

PART C – Decision under Appeal

The decision being appealed is the Ministry's January 23, 2012 reconsideration decision denying the Appellant's request for reimbursement for the costs of a composting toilet because the Ministry determined that:

1. The Appellant receives the maximum allowable shelter allowance under EAPWDR Schedule A section 4;
2. The Appellant did not obtain approval from the minister prior to incurring the costs of the toilet as required by EAPWDR Schedule A section 5(2)(f); and,
3. The Ministry determined that in this instance the installation of a new toilet was not considered as regular maintenance or general repairs under EAPWDR Schedule A section 5(2)(f).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 24 and Schedule A Sections 1, 2, 5(1) and 5(2).

PART E – Summary of Facts

The Ministry did not attend the hearing. The Panel confirmed that the Ministry was notified of the hearing and then proceeded with the hearing under section 86(b) of the Employment and Assistance Regulation.

For its reconsideration decision the Ministry had the following evidence:

1. Information from the Ministry's records indicating that:

- The Appellant is a Person with Disabilities (PWD) receiving assistance as a single person and she receives \$375 in shelter allowance per month. Her shelter costs (mortgage and utilities) are \$667.33) per month.
- On December 16, 2011 the Appellant asked the Ministry for assistance to pay for a composting toilet at her house because she has no indoor plumbing and cannot have that installed because of the costs to install a septic system. The Appellant uses an outhouse.

2. Receipt dated October 2011 for \$1926.40 for a composting toilet, freight and taxes.

3. Appellant's December 26, 2011 request for reconsideration in which she wrote that she feels that having any type of toilet in her house is a necessity because of surgery she had and because going to the outhouse at night and falling is causing more injuries. She described the surgery and her other medical conditions. The Appellant wrote that she discussed getting the toilet with a Ministry worker and then because she thought it was covered she asked her neighbors to get it and pay for it. However, she intended to repay them as soon as she was reimbursed by the Ministry. The Appellant also wrote that having the toilet is necessary for her hygiene so that she can keep clean and not get infections in the incisions she has from surgery, and from the cuts and scrapes from falling down. She explained why she is living in a rural area why having the composting toilet would improve her house, but more so it would improve her quality of life so that she can prevent injuries.

At the hearing the Appellant explained why she got the toilet and why she expected to be reimbursed by the Ministry. She said she had made a few wrong money decisions in the past and a couple of times had to pay the Ministry back. So this time she wanted to make sure she got it right. She said that before she ordered the toilet she went to the local Ministry office, sometime in September 2011, and talked to a staff member who she named. She explained to that Ministry staff member that she needed the composting toilet because she cannot install a regular septic system and she needs the toilet for hygiene and safety reasons. Several times during the hearing the Appellant stated that she made sure she checked with the Ministry first before getting the toilet and that she was told to go ahead, buy the toilet and then to submit the receipts. Now with the Ministry's denial she does not know how she will pay her neighbors back for the toilet and she also does not know how she will pay for its installation. She said there was an area in her house that had been fixed for the toilet and that still needs some improvement. The Appellant also described her rural home, her disabilities and explained why using the outhouse is dangerous and unhygienic for her. For example she said she is very afraid of falling and hurting herself badly whenever she has to use the outhouse. In fact she recently fell and broke her wrist. She also said this whole appeal process is causing a lot of stress.

The Panel finds that the Appellant's oral testimony is related to information about the how and why she got the composting toilet which the Ministry had when it made its reconsideration decision. Therefore the Panel admits the testimony as being in support of the evidence that was before the Ministry pursuant to section 22(4) of the Employment and Assistance Act.

The Appellant's advocate submitted oral and written arguments on behalf of the Appellant. The advocate argued that the Appellant did receive prior approval from the Ministry when she went to the Ministry office before getting the toilet. The advocate also submitted that the Ministry staff person gave the Appellant bad information about reimbursement for the toilet; for example, the Appellant wasn't told that the toilet would be considered by the Ministry to be a cost included in the Appellant's shelter allowance. The advocate suggested that the Ministry could have considered the Appellant's request as a crisis supplement application. The advocate also argued that the chemical toilet has a much lower cost than putting in a septic system and renovating the home for a flushing toilet.

The advocate pointed out that the Appellant has several physical disabilities which dangerously impact her ability to walk and balance. The advocate argued that the requested toilet is not a home decoration like a rug; it is a safety need. The Appellant risks falling every time she goes to the outhouse, especially in the dark. The advocate submitted that the Ministry should honor the information that the Appellant was given by the Ministry worker and pay for the composting toilet and its installation.

The Panel accepts the advocate's oral and written submissions as arguments in support of the Appellant's position.

Because the Ministry did not appear at the hearing the Panel will consider its reconsideration decision to be its position for the purposes of this appeal.

The Panel notes that there is a discrepancy between the Appellant's evidence about when she got approval for the toilet and the information cited by the Ministry in its reconsideration decision. The Appellant's position is that sometime in September 2011 she was told by a Ministry worker to go ahead and get the toilet and that's why she had her neighbors buy it in October 2011. The Ministry's decision indicates that she asked for assistance for the toilet on December 16, 2011.

The Panel notes that the Appellant's testimony at the hearing, which she repeated several times, was that she specifically went to the Ministry office to get approval before getting the toilet. She even named the Ministry worker she talked to in September 2011 and she emphasized, again several times, that because of earlier money problems she wanted to make sure she got this right. The Panel also notes that the receipt for the toilet is dated October 2011, a month after the Appellant said she talked to the Ministry worker. Also the Appellant's testimony at the hearing is consistent with her statement in her request for reconsideration. Therefore, the Panel accepts the Appellant's evidence that she was told by a Ministry worker in September 2011 to go ahead and get the toilet and then to submit the receipts.

The Panel makes the following findings of fact:

1. The Appellant receives \$375 a month as shelter allowance.
2. The cost of the toilet in October 2011 was \$1926.40.
3. The Appellant received Ministry approval to get the toilet in September 2011 before she got the toilet in October 2011.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant's request for reimbursement for the costs of a composting toilet because the Ministry determined that:

1. The Appellant already receives the maximum allowable shelter allowance under EAPWDR Schedule A, section 4;
2. The Appellant did not obtain approval from the minister prior to incurring the costs of the toilet as required by EAPWDR Schedule A section 5(2)(f); and,
3. The Ministry determined that in this instance the installation of a new toilet was not considered as regular maintenance or general repairs under EAPWDR Schedule A section 5(2)(f).

The following section of the EAPWDR sets out the amount of disability assistance that may be provided in the Appellant's circumstances:

24 Disability 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.

The following sections of Schedule A of the EAPWDR sets out how the amount of disability assistance is determined in the Appellant's circumstances:

1 Subject to section 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24(a) [*amount of disability assistance*] of this regulation is the sum of (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus (b) the shelter allowance calculated under section 4 and 5 of this Schedule.

4(2) The monthly shelter allowance for a family unit to which section 14.2 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:

Family Unit Size	Maximum Monthly Shelter
1	\$375

5(2) When calculating the actual monthly shelter costs of a family unit, only the following items are included: (a) rent for the family unit's place of residence; (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit; (c) house insurance premium for the family unit's place of residence if owned by a person in the family unit; (d) property taxes for the family unit's place of residence if owned by a person in the family unit; (e) utility costs; (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

In its reconsideration decision the Ministry indicated that the Appellant receives \$375 shelter allowance per month, her shelter costs are \$667.33 and on December 16, 2011 the Appellant requested reimbursement for the purchase of a composting toilet. The Ministry also reviewed Schedule A of EAPWDR and how support and shelter allowances are calculated under that schedule. Based on this the Ministry determined that: the Appellant already receives the maximum allowable shelter allowance for a one person family unit; the Appellant did not obtain approval from the Ministry prior to incurring the costs; and, the installation of a new toilet in this instance is not considered to be regular maintenance or general repair.

The Appellant argued that she did receive prior approval for the toilet otherwise she would not have had her neighbors get it for her. In the preceding section of this decision the Panel determined that

the Appellant did receive the Ministry's prior approval to obtain the toilet and to submit the receipts for reimbursement. Therefore the Panel finds that the Ministry's determination on this issue was not reasonably supported by the evidence.

The Appellant also argued that the installation of the composting toilet should be considered maintenance and repair because in her circumstances it is necessary for safety and hygiene reasons.

The Panel notes that in its reconsideration decision the Ministry did not explain why in the Appellant's case the purchase and installation of this type of toilet was not considered by it to be regular maintenance or general repair under section 5(2)(f) of Schedule A. The Appellant, in contrast, explained that she has been relying on an outhouse and for safety and hygiene reasons she needs to install the new composting toilet system in her house. In these circumstances, the Panel finds that the Ministry reasonably applied the plain meaning of the words "maintenance and repair" and reasonably determined that the purchase and installation of a composting toilet in the Appellant's case was not a cost which could be included within the meaning of section 5(2)(f).

The Ministry considered the Appellant's request for reimbursement for the cost of the toilet and its installation as a cost that it determined should be included in the calculation of shelter costs under EAPWDR Schedule A section 5. The Panel notes that section 5(2) defines what is included in the calculation of shelter costs; for example, mortgage payments, house insurance, property taxes and the actual cost of maintenance and repairs. The Appellant acknowledged that she receives \$375 a month in shelter allowance, which the Panel notes is the maximum allowable for a single person under EAPWDR Schedule A section 4(2). The Panel therefore finds that the Ministry reasonably determined that because the Appellant is receiving the maximum allowable shelter allowance it could not reimburse her for the costs of the toilet and its installation as an additional shelter cost.

The Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. The Panel therefore confirms that decision.