

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated October 15, 2015 which denied the appellant's request for a crisis supplement to cover hydro utility costs. The Ministry held that the requirements of Section 59(1) of the *Employment and Assistance Regulation* (EAR) were not met as the ministry found that:

- The appellant's hydro utility costs were not an unexpected expense;
- There was insufficient information to establish that there are no 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 Regulation* (EAR), Section 59

## PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*. The appellant had signed a Release of Information which provided authority for the advocate to make decision on her behalf.

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

- 1) Statement of Account for BC Hydro dated June 9, 2015 indicating a zero balance from her “previous bill” plus total charges of \$300.05 including \$110.08 transferred from “previous invoice(s)” and “plan balance,” \$125 for service reconnection and \$42.40 for ongoing hydro consumption;
- 2) Shelter Information dated August 5, 2015 indicating rent of \$645 for which the appellant is responsible for \$334.50, utilities are not included in rent, and the landlord requested direct payment;
- 3) Account Statement dated October 1, 2015 indicating a balance of -\$11.28 in the account as of September 17, 2015; and,
- 4) Request for Reconsideration dated September 30, 2015.

In her Request for Reconsideration, the advocate wrote:

- The appellant’s rent is \$645.
- The appellant moved from one apartment unit to another. She transferred her hydro to the new unit in the same building.
- The appellant was not aware that there was a reconnection fee of \$125 and that they would require she pay out her equal payment plan. She thought that, being in the same building, they would simply change the apartment number for her billing.
- The charges are not for an ongoing issue or a monthly bill. They were unexpected charges due to her changing apartments.
- There have not been any payments made because BC Hydro requires a minimum of \$110.08 which the appellant does not have.
- The appellant has no money on her person or in her bank. She has no friends or family who are able to help her. She has tried other resources without success.
- Without power, the appellant has no way to cook food or store foods that need to be refrigerated or frozen.
- In order to maintain a healthy diet, a human needs to have access to a fridge and stove. Absent a proper diet, this poses a significant imminent danger to her physical safety.

### **Additional information**

In her Notice of Appeal dated October 23, 2015, the appellant wrote that the information the ministry has is incorrect.

At the hearing, the appellant’s advocate provided the following additional documents:

- 1) Print out of definitions for the words “essential”, “imminent” and “immediate”; and,
- 2) Print out of an excerpt of the ministry policy for “Essential Utilities Supplement.”

At the hearing, the appellant’s advocate stated:

- BC Hydro did not contact the appellant after the Statement of Account dated June 9, 2015 was sent to her. There was no disconnection notice or telephone call before her hydro was

disconnected. She had no warning that her hydro service would be disconnected.

- It was not until recently that the appellant has been able to find out from her third party administrator that the \$110.08 from “previous” invoices related to charges outstanding on an account the appellant had in her name back in 2011.
- BC Hydro has agreed to waive the \$125 service reconnection fee because the appellant was just moving from one unit to another.
- The appellant expected her hydro bill to be the amount of her usage, or approximately \$40 per month.
- On June 19, 2015, the appellant and her third party administrator called BC Hydro and were told that the hydro service would only be re-connected if the amount of \$110.08 was paid, and the appellant does not have this amount.
- The appellant tried to get help from a charitable organization and another service but nothing was available for her.
- The appellant suffers from anxiety and other mental health issues and she is “not doing well” with no hydro service in her unit.

The ministry relied on its reconsideration decision, as summarized at the hearing.

***Admissibility of Additional Information***

The ministry did not raise an objection to the admissibility of the information in the oral testimony on behalf of the appellant. The panel considered the oral testimony of the advocate as additional information that corroborates the circumstances surrounding disconnection of the hydro service, 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*. The panel considered the definitions and the excerpt from the ministry’s policy as part of the argument on behalf of the appellant.

## 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 59 of the *Employment and Assistance Regulation* (EAR) were not met, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the appellant's circumstances.

Section 59(1) of the EAR sets out the eligibility requirements which are at issue on this appeal for providing the crisis supplement, as follows:

### **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*. ...

### *Ministry's position*

The ministry's position is that the provisions of Section 59 of the EAR allow for the ministry to provide a crisis supplement when all of the legislative criteria are met. The ministry argued that the need to pay her hydro bill is not an unexpected expense as the appellant was aware that she had a balance owing from a previous residence and she was aware of the outstanding bill since April 2015 and made no effort to make any payments. The ministry also argued that the appellant's shelter allowances are intended to be used for her shelter costs and she has been issued an allowance for this purpose. The ministry argued there is insufficient evidence 'to support a probability of immediacy' that failure to obtain hydro services will place the appellant's health in imminent danger. The ministry argued that in the absence of evidence to support the appellant's statement that if she does not have access to a fridge or stove in order to maintain a healthy diet, her health will be at imminent risk, the result is speculative in describing the future and does not reflect the immediate situation.

### *Appellant's position*

The appellant's position is that the hydro bill was an unexpected expense because she only recently discovered that the amount required by BC Hydro before they will reconnect her hydro service (\$110.08) was for a previous account of the appellant's from 2011 and the appellant did not expect to pay more than her monthly usage of around \$40. The advocate argued that the appellant does not have any resources available herself or from family or friends to pay the \$110.08 required by BC Hydro and she has also checked with two community resources and there was no help available for her. The advocate argued that without power, the appellant has no way to cook food or store foods that need to be refrigerated or frozen and, absent a proper diet, this poses a significant imminent danger to her physical safety. The advocate argued that the ministry policy identifies hydro as an "essential" service, meaning absolutely necessary, and although the ministry equated the meaning of "imminent" and "immediate", the former refers to the future as in "impending, close at hand" and the latter is instantaneous.

*Panel decision*

*Unexpected expense*

Section 59(1) of the EAR 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. Regarding the first requirement that the family unit requires the supplement to meet an “unexpected expense,” the advocate argued that while an expense for regular hydro usage was expected monthly, it was the additional \$110.08 added to the appellant’s hydro account, which they recently discovered related to outstanding amounts from 2011 for a previous residence of the appellant’s, that was unexpected. Given that the June 9, 2015 BC Hydro Statement of Account indicates that there was a zero balance from the appellant’s previous bill, it appears that the ministry relied on erroneous information that the appellant was aware of the outstanding bill since April 2015 and she was aware she had a balance owing from about 4 years ago at a previous residence, the panel finds that the ministry unreasonably concluded that the hydro expense was not unexpected, as required by Section 59(1)(a) of the EAR.

*No resources*

The advocate stated at the hearing that the appellant has no savings, and a copy of the appellant’s bank statement confirmed a negative balance. The advocate stated that while the appellant is able to cover the ongoing hydro usage of about \$40 from her income assistance, she does not have the resources to pay the sum of \$110.08 from hydro services provided to her about 4 years ago at a previous residence. The advocate stated that the appellant approached two community resources in an effort to receive some help towards the expense but nothing was available for her. Given the evidence of the lack of funds or other resources available to the appellant to meet the hydro expense, the panel finds that the ministry did not reasonably conclude 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 59(1)(a) of the EAR.

*Imminent danger to physical health*

Although the appellant’s hydro service has now been disconnected for several months and the advocate stated that the appellant is “not doing well,” there was no evidence before the panel that the appellant suffers diagnosed medical conditions that have been exacerbated by the lack of hydro or that her physical health is in imminent danger. The panel finds that while the definitions of “imminent” and “immediate” are not the same, the distinction is subtle and the claim of a lack of a healthy diet as a result of a loss of cooling or cooking facilities in the appellant’s unit cannot be said to be evidence, on its own, of an “imminent” or impending danger to the appellant’s physical health. 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 59(1)(b) of the EAR, 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 59(1) of the EAR were not met, was reasonably supported by the evidence and the panel confirms the ministry’s decision.