hydro every month to make a reference payment of \$274 towards the debt on their account and also she has to pay \$171 monthly for hydro usage. This monthly expense for hydro totals \$445.

At the hearing the ministry representative testified that the information on file was that an EPP was arranged as reported by the appellant; however, upon checking with hydro it was learned that the ministry's payments of \$42 were never actioned. The ministry representative reported that the request to the company that sets up the cheques for the ministry, which would have been used to pay the hydro company, were indicated in the file to be pending, and no further info was available. The ministry representative also indicated that other details were missing from the file and that confirmation that the lease had been faxed by the appellant to the hydro company was also not contained in the file.

When the ministry spoke with the hydro company on June 11, 2014, they stated that the appellant's power was reconnected on June 10, 2014 as she had made payment arrangements with them to pay off the balances owing (\$247 monthly over 12 months) with the first payment done on June 20, 2014. The hydro company also reported that there is zero money outstanding on the account. The ministry representative stated that the hydro company did not admit that the appellant made these arrangements under duress but rather gave the impression that everything was okay.

The ministry representative also stated that it is not typical for someone receiving assistance to pay \$455 monthly to hydro.

The panel determined the copies of the appellant's hydro bills as well as her testimony were admissible under section 22(4) of the EAA as they were in support of the record before the minister at reconsideration and provided relevant particulars about the appellant's situation and needs.

The ministry representative had no objection to the acceptance of the appellant's copies of hydro bills being accepted as evidence by the panel.

Findings of fact

The appellant receives assistance as a two parent family unit with one dependent child.

On December, 20, 2013 after having advised the ministry that her hydro was disconnected, the ministry contacted the hydro company on the appellant's behalf and arranged for \$1500 to be deferred for 6 months and a \$42 per month Equal Payment Plan (EPP) which was never actioned.

The ministry requested that the appellant contact the ministry in 6 months in order to request that the deferral of hydro debt be renewed for another 6 months.

As the hydro company required the appellant's rental agreement before reconnecting the hydro, the appellant faxed a copy to them and the power was reconnected that same day. (December 20, 2013)

The appellant made 2 separate payments of \$42 to the hydro company on January 31 and March 28, 2014.

On April 11, 2014, the appellant attended the ministry office with a disconnection notice from the hydro company indicating an amount owing of \$977.41.

On May 26, 2014, the appellant attended the ministry office to advise that her hydro was disconnected that same day and the balance owing was \$3,387.65.

On May 30, 2014 the ministry added the appellant's disconnection notice from March 18, 2014 to her electronic file.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant a crisis supplement for hydro on the basis that she did not meet all the legislated criteria pursuant to section 59 of the Employment and Assistance Regulation was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The ministry is not satisfied that the need for the requested item was required to meet an unexpected expense or to obtain an item unexpectedly needed and that the appellant does not have alternate resources available to her.

The ministry considers that failure to have met the hydro expense would have resulted in imminent danger and/or the removal of a child; however, as the appellant met her expense and her power is reconnected, it is the minister's opinion that there is no current imminent danger and/or risk of child apprehension.

Relevant Legislation

EAR

Crisis supplement

- 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, 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 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. (B.C. Reg. 12/2003)

Unexpected expense or item unexpectedly needed

The position of the ministry, as set out in the reconsideration decision, is that it is not satisfied that the appellant has an unexpected expense or requires an item unexpectedly. In January, the appellant was aware of her need to pay \$42 EPP monthly to the hydro company and paid it. The appellant did not pay the \$42 EPP due in February 2014, even though she knew to pay her EPP the month prior. The non-payment in February resulted in the hydro disconnection. As the minister finds the resulting disconnection and hydro expense were not unexpected and the appellant currently has a zero hydro expense, the minister finds the appellant does not require a crisis supplement to meet an unexpected expense.

The appellant's position is that an Equal Payment Plan was never set up on this account during the period in question. The reconsideration decision makes clear that the minister finds the resulting disconnection and hydro expense were not expected after the appellant did not pay her monthly EPP as required. The appellant argues that her hydro account bills for current charges since December 20 show that not only were they billed one and a half to nearly five and a half times the proposed EPP amount over the course of 5 months for monthly usage, they were also carrying charges of their usage from August 1 to December 19, 2013. This amount, originally at \$606.28 as of January 20, 2014 was also not put into an EPP contrary to communication between the ministry and the appellant on December 20. Charges from the family's previous address were deferred until June 20, 2014. The appellant submits that the unexpected expense she faced was not in fact because of non-payment of an EPP, but because the ministry negligently failed to set up an EPP. Informed by the ministry that the EPP was in place, the appellant did not expect to pay for past due and ongoing hydro charges that led to her family's disconnection.

Panel findings

The panel views this criterion in the context of section 59 of the EAR in its entirety, including its title "Crisis supplement." While part of the legislation deals with averting a crisis (failure to provide would result in imminent danger to physical health or removal of a child), the panel considers the overall legislative intent is to provide an effective means of dealing with a crisis – addressing in a timely way a sudden, unanticipated and adverse change in circumstances. The meaning of "unexpected" must be interpreted in this broader context.

This reconsideration decision concerns an application made by the appellant on April 11, 2014, with further information submitted on July 9, 2014 for a crisis supplement for hydro. The language repeatedly in the decision refers to an EPP which in reality was arranged for by the ministry on behalf of the appellant with the hydro company on December 20, 2013; however, was never actioned as

there was no follow-up with the supplier of the cheques and subsequently no payment was issued to the hydro company. However, the evidence indicates that a \$1500 debt from the appellant's previous hydro account was in fact deferred, as a result of the same arrangement. The appellant noting that the \$42 EPP was not deducted from her February assistance proceeded to make the payment before the end of January. Due to the appellant's mental health issues, recovery from recent surgery, eviction notice and fear of losing her children, the appellant was admittedly distracted in February and did not pay attention to her hydro account. The following month she once again paid the pre-determined \$42 EPP amount.

The panel finds that when the appellant received her disconnection of hydro notice in March; that this would have been unexpected, as she had understood that the EPP would be good for a 12 month period and that the previous account's debt was deferred for 6 months beginning in December 2013. The panel finds that the evidence is that the appellant did not anticipate having to pay for past due and ongoing hydro charges at a rate of 1&1/2 to 5&1/2 times the EPP pre-determined amount of \$42. After having taken the necessary steps to engage the ministry, who to the best of her understanding had remedied the issue of hydro disconnection by arranging for the EPP and the 6 month deferral of outstanding charges on December 20, 2013 was once again faced with that same situation in March 2014. Therefore, the panel finds that the ministry unreasonably determined that the need for a crisis supplement for hydro was not an unexpected expense in the circumstances of the appellant pursuant to section 59(1)(a) of the EAR.

No alternate available resources

The position of the ministry, as set out in the reconsideration decision, is that the appellant made payment arrangements with the hydro company on June 10, 2014 for the total balances owing and therefore, the ministry finds that the appellant had an available resource through which she met her hydro expenses.

The appellant's position is that her family has lived without power for two weeks after disconnection because of the ministry's failure to follow through with their commitment to arrange an EPP. After unsuccessful advocacy by community resources, the appellant was forced to agree to an EPP of \$445 per month on her account - \$171 for current usage and \$274 towards charges past due. For the first month June 2014, the appellant was only charged the debt portion and reconnection fees but for July 2014 they will owe the full \$445. The appellant finds that the ministry was unreasonable to conclude that the current financial arrangement with hydro entered into under the duress of having no power to cook, wash clothes, turn on lights and heat and essential appliances demonstrates an ability to pay. The appellant argues that it is unlikely she will be able to pay \$445 monthly and also meet the immediate needs as a family of five on a fixed income of \$ 864.30 per month after rent. This means that they have \$419.30 for 4 weeks of food, medical supplies, clothing, furniture, phone and any other needs for 3 children and 2 adults. The appellant submits that she does not have the available resources to meet the unexpected expense for which she requested this crisis supplement.

Panel findings

The panel finds that the evidence demonstrates the appellant has made significant efforts to acquire

funding from a variety of community resources albeit unsuccessfully. Further, the panel finds that the appellant who was under duress when she agreed to pay \$445 monthly for her hydro bill which is more than $\frac{1}{2}$ of her family unit's disposable monthly income did so in order to provide her family with the necessary power to cook, wash clothes, turn on lights and heat and operate essential appliances. The panel also finds that the ministry was unreasonable to determine that the appellant had the means to pay for a monthly hydro bill of \$445 which exceeds the amount of assistance the appellant receives for shelter and utilities.

In view of this evidence the panel finds that the ministry unreasonably determined that the appellant had resources available to her and the panel therefore, finds that the ministry was unreasonable to conclude that there are resources available to the family unit based on the evidence pursuant to section 59(1)(a) of the EAR.

Imminent danger and/or the removal of a child

The ministry considers that failure to have met the hydro expense would have resulted in imminent danger and/or the removal of a child; however, as the appellant met her expense and her power is reconnected, it is the minister's opinion that there is no current imminent danger and/or risk of child apprehension.

The appellant's position was that she was faced with no other option to address the threat to her family's health and the risk of loss of her children by the continued disconnection of hydro. A monthly hydro bill of \$445 is not tenable and threatens the health of the family. Had the appellant being supported by an EPP as communicated by the ministry, the family would not have been forced to agree to billing amounts that keep them in a position where their health is at risk because they are unlikely to be able to pay for their immediate needs such as food, clothing and make payments at this rate.

Panel findings

The panel agrees with the ministry in that failure to have met the hydro expenses would have resulted in imminent danger and/or removal of a child. However, the panel finds that it is clear from the evidence that the appellant in desperation made the arrangements for a new and future EPP with the hydro company because of the imminent danger of health to her family and the fear of the removal of a child and the loss of not seeing her other children. Having been failed by the ministry for not following through with the original EPP of December 20, 2013 and then after being told on April 11, 2014 by the ministry that a crisis supplement could cover the current total due of \$977.41 and then being refused the hydro supplement; the appellant believed that she had no alternative but to agree, under duress, to the terms of a new EPP which consists of \$247 towards the past due account as well as regular monthly charges of \$171 totaling \$445 per month, more money than her assistance for shelter and utilities. The panel also finds that with the family's hydro disconnected on May 25, and reconnected the day before the reconsideration decision was made, totaling 17 days without power, that the risk of imminent danger to the family and/or removal of a child were extremely high. The panel also confirms from the evidence that while the arrangements for a new EPP exist, no payment has yet, (at the time of this hearing), been made towards the new EPP and the appellant does not know how she can manage these payments. Therefore, the panel finds that the ministry unreasonably determined that the appellant has met her hydro expenses and that there

was no longer a risk of imminent danger to the physical health of any person in her family unit, including herself, or the removal of a child pursuant to section 59(1)(b)(i) &(ii) of the EAR.

Conclusion

Based on the foregoing, the panel finds that the ministry's decision to deny the appellant's request for a crisis supplement for hydro was not reasonably supported by the evidence. The panel therefore rescinds the ministry's decision in favour of the appellant.