

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated June 30, 2015 which denied the appellant's request for a crisis supplement to cover his outstanding hydro bill and reconnection fees. The Ministry held that the requirements of Section 57 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) were not met as the ministry found that there was insufficient information to establish that:

- Hydro utility costs were an unexpected expense;
- There were no alternate resources available to the appellant to pay for the hydro costs; and,
- Failure to meet the expense will result in imminent danger to the health of the appellant.

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) A Request for Reconsideration signed by the appellant on June 6, 2015 outlining the reasons for the reconsideration, with copies of past due hydro bills attached:
 - a. A disconnection notice for \$640.29 dated March 31, 2015;
 - b. A disconnection notice for \$1,495.44 dated May 01, 2015;
 - c. An invoice for \$2,510.67 dated May 8, 2015.
- 2) A Request for Reconsideration- submission signed by an advocate who provided the following information:
 - The appellant is a single person in receipt of Persons With Disabilities benefits.
 - He is not able to manage his finances because of a severe head injury, which requires him to need significant assistance and supervision with daily living activities, limits his ability to retain information and results in poor comprehension. This is why he has arranged for the ministry to pay his hydro bills. The ministry has been sending \$275 per month to the utility company on his behalf.
 - He bought a large electric heater to heat his home after a pellet stove which he was using broke down at the beginning of the year. This resulted in a corresponding increase to his hydro bills, but due to deficits related to his head injury he did not make the connection that this would result in an increase to his hydro bills.
 - He has had no hydro for several weeks and can no longer maintain personal hygiene, or store food, wash utensils, or cook safely.
 - His \$400 per month mortgage takes all of his shelter allowance and the \$275 dollar hydro payment comes out of his support. He receives \$906.42 PWD benefits.
- 3) The ministry Reconsideration record indicated that:
 - On June 2, 2015, the appellant advised that his hydro had been disconnected and the utility company confirmed that his account was in arrears for \$2,510.67. Consumption was \$1,000 for January/February and \$988 for March/April.
 - He has two water filtration systems at home due to his allergies and he is unable to shower or wash his clothes elsewhere.
 - Due to the lack of power, he finds it difficult to exercise proper hygiene, cannot keep his food refrigerated and cannot cook.
 - He provided a breakdown of his support payments to illustrate how he allocates the money he receives from the ministry.

Additional information

Prior to the hearing the panel received 13 pages of further submissions from the appellant the admissibility of which will be dealt with elsewhere in this decision.

Oral testimony

At the hearing, the appellant and his representative stated:

- He is a proven person with a disability with a severe impairment which leaves him with limited ability to retain information and poor comprehension. This is why he has arranged for the

ministry to pay his hydro bills on his behalf.

- His hydro was disconnected on May 28, 2015 and this was sudden and unexpected as he did not understand why it was disconnected.
- The appellant questioned the accuracy of BC Hydro's billing explaining that he was on an equal payment plan since 2011 and was required to pay \$251.54 every month. Then despite receiving a refund of \$817.71 for overpayments in February of 2013, the monthly amount was increased to \$274.10 in August of 2014.
- Just prior to the disconnection of the hydro, the rates seemed to jump significantly and now that the hydro has been disconnected it is not possible to investigate why the consumption has increased so much. Perhaps the increase in consumption is attributable to other factors such as a faulty hydro meter or other reasons. The appellant explained that he uses very little hydro just to run a television, to cook meals and to do his laundry.
- The appellant acknowledged he had received notices from BC Hydro about the pending disconnection but explained that he did not open the envelopes because he did not believe there was any issue with his hydro bills which he understood the ministry was looking after. He further submitted that he believed if there was any problem with the hydro bills the ministry would have been notified about the problem and rectified it because he believed he had arranged for the ministry to look after his hydro bills.
- He explained that without the hydro he has been forced to sometimes cook on his barbeque, and finds it difficult to maintain proper hygiene without access to hot water, can't keep his food fresh without refrigeration and these issues are putting his health in imminent danger.
- He was unclear about whether the ministry had purchased the pellet stove he was previously using to heat his home.
- The appellant advised the panel that he had no family or friends who could assist him with the bill and even if they did, he did not have the financial ability to repay them.

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

- Clients must meet all three of the criteria in the regulation to qualify for a crisis supplement:
 - The expense must be unexpected;
 - There must be proof of a lack of other resources available to the appellant; and
 - There must be an imminent danger to the health of the appellant.
- The ministry stated that the appellant would be expected to let the ministry know of the increase in consumption so that a plan could have been developed to deal with the issue. Although the ministry had been involved in the initial set up of the equal payments for hydro, it is still the appellant's responsibility to monitor that and advise the ministry when there is a problem. It is not reasonable to expect the ministry to know if they haven't been advised by the appellant as they do not get any further information from Hydro once the payments are set up.
- The ministry stated at the time of the reconsideration there was no danger of any imminent danger to the appellant's health, nor was there any evidence related to what other sources of help had been sought or accessed.
- The ministry also noted that the appellant advised them of the need to increase the monthly amount paid to BC Hydro when he advised that the equal payment plan amount had increased by \$22.54 and was adjusted to \$274.10 per month in August of 2014 but failed to do so this time.

Admissibility of Additional Information

The ministry did not object to admitting the 13 pages of additional information which the panel received by fax or to any of the oral testimony heard by the panel. The additional information consisted of a detailed billing history of the appellant's hydro consumption and an email about the hydro disconnection. The panel considered the additional information as corroboration of the information that was already 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*.

APPEAL #

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision which 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 three criteria have not been met in the appellant's case.

The ministry argued that regular averaged payments were being made which indicates hydro expenses are expected expenses which can be planned for. They also argued that although the ministry had been paying the appellant's hydro bills directly based on the equal payment plan, it was not advised by the appellant that there was a significant change to the amount of hydro consumption creating an arrear on the account. Since the ministry is not their client, the utility company does not notify them of any problems with the billing. The ministry stated there was evidence however; that the appellant had been notified by the utility company that consumption had significantly increased and there was probable cause to suspect that increase was due to the addition of an electric heater to replace the pellet stove. This was entirely predictable and could not be characterized as unexpected. The appellant failed to notify the ministry and failed to open notices that he had received in the mail regarding a problem which should have been anticipated. The ministry's position is that it is not unexpected that failing to pay hydro bills will eventually result in a disconnection and that the outstanding balance and a reconnection fee will be required to be paid before hydro is reconnected. The ministry noted that the appellant had informed them of a change to the monthly amount when it had occurred previously.

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 there was a lack of evidence about what other resources within the community or sources such as friends or family were approached for assistance by the appellant. The ministry further argued there is insufficient information to show that failure to provide the appellant with funds to pay his hydro bill would result in imminent danger to the health of the appellant

Appellant's position

The appellant's position is that the hydro bill was an unexpected expense because his brain injury prevented him from making the connection that his hydro consumption and corresponding expenses would be going up now that he had substituted an electric heater to replace his broken pellet heater. The hydro disconnection came as a total surprise to him because he believed he had made arrangements previously with the ministry to look after all of his hydro expenses and pay equal installments directly to BC Hydro. The appellant stated that the lack of hydro is now threatening his health as he is unable to refrigerate food risking food poisoning; is unable to prepare food except for

some limited cooking he can do on his barbeque; and unable to heat water to properly look after his personal hygiene which requires special filtered water due to his allergies. The appellant also stated that after meeting his mortgage and living expenses every month, there is not enough money left over to pay the amount he would be required to pay back the hydro utility company. He and his advocate submit that he had no family or friends who would be able to assist him with the hydro expense. He has no other resources to deal with the arrears on his hydro bill and the lack of a vital necessity such as hydro is endangering his health because he cannot look after his personal hygiene properly and food safety and preparation are compromised.

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 intended to assess 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 due to his head injury and resulting diminished capacity for comprehension he did not anticipate that there was any consequence to his hydro consumption or expenses when his pellet stove broke down and was replaced by an electric heater which he purchased. He also believed that he had arranged for the ministry to look after his hydro expenses and believed they would be responsible for adjusting any variances to the bills as they occurred.

The ministry asserts that regular hydro expenses are to be paid for from a client’s living allowance and are not an unexpected expense. Even though the ministry in this case facilitated a regular monthly amount to cover the cost of hydro and made payments directly to BC Hydro on behalf of the appellant, it is still the client’s responsibility to monitor the hydro account, to advise them of any changes and to cover the cost of any arrears. The ministry submits the appellant must have been aware of this as he had previously contacted them to advise them of a change in the monthly average amount payable and which was adjusted at that time. The ministry noted at the hearing that the appellant had received notices from BC Hydro about pending disconnection but had not dealt with the situation. The appellant acknowledged he did not open the notices as he did not expect there was any issue with the hydro bills as it was being taken care of by the ministry.

The panel finds that the appellant failed to take reasonable steps to advise the ministry of the change to his hydro consumption and to seek assistance in dealing with the situation as it developed. The panel also finds that the ministry was reasonable in asserting that the ultimate responsibility for paying the hydro bills rest with the appellant and are part of the allowances he receives. 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 finds that the ministry reasonably determined the appellant has not provided sufficient

evidence to demonstrate that there are no alternate resources available to him to meet the expense. The appellant stated at the hearing that he has no friends or family that he could rely on for help with this bill and even if he managed to borrow the money, he does not have enough money left at the end of the month after he pays his expenses to pay back any loan if he could secure one.

The onus is on the appellant to demonstrate there are no available resources to meet the expense. There was no evidence about what community resources were accessed for help and no evidence that the appellant had approached the utility company directly or through the ministry to negotiate a repayment schedule or to partially repay the amount owed which could restore the hydro service. There was also insufficient evidence about what savings if any the appellant had or if there was sufficient equity in the appellant's property which could be accessed to address the issue. Based on the evidence the panel finds the ministry reasonably concluded the appellant did not establish there were no other resources available to him to meet the expense under Section 57(1) of the EAPWDR.

Imminent danger to physical health

The ministry was presented with anecdotal evidence only of any alleged danger to the appellant's physical health. There was no independent medical assessment or any evidence of medical treatment necessitated by the appellant's current situation of being without electric power.

The panel finds that the ministry reasonably determined that there is insufficient information to establish that that failure to meet the outstanding hydro expense will result in imminent danger to the physical health of the appellant, as required by Section 57(1)(b) of the EAPWDR.

Conclusion

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