

PART C – Decision under Appeal

The decision under appeal is the July 4, 2014 reconsideration decision of the Ministry of Social Development and Social Innovation (“Ministry”) in which the Ministry denied the Appellant’s request for a crisis supplement for utilities under section 57 of the *Employment and Assistance for Persons with Disabilities Regulation* (“EAPWDR”).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 57(1).

PART E – Summary of Facts

The Appellant has been designated a person with disabilities and receives monthly disability assistance.

The information before the Ministry at the July 4, 2014 reconsideration included the following:

- A copy of the Appellant's 2-page BC Hydro bill dated April 25, 2014. On the first page, the bill indicates a \$5,071.41 balance payable from the Appellant's previous bill, a \$200 credit based on payment made March 19, 2014, three late payment charges totaling \$141.14, current charges for the period from February 20, 2014 through April 22, 2014 of \$262.54 and past due amount to be paid of \$2,909.96. On the second page of the April 25, 2014 bill, it indicates a "transfer amount to installment plan" of \$4,871.41 and a "security deposit installment due April 25, 2014" of \$2,506.28. It also indicates on this page a balance payable of \$2,909.96.
- A copy of a previous decision of the Employment Assistance Appeal Tribunal dated April 4, 2014 ("April Appeal") provided to the Ministry and the Appellant on April 24, 2014. In the April Appeal, the Tribunal rescinded a previous reconsideration decision of the Ministry of December 17, 2013, in which the Ministry had denied the Appellant's request for a crisis supplement for hydro made in early November 2013. As required by legislation, the Tribunal referred its decision back to the Minister for a decision as to the amount of crisis supplement to be provided to the Appellant based on the information before the Tribunal at the April Appeal.
- A copy of the Appellant's request for reconsideration dated June 15, 2014.

The Appellant does not dispute the following facts set out in the Ministry's July 4, 2014 reconsideration decision:

- The Appellant receives a total of \$906.42 per month in disability assistance; of this amount, \$375 per month is shelter allowance and \$531.42 per month is support.
- The Appellant's monthly mortgage payment is \$550.00.
- As a result of the April Appeal decision, the Ministry confirmed that as of April 26, 2014, the Appellant's outstanding BC Hydro bill was \$5,012.55. The Ministry paid \$2,506.28 directly to BC Hydro on the Appellant's behalf on April 26, 2014 to avoid disconnection; at the time of this payment, \$2,506.28 was half of the Appellant's outstanding hydro bill.
- Also as a result of the April Appeal decision, the Ministry set up monthly installment payments of \$208.86 on the Appellant's behalf to be paid directly to BC Hydro starting June 8, 2014 for 12 months (these installments amount to \$2,506.28 – the remaining outstanding amount of the Appellant's hydro bill as of April 26, 2014). The monthly installment payments were to be paid directly to Hydro by the Ministry and deducted from the Appellant's support portion of his monthly disability assistance.

The Appellant was dissatisfied with the amount the Ministry determined it would pay BC Hydro as a result of the April Appeal – in particular, the Appellant believed the Ministry should pay the entire outstanding amount of \$5,012.55 on his behalf and should not have set up monthly installment payments of \$208.86 directly to BC Hydro from his disability assistance. The Appellant requested a new crisis supplement for utilities in the amount of \$2,909.96 – the amount outstanding as reflected on the April 25, 2014 BC Hydro bill – and directed the Ministry to cancel the monthly installment payments of \$208.86 to BC Hydro. On May 1, 2014, the Ministry informed the Appellant that it was denying his new request for a crisis supplement for utilities of \$2,909.96 and the Appellant requested reconsideration, which has resulted in this current appeal.

In his Notice of Appeal dated July 21, 2014, the Appellant writes that he disagrees with the Ministry's reconsideration decision because he "successfully won [his] Tribunal for a crisis grant on hydro arrears" [referring to the April Appeal]. He writes that he is a person with severe disabilities and "hydro is a basic requirement." The Appellant indicates that his monthly "income" [disability assistance] is \$906.42. He writes that his "rent" is \$550 [the Appellant confirmed at the hearing that he does not pay rent, but has a mortgage] and that \$175 comes out of his monthly support [to cover his shelter costs over and above the \$375 monthly shelter costs portion of his disability assistance]. The Appellant writes that his "regular payment per month for hydro is \$80" and he pays for prescriptions, so he is not able to afford his food. He writes that he also has to pay a monthly cost for wood for heat and he has no ability to pay \$208.86 [the monthly installments to BC Hydro] and he has a special diet so his health is at risk because of insufficient funds.

Prior to the hearing, the Appellant and his advocate submitted the following additional documents:

- A copy of a BC Hydro disconnection notice dated July 30, 2014 indicating that a total amount of \$2,380.75 is past due;
- A copy of a computer printout that the Appellant's advocate stated was provided to her by BC Hydro showing late payment charges on the Appellant's account for the period from February 18, 2012 through August 5, 2014.
- A copy of a 2-page letter from the Appellant to the complaint specialist at the Office of the Provincial Director of Child Welfare dated March 21, 2014.

In support of their submission of the new documents, the Appellant and his advocate told the panel that because the Ministry did not provide the Appellant the crisis supplement of \$2,506.28 (amounting to the rest of his outstanding hydro arrears as at April 26, 2014), and he had directed the Ministry to cancel the installment payments of \$208.86, BC Hydro intends to disconnect the Appellant's hydro at the end of August 2014 as reflected in the disconnection notice of July 30, 2014. The Appellant and his advocate said that the Appellant has late payment charges from BC Hydro (set out in the computer print out) for which he should not be responsible because these charges arose during the time that he was attempting to schedule an oral hearing at the Tribunal. The Appellant and his advocate said that given the April Appeal decision rescinding the Ministry's denial of his request for crisis supplement for hydro, if the Tribunal's oral hearing had occurred earlier as he had requested, the Appellant would not have incurred all of the late payment charges. The Appellant and his advocate referred to his letter to the complaint specialist as evidence setting out that the delay in setting an oral hearing was not the Appellant's fault.

At the hearing, the Appellant's advocate provided a 3-page written submission that she read at the hearing. In this submission, the advocate has listed the Appellant's monthly expenses totaling \$1,898.00, broken down as follows:

- Mortgage - \$550
- Gluten free diet - \$400
- Electricity - \$100
- Car [insurance] - \$148
- Gas - \$300

- Medication - \$140 ["Reactine and nasal spray are 'over the counter' drugs"]
- Phone - \$60
- Visitation - \$200 [the Appellant "has 2 sons currently in care who each visit twice a month"]

The Ministry did not object to the admission of the additional documents and written submission provided by the Appellant and his advocate prior to and at the hearing. The panel admits the additional documents and the written submission of the Appellant's advocate under section 22(4)(b) of the *Employment and Assistance Act*. The BC Hydro disconnection notice of July 30, 2014 and the computer printout of the Appellant's late payment charges to BC Hydro provides updated information about the Appellant's hydro account, the subject of the reconsideration decision. The advocate's submission provides written testimony and information about the Appellant's monthly expenses, supporting his argument on reconsideration that he did not have resources to cover his monthly hydro expenses. The panel notes, however, that the Appellant did not provide documentary evidence to support the amounts listed for his monthly expenses (such as copies of his car insurance or telephone bills, or receipts for his gas, special diet and over the counter medications). The Appellant's letter to the complaint specialist of March 21, 2014 supports his argument on reconsideration that the delay of several months for an oral hearing before the Tribunal increased the amount of his hydro debt.

The Appellant's testimony at the hearing is as follows. The Appellant lives in a trailer (to which he has added additional rooms) on an acreage he owns and his mortgage payments are \$550 per month, but he has not been able to pay his homeowner's insurance. The Appellant has a fish pond on his property and runs the pond pumps all the time. He uses a wood stove to heat the trailer and generate heat for the fish pond and the greenhouses he has built on to the trailer and its extensions. His doctor has told him that he should not use the wood stove because the smoke aggravates his disabilities (he has COPD, among other conditions), but he needs the wood stove to heat the residence, the fish pond, and the greenhouses. The Appellant typically takes 3-4 hot showers per day and keeps his living quarters at 78°F to reduce the pain caused by his disabilities. He tries to pay \$100 per month to BC Hydro, but he cannot afford to pay an additional \$208.86 per month to BC Hydro in installments. When BC Hydro installed a "smart meter" a couple of years ago, his hydro bills increased. The Ministry did not contact him to discuss the installment plan payments it arranged with BC Hydro and he would have liked the opportunity to negotiate with BC Hydro himself. His monthly expenses are much higher than his monthly disability assistance and he has paid many of his expenses on his credit card. A friend paid off his previous credit card debt of \$6,000.00 for him, but he has a current credit card bill of \$5,000.00.

At the hearing, the Ministry advised that it would only pay half of the outstanding amount for a crisis supplement for utilities to avoid disconnection. The Ministry explained that in the Appellant's case, the amount of \$2,506.28 paid directly to BC Hydro on April 26, 2014 was the maximum amount it would pay for the Appellant's crisis supplement as it avoided disconnection at that time. The Ministry stated that, given the Appellant's usage history and the amount outstanding on his account, BC Hydro required repayment of the remaining \$2,506.28 in monthly installments within one year – the Ministry said there was no room to negotiate the amount with BC Hydro and that the Ministry was aware that \$208.86 per month was high.

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry's reconsideration decision to deny the Appellant's request for a crisis supplement for utilities for outstanding hydro arrears on the basis that he did not meet the criteria set out in section 57(1) of the *EAPWDR* is reasonable.

The criteria to be applied by the Ministry on a request for a crisis supplement are set out in section 57(1) of the *EAPWDR* as follows:

- (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 ...

Submissions

The Appellant's position is that he meets the eligibility criteria to receive a crisis supplement for utilities for his outstanding hydro arrears. The Appellant's submissions focused primarily on the Ministry's decision, subsequent to the April Appeal, to pay one half of the Appellant's outstanding hydro arrears of \$2,506.28 and to arrange monthly installment payments to BC Hydro of \$208.86 for 12 months directly from the Appellant's disability assistance to repay the remainder of the outstanding arrears. The Appellant argued that he does not have financial resources to pay the \$208.86 monthly installments to BC Hydro and points to the evidence his monthly expenses are \$1,898, more than double his monthly disability assistance of \$906.42. The Appellant argued that it was unreasonable of the Ministry to negotiate installment payments of \$208.86 to BC Hydro on his behalf without consulting with him about the amount he could pay. The Appellant acknowledges that his hydro bills are high and he said that he tries to pay \$100 per month towards his hydro bill, but he knows that his monthly charges may be more than \$100 (he does not dispute the charges for the period from February 20, 2014 through April 22, 2014 of \$262.54 on the April 25, 2014 bill before the Ministry at reconsideration). The Appellant further argued that he should not be responsible for late payment charges which accrued on his BC Hydro account during the period in which his request for an oral hearing before the Tribunal was delayed – he argues that if his oral hearing had been held when he initially requested it, he would not have incurred the late payment charges. The Appellant relies on the findings of the panel in the April Appeal that his hydro charges are an unexpected expense and that without hydro, he faces an imminent danger to his health.

The Ministry stood by its reconsideration decision. The Ministry's position is that the Appellant's outstanding hydro arrears are not an unexpected expense – although the Appellant argues that the delay in scheduling the April Appeal was not his fault, as it stated in its reconsideration decision, "the requirement to pay [his] hydro bill during that time was not an unexpected expense." The Ministry also says that the Appellant has the resources to cover the payments of \$208.86 from his disability assistance to hydro each month; although the Ministry representative at the hearing agreed that \$208.86 was high, this amount was required by BC Hydro and was not negotiable. The Ministry representative at the hearing acknowledged that hydro is considered a basic necessity, but the Ministry's position is that as the Ministry has paid half of the Appellant's outstanding debt to BC Hydro

and had negotiated monthly installment payments to avoid disconnection, the failure to pay the outstanding amount would not result in imminent danger to the Appellant's physical health.

Decision

In order to receive a crisis supplement under section 57 of the EAPWDR, an applicant must meet all three of the criteria set out in subs. 57(1) – if the applicant does not meet one of the three criteria, the crisis supplement will not be provided.

As was explained to the Appellant and his advocate at the hearing, the issue before this panel on this appeal is the reasonableness of the Ministry's July 4, 2014 reconsideration decision denying the Appellant's new request for a crisis supplement for his outstanding hydro arrears of \$2,909.96.

This panel also explained to the Appellant and his advocate that although a panel of the Tribunal may rescind a reconsideration decision of the Ministry, a panel of the Tribunal has no jurisdiction to order the Ministry to pay a specific amount subsequent to a successful appeal. Following the April Appeal, the Ministry paid \$2,506.28 directly to BC Hydro towards the Appellant's outstanding arrears and set up an installment payment plan directly to BC Hydro from the Appellant's assistance to cover the Appellant's remaining hydro debt. The Ministry then denied the Appellant's new request for a crisis supplement for utilities to cover the remainder of his outstanding hydro arrears of \$2,909.96, which is the decision under appeal to this panel.

Subsection 57(1)(a) of the EAPWDR requires that the requested crisis supplement is to meet an "unexpected expense" (or obtain an item unexpectedly needed). The panel notes that it is not bound to follow decisions of other panels of the Tribunal. In particular, the panel notes that the evidence before it on this appeal is different from the evidence before the panel on the April Appeal. The panel finds that the Appellant has continued to accrue outstanding hydro charges during the time that he has appealed the Ministry's reconsideration decisions and, further, that the Appellant has been aware of his increasing debt to BC Hydro for some time. The panel finds that the Ministry's determination that the Appellant's outstanding hydro arrears is not an unexpected expense (as required by subs. 57(1)(a)) is reasonable based on the Appellant's own evidence acknowledging that he has outstanding arrears to hydro and his hydro bills are generally high.

The panel has already found that it was reasonable of the Ministry to determine that the expense of the outstanding hydro bill was not unexpected such that the Appellant has not met the criteria set out in subs. 57(1)(a) of the EAPWDR. Subsection 57(1)(a) further requires the Appellant demonstrate that he doesn't have resources to pay the hydro charges. The Ministry's representative at the hearing agreed that a monthly payment of \$208.86 for hydro was high for a person receiving disability assistance. The panel notes that the Appellant receives monthly disability assistance of \$906.42 and his evidence at the hearing is that his monthly expenses are at least double his disability assistance (although he did not provide documentary evidence of his monthly expenses). The Appellant's evidence is that he has a credit card that he uses to cover his monthly expenses and a friend has paid his credit card debt for him in the past. The panel finds that the Ministry's determination in its reconsideration decision that it was satisfied that the Appellant has the resources to cover the payments of \$208.86 from his disability assistance to BC Hydro each month was reasonable.

The Appellant argues that with the pending hydro disconnection, his physical health is in imminent danger – the criteria set out in subs. 57(1)(b) of the EAPWDR. The Ministry representative at the hearing agreed that hydro is a basic necessity. The Appellant argued that because the Ministry has not paid the remainder of his outstanding hydro bill (\$2,909.96), he has received a disconnection notice from BC Hydro that his hydro will be cut off as of the end of August 2014. The panel notes that at the time of the Appellant's new request for a crisis supplement, the Ministry had paid half of the Appellant's outstanding BC Hydro bill and had set up monthly installment payments to avoid disconnection. The evidence before this panel is that the Appellant has a wood stove which provides him heat, he tries to pay \$100 per month to BC Hydro and, further, that the Appellant directed the Ministry to stop the installment payments to BC Hydro which would have paid off his outstanding arrears. The panel notes that it is the Appellant's action in cancelling the installment payments that has resulted in the disconnection notice from BC Hydro. The panel finds that the Ministry was reasonable in its determination that failure to provide the requested crisis supplement of \$2,909.96 for the remainder of the BC Hydro charges will not result in imminent danger to the Appellant's physical health.

The panel finds that the Ministry's determination that the Appellant did not meet the requirements of section 57(1) was a reasonable application of the legislation in the circumstances of the Appellant and confirms the Ministry's reconsideration decision.