

**PART C – Decision under Appeal**

The decision being appealed is the Ministry's January 11, 2012 reconsideration decision in which the Ministry determined that under section 28 of the EAR the Appellant was not eligible for the shelter allowances that she received for August 2011 and for September 2011 because she did not have shelter costs for those two months. The Ministry also determined that under section 27 of the EAA the Appellant had to repay the shelter allowances she received for those 2 months.

**PART D – Relevant Legislation**

Employment and Assistance Act (EAA) Section 27.

Employment and Assistance Regulation (EAR) Section 28 and Schedule A.

## PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from the Ministry's records that:

- The Appellant was receiving income assistance as a single employable parent of 1 dependent child. When her file was opened in April 2011 she gave the Ministry her residential address.
- On September 28, 2011 the Appellant told the Ministry that she intended to move and had placed her belongings in storage at the beginning of September.
- On September 29, 2011 the Ministry contacted the Appellant's landlord at the address the Appellant gave in April 2011. That landlord confirmed that the Appellant did not pay rent for June or July and had moved out mid-July. Because the Appellant received shelter allowances for August and September the Ministry asked her for rent receipts for those months.
- On October 26, 2011 the Appellant provided the Ministry a copy of her rental agreement for a different residence.
- On November 25, 2011 the Appellant told the Ministry that she could not provide rent receipts because she lived in her car during that period. The Ministry told her she would have to repay the shelter allowances she received for August and September because she did not have shelter costs for those 2 months.

2. Appellant's December 22, 2011 reconsideration request in which she wrote that she stayed at a friend's place and paid her \$400 rent for August and \$400 for September. She would supply rent receipts by January 6, 2012.

3. Copy of Ministry overpayment chart showing shelter allowance payments to the Appellant in the amount of \$375 for August 2011 and \$375 for September 2011.

In the Appellant's January 25, 2012 notice of appeal she wrote that it took her awhile to get the receipts because the landlord lived in another city and did not have the means to get the receipts to her. She provided 2 receipts from the friend she identified in her reconsideration request. One receipt was for \$400 for rent for August 2011 and the other for \$400 for rent for September 2011.

At the hearing the Appellant said she did not tell the Ministry she was living in her car. She also stated that she did have shelter costs for August and September as the 2 receipts show. She was unable to get the receipts sooner because she couldn't reach her friend over the holidays. She did not have a phone, the internet or other means to contact her.

The Panel finds that the Appellant's statement in her notice of appeal, the August and September rent receipts and her testimony at the hearing all relate to the information about her shelter costs that the Ministry had when it made its reconsideration decision. Therefore, pursuant to section 22(4) of the EAA, the Panel admits these documents and the Appellant's testimony as being in support of the evidence that was before the Ministry at the time of its reconsideration decision.

At the hearing the Ministry referred to the information it received from the Appellant in November 2011 and noted that at the time of its reconsideration decision it did not have any receipts for rent/shelter costs from the Appellant. It made its decision based on the information it had.

The Panel makes the following findings of fact: the Appellant received shelter allowances of \$375 for August 2011 and \$375 for September 2011; and, on January 25, 2012 the Appellant provided rent receipts for \$400 for August 2011 and \$400 for September 2011.

**PART F – Reasons for Panel Decision**

The issue in this appeal is whether the Ministry reasonably determined that the Appellant was not eligible for shelter allowances for August 2011 and for September 2011 under section 28 and Schedule A of the EAR, and whether the Ministry reasonably determined that the Appellant had to repay the shelter allowances she received for those 2 months.

The following sections of the EAA set out the repayment provisions applicable to this appeal:  
 27(1) If income assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable for repay under subsection (1) is not appealable under section 17(3) [*reconsideration and appeal rights*].

The following sections of the EAR are the income assistance and shelter allowance provisions applicable to this appeal:

28 Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than (a) the amount determined under Schedule A, minus (b) the family unit's net income determined under Schedule B.

**Schedule A Monthly shelter allowance**

4(1) for the purposes of this section, "family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1(2) of this regulation.

(2) The monthly shelter allowance for a family unit to which section 15(2) of the Act does not apply is the smaller of (a) the family unit's actual shelter costs, and (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

In its reconsideration decision the Ministry noted that the Appellant initially said that she did not have shelter costs because she had been living in her car, but then later indicated that she would provide rent receipts by January 6, 2012. The Appellant did not provide those rent receipts by January 11, 2012, the date of the reconsideration decision. Therefore, the Ministry determined that because the Appellant did not have any shelter costs for August 2011 or September 2011 she was not eligible for the shelter allowances she received for those 2 months. The Ministry also determined that because the Appellant received income assistance including shelter allowance that she was not eligible for she had to repay the shelter allowances for August and September 2011. The Ministry's position is that at the time it made its reconsideration decision it did not have the requested receipts proving that the Appellant had rent/shelter costs for August 2011 and for September 2011.

The Appellant's position is that she did have shelter costs for August 2011 and September 2011 in the amount of \$400 for each month. She was unable to provide rent receipts sooner because she had difficulty contacting the landlord; however, she has now provided those two receipts.

The Panel finds that the Appellant received shelter allowances for August 2011 and for September 2011 in the amount of \$375 per month. The Panel also finds that the Appellant did not provide receipts proving that she had shelter/rent costs for those two months by the time the Ministry made its reconsideration decision on January 11, 2012. So at the time of its reconsideration decision, based on the information it had, the Ministry reasonably determined that the Appellant did not have shelter costs for August and September. However, the Panel has admitted into evidence the two rent receipts provided by the Appellant on January 25, 2012. These receipts prove that the Appellant had shelter costs of \$400 for August and \$400 for September 2011, which is more than the shelter allowance she received. Therefore the Panel finds, based on this evidence, that it was not reasonable for the Ministry to determine that the Appellant did not have shelter costs for those two months and the Panel overturns and rescinds that Ministry's decision in favour of the Appellant. Because the Panel has overturned the Ministry's decision that the Appellant did not have shelter costs, the Panel also overturns and rescinds the Ministry's reconsideration decision under section 27(1) of the EAA that the Appellant must repay the shelter allowances she received for August 2011 and for September 2011.