

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated April 27, 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

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act (EAA)*.

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

- 1) Invoice dated March 17, 2015 from the hydro company for the total amount owing of \$708.64, which is past due. The total consists of \$471.27 as the balance payable from the previous bills, less two payments of \$58 made January 21, 2015 and two payments of \$58 made February 18, 2015, for a remaining balance of \$239.271, plus \$8.92 in late payment charges, and the electric charges for the period January 14 to March 13, 2015 of \$460.45;
- 2) Copy of an email dated March 28, 2015 from the hydro company providing a disconnection notice for the total amount owing of \$708.64. If disconnection occurs, a reconnection charge of up to \$365 will be charged and appear on the next bill;
- 3) Letter dated April 17, 2015 to the ministry in which the appellant wrote that:
 - Her unexpected circumstances were not previously heard which were that she did not expect to have custody of her grandson. He was apprehended by the Ministry of Children and Family Development (MCFD) and came into the care of the appellant and her daughter.
 - She was also informed by the Canada Revenue Agency (CRA) that she does not qualify for the child tax benefit or GST/HST for her grandson, which she did not expect as she was counting on this money to help pay for the bills.
 - The appellant wrote that she cannot have the hydro disconnected with a child in the home as well as her and her daughter as they will have no way to cook, no heat, lights or telephone connection; and,
- 4) Request for Reconsideration dated April 24, 2015.

In her Request for Reconsideration, the appellant wrote:

- She is diabetic, has kidney disease, double anemia and she is B-12 deficient. She has had to purchase additional diabetic supplies and vitamin supplements and foods to maintain a diet suited for her health needs.
- It was unexpected that her grandson would be in her care. She receives food, recreation, and school funds from MCFD; however, all additional costs are paid by her. These are unexpected expenses that she did not and could not anticipate- transportation, school lunches/programs, extra clothing, shoes, increased gas/hydro.
- Without hydro, her family will not have heat, hot water, or food. All of it will be ruined in the fridge and freezer. Her health cannot tolerate this. She could go into a diabetic coma without proper nutrition and/or low blood sugar shock and be hospitalized. Her kidney function will be dangerously impacted, resulting in a decline in health and well-being.
- She has no other resources to pay the hydro bill. If the ministry helps her, she will go on the equal payment plan. She has informed MCFD and they believe it is the ministry's responsibility to aid and assist.

Additional information

In her Notice of Appeal dated May 1, 2015, the appellant wrote:

- She did contact the hydro company to ask about the substantial increase to her bill in January 2015. Her landlord changed the thermostat, which may have contributed to the huge increase.

- She contacted the hydro company to discuss the disconnection notice and payment; however, she did not have access to \$700. If hydro is disconnected, there is a deposit of \$1,000 required.
- She asks how she can live without hydro when it is a basic human need.
- Regarding the unexpected nature, the front brakes on her car need repair for her medical transportation.
- If her request is denied, she could become homeless and go to the media since news stations have said they are willing to air her story.

Attached to the Notice of Appeal were the following documents:

- 1) Letter dated May 1, 2015 to the Tribunal in which the appellant wrote that:
 - She is a Person With Disabilities (PWD) and, in January 2015, she contacted the ministry about the outrageous hydro bill she received. The amount had jumped to over \$400, as in the enclosed bill.
 - She had no other resources to pay the hydro bill. She contacted the hydro company and made two payments; however, they require the total amount to be paid in full.
 - She had unexpected vehicle expenses as the front brakes went and she requires her vehicle for medical transportation.
 - She also had an unexpected change in her family circumstances with her grandson living with her.
 - Her grandson will be removed under the Child, Family and Community Act if she cannot provide heating, fuel for cooking, and food (damaged with no fridge to keep fresh). If her hydro is disconnected, her grandson will be placed in foster care.
 - Having hydro to live is a basic human need. Without it, her health and that of her daughter's will be in jeopardy. She has diabetes, kidney disease, double anemia and her daughter suffers.
 - She has contacted the media and there are several who want to air her story but she requests that the Tribunal "don't let it come to that;" and,
- 2) Invoice dated January 15, 2015 from the hydro company for the total balance payable of \$471.27. The total consists of \$113.36 as the balance payable from the previous bills, less two payments of \$58 made November 19, 2014 and two payments of \$58 made December 17, 2014, for a credit of \$118.64 plus the electric charges for the period November 14, 2014 to January 13, 2015 of \$589.91. There are handwritten notes on the invoice indicating that the appellant called the hydro company and the ministry about the amount of \$589.91.

Prior to the hearing, the appellant submitted additional documents one day after the expiry of the time period for providing written submissions, but were accepted by the panel chair, pursuant to the Tribunal guidelines, as not causing delay to the proceedings or prejudice to the ministry. The additional documents consisted of:

- 1) Letter dated May 22, 2015 to the Tribunal in which the appellant wrote that:
 - She is a PWD appealing the ministry decision denying her help with her hydro.
 - This letter is an update on her hydro situation. She still needs help.
 - Please consider a payment plan with the ministry whereby the ministry helps her with her hydro bill and deducts the monthly payments from her assistance cheque.
 - Her landlord is willing to pay a total of \$62.88 towards her hydro bill as they take some responsibility for her bill being so high in January 2015 since they had an electrician change the thermostat which caused a spike in usage for January 2015.

- This was unexpected and something she could not foresee.
- 2) Letter dated May 7, 2015 to the appellant in which her landlord wrote that:
- She has assessed the difference in hydro costs due to issues with a thermostat installed then replaced over the winter.
 - She calculated the difference between the usage in 2014 and the same for 2015 and arrived at a dollar value of \$62.66.
- 3) Cheque dated May 14, 2015 payable to the appellant for \$62.66.

Prior to the hearing, the ministry submitted a letter dated June 1, 2015 indicating that the ministry relied on its reconsideration decision. The ministry also wrote that the appellant may contact the ministry directly and request payments be made directly to the hydro company from her disability assistance each month.

Admissibility of Additional Information

There were no objections raised by either party with respect to the additional information provided for the appeal. The panel considered the information in the appellant's letter attached to her Notice of Appeal regarding her health conditions as relating to her need for hydro services and the change in the appellant's circumstances with her grandson living with her, which was before the ministry at reconsideration. The panel considered the invoice from hydro dated January 15, 2015, other than the appellant's handwritten notes, as additional information that corroborates the history of the amount outstanding with hydro, which was also before the ministry at reconsideration. The panel considered the additional documents submitted by the appellant, namely the appellant's letter dated May 22, 2015, the landlord's letter dated May 7, 2015 and the cheque dated May 14, 2015 as relating to the interactions between the appellant and her landlord regarding an issue that had been raised by the appellant at reconsideration. Therefore, the panel admitted the additional information referred to 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 *EAA*.

The panel considered the information in the letter from the ministry dated June 1, 2015 regarding proposed payments as additional information regarding options for payment of future hydro expenses, which was information raised by the appellant at reconsideration and, therefore, admissible under Section 22(4)(b) of the *EAA*.

The panel did not admit the information in the Notice of Appeal and the attached letter as well as the handwritten notes on the invoice dated January 15, 2015 regarding the appellant having contacted hydro since the information before the ministry at reconsideration was that the appellant confirmed with the ministry that she had not contacted hydro and this is, therefore, additional information that contradicts and does not tend to corroborate the information and records before the ministry at reconsideration. The panel did not admit the information in the Notice of Appeal and the attached letter raising an issue with the brakes on the appellant's car and the potential for removal of her grandson from her care. These issues were not raised by the appellant at reconsideration and the additional information does not tend to corroborate the information that was before the ministry at reconsideration and is, therefore, not in support of information and records that were before the ministry at the time of the reconsideration, pursuant to Section 22(4)(b) of the *EAA*.

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.

Unexpected expense

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 hydro bill is a regular expense and the appellant did not contact the hydro company or provide any evidence to support there being a sudden, irregular increase. The ministry also argued that although the appellant stated that she did not expect her grandson to be placed in her care and this has resulted in additional expenses, the MCFD is providing the appellant with funding for his care and, consequently, his needs cannot be included in the calculation of the amount of assistance the appellant is eligible to receive.

Appellant's position

The appellant's position is that she requires a crisis supplement to meet the unexpected expense of her hydro bill, that she has no alternate resources to meet the expense and failure to pay the outstanding hydro bill will result in imminent danger to the physical health of her and her daughter. The appellant argued that hydro costs are 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 the hydro bill was an unexpected expense because she did not expect to have custody of her grandson and she was also informed by the CRA that she does not qualify for the child tax benefit or GST/HST for her grandson and she was counting on this money to help pay for the increased bills. The appellant argued that while she receives funds from MCFD for her grandson for food, recreation, and school, all additional costs, such as transportation, school lunches/programs, extra clothing, shoes, increased gas/hydro, are paid by her. The appellant argued that her landlord takes some responsibility for her hydro bill being so high in January 2015 because they had an electrician change the thermostat which caused a spike in usage for January 2015 and this was unexpected and something she could not foresee.

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 because there are no resources available to the family unit, and the ministry is satisfied that failure to meet the expense 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.

Regarding the first requirement that the family unit requires the supplement to meet an “unexpected expense”, the appellant argued that the hydro bill was an unexpected expense because she has unexpected additional expenses as a result of taking custody of her grandson and she was unexpectedly informed by the CRA that she does not qualify for additional income through the child tax benefit or GST/HST for her grandson to help pay for the increased bills. The appellant argued further that although she receives funds from MCFD for her grandson for food, recreation, and school, she is responsible for all other costs, such as transportation, school lunches/programs, extra clothing, shoes, and increased gas/hydro. The panel finds that the hydro expense is not rendered unexpected as a result of a change in the appellant’s family circumstances, unless there is evidence that this has resulted in abnormally high hydro consumption and charges, which is not the case here. The appellant acknowledged that she receives funds from MCFD towards care for her grandson and, if she finds that these funds are not sufficient to cover the cost of care for her grandson, the panel finds that the ministry reasonably determined that the appellant’s recourse is with the MCFD.

The appellant argued that there was an unexpected spike in her hydro usage and charges in January 2015 for which her landlord takes some responsibility because they had an electrician change the thermostat. In the letter dated May 7, 2015, the landlord wrote that she has assessed the difference in hydro costs due to issues with a thermostat installed then replaced over the winter and arrived at a dollar value of \$62.66, for which they issued the appellant a cheque. However, the ministry pointed out that the appellant did not contact the hydro company upon receipt of the invoice dated January 15, 2015 for the total balance payable of \$471.27 to explain that there may be an error in her hydro consumption due to an issue with the thermostat in her residence and to seek an adjustment to her account or to make arrangements to possibly avoid receiving a subsequent disconnection notice. The amount of the increase in hydro consumption due to the issues with the thermostat has been quantified by the landlord at \$62.66 and the appellant has been reimbursed for this amount.

The invoices dated January 15 and March 17, 2015 indicate regular payments of \$58 to the hydro company, which the ministry stated it forwarded on the appellant’s behalf and on her direction, as well as \$58 from her room-mate, in the months of November and December, 2014 and January and February, 2015 and that no additional payments were applied to the appellant’s account up to the date of the invoice on March 17, 2015. The appellant does not dispute that she received invoices detailing the amount of her hydro consumption and the related charges and the panel notes that it is not unexpected that the appellant’s hydro consumption would increase over the colder winter months or that failing to pay the additional charges applicable in the winter, or at least some additional partial payments, would ultimately result in a disconnection notice. Given that the appellant does not dispute that she was aware of the ongoing amounts due for hydro, it is reasonable to expect an increase in these amounts over the winter months, and she did not take action available to her to possibly 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

Ministry’s position

The ministry argued that there is insufficient information to confirm that the appellant does not have the resources to pay the hydro bill as the appellant did not attempt to contact the hydro company to negotiate a payment plan or to obtain information about the reason for, or the amount of, the increase in the bill.

Appellant's position

The appellant argued that she has no other resources to pay the hydro bill and, if the ministry helps her, she will go on the equal payment plan. The appellant argued that she has had to purchase additional diabetic supplies and vitamin supplements and foods to maintain a diet suited for her health needs.

Panel decision

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 wrote in her Request for Reconsideration that she has no other resources to pay the hydro bill and she has had to purchase additional diabetic supplies and vitamin supplements and foods to maintain a diet suited for her health needs. However, the appellant has not provided any financial information, such as a copy of a bank statement, to show that she has no resources to pay the hydro bill and did not provide information to document any efforts made to obtain funds from other sources, such as family, friends or community resources. The appellant provided information that she received a cheque for \$62.66, as the amount that her landlord assessed for the difference in hydro costs due to issues with a thermostat replaced over the winter, and the panel finds that these are additional resources available to the appellant to meet the hydro expense.

The ministry pointed out that the appellant did not contact the hydro company upon receipt of the invoice dated January 15, 2015 to explain that there may be an error in her hydro consumption or to negotiate arrangements to possibly avoid receiving a subsequent disconnection notice. The appellant wrote in her Request for Reconsideration that if the ministry helps her, she will go on an equal payment plan and she has not provided an explanation for not having explored this option with hydro prior to receiving the disconnection notice. In her letter dated May 22, 2015, the appellant requests consideration of a payment plan whereby the ministry helps her with her hydro bill by deducting the monthly payments from her assistance cheque, and the panel finds that this indicates that the appellant has the resources available to meet the hydro expense. In the letter dated June 1, 2015, the ministry wrote that the appellant may contact the ministry directly and request payments be made directly to the hydro company from her disability assistance each month. Given the evidence of the funds available to the appellant for ongoing 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**Ministry's position*

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. The ministry argued that the appellant has not provided any information to support a probability of immediacy that failure to obtain the supplement will place her health in imminent danger as she has not contacted the hydro company to determine if there are any payment options available.

Appellant's position

The appellant argued that having hydro to live is a basic human need and, without it, her health and that of her daughter's will be in jeopardy. The appellant argued that she has diabetes, kidney disease, double anemia and her daughter suffers. The appellant argued that without hydro, her family will have no way to cook, no heat, hot water, lights, telephone connection, or food, which will

be ruined in the fridge and freezer, and her health cannot tolerate this. The appellant argued that she could go into a diabetic coma without proper nutrition and/or low blood sugar shock and be hospitalized and her kidney function will be dangerously impacted, resulting in a decline in health and well-being.

Panel decision

Despite having received a disconnection notice from the hydro company by email dated March 28, 2015, the appellant did not claim, in her May 22, 2015 letter providing an update on her hydro situation, that the hydro service was disconnected to her residence or that there is currently a risk of the hydro company disconnecting the hydro service. The panel finds that the ministry reasonably interpreted the word "imminent" to refer to immediacy, such that the danger to the health of a person in the family unit is likely to happen soon. While the appellant argued that she has several health conditions, including diabetes, kidney disease, and double anemia, and her daughter suffers, she has not provided evidence from a medical professional to confirm that the risk of complications or deterioration in either her health conditions or that of her daughter is high with a loss of hydro service to her residence, which will cause danger to their physical health. The panel finds the ministry's conclusion 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.