

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's Reconsideration Decision dated June 12, 2018, which denied the appellant's request for a crisis supplement to be increased from the amount the ministry granted to one-half of the Appellant's BC Hydro arrears. The ministry denied the Appellant's Reconsideration Request on the grounds that although the Appellant

- (i) met the criterion of showing that the need for money was to meet an unexpected expense or obtain an item unexpectedly needed,
- (ii) he did not meet the criterion of having no resources available to pay the Hydro bill, and
- (iii) he did not meet the criterion of showing that imminent danger to the Appellant's physical health could result.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 5, 16

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 57(1)

PART E – SUMMARY OF FACTS

Documents and Information Before the Minister at Reconsideration

The documents and information before the ministry at the time of the reconsideration decision included:

A. The Decision to be Reconsidered dated May 1, 2018 (as included in the Request for Reconsideration form) which included that:

- The Appellant contacted the ministry on May 1, 2018 to request assistance with a large BC Hydro bill
- That the Appellant was confused as to why the Hydro bill balance was so high because the ministry had been making \$69 per month payments on the Appellant's behalf
- the ministry investigated and found that there was a usage spike from January to March 2018 resulting in a balance owing of \$910.06
- BC Hydro advised the equal payment plan would be \$153 per month
- The ministry worked out a payment arrangement with BC Hydro to avoid service disconnection
- The ministry paid a crisis supplement directly to BC Hydro of \$229 a month
- The ministry made arrangements to pay an additional \$76 per month to BC Hydro from the Appellant's income assistance benefits to pay the remaining balance owing, so that the direct payment would now be \$229 per month
- The ministry advised the Appellant that he may adjust the amount paid to BC Hydro (\$229 monthly) to accommodate changes in his usage
- On May 24, 2018 the Appellant requested reconsideration of the decision to pay \$229 as a crisis supplement to BC Hydro, because the payment arrangements made by the ministry with BC Hydro did not leave the Appellant with enough funds to pay for his other monthly needs, which were \$307 pay directly for rent, and the \$229 pay directly to BC Hydro from a total assistance amount of \$1,165.42, leaving the Appellant with \$629.42 for all of his other needs.

B. The appellant's statement in support of his request for reconsideration saying that

- On May 1, he called the toll-free number to request a crisis grant for BC Hydro in the sum of \$1,132.06
- The ministry worker said she would contact BC Hydro and inquire as to why the bill got so high since the Appellant was making monthly instalment payments and despite doing so was being threatened with disconnection
- When the Appellant did not hear back from the ministry worker he called the ministry and spoke to a man who looked up his file, and said that the ministry had made a payment agreement with BC Hydro such that the Appellant's payments would be \$229 per month plus his regular payment of \$76 per month
- The Appellant told the ministry worker that would be an impossible amount to pay because of his pad rental being \$307 and he had other expenses
- The Appellant says he has worked diligently to keep his Hydro up-to-date by making additional payments
- The Appellant said the ministry has a policy to pay half the arrears in a crisis situation so half the arrears of \$1,132.06 is \$566.03 but the ministry only paid \$229
- The Appellant set out his monthly expenses of food \$300, phone cable and Internet \$155, car insurance \$60, gas and maintenance \$60, furnace oil \$66, clothing \$50, personal care items \$15, haircuts six dollars, pet supplies \$50, pad rental \$307, property tax \$10, lawn care fuel \$10 and laundromat are \$20 for a total of \$1,109
- The Appellant said that the foregoing detailed budget did not include house insurance as he has not been able to afford it for three years, does not include gifts or travel to see his children
- The Appellant argued that the ministry erred in making an agreement concerning his Hydro bill without consulting him on the details, further erred in the amount that they sent to BC Hydro directly as a crisis supplement, saying it should have been half of the arrears of \$1,132.06 (instead of \$229).

C. A letter from BC Hydro dated November 27, 2017

- The letter advised the Appellant that an instalment plan to pay \$161.40 had been set up with the first instalment due December 27, 2017 in the sum of \$69, a further \$69 due January 25, 2018 and then \$23.40 to be paid from the 26th 2018, with these amounts in addition to the regular billing amounts.
- An Invoice from BC Hydro dated January 23, 2018
- An Invoice from BC Hydro dated February 22, 2018
- A BC Hydro letter dated April 24, 2018 showing that the Appellant had an overdue amount of \$979.68 plus new charges of \$152.38
- A BC Hydro letter dated May 1, 2018 saying a catch-up payment plan has been established to pay the amount owing of \$910.06

Evidence Submitted on Appeal

Neither the Appellant nor the ministry provided any further evidence on appeal.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the Ministry of Social Development and Poverty Reduction's Reconsideration Decision dated June 12, 2018, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. The ministry denied the appellant's request for a crisis supplement of one-half of the Appellant's BC Hydro arrears and granted him a lesser amount instead, which the ministry paid towards those arrears. The ministry denied the Appellant's Reconsideration Request for the supplement to be increased to one-half of the arrears on the grounds that although the Appellant

- (i) met the criterion of showing that the need for money was to meet an unexpected expense or obtain an item unexpectedly needed,
- (ii) he did not meet the criterion of having no resources available to pay the Hydro bill, and
- (iii) he did not meet the criterion of showing that imminent danger to the Appellant's physical health could result.

Applicable Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 5, 16

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Reconsideration and appeal rights

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
- (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
 - (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision respecting the conditions of an employment plan under section 9 [employment plan].

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3) Subject to a regulation under subsection (5) and to sections 9 (7) [employment plan], 17 and 18 (2) [overpayments], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in the [Employment and Assistance Act](#) and the regulations under that Act.

- (5) The Lieutenant Governor in Council may designate by regulation
- (a) categories of supplements that are not appealable to the tribunal, and
 - (b) circumstances in which a decision to refuse to provide disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 57(1)

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

Parties' Submissions

Appellant's Submission

In his Notice of Appeal dated June 20, 2018, the Appellant submitted that the ministry made an agreement with BC Hydro without consulting him, and that the ministry erred in assuming that a monthly payment of \$229 to BC Hydro was manageable because his basic cost of living was \$1,109 without the additional Hydro expense, that he could not afford house insurance, house repairs, car repairs or any other unexpected costs so he was constantly at risk of crisis. He stated that he was in imminent danger because of his high blood pressure being elevated due to severe financial stress and his ability to feed himself is at risk because of lack of money for food.

At the hearing, he argued that the BC Hydro letter of November 27, 2017 confirmed arrangements that he had made, that the ministry had no right to make any agreement with BC Hydro without consulting him, and that the crisis grant should have been half the arrears of \$1,132.06, not the \$229 crisis grant that the ministry did make.

The Appellant said that he had called the ministry and received the answer that the ministry would look into the situation. When the ministry did not call back he telephoned them and determined that the ministry had approved a crisis grant of \$229, rather than half of the outstanding amount (which the Appellant said should have been \$566.03, as that is half of the outstanding amount of \$1,132.06.)

The appellant argued that the ministry policy is to pay half of the outstanding amount.

The Appellant said that his expenses as set out in Part E section B are large enough that the agreement the ministry made with BC Hydro to pay \$229 per month was unreasonably high, and that the instalment agreement which the Appellant said he had proposed, to pay another amount per month to BC Hydro, was more reasonable.

The Appellant's Advocate said that she had been an advocate for 30 years and it is the policy of the ministry to pay half of the arrears of \$1,132.06 to be paid over 12 months, and thus the crisis grant should have been \$556.03 with the balance of \$566.03 payable over 12 months, but by making the crisis grant \$229, it was \$327.03 too little.

The Appellant's Advocate also submitted that as the name of the ministry is the "Ministry of Social Development and Poverty Reduction" then, if the panel understands the submission correctly, the ministry should make every effort to ensure that the poverty of individuals is reduced, and that would be achieved by granting the appeal.

The Appellant's Advocate argued that to commit someone to the payment plan the ministry did, without consulting the Appellant, is not reasonable, and that the lack of consultation and the Reconsideration Decision both offend the rules of Natural Justice and Procedural Fairness.

Ministry Submission

The ministry submitted that there is no policy of paying half of the arrears to BC Hydro when a Person with Disabilities falls into arrears and is threatened with disconnection. The ministry said the policy is to determine the least amount that BC Hydro would take in order to avoid a disconnection and pay that amount, with the balance of the arrears to be paid off over 12 months.

In this case, the ministry submitted that it had determined the least amount that BC Hydro would take, in order to avoid disconnection, was \$229 and it is that amount that was paid to BC Hydro on the Appellant's behalf as a crisis grant. The ministry submitted that after the \$229 crisis grant had been paid to BC Hydro, that left \$903.06 to be paid over 12 months. The ministry submitted that the monthly payment agreement that it had made with BC Hydro for \$229 per month to be paid directly to BC Hydro was made up of \$153 for the Appellant's Equal Payment Plan plus 1/12 of the arrears of \$903.06 (rounded to \$76 per month), totaling \$229 per month. The panel notes that the monthly payments of \$229 are the same amount as the \$229 crisis grant, and notes this is simply a coincidence.

The ministry noted that it pays the appellant's pad rental of \$307 per month directly to the landlord and the further \$229 per month directly to BC Hydro.

The ministry reiterated that there is no policy that one-half of arrears are paid as a crisis grant with the remainder to be paid over 12 months, and that crisis grants are limited to the least amount that BC Hydro will take in order to avoid disconnection.

The ministry said it had considered the pad rent and the direct payment to BC Hydro and submitted that left the

Appellant was \$642.42 remaining from his monthly disability benefit of \$1,185.42, and that this amount was sufficient to meet the Appellant's basic needs.

The ministry also pointed out that under section 16(1) of the EAPWDA, reconsideration is only available when there has been a refusal to provide disability assistance, hardship assistance, or a supplement, or a discontinuance or reduction of disability assistance or a supplement. The ministry further argued that its actions in paying a crisis grant of \$229 and negotiating monthly payments of another \$229 for 12 months is not a denial, discontinuance, or reduction of assistance nor of a supplement, and that therefore the issue was not open to reconsideration. The ministry pointed out that despite the fact that reconsideration was not available to the Appellant, it had gone on to address the issue of the amount of arrears paid as a crisis supplement.

The ministry submitted that there is no duty to consult the appellant when making arrangements with BC Hydro to avoid disconnection.

The ministry pointed out that if a crisis supplement was available, under section 57 (1) of the EAPWDR, it would have to be for an item unexpectedly needed or an unexpected expense, for which there were no resources available and that failure to obtain that item or meet the expense would result in imminent danger to the appellant's physical health.

Panel Finding

The panel notes that under section 16(1) EAPWDA Reconsideration would not be available unless there had been a denial, discontinuance or reduction of assistance or of hardship assistance or of a supplement provided, and none of that occurred in this matter. Because the ministry allowed a Reconsideration Hearing, the decision in that Reconsideration Hearing is subject to appeal to the Tribunal. The Tribunal proceeded with hearing the appeal on the issue of whether or not the Appellant was entitled to a greater amount for his crisis supplement or if the amount granted by the ministry was proper under the legislation in the circumstances of the Appellant.

Natural Justice and Procedural Fairness

Natural Justice

The panel observes that Natural Justice is a term used to indicate a hearing without bias; in other words a fair hearing. It is sometimes referred to as a duty to act fairly.

There is nothing in the record before the tribunal to indicate that the reconsideration officer, in arriving at the Reconsideration Decision dated June 12, 2018 acted in a biased or unfair manner. In this appeal, neither the Appellant nor his Advocate pointed out any bias exhibited by the reconsideration officer or any way in which the reconsideration officer proceeded unfairly. A duty to act fairly means to consider all of the evidence before the hearing officer, not to consider evidence not in the record, and to weigh all of the evidence fairly.

The panel finds that there is no legislated requirement for the ministry to consult the Appellant when making payment arrangements with BC Hydro to avoid disconnection.

The panel finds that to make payment arrangements with BC Hydro to avoid disconnection without consulting the Appellant does not offend the requirements of Natural Justice, as the duty to act fairly applies to a hearing conducted without bias, and not to such payment arrangements as were made here.

The panel finds that the reconsideration officer, on the face of the record, considered all of the evidence before him or her, considered nothing not in the record, and arrived at a reasoned decision based on that evidence.

The panel finds that at reconsideration there was no denial of Natural Justice.

Procedural Fairness

The panel observes that the concept of Procedural Fairness is a term used to indicate that a fair and proper procedure is used when making a decision, in this case the Reconsideration Decision, and has nothing to do with the actual outcome of that decision.

There is nothing in the record before the tribunal to indicate that the reconsideration officer arrived at his or her decision through consideration of anything other than the evidence presented by the minister and by the Appellant. On the face of the record, the reconsideration officer reviewed and analysed that evidence in a logical manner and did not consider anything not presented by either the ministry or the Appellant. The panel observes that the reconsideration officer is free to accept or reject any of the evidence presented at reconsideration.

The panel observes that Procedural Fairness is a requirement of a hearing and has nothing to do with whether or not there are consultations made with BC Hydro to avoid disconnection, made before any hearing, and in this case made before the Reconsideration hearing.

The panel finds that the reconsideration officer engaged in a fair and proper procedure in arriving at the Reconsideration Decision and that there was no denial of Procedural Fairness.

Appellant's Submission Based on the Name of the Ministry

The panel finds that the submission that the panel should pay heed to the name of the ministry, "The Ministry of Social Development and Poverty Reduction", and in some way allow the Appellant's appeal based on interpretation of that name, is without merit.

The Legislative Scheme

Section 57(1) EAPWDR provides that a crisis supplement is available to a person who has been designated as a Person with Disabilities who meets 3 conditions:

- (a) the person must require the supplement to meet an unexpected expense or to obtain an item unexpectedly needed
- (b) there must be no resources available to the person, and
- (c) the minister considers that failure to meet the expense or obtain the item will result in imminent danger to the physical health of the person.

(a) The Supplement is Required to Meet an Unexpected Expense or Obtain an Item Unexpectedly Needed

At reconsideration the minister was satisfied that there was an unexpected need; specifically, to pay the BC Hydro arrears, and therefore this first condition was not in issue on appeal

(b) Resources Available

The ministry made arrangements to pay the minimum amount required by BC Hydro to avoid disconnection (\$229 comprised of \$153 per month for the equal payment plan plus \$76 toward the arrears) in order to avoid disconnection. That \$229 per month was available from the appellant's \$1,185.42 per month disability assistance leaving him with approximately \$649.42 after pad rental of \$307 paid directly to the landlord.

The Appellant had argued that with the money remaining to him (\$649.42) he was unable to meet his other expenses, which are set out in Part E "Statement of Facts" Section B.

The panel observes that allocation of the Appellant's remaining monies among his expenses is for him to determine, and not for the ministry or this panel. The sole question is from the resources available are there or are there not sufficient monies with which to meet the unexpected expense, in this case the minimum payment required by BC Hydro.

The panel finds that there were resources available to pay the BC Hydro account, and therefore the condition of inability to meet the BC Hydro expense because of lack of resources was not satisfied, because the Appellant does have the resources available.

(c) Failure to Meet the Expense will result in Imminent Danger to the Physical Health of the Appellant

Because arrangements were made with BC Hydro to avoid disconnection, lack of electric power is no longer a risk. While it would be conceivable that lack of electric power might constitute imminent danger to the Appellant's physical health, avoidance of disconnection eliminates that risk.

The panel finds that there is no risk to the Appellant's physical health, and that therefore the third requirement is not satisfied.

Conclusion

The panel finds that the ministry's determination, specifically in order to meet the criteria of the Appellant having no resources available with which to meet the unexpected expense of the BC Hydro account and that failure to meet that expense would result in imminent danger to the Appellant's physical health was not met, were reasonably supported by the evidence and a reasonable application of the applicable enactment, namely the *Employment and Assistance for Persons with Disabilities Regulation* section 57(1), in the circumstances of the Appellant.

The panel confirms the ministry's reconsideration decision. The appellant is not successful on his appeal.

PART G – ORDER**THE PANEL DECISION IS: (Check one)**☒ **UNANIMOUS**☐ **BY MAJORITY****THE PANEL**☒ **CONFIRMS THE MINISTRY DECISION**☐ **RESCINDS THE MINISTRY DECISION**

If the ministry decision is rescinded, is the panel decision referred back to the Minister
for a decision as to amount? ☐ Yes ☐ No

LEGISLATIVE AUTHORITY FOR THE DECISION:*Employment and Assistance Act*Section 24(1)(a) ☒ or Section 24(1)(b) ☒

and

Section 24(2)(a) ☒ or Section 24(2)(b) ☐**PART H – SIGNATURES**

PRINT NAME

Donald (Dan) McLeod

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/July/11

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/July/11

PRINT NAME

Marnee Pearce

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/July/18