

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Innovation and Poverty Reduction (the “Ministry”) reconsideration decision dated April 9, 2018 which held that the appellant is not eligible for a crisis supplement to re-pay two utility debts from 2014 on the basis that the appellant did not meet the requirements set out in s.57 Employment and Assistance for Persons with Disability Regulation (“EAPWDR”). Specifically, the Ministry found that the need for the item was not unexpected nor was it an unexpected expense, the appellant did not show that there were no other resources available to him, and a failure to obtain the item or meet the expense would not result in imminent danger to the physical health of the appellant’s family unit or the removal of a child pursuant to the Child, Family and Community Service Act.

PART D – RELEVANT LEGISLATION

- s. 57 Employment and Assistance for Persons with Disabilities Act (“EAPWDR”)
- s.22(4) Employment and Assistance Act (“EAA”)

PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was:

The appellant is in receipt of disability assistance as a 2-person family unit.

On February 2, 2018 the appellant requested a crisis supplement for funds to pay two utilities debts from 2014.

The Ministry denied the appellant's request.

On October 6, 2017 the appellant and his spouse had previously made the same request for a crisis supplement for utilities to pay the 2014 utilities debts and the Ministry also denied that request.

On January 27, 2014 the appellant's spouse made a request for a crisis supplement for \$597.26 to pay an outstanding utility bill and for the Ministry to pay another utility bill from an account that she had six years prior to 2014. The Ministry denied those requests from the appellant's spouse.

The appellant provided in his request for reconsideration:

- since the year 2014 he has had to contend with multiple personal setbacks including poor health and struggles with addiction
- his monthly income is not adequate to repay his debt on top of his regular living expenses
- he is working to improve his circumstances so as to maintain his sobriety and in the hopes of reuniting his family

A March 5, 2018 "note to worker" provides:

- The outstanding debt to the first utility company is \$259.43 and to the second utility company is \$140.14.
- The appellant had been in and out of jail up until August 24, 2016 and is also suffering from physical injury broken bones and mental illness due to brain injury
- The appellant wants to stay clean and sober and hopes to be reunited with his family. He has struggled with rage episodes, misunderstanding, he also has F.A.S.
- The appellant grew up with sex and physical and mental abuse which all led to his struggles with addiction
- He has ended up with outstanding bills and ended up homeless until 11 months ago.
- He has been sober and drug free for 5 months and 11 days and now wants to get his life back on track and obtain housing and go to drug and alcohol treatment and does want to stay clean and sober and hopes to be reunited with his family.

An email from a credit bureau on behalf of the two utility companies advising the appellant that his account is in default and immediate collection is required and that he owes \$259.43 to the first utility company and \$140.14 to the second utility company.

Additional information was submitted after reconsideration. The Ministry did not object to the admission of the additional information. The panel reviewed the documents and determined that they are written testimony in support of information or records before the Ministry at the time of reconsideration. The panel admits the additional information pursuant to s.22(4)(b) EAA.

The additional information:

A May 9, 2018 letter from the appellant's advocate which stated:

- The advocate letter submitted to the reconsideration branch on March 28, 2018 was omitted from the appellant's documents
- An article posted May 1, 2018 entitled "man in hospital after shooting:
- An article posted May 3, 2018 entitled "suspect in shooting at motel arrested"
- An article posted May 4, 2018 entitled "two suspects in shooting charged – one remains at large"

A March 16, 2018 letter from the appellant's advocate states:

- Since 2014 the appellant has been dealing with numerous issues and personal challenges such as incarceration, health issues, and homelessness
- The appellant's debts were not his focus as he was focused on meeting basic needs and health issues which override his debt concerns
- The appellant's attempts at survival took over all other matters. The appellant has received treatment and is sober almost six months
- The appellant's monthly expenses include paying rent (\$850), shaw (\$125), groceries (\$300), transit (\$100), and kids expenses (\$150). He has no additional income to pay the debt.

At the hearing the appellant's advocate relied on the submissions contained in the appellant's submission. The appellant's advocate also provided clarification:

- The appellant's \$125 per month shaw bill is for internet that the appellant requires due to his hearing disability.
- The appellant and his spouse have looked at approximately ten rental places in the last week. Three of those rental places were all-inclusive type places where the appellant would not be required to obtain a utility account.
- The appellant's advocate spoke to the RCMP that patrols the hotel where the appellant resides. The RCMP officer told the appellant that in 2016 the RCMP responded 99 times to the hotel. In 2017 RCMP responded 188 times to the hotel.
- The appellant's children have been removed from his care for 3 or 4 years. The visits with the appellant and his children are done in the community. The appellant and his partner see the children on the weekends.
- The appellant and his partner have been together off and on for 18 years. They receive assistance as a family unit
- The appellant has looked into the utility company's pilot program to assist with debts but this debt is too old to qualify for the pilot program. The appellant has also looked into the Homeless Prevention Program ("HPP") but the appellant cannot apply for that program until he has exhausted the Ministry appeal process.

The appellant's advocate argued the following at the hearing:

- The term "unexpected" in the legislation should be viewed subjectively and not objectively.
- It is not unreasonable to assume that someone that experiences homelessness has no additional assistance or resources.
- Due to the age of the debt it is not unreasonable to assume that the appellant has no other resources to assist with paying off the debt.
- The ability for the utility companies to seek compensation for the debt by the appellant by way of a lawsuit had expired pursuant to the Limitation Act, and the two year limitation set out in that act. The utility companies cannot pursue any additional action apart from not permitting the appellant to obtain a utility account or having the credit bureau attempt to reach the appellant. If the appellant makes any payment to the utility companies, that payment will be considered partial payment of the debt and the Limitation Act will no longer protect the appellant.
- The advocate submits that based on the RCMP evidence of the patrolling around the hotel where the appellant resides, there is danger to him.
- The rental market is very challenging in the community that the appellant resides.

The Ministry relied on their reconsideration decision at the hearing. The Ministry also provided at the hearing that that the Ministry will assist in negotiating re-payment plans with the utility companies on behalf of their clients and repayment can come directly of their client's assistance cheques.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether it was reasonable for the Ministry to determine that the appellant is not eligible for a crisis supplement for re-payment of two outstanding utility bill debts on the basis that the appellant did not meet the requirements set out in s.57 EAPWDR. Specifically, was it reasonable for the Ministry to determine that the need for the item was not unexpected nor was it an unexpected expense, the appellant did not show that there were not other resources available to him, and a failure to obtain the item or meet the expense would not result in imminent danger to the physical health of the appellant's family unit or the removal of a child pursuant to the Child, Family and Community Service Act.

The legislation provides:

Employment and Assistance Act:

Panels of the tribunal to conduct appeals

22 (1) If a person commences an appeal in accordance with section 21 (1), the chair must appoint a panel consisting of up to 3 members of the tribunal to hear and determine the appeal.

(2) If a panel consists of more than one member, the chair must designate a chair of the panel from among the members of the panel, and if a panel consists of one member, that member is the chair of the panel.

(3) A panel must conduct a hearing into the decision being appealed within the prescribed period either

(a) orally, or

(b) with the consent of the parties, in writing.

(4) In a hearing referred to in subsection (3), a panel may admit as evidence only

(a) the information and records that were before the minister when the decision being appealed was made, and

(b) oral or written testimony in support of the information and records referred to in paragraph (a).

(5) Evidence referred to in subsection (4) may be admitted whether or not it would be admissible as evidence in a court of law.

(6) The panel chair is responsible for deciding any question of practice or procedure that arises during a hearing and is not provided for in the regulations or in the practices and procedures of the chair under section 20 (2) (a) [powers and duties of the chair].

Employment and Assistance for Persons with Disabilities Regulation

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.

[am. B.C. Reg. 13/2003.]

The panel finds that it was reasonable for the Ministry to determine that this debt is not unexpected. The appellant and his spouse have both been aware of this debt since 2014. Further, the appellant currently has housing at a hotel and the debt is not preventing him from obtaining housing at the hotel. The appellant is aware that this debt needs to be paid before he can obtain housing that requires him to have a utility account through one of the utility companies.

The panel finds that it was reasonable for the Ministry to determine that the appellant has not shown that there are no other resources available to him to pay for the utility debt. The appellant's total outstanding debt owed to the utility companies is \$399.57. The appellant states that out of ten places he has looked at for potential rental accommodation, only three were all inclusive places. There are therefore rental options (including the current place the appellant resides) for the appellant that do not require him to obtain a utility account. The appellant is aware that he may eventually need to re-commence an account with one of the utility companies if he chooses accommodation is not an all inclusive accommodation. The appellant did not provide evidence about discussions with the utility companies regarding payment plans to pay back his debt. Instead, the appellant's advocate submits that the appellant has not attempted to pay back any of this debt because if he does he will no longer be able to rely on his limitation defence against the debt owing. The panel finds that this is not a reasonable approach to take especially if the appellant is attempting to open his options to find more stable and suitable housing. To obtain a rental accommodation where the appellant needs a utility account, the debt will need to be paid back. Hiding behind a limitation defence prevents the appellant from seeking resources to assist him in repaying the utility debts. The panel heard from the Ministry that they also assist in negotiating these re-payment plans with the utility companies. The appellant submits that there is no additional money in his budget to pay back these debts. However, as the appellant has not attempted to look at the utility company repayment plans or the Ministry programs, the appellant is not adequately aware of the details of repayment (including if some of the debt will be forgiven), to be able to state that he cannot afford to pay back the debts.

The panel finds that it was reasonable for the Ministry to determine that there is no imminent danger to the physical health of anyone in the family unit and no danger of a child being removed pursuant to the Child, Family and Community Service Act. The appellant's advocate provided news paper articles on the subject of the dangers in the area that the appellant currently resides. The appellant's advocate also provided some hearsay evidence from a local RCMP officer he spoke with about the rates of crime in the area. Neither the articles nor the hearsay evidence are sufficient proof that the appellant's family unit is in imminent danger to their physical health.

The appellant and his advocate agreed that there is no risk of the removal of a child pursuant to the Child, Family, and Community Services Act by reason that the appellant and his spouse have not had their children residing with them in approximately four years.

For the reasons set out above, the panel finds the Ministry decision to be reasonably supported by the evidence and confirms the decision.