



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of March 22, 2016 that determined the appellant was not eligible for a crisis supplement to pay the overdue amount of her BC Hydro bill because she did not meet all the criteria set out in section 57(1) Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”).

### PART D – Relevant Legislation

EAPWDR – section 57

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- February 2016 BC Hydro bill showing balance from previous bill was \$442.39; payment in January of \$119.00; current usage charges \$161.19 for a current balance of \$482.77, an amount which is considered Past Due.
- Summary of BC Hydro charges – Equal Payment plan – on February statement -  
Status to date:
  - Cost of energy \$1,546.68
  - Monthly installments \$1,637.00Anniversary date: March 2016.
- Final Disconnection Notice from BC Hydro to appellant dated February 10, 2016 indicating that \$164.51 needs to be paid immediately to avoid disconnection.
- Request for reconsideration dated March 16, 2016.

The appellant is a sole recipient of disability assistance. Her monthly assistance is \$941.42; \$375.00 for shelter, \$531.42 for support and \$35.00 diet supplement. She also receives monthly \$709.40 for CPP, which is deducted dollar for dollar from her disability assistance. The appellant's monthly rent (shelter costs) is \$500.00 plus utilities.

In March 2012 the ministry assisted the appellant with establishing an Equal Payment Plan (EPP) with BC Hydro because she was behind in her payments and commenced issuing monthly payments directly to BC Hydro. The appellant was required to monitor her BC Hydro usage and advise the ministry of any changes to her hydro costs.

In August 2013 the appellant submitted a BC Hydro disconnection notice for \$355.45. The appellant had not advised the ministry of an increase in usage and a crisis supplement was issued to avoid disconnection.

On February 29, 2016 the appellant requested the ministry increase her monthly EPP payment to BC Hydro from \$119.00 to \$157.00 beginning in April 2016.

On March 1, 2016 the appellant submitted the February 2016 BC Hydro bill to the ministry along with a Notice of Disconnection. The appellant stated that she was under the impression the ministry was taking care of the BC Hydro bills and that she had not been monitoring her account. The appellant contacted BC Hydro in an attempt to resolve the issue. The BC Hydro bill had a past due amount of \$482.77 ((323.39 past charges, \$2.38 late fees and \$161.19 for current charges). The appellant requested a crisis supplement to pay the outstanding amount.

In her Request for Reconsideration dated March 6, 2016, the appellant reviewed her disability situation, the excess of her EPP installments over her energy usage and her dealings with the ministry to address the issue.

The appellant's Notice of Appeal is dated March 29, 2016. Under Reasons for Appeal, her hand-written submission goes to argument. Attached to the Notice of Appeal is a two page submission from the appellant's advocate which the panel considers argument in support of the appellant's request for a crisis supplement. (See Part F, Reasons for Panel Decision, below).

Attached to the Notice of Appeal are the following:

1. Note dated March 31, 2016 from a medical practitioner which stated, "Due to medical reasons, the loss of hydro would be a detriment to (the appellant's) health and cause severe decline in her condition".
2. Appellant's Residential Tenancy Agreement showing her rent is \$500 a month. The rent provides water, appliances, garbage collection and parking for one vehicle but not electricity.
3. A chronology of the appellant's BC Hydro account from December 2014 to March 23, 2016 showing the difference between the cost of the energy and the payment applied to EPP.
  - The chronology shows the cost of the energy from March 2015 to March 2016 was always higher than the payment applied resulting in an outstanding balance of \$315.02 on March 23, 2016 when the account was locked for credit action. BC Hydro estimates the new EPP should be \$148.00 monthly.

The ministry did not have any objection to the panel admitting these documents as evidence but noted that both documents were obtained and provided after the Reconsideration decision.

The panel admitted items 1 to 3 as documentary evidence, which either substantiated or further explained information already before the ministry, as being in support of the information and record before the ministry at reconsideration. The panel admitted the documents in accordance with section 22(4) of the *Employment and Assistance Act* (EAA).

At the hearing the advocate provided the panel with a recap of the appellant's current circumstances; her PWD status as a result of severe mental and physical impairments that result in the appellant's need for significant assistance with her daily living; and, her inability to work at any type of employment on a full time basis. The appellant has lived in her current residence for approximately 12 years and pays \$500 a month for rent. Her building was sold recently and the new landlord was planning to upgrade the suites; this would result in the rent being increased to \$800 a month. The appellant went to the landlord and requested that the apartment not be upgraded so the rent could remain at \$500 as she could not afford any increase. The landlord agreed.

The appellant stated that she received a Notice of Disconnection from BC Hydro dated February 10, 2016 indicating that she needed to pay \$164.51 immediately or her hydro (electricity) would be disconnected. The appellant stated that she had also received her BC Hydro bill dated February 16, 2016 about the same time. The BC Hydro bill indicated that her anniversary date for the EPP was March 2016; that the cost of energy for the previous 12 months was \$1,546.68 and, her monthly installments were \$1,637.00. The appellant stated that she contacted BC Hydro who advised her that her account was in the arrears and if she didn't pay her bill the electricity would be disconnected. The BC Hydro rep told the appellant she needed to increase her monthly payments to \$157.00 and pay her outstanding balance of \$363.73. The appellant asked for an explanation on how her account could be in the arrears when her BC Hydro bill clearly showed that she has a credit. She stated the BC Hydro representative didn't give her a response and hung up. The appellant stated that she has no shared utilities and doesn't have television, cablevision or computer internet charges.

In response to questions from panel and ministry, the appellant replied:

- The advocate didn't ask BC Hydro to explain why the cost of energy on the chart provided by BC Hydro is the same (\$139) from March 2015 to August 2015 and from Sept 2015 to February 2016 (\$157);

- 
- The advocate didn't ask BC Hydro to explain the yearly recap of monthly installment payments vis-a-vie the annual cost of energy on February 2016 BC Hydro statement;
  - The appellant saw her BC Hydro bill going up and went to the ministry office to get assistance and was told the ministry doesn't do that (pay for hydro) anymore;
  - The advocate confirmed that she checked a number of other rental accommodations in the community and did not find any rental units like the appellant's that were less expensive. The only one she found to be the same dollar amount that the appellant paid was a converted hotel that provided a studio room (no separate bedroom) that had no lighted hallways, no carpet in the room and no hot water in building and has safety concerns.

The ministry relied on the facts as stated in the Reconsideration decision.

In response to questions from the panel and the appellant the ministry stated:

- Does not understand if the appellant appears to have a credit in her EPP BC Hydro account why BC Hydro would be issuing a Notice to Disconnect;
- The ministry understands why the appellant would think she has a credit with BC Hydro;
- The ministry did not inquire with BC Hydro for an explanation;
- At the request of clients, the ministry issues payments for all monthly BC Hydro, gas and electrical payments on the same day when monthly assistance cheques are issued.

The panel admitted the oral testimony of the appellant and the ministry, which either substantiated or further explained information already before the ministry, as being in support of the information and records before the ministry at reconsideration. The panel admitted the testimony in accordance with section 22(4) of the EAA.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the appellant was not eligible for a crisis supplement to pay the overdue amount of her outstanding BC Hydro bill was either a reasonable application of the legislation or reasonably supported by the evidence because she did not satisfy the three statutory criteria for a crisis supplement set out under section 57(1) EAPWDR.

The legislation considered:

### **EAPWDR**

#### **Crisis supplement**

Section 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*.

#### **Unexpected expense**

##### Ministry's position

The ministry's position is that utility bills are not considered an unexpected expense. The ministry argued assistance was provided to the appellant in March 2012 and August 2013 and the appellant was advised she needed to report any changes in her BC Hydro costs to the ministry but the appellant did not do that. The ministry stated the ministry has been issuing a monthly payment to BC Hydro on the appellant's behalf since March 2012, that her account became overdue for a second time in August 2013 because the appellant had not advised the ministry of an increase in her costs. The ministry argued that there is no way for the ministry to know there is an increase in energy costs if the appellant does not report the change(s), a responsibility that has been explained to her.

##### Appellant's position

The appellant's position is that she is on EPP with BC Hydro and the ministry was paying the agreed amount each month to cover her hydro costs. The appellant argued she was surprised when she received the disconnection notice in February 2016 as the February 2016 BC Hydro statement indicated that her annual energy costs were lower than her annual payments. The appellant stated she contacted BC Hydro and was told her account was past due, that she needed bring her account up to date and increase her monthly payments from \$119 to \$157 monthly. The appellant argued that when she asked for an explanation as to why her account would be past due when the statement indicated she in fact had a surplus, the BC Hydro representative did not respond and hung up on her. The appellant argued that then she went to the ministry office to seek assistance and advise them of the situation. The appellant stated she did not receive any assistance there either and was told that the ministry does not pay BC Hydro bills.

##### Panel Decision

The evidence is that the appellant is on an EPP with BC Hydro and the ministry pays an agreed

amount on behalf of the appellant to BC Hydro each month. The appellant told the panel that she looks at her BC Hydro bill each month and did notice that the bill indicated her monthly charges were increasing, but she was not concerned because the ministry was paying her bill. In February 2016 BC Hydro sent the appellant a disconnection notice because her account was overdue and in arrears, with the result being that the overdue amount needed to be paid as her EPP annual review was to be conducted in March 2016 and a new EPP established. At about the same time in February, the appellant also received her monthly BC Hydro statement. In addition to setting out the month's energy consumption and costs, the statement separately provided a recapitulation of her BC Hydro consumption and payments for the preceding 12 months. The ministry stated they (ministry) cannot explain nor do they understand the energy recapitulation figures on the February BC Hydro statement. The evidence is that neither the ministry nor the advocate contacted BC Hydro for an explanation regarding the discrepancy between the past due amount on the February statement, the energy recapitulation on the February statement and the BC Hydro disconnection notice. The statement recapitulation showed that her payments were more than her energy costs. The appellant testified that she contacted BC Hydro to obtain an explanation, but without success. The advocate (appellant) contacted BC Hydro and on April 1, 2016 received a chronology of the appellant's hydro account. The panel did not give any weight to the chronology of the appellant's account provided by BC Hydro because the BC Hydro costs for several consecutive months are exactly the same and to the exact dollar, a situation the panel finds is not likely nor credible.

The panel finds that the February BC Hydro statement and the Notice of Disconnection from BC Hydro provided conflicting information to the appellant and neither were the advocate nor the ministry able to provide a rational explanation that would assist the panel in making a determination on whether the BC Hydro bill and the disconnection notice should have been expected or not.

Therefore, the panel finds that the ministry was not reasonable, in the circumstances described above, in determining that the appellant's disconnection notice and demand for payment of an overdue account was an expected expense.

### **Alternate Resources**

#### **Ministry's Position**

The ministry's position is that the shelter allowance is intended to be utilized to meet shelter costs, rent and utilities. The ministry argued that the appellant's rent, not including her utilities, exceeds her shelter costs. The ministry stated that shelter funds are being provided in accordance with the current legislation and therefore the appellant needs to find alternate ways to meet that expense if her costs are higher. The ministry argued there is not sufficient evidence that there is a lack of resources available to the appellant in her shelter/support allowance to budget, on a gradual basis, for utility costs.

#### **Appellant's Position**

The appellant's position is that her rent is very reasonable for the community where she resides and in comparison, a single room occupancy hotel in her community charges \$500 a month and all you get is one large room with a bathroom, no kitchen, no hot water, no carpeting, no lighting in the hallways or stairwell and there are safety concerns for single women. The appellant argued that she is not able to obtain credit and canvassed friends and family for a loan but they are not able to assist her at this time. The appellant argued there are no agencies in her community that have emergency

funds for hydro bills. The appellant argued that her monthly hydro payment has been increased from \$119 to \$157 to cover her costs so now her rent and hydro will cost \$657 a month which will only leave her with \$249.42 for telephone, food, clothing, transportation and other household costs.

#### Panel Decision

The ministry relies on the argument that the shelter allowance is intended to cover rent and utilities. However, the evidence is that the appellant's rent and utilities (\$657) for her one-bedroom apartment are almost twice her shelter allowance (\$375). The appellant has been renting her apartment for over 10 years and the panel finds the evidence indicates that her rent is very reasonable in comparison to other rental units in the community. The ministry argued there is insufficient evidence there are a lack of resources available to the appellant. The evidence is the appellant was not able to obtain financial assistance from family, friends or community agencies and after she had paid her rent and utilities she only had \$249.42 left to cover the costs for her special diet (diabetic) and pay her other household expenses. The panel finds the evidence supports the appellant's position. The panel finds that the appellant does not have alternate resources available to pay the unexpected overdue amount of her hydro bill.

The panel finds the ministry's decision that the appellant had alternate resources to pay her overdue hydro bill is not supported by the evidence and was not reasonable.

#### **Imminent Danger to Physical Health**

##### Ministry's Position

The ministry argued there is insufficient evidence to support the probability of immediacy that a hydro disconnection resulting from a failure to obtain a crisis supplement for the overdue amount of her hydro bill will place the appellant's physical health in imminent/immediate danger. The ministry argued that although the appellant indicates she has severe disabilities resulting in the need for assistance in paying her hydro bill, without direct evidence, the possibility of imminent danger is speculative for the future.

##### Appellant's Position

The appellant argued that she has a PWD designation, meaning she requires significant assistance with her daily living activities. The appellant argued she requires hydro to heat her apartment; to cook; to keep her food cold and safe; to provide hot water for washing clothes, dishes and personal hygiene; and, to provide lighting to assist with her personal safety in moving about her apartment. The appellant argued that she is diabetic and her physician has provided a letter of support stating that the loss of hydro would be a detriment to her health and cause a severe decline in her condition.

##### Panel Decision

The evidence is the appellant is PWD; she has a diabetic condition which is not in dispute. The note from the physician supports the appellant's need for electricity to keep her health and medical condition from a severe decline. The panel finds that a diabetic condition when not treated and attended to properly can result in imminent danger to a person's physical health. The panel finds the doctor's note supports the appellant's position that her health would be in imminent danger if her hydro was disconnected and she was left to live in her suite without heat, light, hot water for washing herself/clothes/dishes, and no refrigeration to keep food from spoiling.

Therefore, the panel finds that the ministry's decision that the appellant did not meet the legislated criteria of imminent danger to physical health is not supported by the evidence and was not reasonable.

**Conclusion:**

The panel finds that the ministry's decision that the appellant was not eligible for a crisis supplement to pay the overdue amount of her outstanding BC Hydro bill is not supported by the evidence and is not a reasonable application of the legislation supported by the evidence.

Therefore, the panel finds in favor of the appellant and rescinds the ministry's Reconsideration decision of March 22, 2016 pursuant to section 24(1)(b) and 24(2)(b) EAA.