

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of January 9, 2015 wherein the ministry denied the appellant a crisis supplement to pay the arrears on the appellant’s hydro bill. The bases for the ministry’s decision were as follows:

1. Part of the arrears, which had been accumulated up to and including April 26, 2014 (the “Old Charges”), had already been the subject of an appeal before the Employment and Assistance Appeal Tribunal (the “Tribunal”). The ministry applied section 17 of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”) in deciding that no right to reconsideration exists for the Old Charges.
2. For arrears accumulated after April 26, 2014 (the “New Charges”) the appellant did not satisfy two statutory criteria as set out in section 57(1) of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”). The ministry held that the hydro arrears were not an unexpected expense, and that failure to meet the hydro expense would not result in imminent danger to the appellant’s physical health.
3. The ministry also held that the appellant’s shelter costs are not sustainable and determined that the appellant was not eligible for a crisis supplement for that reason, ultimately because such ongoing unsustainable costs are not “unexpected” as required by EAPWDR section 57(1).

PART D – Relevant Legislation

EAPWDA sections 16 and 17;
EAPWDR section 57

PART E – Summary of Facts

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

- The appellant's Request for Reconsideration dated December 19, 2014 including a brief written submission.
- The appellant's hydro bills dated April 25, August 25, and October 24, all from 2014.
- A typewritten "breakdown" of the appellant's hydro bill for June 24, 2014. The "breakdown" was apparently prepared by the ministry based on information it obtained verbally from BC Hydro staff on October 31, 2014.
- A series of e-mails from, respectively, a lawyer for an advocacy agency, the appellant's advocate, and customer relations staff at BC Hydro.
- Documentation evidencing the appellant's purchase of his home in 2004.

At the appeal hearing, the appellant (through his advocate) submitted a written argument which she read aloud at the hearing, and copies of two previous decisions by panels of the Tribunal with respect to the appellant's requests for crisis supplements for hydro. The panel accepted these three documents as argument.

Information in the Request for Reconsideration, the reconsideration decision, and the previous Tribunal decisions indicates that:

- The appellant is a sole recipient of disability assistance whose file was opened in 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. The ministry denied the appellant's request at reconsideration on December 17, 2013. The appellant appealed and the reconsideration decision was rescinded by a panel of the Tribunal on March 31, 2014.
- In response to the Tribunal panel's decision, the ministry paid \$2,506.28 directly to BC Hydro on the appellant's behalf on April 26, 2014 to avoid disconnection. The ministry also made an arrangement with BC Hydro for monthly installments of \$208.86 to be paid to BC Hydro directly from the appellant's disability assistance. If the installment plan were followed through, the installment payments would pay off the remaining outstanding balance of the appellant's hydro account in one year.
- The appellant objected to the ministry only paying part of the outstanding arrears and he also directed the ministry to stop making the installment payments on his behalf. He asked the ministry to pay the outstanding balance of \$2,909.96 reflected on his April 25, 2014 hydro bill.
- On May 1, 2014 the ministry informed the appellant that it was refusing his request and subsequently upheld its decision at reconsideration on July 4, 2014.
- The appellant submitted a Notice of Appeal dated July 21, 2014. A panel of the Tribunal confirmed the ministry's reconsideration decision on August 13, 2014.
- On October 29, 2014, the appellant requested that the ministry pay the \$2,616.67 which was shown as outstanding on his August 25, 2014 hydro bill. The ministry's denial of his request at reconsideration on January 9, 2015 is the subject of the current appeal.

The April 25, 2014 hydro bill shows that the appellant incurred new usage charges of \$262.64 and made a payment of \$200.00.

The “breakdown” of the June 24, 2014 hydro bill shows that the appellant incurred new usage charges of \$80.80, and he appears to have made a payment of \$180.00.

The August 25, 2014 hydro bill shows that the appellant used \$184.36 in electricity and made payments totaling \$129.48.

The October 24, 2014 hydro bill shows that the appellant used \$506.30 in electricity and made payments totaling \$220.00.

In his Request for Reconsideration of December 12, 2014 the appellant wrote that “I have a hydro bill that is overdue and I have no ability to pay. I won the crisis application but the ministry only paid half the full amount. My severe health problems require that I have electricity to maintain my heat, cleanliness and safe food. I have no other resources to cover this hydro bill.”

The chain of e-mails among legal counsel for an advocacy center, the advocate, and the BC Hydro customer service representative, indicate that:

- The advocacy center advised the appellant’s advocate on December 5, 2014 that the Tribunal panel of August 13, 2014 made an error of law and asked itself the wrong question. However, the advocacy center did not have the resources to take the appeal decision to judicial review as the court would likely refer it back to a different Tribunal panel for a re-hearing and it would not lead to systemic change.
- BC Hydro has placed a “freeze” on the appellant’s account – that is, it won’t take any steps toward disconnection, but will follow the normal process of billing and collections - until March 15, 2015.
- The appellant was “very concerned that his Hydro continues to fluctuate...”

In his oral testimony on appeal the appellant, supported by his advocate, stated that:

- The issue on appeal is the ministry’s decision to pay only half of the crisis supplement that was “approved” by the Tribunal panel on March 31, 2014.
- After an energy audit conducted by BC Hydro in 2013, BC Hydro provided him with an energy efficient fridge and lightbulbs, but his bill spiked upward abruptly after a smart meter was installed sometime after mid-2012 or perhaps 2013.
- He complained to BC Hydro about his hydro consumption and was advised to hire an electrician to confirm whether energy was being lost somehow. The appellant could not afford to hire an electrician.
- The appellant said he found “a wire” under his trailer that he thought might have been evidence that a neighbour was tapping into his hydro power. The appellant disconnected the wire and his hydro consumption appeared to “level off” and “return to normal”.
- At some point in mid-2014 BC Hydro replaced his smart meter, telling the appellant that it was “the wrong meter.” His hydro usage again “went sky high” and then levelled off over last summer.
- The appellant pays \$550 per month on his mortgage. The mortgagee is a friend of the appellant’s from whom the appellant bought his home. The mortgagee has given the appellant a year’s grace from making mortgage payments, interest free. The mortgagee also paid off the appellant’s credit card bill of \$6,000.

- In part because of a dietary need, the appellant uses a series of ponds and electric pumps to raise fish on his property. He uses a wood-burning stove to heat his home.
- In response to a question from the panel, the appellant stated that his living costs are high, but they will be sustainable once his children return home. He stated that he has applied to have the children returned to him.

In his oral testimony on appeal, the ministry representative stated that:

- BC Hydro has a policy of only paying one half of hydro arrears – enough to prevent disconnection – and arranging installment payments for the other half of arrears to be paid from an applicant's assistance. In response to a question from the panel he said that this policy is province-wide and he has applied it many times before. He has not seen any written policy in this regard, but the process was confirmed to him by a policy manager in the ministry.
- He has never seen hydro arrears this large before.
- The ministry tried to contact the appellant regarding the installment payment plan but the appellant could not be reached. The ministry did contact the appellant's advocate who advised she would inform the appellant.
- The ministry could not get BC Hydro to reduce the \$208.86 installment payments – based on its policy, and given the appellant's past history, BC Hydro required the arrears to be paid off within a year.
- In response to a question from the panel, he answered that he hasn't seen "sustainability" used as an express reason for denial of a crisis supplement before, and is not aware of any written policy in this regard.

Admissibility of Additional Information

The oral statements of both the appellant and the ministry representative tended to reiterate and corroborate information that had been before the ministry at reconsideration. The panel accepted these statements as being oral testimony in support, in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision of January 9, 2015 wherein the ministry denied the appellant a crisis supplement to pay the arrears on the appellant's hydro bill. The bases for the ministry's decision were as follows:

1. Part of the arrears, which had been accumulated up to and including April 26, 2014 (the "Old Charges"), had already been the subject of an appeal before the Employment and Assistance Appeal Tribunal (the "Tribunal"). The ministry applied section 17 of the *Employment and Assistance for Persons with Disabilities Act* ("EAPWDA") in deciding that no right to reconsideration exists for the Old Charges.
2. For arrears accumulated after April 26, 2014 (the "New Charges") the appellant did not satisfy two statutory criteria as set out in section 57(1) of the *Employment and Assistance for Persons with Disabilities Regulation* ("EAPWDR"). The ministry held that the hydro arrears were not an unexpected expense, and that failure to meet the hydro expense would not result in imminent danger to the appellant's physical health.
3. The ministry also held that the appellant's shelter costs are not sustainable and determined that the appellant was not eligible for a crisis supplement for that reason, ultimately because such ongoing unsustainable costs are not "unexpected" as required by EAPWDR section 57(1).

The relevant legislation is as follows:

EAPWDA

Reconsideration and appeal rights

- 16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:
- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
 - (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
 - (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
 - (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
 - (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
 - (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].
- (2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.
- (3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 17 and 18 (2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a

reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the *Employment and Assistance Act* and the regulations under that Act.

(5) The Lieutenant Governor in Council may designate by regulation

- (a) categories of supplements that are not appealable to the tribunal, and
- (b) circumstances in which a decision to refuse to provide disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

No appeal from decision based on same circumstances

17 If a person reapplies for disability assistance, hardship assistance or a supplement after

- (a) the eligibility of the person's family unit for the disability assistance, hardship assistance or supplement has been determined under this Act,
- (b) a right of appeal under section 16 (3) has been exercised in respect of the determination referred to in paragraph (a), and
- (c) the decision of the tribunal in respect of the appeal referred to in paragraph (b) has been implemented

no right of reconsideration or appeal exists in respect of the second or a subsequent application unless there has been a change in circumstances relevant to the determination referred to in paragraph (a).

EAPWDR

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;

(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.

* * *

1. The Old Charges

The appellant did not expressly advance an argument with respect to the ministry's decision not to provide reconsideration of the Old Charges. He took the position that the ministry's decision to pay only half the arrears in April, 2014 should be rescinded. He argued that he "won" his appeal on March 31, 2014 and that the policy approach taken by the ministry – to only pay half the arrears and to have the appellant pay the rest in monthly installments – was not supported by legislation. He also argued that the ministry's determination that he could pay the balance of the arrears on monthly installments over the year was not reasonable. The appellant stated that he lives a simple life and tries to conserve on hydro usage but he simply can't keep up with current charges and pay the monthly installments at the same time. He said he is also subject to ongoing late payment charges that he would not face if the ministry had paid the full arrears. The appellant argued that the Tribunal panel of August 13, 2014 should have dealt with the question as to whether the ministry's decision to pay only half the arrears was reasonable, rather than treating his appeal as a new application for a crisis supplement.

The ministry's position is that the Old Charges were the subject of a previous appeal to the Tribunal,

and that section 17 of the EAPWDA precludes a further reconsideration of the matter since there have been no relevant changes in the appellant's circumstances.

Panel Decision

The panel's jurisdiction is set out in section 16 of the EAPWDA, and is subject to prescribed limits. The panel's jurisdiction in this case is to determine the reasonableness of the ministry's reconsideration decision of January 9, 2015. We do not have the authority to revisit the ministry's decision regarding its payment of one-half the appellant's arrears made in April, 2014. That was the subject of an appeal to the Tribunal in July, 2014 which led to the appeal decision of August 13, 2014. The process to challenge that panel's decision was to pursue judicial review. The panel acknowledges the difficulties the appellant faced in pursuing judicial review, but ultimately he did not challenge the panel's decision in the courts.

The general rule is that once a matter is adjudicated, it can't be revisited outside of established procedures for reconsideration, appeal, or judicial review. Section 17 appears to relax that standard to an extent by providing that the ministry and the Tribunal may revisit a determination if it is the subject of a new application and if "there has been a change in circumstances relevant to" the previous determination.

With respect to the Old Charges, there was no evidence before the ministry to indicate that there had been a relevant change in the appellant's circumstances. As the ministry noted, the appellant's request for a crisis supplement pertains to hydro costs up to April 26, 2014 which were previously the subject of an appeal, and the additional information provided by the appellant in the chain of e-mails among the advocate, the advocacy center and BC Hydro all pertain to previous decisions by the panels of the Tribunal. There is no indication of a change of circumstances.

Section 16(3) of the EAPWDA provides that, subject to certain exceptions, a person who is dissatisfied with the "outcome of a request for reconsideration under subsection (1)(a) to (d) may appeal the decision that is the outcome of the request to the tribunal." In this case, the ministry's determination that there is no right of reconsideration for the Old Charges was the "outcome" of the appellant's request. The panel finds that the ministry's determination that the appellant did not have a right to reconsideration is a reasonable application of the applicable enactment in the appellant's circumstances under section 24(1)(b) of the *Employment and Assistance Act* for the reasons outlined above. It follows that the appellant is not entitled to have the request for reconsideration of the Old Charges proceed to reconsideration.

2. The New Charges

The appellant's position is that he has no resources to pay his hydro bill. He also stated that he has severe health conditions that led to his designation as a person with disabilities, and that if the ministry fails to pay his arrears it will result in imminent danger to his physical health. The appellant acknowledged that his living expenses are "high" but argued that he expected his income will more closely match his expenses if he is successful in regaining custody of his children. He argued that there is no legislative authority for the ministry to adopt a "sustainability" criterion.

The ministry's position is that the appellant has owned his property for the past ten years, that he is

aware his hydro consumption varies from season to season, and that he has not provided evidence to demonstrate that his hydro charges are unexpected. The ministry acknowledged that the appellant has no available resources to pay his hydro bill in full, but it argued that the appellant does not currently have a disconnection notice so there is no imminent danger to the appellant's physical health. The ministry also argued that the appellant's high living expenses are not sustainable based on his income. It argues that this alone is sufficient reason to refuse the appellant a crisis supplement for hydro.

Panel Decision:

The onus is on the appellant to show that he satisfies the legislative criteria for eligibility for a crisis supplement. The New Charges were incurred after the decision to which the appellant objects – the ministry's decision to only pay half the hydro arrears in April, 2014. The appellant's bills demonstrate that the appellant on average uses more electricity each billing period than he pays for. Other than unsubstantiated claims that the first and second smart meters caused "sky high" spikes in his consumption (which he said subsequently levelled off both times) and that someone had been tapping into his power, the appellant has provided no evidence to indicate that his hydro charges are "unexpected."

The ministry's reference to "sustainability" in the panel's view simply reflects the legislative criterion with respect to the need for the expense to be unexpected. In the appellant's circumstances – where the appellant's chosen lifestyle causes his living expenses (particularly his hydro usage) to routinely exceed his ability to pay even after substantial financial assistance from his friend over the past year (payment of his \$6,000 credit card bill, and the one-year interest-free deferral of mortgage payments) – it is difficult to conclude that the ongoing shortfalls in his hydro payments are unexpected.

Section 57(7)(d) of the EAPWDR does contemplate that hydro can in appropriate circumstances be an unexpected expense suitable for a crisis supplement. However, in the circumstances of the appellant's case as outlined above, and for the foregoing reasons, the panel finds the ministry's decision on the "unexpected" criterion was reasonable.

Regarding the criterion relating to imminent danger to physical health, the word "imminent" connotes a feeling of immediacy that is not present in the appellant's situation. The evidence submitted by the appellant demonstrates that his account is not going to be subject to the threat of disconnection until March 15, 2015 at the earliest. There is still opportunity for the ministry and the appellant to come to an arrangement with BC Hydro in the interim. Accordingly, the panel finds that the ministry reasonably concluded that failure to meet the expense of the New Charges will not result in imminent danger to the appellant's physical health.

Based on this analysis, the panel finds that the ministry's decision regarding the New Charges was reasonable.

Conclusion

For the foregoing reasons, the panel finds that the ministry's reconsideration decision is a reasonable application of the applicable legislation in the appellant's circumstances, and confirms the ministry's decision.