

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated March 17, 2017 which denied the appellant's request for a crisis supplement to cover the cost of a hydro expense. The Ministry held that all of 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 evidence to show that failure to pay the hydro expense will result in imminent danger to the appellant's physical health.

PART D – Relevant Legislation

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

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 5

PART E – Summary of Facts

The appellant pointed out that he made a request in his Notice of Appeal for an extension of time to make a written submission. The panel provided an opportunity for the appellant to make a request to the panel for an adjournment of the hearing to allow additional time. The appellant did not request an adjournment and he elected to proceed with the hearing.

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

- 1) BC Hydro account in the appellant's name dated February 1, 2017 indicating a past due amount of \$215.65, including an annual adjustment amount of \$151.65;
- 2) Request for Crisis Supplement- Utilities dated February 2, 2017. When asked whether he is reliant on essential medical equipment that requires electricity, the appellant responded "no" and, asked to describe the direct threat to his health and safety, the appellant indicated "unexpected annual adjustment- not able to pay- service essential- will be disconnected;"and,
- 3) Request for Reconsideration dated March 14, 2017.

In his Request for Reconsideration, the appellant wrote that:

- With respect to criterion 2, while BC Hydro stated that they informed him of the Annual Adjustment, they did not and he was not aware of it.
- With respect to criterion 4, a disconnection notice/ risk of disconnection is only one potential imminent threat to his health and safety. As he has previously stated, this situation is an imminent threat to his health and safety because it causes severe anxiety and panic, for which medical documentation has been submitted.
- While it is very nice of the ministry to make a payment arrangement on his behalf, the ministry is redirecting funds which are meant for shelter, food, other utilities, other necessities, etc. This arrangement does not resolve the issue that he does not have the available funds, even on a payment arrangement, to pay the extra costs of the Annual Adjustment.
- The ministry breached his right to self-determination, by unilaterally and without his consent, setting up direct payment to BC Hydro and deduction for those payments from his assistance.
- He did not request or give permission for the ministry to take over his BC Hydro account and make payment arrangements with BC Hydro on his behalf.
- He gave the ministry permission to contact BC Hydro and obtain information only. This is also a breach of privacy/access to information by both BC Hydro and the ministry.
- The ministry was asked to adjudicate a service request, not take control of his affairs.
- This is not an issue of poor budgeting, poor credit management, etc. on his part.

In his Notice of Appeal dated March 22, 2017, the appellant expressed his disagreement with the ministry reconsideration decision and wrote that:

- The ministry stated that criteria 1, 2, and 3 have been met; however, criterion 4 was not met. He will, therefore, only address criteria 4 on this appeal.
- He requests an extension to make a written submission with respect to his reasons for disagreeing with the ministry's decision.

At the hearing, the appellant stated that:

- He has comments about the process the ministry took on his request that are important to consider in relation to the context. While the ministry had his consent to obtain information from BC Hydro, the ministry did not have his consent to make a payment arrangement with BC Hydro and, therefore, exceeded the scope of his consent. This is a breach of his privacy and his right to self-determination and he wishes to pursue an argument based on the *Canadian Charter of Rights and Freedoms*. Anything arising after this breach should not be considered.
- BC Hydro had told him that there were no payment arrangements available.

- The ministry claimed that BC Hydro would have informed him about the Annual Adjustment amount, but this is not accurate because the information was not provided to him from BC Hydro. There is nothing on the BC Hydro account dated February 1, 2017 which provides notice of the annual adjustment in a sufficiently clear manner. Previous invoices did not refer to the annual adjustment.
- The ministry maintains that there is only a danger to his physical health if he has a disconnection notice or the threat from BC Hydro of a disconnection notice.
- He has been diagnosed with anxiety and panic disorder and PTSD [Post Traumatic Stress Disorder], etc. and the ministry is in possession of a great deal of information that was provided to be approved for disability assistance in the first place.
- There is no way for him to resolve the outstanding amount and this activated his disabilities.
- The ministry making a payment plan with BC Hydro did not allow him to be an independent person or to be self-determined. This should not be accepted as a reasonable solution.
- The ministry suggested that if his rent was lower, he would be able to pay for the BC Hydro amount. His medical practitioner supports his need for his own accommodation and that to share accommodation with others would harm him. He is paying \$700 per month for his own accommodation and this is a reasonable and not extravagant amount, especially compared to a friend paying \$500 per month to rent an RV.
- He has \$245.65 per month for support and he spends more than that on food alone. He is on a highly restricted diet, which is high protein and low sugar and sodium, and he has some allergies. He has gone into debt living on credit to make up the difference.
- His anxiety, panic and PTSD also impact his physical condition, by affecting his immune function. All of his health is adversely impacted.
- He went into a state of anxiety over this whole issue. It is reasonable to expect a disconnection notice from BC Hydro because this is the “imminent outcome.” He is trying to be proactive in avoiding this outcome.
- Other than his application for disability, there was probably further documentation sent to the ministry to confirm his anxiety and panic prior to his request for a crisis supplement.
- “Mental health is physical safety.”
- Now he has been informed that there might be an annual adjustment amount next year, it is reasonable to say that it is not an unexpected amount.

The ministry relied on its reconsideration decision as summarized at the hearing. At the hearing, the ministry stated that it was heard and understood that the appellant has anxiety, but the ministry can only consider the health conditions upon receipt of a disconnection notice.

Admissibility of additional information

The ministry did not raise an objection to the admissibility of the information in the appellant’s oral testimony. The panel finds that his testimony tends to corroborate information provided by the appellant at reconsideration and is, therefore, in support of information and records before the ministry at reconsideration, pursuant to Section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a crisis supplement to cover the cost of a hydro expense as all of the requirements of Section 57 of the 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*.

Panel decision

In the reconsideration decision, the ministry was satisfied that the appellant's request for a crisis supplement met all but one criterion in Section 57 of the EAPWDR. The ministry was not satisfied that there was sufficient evidence to show that failure to pay the outstanding hydro expense will result in imminent danger to the appellant's physical health. The ministry wrote that BC Hydro is not threatening disconnection of services to the appellant at the time of the reconsideration decision, nor were they at the time of the request. The ministry wrote that BC Hydro accepted a payment plan for the outstanding amount equal to an additional \$37.77 per month for 6 months, that this was a reasonable option to deal with the annual adjustment amount, and this satisfied any threat of the appellant's services being disconnected.

While the appellant acknowledged that BC Hydro had not issued or threatened a Disconnection Notice, he argued that disconnection is the "imminent outcome" of an outstanding account and that the ministry was outside the scope of his consent in negotiating a payment plan with BC Hydro, which is a breach of his privacy and his right to self-determination contrary to the *Canadian Charter of Rights and Freedoms* and, therefore, anything arising after this breach should not be considered. As mentioned by the panel at the hearing, due to the applicability of the *Administrative Tribunals Act* (sections 44 and 46.3), the Tribunal does not have the jurisdiction to consider constitutional questions or to apply the *Human Rights Code* and, therefore, the panel cannot consider arguments based on these grounds. Although the appellant stated that BC Hydro told him that no payment arrangements were available, BC Hydro was willing to enter into an arrangement and agreed to a payment arrangement on the appellant's account, and there was no evidence before the panel that BC Hydro was pursuing a disconnection of the appellant's services for failure to pay an outstanding amount.

The appellant argued that he should not be penalized for being proactive and making his request to the ministry before it got to the point of disconnection, that there was no way for him to resolve the amount outstanding with BC Hydro and this activated his disabilities, causing severe anxiety and panic. The appellant argued that his anxiety, panic and PTSD also impact his physical condition, by affecting his immune function, and that all of his health was adversely impacted. The panel notes that Section 57 of the EAPWDR provides only for circumstances where there is an imminent danger to the physical health of the person- the provision does not include mental health. The appellant

argued that his mental health impacts his physical condition, but there was no information from a medical professional provided on the appeal to establish this interaction in the appellant's health conditions or that his health was being dangerously compromised in this situation. The panel also notes that the meaning of the word "imminent" has a sense of urgency – i.e. "impending; about to happen" and there was also no evidence of impending or imminent danger to the appellant's physical health. Therefore, 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 appellant's physical health, 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 a hydro expense because all of the requirements of Section 57 of the EAPWDR were not met, was reasonably supported by the evidence and the panel confirms the ministry's decision. The appellant's appeal, therefore, is not successful.