

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 March 9, 2015 which held that:

1. the ministry was not able to approve the appellant’s request for a crisis supplement to pay her outstanding natural gas utility (NGU) bill because the appellant did not meet the eligibility requirements set out in section 59 of the Employment and Assistance Regulation (EAR). Specifically, the ministry found that the need to pay the NGU bill was not unexpected, and that a crisis supplement may only be provided for the calendar month the request was made whereas the appellant’s NGU bill was incurred prior to January 2015.
2. Under section 58.1 of the EAR the ministry may approve a utility security deposit supplement, but the ministry notes that the NGU will only reinstate the appellant’s account after receiving payment in full. Accordingly, a security deposit is not required at this time. In addition, the appellant’s eligibility for assistance was discontinued after February 2015 and consideration for a NGU security deposit may only be considered when a person is also eligible for income assistance.
3. Finally, the appellant requested a Reconsideration or Appeal supplement but this supplement may only be issued with respect to a decision to discontinue or reduce assistance or a supplement. Payments of the appellant’s NGU bill and security deposit have been denied, not discontinued or reduced. Consequently, Reconsideration or Appeal supplements are not applicable. Moreover, section 81(1)(b) of the EAR specifies that reconsideration and appeal supplements are not appealable to the tribunal. Accordingly, this issue was not considered by the appeal panel.

PART D – Relevant Legislation

EAR sections 54(2), 58.1, 59, 81

PART E – Summary of Facts

The documentary evidence before the ministry at reconsideration included the following:

1. A NGU bill for \$609.86 dated December 29, 2014, showing a due date of January 20, 2015.
2. An undated crisis supplement request form submitted by the appellant advising the ministry that she has received a notice of disconnection from the NGU. She states that the utility no longer takes payment by credit card and is not willing to defer payment unless the ministry contacts them directly. She requests a crisis supplement to pay her NGU bill. The form was date stamped January 19, 2014 and January 23, 2015.
3. A Note to Workers form dated January 23, 2015 submitted by the appellant on January 23, 2015 advising the ministry that she is required to pay \$609.86 to the NGU before January 31, 2015 in order to maintain heating, hot water, cooking and safety. The appellant cites EAR sections 58.1 and 59 to request a utility security deposit and/or a crisis supplement to pay the bill of \$609.86.
4. A Notice of Disconnection dated February 2, 2015 from the NGU to the appellant. It advises her that a payment of \$609.86 before February 16, 2015 is required to avoid disconnection, and that if it becomes necessary to disconnect service, then reactivation of service will require payment in full, plus a security deposit and a reactivation charge.
5. A letter from the ministry to the appellant dated February 12, 2015 that advises her that she is not eligible for a crisis supplement. It noted that a worker called the NGU and was advised that no payments have been made to the appellant's account since February 6, 2014.
6. A *Request for Reconsideration* signed by the appellant and dated March 5, 2015. The appellant included a one-page statement in which she states that originally she requested a supplement to pay a utility security deposit under Section 58(1)(a) (sic) of the EAR. She wrote that she had been contacted by the NGU regarding her bill and was asked for a security deposit to continue providing service. She explains that she had asked also for a crisis grant and expected the ministry to use its discretion and apply the appropriate legislation but due to a lack of prompt response by the ministry the appellant received a notice of disconnection from the NGU. She wrote that the expense is unexpected because: 1) with no notice to their customers, the NGU no longer accepts payment by a particular credit card that they previously accepted, and 2) had the ministry provided the original supplement request [the security deposit], there would not have been a disconnection notice. The disconnection notice was unexpected. She explains further that if the security supplement had been paid by the ministry it would have resulted in a lesser amount being paid out but now the NGU requires payment in full of \$609.86.

The appellant's *Notice of Appeal* was dated March 23, 2015 and states that she did receive income assistance for the months of January, February and March 2015 (after the ministry overturned its initial denial of this payment) and accordingly was eligible for the crisis grant for which she had applied. She also takes issue with the discrepancy in the date on the reconsideration decision letter (March 10, 2015) and the date on the summary of facts for the supporting information for the reconsideration (date stamped March 11, 2015). The appellant concludes "This puts into question whether the documents were actually considered prior to making the decision stated in the letter which is one day earlier".

At the hearing, the appellant explained that the disconnection notice requiring a payment of \$609.86 was not an unexpected item, but was an unexpected expense because she had expected that the ministry would have made appropriate payment arrangements to the NGU on her behalf. She

complained that she had continuously encountered obstacles in her dealings with the ministry including repeatedly being asked to prove things or to resubmit things. She frequently asked the ministry to date stamp documents to assist her to demonstrate that she had submitted them but the ministry frequently refused to do so. She originally applied for assistance in September 2013 and did receive it for the months of November and December 2013. But assistance was discontinued in January 2014 with no explanation being given by the ministry. She received some assistance payments in 2014 but her file was closed for some time in that year with no explanation being provided. At that time the appellant owed over \$1000 to the hydro utility and over \$600 to the NGU. The ministry paid \$159.33 to the hydro utility on behalf of the appellant and arranged with the utility to defer the outstanding balance so long as the monthly bill continued to be paid. As part of the negotiation, the ministry committed to making a regular monthly payment directly to the hydro utility, deducting the amount of the monthly payment from the appellant's income assistance cheque. When the ministry discontinued the appellant's income assistance in 2014, it also ceased payment of the monthly amount to the hydro utility.

The appellant continued to apply for assistance through 2014 and was advised in late November that her request would be approved. She did not receive assistance in December but did receive a payment of \$514.91 in January 2015, and an additional \$21 was paid by the ministry to the hydro utility.

The appellant explained that she attempted to pay her utility bills as much as possible even when she was not on assistance. She made some payments on a VISA credit card but the hydro and natural gas utilities would no longer accept credit card payments starting in February 2014.

In January 2015, the appellant applied for a crisis supplement after being advised orally by the NGU that her service would be disconnected if she didn't pay her outstanding bill. She applied for a utility security deposit as well since she was not sure which was the appropriate approach and she expected that the ministry would use their discretion to determine which approach was to be used. She received the disconnection notice in writing from the NGU in February and followed up on her request for a crisis supplement but was denied the supplement, and at the same time her income assistance was discontinued. The decision to discontinue her assistance was subsequently reversed by the ministry.

The appellant complained that in her dealings with ministry staff over the past 1½ years she frequently has found them to be unhelpful, uncooperative and at times threatening.

The appellant acknowledged, through her advocate, that she was not eligible for the reconsideration or appeal supplement that she had requested.

The ministry asked whether the appellant had any proof of payments made by her to the NGU. The appellant showed the panel a NGU bill for March 2015 that confirmed a payment of \$200 had been made. The ministry asked if any other payments had been made to the NGU over the past 1½ years and the appellant responded that in the absence of continuous income assistance she was unable to make such payments.

In response to a question from the panel as to why her income assistance was discontinued in 2014 the appellant indicated that she had been given no explanation from the ministry for this decision.

She claims that she asked for an appeal form but the appeal period had expired by the time she received the appeal material.

Prior to the hearing, the appellant provided additional documents, specifically: 1) A receipt issued by the ministry dated January 8, 2015 for the February assistance payment to the appellant. It shows that the appellant was eligible for a total allowance of \$610 but had a deduction of \$21; 2) Ministry confirmation of application for medical benefits dated January 8, 2015; 3) Letter dated March 11, 2015 from the ministry to the appellant advising that she will not be denied income assistance; 4) Copy of a Reconsideration Decision dated March 11, 2015 regarding the ministry's decision that the appellant was not eligible for assistance because she had failed to provide requested information. This resulted in the ministry determining that she should not be denied assistance for failure to provide the requested information.

At the hearing, the appellant provided the panel with four additional documents: 1) a photocopy of a ministry assistance cheque dated January 8, 2015 in the amount of \$514.91; 2) a photocopy of a ministry assistance cheque dated March 25, 2015 in the amount of \$337.62; 3) a ministry cheque history statement dated July 4, 2014 showing that the appellant received an assistance payment of \$450.67 for the month of June 2014, and the ministry made a payment of \$159.33 to the provincial hydro authority on behalf of the appellant; and 4) a disconnection notice from the provincial hydro authority for an amount owing of \$859.19.

The ministry objected to the admission of all four documents submitted by the appellant at the hearing on the grounds that they were not relevant to the appeal. The ministry did not object to the admission of the appellant's testimony that she made a payment of \$200 to the NGU in February/March of 2015 or to the documents provided prior to the hearing.

The ministry began by confirming that the appellant's eligibility for income assistance for the month of March 2015 is not an issue as the ministry reversed its initial refusal of income assistance for that month. The primary issue from the ministry's point of view is the matter of unexpected need for the crisis supplement. The ministry noted that it had been informed by the NGU that the appellant had made no payments in 2014, and observed that a disconnection notice is not unexpected when the bills have not been paid over an extended period of time. The ministry does have an agreement with the provincial hydro authority that allows them to make deferrals and ongoing payments on behalf of recipients of assistance, but these arrangements only apply for as long as the recipient continues to be on assistance. The ministry acknowledges that the appellant satisfies two of the three criteria for a crisis supplement. She requires the natural gas service for heat, cooking and hot water and accordingly, without it she would be in imminent danger to health. Additionally, there is no indication that she has alternate resources available to meet the expense of natural gas service. But the ministry concluded that the disconnection of natural gas service was a consequence of not making any payments on the account since February 2014 and therefore could not be considered to be unexpected since it had gone on for so long. Accordingly, the ministry determined that the appellant did not meet all of the criteria necessary to qualify for a crisis supplement.

In response to a question from the appellant, the ministry reported that ministry records show a comment entered in the file notes on February 12, 2015 confirming a conversation between the ministry and the NGU in which the NGU confirmed that the appellant had made no payments to the utility since February 6, 2014.

In response to a question from the panel, the ministry explained that the file notes indicate that the NGU confirmed that it was not willing to restore service if a security deposit alone was paid, but only in the event that full payment of the outstanding bill and a security deposit were paid.

In response to a question from the panel the ministry confirmed that there were gaps in the payment of income assistance to the appellant during 2014. The file notes indicate that her file was opened in April 2014 and closed in August 2014 but the full history of income assistance payments in 2014 was not readily available.

The ministry was asked to explain the following statement from the March 9, 2015 reconsideration decision as it applied to the appellant: "*In addition, under Section 59(2) of the Employment and Assistance Regulation a crisis supplement may only be provided for the calendar month the request was made. The outstanding (NGU) bill was incurred prior to January 2015.*" The ministry explained that this section does not readily apply to utility bills that typically relate to services provided in a previous period. The ministry acknowledged the view that this statement was more an observation rather than a ground of denial relating to the appellant's eligibility for a crisis supplement.

Additional evidence

The panel reviewed the five items of additional evidence to determine their admissibility. The panel admitted the evidence of a \$200 payment by the appellant to the NGU in February/March of 2015 because it supports the previous evidence of an outstanding NGU bill. The panel admitted the income assistance cheques for \$514.91 and \$337.62 because they confirm that the appellant was receiving some income assistance in 2014. The panel admitted the bill from the hydro utility as it supports the appellant's claim that she was in difficult financial straits. The panel admitted the cheque history dated July 4, 2014 as it confirms that the ministry deducted \$159.33 from the appellant's June 2014 assistance payment in order to cover a similar payment to the hydro utility. The panel admitted the documents provided prior to the hearing as they supported the appellant's claim that she was in receipt of income assistance at the time of her request. These included the following:

1. a receipt issued by the ministry dated January 8, 2015 for the February assistance payment to the appellant. It shows that the appellant was eligible for a total allowance of \$610 but had a deduction of \$21.
2. a *Reconsideration Decision* dated March 11, 2015 regarding the ministry's decision that she was not eligible for assistance because she had failed to provide requested information. This resulted in the ministry determining that she should not be denied assistance for failure to provide the requested information as confirmed in a letter to the appellant dated March 11, 2015.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's decision to deny the appellant's request to receive a crisis supplement to pay the outstanding natural gas utility (NGU) bill or a NGU security deposit was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that:

1. the appellant was not eligible for a crisis supplement to pay the outstanding NGU bill or a NGU security deposit because the ministry determined that the need to pay the NGU bill was not unexpected, and that a crisis supplement may only be provided for the calendar month the request was made whereas the appellant's NGU bill was incurred prior to January 2015; and
2. a security deposit is not required at this time; the appellant's eligibility for assistance was discontinued after February 2015 and consideration for a NGU security deposit may only be considered when a person is also eligible for income assistance.

The relevant legislation is as follows:

From the EAR:

Reconsideration or appeal supplement

54 (1) For the purposes of this section a reconsideration or appeal is determined when

- (a) a decision of the minister or a decision of the tribunal has been made in the reconsideration or appeal, if the decision can be implemented without a further decision as to amount, or
- (b) if a decision of the tribunal requires a further decision of the minister as to amount, the decision of the minister as to amount has been made.

(2) The minister may provide a supplement to or for a family unit that is eligible for income assistance if a recipient in the family unit delivers a request for a reconsideration under section 79 [*how a request to reconsider a decision is made*] or an appeal form under section 84 [*commencing an appeal*] in respect of a decision that resulted in a discontinuation or reduction of income assistance or a supplement but only if the recipient agrees in writing to repay the amount of the supplement paid under this section.

Supplement to pay a utility security deposit

58.1 (1) In this section, "**utility security deposit**" means an amount required by a utility provider of electricity or natural gas services to secure payment for the provision of residential electricity or natural gas services to a family unit.

(2) The minister may provide a utility security deposit to or for a family unit that is eligible for income assistance or hardship assistance, in an amount not to exceed the minimum amount required by a utility provider from a recipient, if

(a) the utility security deposit is necessary to enable the family unit to obtain or continue to obtain the services of the utility, and

(b) the recipient agrees in writing to repay the amount paid under this section.

(3) The minister may recover the amount of a utility security deposit provided under subsection (2) by deducting \$20 for each calendar month, or a greater amount with the consent of a recipient, from income assistance or hardship assistance provided to or for the family unit starting with the income assistance or hardship assistance provided for the calendar month following the calendar month during which the utility security deposit is paid.

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;
 - (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.

Decisions that may not be appealed

- 81** (1) The following categories of supplements are not appealable to the tribunal:
- (a) Repealed. [B.C. Reg. 313/2007, s. 1 (g).]
 - (b) reconsideration and appeal supplements under section 54;

Appellant's Position

The appellant argues that the disconnection notice was not an unexpected item but was an unexpected expense. She explained that she understood that a disconnection notice is expected to

be given when one fails to pay their utility bill for an extended period of time. But the appellant had requested a crisis supplement to cover the outstanding bill as well as a request that a security deposit be paid and expected that the ministry would make one or the other of these payments because the appellant felt that she qualified for them. She left it to the ministry's discretion to determine which approach was the more appropriate and was surprised to discover that the ministry had done neither since she had received no indication from the ministry that they were not going to pay the NGU. Accordingly, the appellant found the disconnection notice to be unexpected.

The appellant claimed that she made every effort to pay her utility bills when she had the resources to do so. But the changed policy of the utility companies to refuse credit card payments, and the inconsistent/interrupted schedule of income assistance payments from the ministry frustrated those efforts and made the need for the full payment of the NGU bill unexpected. She pointed to the \$200 in February/March 2015 as evidence of her efforts to pay the utility bills whenever she was able to do so.

The appellant acknowledged that she was not eligible for the reconsideration/appeal supplement.

Ministry's Position

The ministry argues that the appellant was not eligible for a crisis supplement because the disconnection notice was not unexpected. The ministry had confirmed with the NGU that the appellant had made no payments in 2014 after February 6, 2014. The reconsideration decision also argues that under section 59(2) of the EAR a crisis supplement may only be provided for the calendar month the request was made whereas the NGU bill was incurred prior to January 2015. But at the hearing, the ministry explained that that was not being used by the ministry as a basis for denying the crisis supplement.

The ministry explained that in their discretion, they determined that it would not be appropriate to pay a security deposit to the NGU on behalf of the appellant since they had been advised by the NGU that this would not suffice and that service would only be restored after payment in full of the outstanding balance. In the reconsideration decision the ministry also argued that the appellant was not eligible for a utility security deposit since her income assistance was discontinued in February 2015 and the legislation requires that the person be receiving assistance to be eligible for the payment of a utility security deposit. At the hearing, the ministry confirmed that the appellant had subsequently been found eligible for assistance for the month of February 2014 and therefore this barrier to her eligibility for a utility security deposit no longer applied.

Panel Decision

The panel gave careful consideration to the appellant's claim that the disconnection notice was an unexpected expense since she assumed that the ministry had made arrangements with the NGU to either pay the outstanding bill or pay the utility security deposit. It noted that the ministry had made such an arrangement previously on behalf of the appellant for the outstanding hydro utility bill.

Accordingly, it is not surprising that the appellant was expecting that the ministry would have also dealt with the NGU bill on her behalf. On the other hand, the ministry had determined that the appellant was not eligible for a crisis supplement and in discussions with the NGU had determined that paying only the utility security deposit would not be sufficient to restore service. The ministry referred to this in its reconsideration decision and reconfirmed it at the appeal hearing. The

appellant's Note to Workers, wherein the appellant noted that "In order to secure my (NGU) account I am required to pay \$609.89 before January 31, 2015" indicates that the NGU had already determined by January 23, 2015 that it was not willing to accept simply a utility security deposit – it wanted payment in full of the outstanding balance.

The evidence shows that the ministry did not follow-up promptly on the appellant's urgent requests of January 23, 2015. It did not contact the NGU until February 12, 2015 after the NGU had sent the appellant the written notice of disconnection.

The panel also acknowledges other aspects of the appellant's reported experiences with ministry staff. The panel appreciates that we have heard only one side of these interactions. Nonetheless, the appellant's advocate was listening by telephone to one of these episodes and confirmed the appellant's account of events. Moreover, the panel notes that the reconsideration decision contained an extraneous argument (regarding the applicability of section 59(2) of the EAR). Specifically, the ministry's statement that the crisis supplement may only be provided for the calendar month the request was made whereas the NGU bill was incurred prior to 2015 was acknowledged by the ministry at the hearing to be inappropriate.

However, based on the evidence that the appellant did not make any payments to the NGU between February 6, 2014 and the issuance of the disconnection notice on February 2, 2015, the panel finds that the ministry was reasonable in determining that the NGU bill was not an unexpected expense as required by section 59(1).

Similarly, the evidence of the ministry and the appellant's Notice to Workers indicate that the NGU was not willing to accept a utility security deposit without payment in full of the outstanding NGU bill. Since the appellant was not eligible for the crisis supplement for payment of the NGU bill in full, and the NGU was not willing to accept simply a utility security deposit, the panel finds that the ministry was reasonable in concluding that the utility security deposit would not enable the provision of residential natural gas services as required by section 58.1

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decisions that the appellant was not eligible for a crisis supplement or a utility security deposit were a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry decision.