

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated April 23, 2015 which denied the appellant's request for a crisis supplement to cover hydro utility costs. The Ministry held that the requirements of Section 57(1) of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were not met as the ministry found that:

- The appellant's hydro utility costs were not an unexpected expense;
- There was insufficient information to determine whether or not there were alternate resources available to the family unit to pay for utility costs; and,
- It was not satisfied that failure to meet the expense would result in imminent danger to the physical health of any person in the family unit.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 57

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Disconnection notice dated Friday, March 20, 2015 for the total amount owing of \$548.17, which is past due. If disconnection occurs, before the service is reconnected the total amount owing must be paid and a reconnection charge of up to \$355 will be charged and appear on the next bill; and,
- 2) Request for Reconsideration dated April 20, 2015, with the appellant's handwritten notes on the "Decision to be Reconsidered."

In her Request for Reconsideration, the appellant wrote:

- The ministry has created a "Catch 22" situation by refusing to help until there is a disconnection notice and then refusing to help because a disconnection notice is "not unexpected." In other words, there is no situation under which the ministry would agree to help;
- Now the hydro bill has become even more impossible;
- She requests that the ministry do what is right and help her with her hydro bill;
- As discussed with the hydro company, her plan is to go on equal payments once this is dealt with; and,
- The appellant's notes on the Request for Reconsideration 'Decision to be Reconsidered' included that: she first contacted the ministry regarding the crisis supplement in January 2015; she has made payment arrangements several times with the hydro company just to keep the account active until her PWD [Persons With Disabilities] comes through; the hydro bills averaged \$250 bi-monthly, not \$550; she did what she was told to do and is now seriously behind with no means possible of getting this paid; she is paying hydro \$250 when she receives her next cheque but, in the meantime, the current bill is "added on"; and the outstanding hydro bill and disconnection notice were unexpected.

Additional information

In her Notice of Appeal dated May 4, 2015, the appellant wrote:

- The ministry's explanation to her left no situation under which they would have provided crisis help.
- She was told that the ministry would not help pay hydro without a disconnection notice, then when she took a disconnection notice in she was told that they would not provide help with a disconnection notice because a disconnection notice is not "unexpected."
- This "Catch 22" situation is not acceptable to her.

At the hearing, the appellant showed a screen-shot of a graph of the hydro consumption at her residence. It showed a bar for the month of January 2015 at "77" compared to "38" for November 2014, indicating an approximate doubling of the hydro consumption.

At the hearing, the appellant stated:

- She has made arrangements with the hydro company and, specifically, she talked to a representative of hydro on March 26, 2015, April 8, 2015, April 20, 2015 and on May 25, 2015. She has agreed to pay \$215 per month for this month until August 2015, and \$198 in September 2015.
- The ministry has put her in a "Catch-22" because if she had been told that the ministry does

not help with hydro bills, then she would not have waited for it to get to the point of a disconnection notice and a \$900 bill.

- She and her husband had saved up \$250 to pay towards the hydro account but she “did not dare” make a partial payment to hydro because then they would not get the disconnection notice and, therefore, would not receive the supplement from the ministry.
- Although she has now made arrangements with hydro until September 2015, they will then be getting back into the winter months with higher bills and they will not be able to pay. She expects that they will lose the hydro service this winter and this is inevitably going to be dangerous.
- The arrangement with hydro includes payments towards the amount past due plus a portion of the current consumption. This alleviates the disconnection notice for the time being, at least until September 2015.
- The ministry stated in the reconsideration decision that she had received other notices but this is not correct because she did not receive any other notices besides the final disconnection notice. She did not receive the final disconnection notice until March 2015 because these notices are generated by computer and the hydro company advised her that they could not provide one earlier.
- On April 8, 2015, the ministry denied her request for a crisis supplement even though hydro costs seem to be clearly included in Section 57(7) of the EAPWDR. Section 57(7) of the EAPWDR specifically sets out that a crisis supplement may be provided for fuel for heating, fuel for cooking meals, water and hydro, and this section applies to her situation.
- The ministry stated that it is not unexpected that her hydro bill would increase over the winter months and while it was expected that the bill would increase somewhat in the winter, she never imagined that the bill would be over double the amount of the bills in the previous months.
- If the ministry will not help even when a disconnection notice has been received, she cannot think of a situation where the ministry will help with hydro bills.
- She and her husband did not keep the house very warm (around 15 degrees) because of the high cost. They just moved into an old farm house in July 2014 and recently talked to the previous tenants who live nearby. The previous tenants pointed out that the house is not insulated and uses electric baseboard heat. The previous tenants’ bills in the winter had been even higher, around \$800 per month.
- She and her husband went through a foreclosure about 1 ½ years ago and they have a wood stove that they would like to install in their current house. The landlord has agreed, but she has obtained a quote to have the stove installed and it was over \$2,000, which would leave them without funds for other bills.
- They pay \$850 per month in rent and they have been notified that their rent will be going up to \$950 per month.
- In terms of their income, they receive \$623.07 from the ministry in assistance and her husband receives \$563.74 and \$345 in CPP and OAS (which is deducted dollar-for-dollar by the ministry), for a total income of \$1,531.81. The ministry is aware of these amounts.
- She and her husband have no savings. The ministry did not ask for confirmation of the resources available to her.
- Her family and friends do not have the funds to pay a \$500 hydro bill as “in the current economic downturn, no one has that kind of money.”
- Although the ministry stated in the reconsideration decision that because the hydro has not been disconnected, there is no imminent danger to her health, she cannot understand why the

ministry would want them to have the service disconnected because then a large reconnection charge will apply and make the bill even higher.

- It is common knowledge that the amount of a shelter allowance is never sufficient to cover the actual cost of accommodation and always needs supplementing from the living allowance.

The ministry relied on its reconsideration decision, as summarized at the hearing. At the hearing, the ministry clarified that:

- The ministry expected the appellant would continue to pay as much as she was able towards the hydro bill after November 2014 and not stop payments altogether, and to see about making an arrangement with hydro.
- Typically the ministry would not provide advice regarding how to be eligible for a supplement, particularly a crisis supplement. The ministry would not advise clients to potentially put themselves in a crisis situation. While a disconnection notice is generally required before the ministry considers a crisis supplement for hydro, the notice is only one factor that is taken into consideration.
- It is reasonable for the appellant to take action to avoid a disconnection notice whenever possible. There had been no contact with hydro from at least January until March 2015. Hydro advised the ministry that the appellant was current with her account until November 2014 and had been paying over \$250 bi-monthly.
- The appellant receives a shelter allowance of \$570 per month and her rent is \$850 per month plus utilities, including hydro. It seems that the affordability of the appellant's accommodation is the problem.
- In terms of the availability of resources to the family unit, the ministry typically receives copies of bank statements to show that there are no savings that can be used to pay towards the hydro bill. Sometimes there will be a verbal confirmation or a written statement that various sources have been approached and that other resources are not available. The ministry expects to see that all funds have been depleted and that the client has reached an emergency situation.

Admissibility of Additional Information

The ministry did not object to admitting the information from the graph of the hydro consumption and did not raise an objection to the additional information in the appellant's oral testimony. The panel considered the graph as additional information that corroborates the claim of an increase in the hydro bills in the winter months, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision that denied the appellant's request for a crisis supplement to cover utility costs, on the basis that the requirements of Section 57 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were not met, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the appellant's circumstances.

Section 57(1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the crisis supplement, as follows:

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.

Ministry's position

The ministry's position is that the provisions of Section 57 of the EAPWDR allow for the ministry to provide a crisis supplement when all of the legislative criteria are met, namely that the supplement is required to meet an unexpected expense, there are no alternate resources available to the family unit to meet the expense, and failure to meet the expense will result in imminent danger to the physical health of any person in the family unit. The ministry argued that the appellant received hydro bills bi-monthly, had been paying her bill up to November 20, 2014, and it is not unexpected that the hydro bill would increase over the winter months or that failing to pay the bill would result in a disconnection notice. The ministry also argued that there is insufficient information to confirm that the appellant does not have the resources to pay the hydro bill, specifically that she does not have savings to pay the bill, that she is unable to pay the outstanding amount with her monthly assistance, she has been unable to negotiate a payment plan with the hydro company, or that she has exhausted the assistance of family, friends and community resources. The ministry argued there is insufficient information to show that failure to provide the appellant with funds to pay her hydro bill would result in imminent danger to the health of the appellant or her spouse. The ministry argued that the appellant has not provided any information to confirm that her hydro has been disconnected and the appellant has been in contact with hydro since she advised she is planning to go on to equal payments once this issue is dealt with.

Appellant's position

The appellant's position is that the hydro bill was an unexpected expense because while it was expected that the bill would increase somewhat in the winter, she never imagined that the bill would be over double the amount of the bills in the previous months. The appellant argued that the ministry has created a "Catch 22" situation which is unfair and unacceptable because they told her a disconnection notice would be required to be considered for a crisis supplement and then, when she obtained the disconnection notice, the ministry asserted that it was not unexpected that failing to pay the hydro bill would result in a disconnection notice. The appellant argued that hydro costs are clearly included in Section 57(7) of the EAPWDR, which specifically sets out that a crisis supplement may be provided for fuel for heating, fuel for cooking meals, water and hydro, and this applies to her situation. The appellant argued that she did what she was told to do and is now seriously behind on the hydro account with no means possible of getting it paid with the ongoing bills being added on. The appellant stated at the hearing that she and her husband have no savings and no one they know has any money to pay a \$500 hydro bill. The appellant argued that although she has now made arrangements with hydro until September 2015, there will be higher bills again in the winter months which they will not be able to pay and she expects that they will lose the hydro service this winter and this is inevitably going to be dangerous.

Panel decision

Section 57(1) of the EAPWDR sets out that the ministry may provide a crisis supplement to or for a

family unit if the family unit or a person in the family unit requires the supplement to meet an unexpected expense, is unable to meet the expense or obtain the item because there are no resources available to the family unit, and the ministry is satisfied that failure to meet the expense or obtain the item will result in imminent danger to the physical health of any person in the family unit. The criteria in Section 57(1) are geared towards assessing a “crisis” or an emergency situation and, while Section 57(7) of the EAPWDR provides an exception for utility expenses, including hydro, to the maximum monthly and yearly amounts prescribed in sub-sections (4)(b) and (5) respectively, an emergency situation must first be established through all of the criteria in Section 57(1) being met.

Unexpected expense

Regarding the first requirement that the family unit requires the supplement to meet an “unexpected expense”, the appellant argued that while she expected the hydro bills to increase in the winter months, she did not expect them to double. The appellant also stated that the ministry has created an unfair “Catch 22” situation because they told her a disconnection notice would be required to be considered for a crisis supplement and then, when she obtained the disconnection notice, the ministry asserted that a disconnection notice is not unexpected. While the appellant argued that she was surprised by the amount of the increase in the hydro bills in the winter months, she did not describe any reasonable inquiries made by her, either of the landlord, the hydro company, or previous tenants, prior to entering into the rental arrangement, to discover the amount of the total hydro bills for which she would be responsible. At the hearing, the appellant admitted that the house is not insulated, has electric baseboard heaters, and she discovered in recent conversations with the previous tenants that their hydro bills were even higher than the appellant’s in the winter months. The appellant stated that the average hydro expense in the fall was \$250 bi-monthly and that she did expect some increase in the hydro bill in the winter months.

As the ministry clarified at the hearing, the disconnection notice from hydro is one indicator of an emergency situation but, in the appellant’s case, she admitted that she had precipitated the disconnection notice by not making a payment towards her hydro account and not contacting the hydro company to set up a payment arrangement at that time. The appellant acknowledged at the hearing that she had saved \$250 to put towards the hydro account but “did not dare” make a payment or contact the hydro company to make an arrangement for fear of not ultimately getting some assistance from the ministry. Given that the appellant was aware of the ongoing amounts due for hydro and she admitted that she knew that this amount would increase in the winter months, and she intentionally did not take action available to her to avoid receiving a disconnection notice, the panel finds that the ministry reasonably concluded that the hydro expense was not unexpected, as required by Section 57(1)(a) of the EAPWDR.

No resources

The panel also finds that the appellant has not provided sufficient evidence to demonstrate that there are no resources available to the family unit to meet the expense. The appellant stated at the hearing that she and her husband have no savings, but she did not dispute that she had not provided the ministry with any financial information, such as a copy of a bank statement, to show that they had no resources to pay the hydro bill. Although the appellant pointed out at the hearing that the ministry did not ask for this information, the onus is on the appellant to demonstrate her “crisis” and the need for the supplement. The appellant stated at the hearing that no one has money to pay a \$500 hydro bill, but she did not provide information to document any efforts made to obtain funds from other sources, such as family, friends or community resources. The appellant stated at the hearing that she had saved \$250 to pay towards the hydro bill prior to the receipt of the disconnection notice, but that she

did not want to make a partial payment because she and her husband could not pay off the full amount of the hydro account without assistance from the ministry. The appellant also stated at the hearing that she has now entered into an arrangement with the hydro company and is making monthly payments towards the past due amount plus a portion towards the current consumption and this alleviates the disconnection notice for the time being, at least until September 2015. Given the evidence of the funds available to the appellant for partial payments, the panel finds that the ministry reasonably concluded that there was insufficient information to establish that there are no resources available to the appellant's family unit to meet the expense, under Section 57(1)(a) of the EAPWDR.

Imminent danger to physical health

The appellant argued that although she has now made arrangements with hydro until September 2015, there will be higher bills again in the winter months which she and her husband will not be able to pay, she expects that they will lose the hydro service this winter and this is inevitably going to be dangerous. Despite having received a disconnection notice from the hydro company in March 2015, the appellant did not dispute that the hydro service was not disconnected to her residence and she acknowledged that there is currently no risk of the hydro company disconnecting the hydro service. The appellant did not argue that there was an "imminent" danger to the physical health of either her or her husband but, rather, that it will be dangerous in the upcoming winter months when she expects they will lose hydro services. The panel finds the ministry's determination that it was not satisfied that the failure to meet the outstanding hydro expense will result in imminent danger to the physical health of any person in the family unit, as required by Section 57(1)(b) of the EAPWDR, to be reasonable.

Conclusion

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a crisis supplement for the cost of hydro utilities because the requirements of Section 57(1) of the EAPWDR were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision.