

APPEAL NUMBER
2021-0087

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated April 13, 2021 which held that the appellant was not eligible for a crisis supplement for utilities. Specifically, the ministry determined that the appellant was not eligible for a crisis supplement because the appellant did not identify an unexpected expense or a requirement to obtain an item unexpectedly needed.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR) section 59

PART E – SUMMARY OF FACTS

Background Information

- The appellant is a sole recipient of income assistance and receives a total amount of \$1,000 per month.
- The appellant has lived at the current residence since May 2020.
- On March 23, 2021 the appellant requested a crisis supplement because her hydro had been cut off and she had no way of cooking or heating.
- The utility company requested payment of \$1700 before the appellant's power could be reconnected and she had no resources to pay the amount.
- The appellant's children were taken into care in December 2020 so the appellant's monthly assistance amount was adjusted, however she continued to receive a top up amount for shelter costs.
- As the reason for requesting a reconsideration of the denial of a crisis supplement the appellant wrote, in summary:
 - Her children had been taken into care and she was working hard to get them returned to her.
 - She had not been receiving the correct Child Tax Benefit (CTB) amount for some time and this was what she had been counting on to pay the overdue utility bill.
 - When the appellant moved into her current address an outstanding amount that had been owing to the utility company was added to her current account.
 - She had been getting on top of her bills when "all this happened".
 - She has been doing everything possible to get her children back, did not get a notice of disconnect, and now the power has been cut off.
 - She cannot provide the social worker with what she needs to get her children back, which is a stable home.

On the Notice of Appeal form, signed on April 27, 2021, the appellant did not provide any comments to indicate why she disagreed with the ministry decision.

At the hearing, the appellant explained that she has had many things going on in her life over the past year:

- She had misplaced a \$50 cheque from the ministry last year so it was reissued to her. It turned out that the tenant who lived in the other suite had got hold of the cheque as well as the appellant's cell phone and deposited the cheque to the tenant's own account. The tenant also stole \$500 from the appellant's account. The police were involved but because the appellant was reluctant to sign a statement detailing these allegations – in part because the appellant understood the other tenant had a firearm – the police did nothing further and the appellant did not receive any restitution from the theft. The appellant argues that the ministry informed her they were denying her request for a crisis grant for utilities because she had engaged in fraud to obtain the reissued \$50 cheque, which was not true.
- The appellant's cell phone was stolen by the other tenant and she did not have access to emails. She got a new email address, which she provided to the utility company however it was only recently she started receiving any emails from them. The appellant stated she did not receive any billings or disconnect notice from the utility company and that she got up one day and found her electricity had been shut off.
- The appellant states when she moved into this residence in May 2020 she was told by the utility company that she had an old account with \$700 owing, which they would add to the current account. She made some payments to the utility company, usually around \$75 or \$100 however she could not make these payments every month because sometimes there were things happening and she could not make the payment.
- The appellant's children were living with her in 2020, until they were placed with her mother in December 2020. The appellant stated that the Ministry for Children and Family Development (MCFD) had been to her home about 22 times because the tenant who had stolen her \$50 cheque and money from her account kept calling MCFD with complaints about the appellant.
- The appellant is trying to regain custody of her children and is taking parenting courses however her children will not be returned to her if their home does not have electricity.
- The appellant's mother had claimed the Child Tax Benefit (CTB) in 2019, even though the children were living with the appellant. In June 2020 the appellant finally started to receive her CTB and had been hoping

for a retroactive payment from them to catch up on her utility bill, however they never did backpay her.

- The appellant stated she had not received any utility bills until about two months ago when she found out that her account was up to \$1883, with some months showing usage of \$600. The appellant does not know whether she is on monthly or bi-monthly billing. The appellant added that just recently, since her hydro had been disconnected, she received yet another bill which had another \$400 added to it and now \$2251 is owing. She does not understand why the bills are so high. The electricity is used for heating and lights. She states she lives in an old trailer that has black mold and defective (largely missing) insulation but this accommodation is all she can afford.
- The appellant stated when she called the ministry for a crisis grant to help with this bill, the ministry contacted the utility company and were told the company would not accept any partial payments, that the bill in its entirety must be paid before reconnection.
- The appellant stated she is not used to having to pay for utilities when she rents, as usually they are included in the rent and she is not very good at paying bills. She doesn't understand what the equal payment plan is and questions why the ministry did not inform her of this when she first moved into this residence, or offer to pay the utility company directly as they do for her rent.
- The appellant also confirmed she had still not received the BC Recovery Benefit, which she would have used to try to pay the utility bill. The ministry representative offered to contact the appellant to review this with her.

At the hearing, the ministry relied on its reconsideration decision and noted the reason for denying the crisis supplement request was because it was not clear if there was an unexpected expense. The ministry did not know whether the billing was monthly or bi-monthly and there was no documentation as to what payments the appellant had made, or when. The ministry argues that because the appellant has been living at this residence since May 2020 it is not unexpected that when bills are not paid that the utility would be cut off.

During questioning with regards to the ministry policy on Essential Utilities for hydro, the ministry noted that although this particular utility company is not BC Hydro, the ministry does make the same type of payment arrangements when they approve a crisis supplement request. The ministry's policy is that when a crisis supplement is approved, the ministry pays one half of the overdue bill with the remainder of the overdue amount spread out over a period of time and added to the account. In addition, the Equal Payment Plan (EPP) amount is calculated and the total is then paid directly to the utility company monthly from the client's entitlement. The appellant indicated she had given permission for the ministry to speak to the utility company and she was not aware of how to set up EPP, or whether her billings were monthly or bi-monthly, or why her bills were so high. The ministry representative offered to call the utility company to find all this out and report back to the appellant.

Admissibility of Additional Information

The panel accepted the appellant's oral testimony as evidence under section 22(4) of the Employment and Assistance Act, which allows for the admission of evidence reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision that the appellant was not eligible for a crisis supplement to meet the expense of paying a utilities bill was reasonably supported by the evidence or was a reasonable application of the enactment in the appellant's circumstance. Specifically, was the ministry reasonable in determining that the appellant was not eligible for a crisis supplement because the appellant did not identify an unexpected expense or a need to obtain an item unexpectedly needed?

The Appellant's Position

The appellant's position is she was not aware the utilities bill was accumulating so high because she was not receiving the bills. Although she was making every effort to try to pay for utilities she just could not manage with everything else that has happened to her over the past year.

The Ministry's Position

The ministry's position is they could not determine there was an unexpected expense because the appellant did not provide any information with regards to how frequent her billings were, how much she had paid or when she had made a payment. The ministry argues that the appellant knew she had a utility bill to pay, therefore it could not be considered unexpected that the utilities would be disconnected when she did not pay the bill. The ministry acknowledges the appellant does not have the resources to pay the expense and that there is imminent danger to health so these requirements of EAR section 59 have been met, however the requirement that there be an unexpected item or expense has not been met.

Panel Decision

Section 59(1) sets out 3 criteria all of which the appellant must meet before the ministry may provide a crisis supplement (full text of the section follows these Reasons):

1. the appellant requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed;
2. there are no resources available to the appellant;
3. failure to obtain the crisis supplement will result in imminent danger to the physical health of the appellant.

The ministry found that the appellant has met criterion 2 and 3, but not criterion 1. Therefore, the panel's discussion is limited to criterion 1 - whether the appellant's utilities billing was an unexpected expense or an item unexpectedly needed.

The request for a crisis supplement is to pay an essential utility, which is the appellant's hydro bill. The appellant moved into her residence in May 2020 already owing \$700 and since that time the bill increased to over \$2,200. The panel found the appeal record to be lacking in that there were no copies of the utility bill to show how the bill accumulated or what payments were made since May 2020. The appellant indicated she had made \$75 to \$100 payments whenever she could, and we can assume there had been payments made or the utility company would have disconnected sooner than March 2021.

The ministry determined the appellant had not met the unexpected criteria because they did not have enough information to establish that the outstanding amount leading to the disconnect of hydro services was an unexpected expense, and it was unclear if the appellant was making payments each billing cycle, over what time period the outstanding amount was accumulated or if she was aware how much was owed. The panel questions why this was not done when the appellant first contacted the ministry to ask for the crisis supplement, which is the usual procedure when an Essential Utilities Supplement is requested. A ministry worker did contact the utility company but was only told the entire amount needed to be paid prior to reconnection, but why was the history of billing and payment not clarified at that time if it is relevant to determine whether it is an unexpected expense? At the hearing, the ministry indicated they would contact the utility company on the appellant's behalf to find out more information. The panel finds the ministry was not reasonable in making the ineligibility determination, citing these reasons, when they were not explored prior to making the decision to deny.

The panel notes that section 59(1)(a) of the legislation does not differentiate eligibility based on the amount of usage or size of bills, merely that the amount needs to be unexpected. It is worth noting that the ministry policy manual (Crisis Supplement policy, effective May 1, 2018) provides additional considerations:

- the term “unexpected” refers not only to the expense itself (e.g. an unexpectedly large utility billing) but to the applicant’s ability to pay that expense;
- an unexpected expense or item unexpectedly needed refers to an unforeseen situation that suddenly interferes with a person’s ability to pay the expense or obtain the item; and
- the overall circumstances which gave rise to the unexpected need.

If the appellant was not expecting to have to pay high electricity costs, then an invoice higher than anticipated would be unexpected. The question then becomes what was anticipated or expected and when did the appellant become aware of it. The appellant indicated she was not receiving utility bills via email until several months ago. She noticed the first bill showed over \$600 in current charges, and in the final bill received after disconnect there was charged an additional \$400. She does not understand how they can be so high. The appellant was aware she had to pay for a hydro bill, and did make payments, however when she finally received a bill it was for a higher than expected amount and she did not have the resources available to pay the bill. The appellant did not receive a notice of disconnect and woke up one morning to find the hydro disconnected. The panel considers that the amount of the bill when the appellant finally received it, and the eventual disconnection, can be considered an unexpected expense.

The ministry also determined that because the appellant was aware she had \$700 added to her hydro bill when she first moved in that it cannot be considered unexpected to be disconnected when the bills are not paid, however, in the panel’s view, the ministry should have attempted to ascertain whether this amount had been paid off and whether the current amount owing was for ongoing charges.

The appellant’s various hardships and adverse circumstances, some of them brought on by the actions of others as detailed earlier in this decision, are relevant to the determination of the appellant’s unexpected inability to pay the hydro bill and, in the panel’s view, should have been considered by the ministry as part of reasonable inquiries into the appellant’s situation.

The panel considers the appellant did have an unexpected expense in the higher than anticipated hydro bill and the resulting disconnection, in addition to the multiple adverse circumstances affecting the appellant’s ability to pay the bill, and therefore finds the ministry was not reasonable in determining the utility bill was not an unexpected expense.

Conclusion

The panel finds that the ministry’s determination the appellant was ineligible for a crisis supplement under section 59(1) of the EAR because she did not meet eligibility criteria was not a reasonable application of the legislation. The panel therefore rescinds the ministry’s decision. The appellant is successful on this appeal.

The applicable legislation is **EAR**:

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*.

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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

Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021 May 15

PRINT NAME

Kenneth Smith

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 May 15

PRINT NAME

Michael Skinner

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 May 15