

### PART C – Decision under Appeal

The decision at appeal is the ministry's decision at reconsideration on March 9, 2012. At that time the ministry determined that the appellant had received shelter allowances for which he was not eligible from March 2009 to July 2009 and from December 2009 to November 2011. The ministry found the appellant ineligible for this benefit because they found that during those periods the appellant was paying for room and board to his parents and Schedule A Section 6 (2) of the *Employment and Assistance Regulation (EAR)* stipulates that a person is not eligible for shelter allowances if they are paying room and board to a parent.

Consequently, the ministry found that under Section 27 (1) of the *Employment and Assistance Act (EAA)* the appellant is liable to repay the funds that he was not eligible to receive, and they point out that under Section 27 (2) of the *EAA* the amount of the overpayment is not open to appeal.

### PART D – Relevant Legislation

*Employment and Assistance Regulation (EAR)* section 28 and Schedule A sections 2, 4 (2) and 6 (2).  
*Employment and Assistance Act (EAA)* section 27 (1) and (2).

## PART E – Summary of Facts

Documents before the ministry at reconsideration included the following:

- Letter from the ministry to the appellant dated December 6, 2011 reminding the appellant of an appointment he had had but failed to meet and setting up the date of a new appointment;
- A 4-page Overpayment chart in the appellant's name for the months March 2009 to November, 2011 showing an "Overpay amount" of \$11,120.00 and stating, "Client living room and board with his parents. Overpayment resulted due to admin error. MSD was aware that client living with his parents, however, file set up as room & board private and client was only eligible for support during this time, not shelter amount";
- A "To whom it may concern" note from the appellant's father dated November 23, 2011 confirming that the appellant had been charged for rent and not room and board;
- A "To whom it may concern" note from the appellant's father dated February 8, 2011, stating that the appellant stayed in his house and was charged for rent not room and board;
- A Shelter Information Ministry form in the appellant's name on which the section "Room and Board (Meals Included) is completed with a Rent Receipt dated March 1, 2009 in the name of the appellant and signed by the landlord, stating that the amount of \$550 had been received for Room and Board for the month of March, 2009;
- The ministry's Request for Reconsideration Form completed by the appellant and signed by him on February 24, 2012.

At the hearing the appellant presented a further letter from his father dated April 5, 2012, (with the same signature as that found on the letters of February 8, 2011 and November 23, 2011 and the Rent Receipt mentioned above) stating that the appellant is staying in the writer's house and that, "the cheque of \$550 a month from Social Assistance (Welfare). \$375 goes toward for the rent. The balance \$175 I gave to him for groceries, he had to buy. I hope you understand". The appellant sought to have this letter accepted into evidence. The ministry did not object. Accordingly, and based on Section 22 ((4) (b) of the *EAA*, the panel accepted the letter into evidence as it is clearly supportive of materials that were before the ministry at the time of reconsideration.

The appellant's evidence at the hearing was that he had first told the ministry that he would be living with his parents in 2008 when he left the facility in which he had been living trying to deal with a problem with methadone. He had provided that information as part of the development of a transition plan which the ministry required from him. He testified that he had returned to that facility in 2009 for a time and that he had also returned to that facility on December 29, 2011 and was currently living there. When he left the facility for the second time after 2008, the ministry had not changed the earlier information he had given them about going to live with his parents.

He explained that when at his parents' home he lived in his bedroom but that he didn't eat with the family. He said that they ate in the kitchen whereas he ate in the living room. He explained that whereas his family ate Chinese food, he ate things like macaroni and cheese which he purchased from the funds received from the ministry. He said that his parents had insisted on charging him rent.

He also explained that whereas from March 2009 to July 2009 the ministry had provided the funds direct to him, as of December 2009 it was his father who got the ministry's cheque in the amount of \$550. His father kept \$375 for himself to cover the appellant's rent and gave the appellant the rest,

\$175, in cash. He said that he did not have a bank account.

In their Summary of Facts at reconsideration the ministry state that during an annual financial review in November 2011 it was discovered that the system had been updated to reflect room and board but not room and board to a parent. From January 2011 the room and board funds of \$550 were issued directly to the appellant's father and support funds of \$60 were issued to the appellant.

The representative from the ministry drew the panel's attention to the Shelter Information Form. On this form, the information given is said to start on March 1, 2009. There is a box headed, "Room and Board (meals included)" and this has been filled in with the amount \$550.00 per month. There are boxes headed "Client's Portion of Rental Amount" and "Total rent (if shared)" and these boxes are not ticked.

Below the Shelter Information Form there is a Rent Receipt, dated March 1, 2009 and signed by the appellant's Landlord, his father. There is a box on the Receipt for "Rent" and one for "Room and Board". There is a tick in the box for Rent, and beside the dollar sign the numbers "55" have been entered then crossed out. The box for Room and Board is ticked, and beside it is written \$550. It was based on this form and rent receipt, said the ministry's representative that the ministry realized that the appellant had been getting a shelter allowance for which he was not eligible. The representative did not know why the error was not pointed out to the appellant at that time, March 2009.

The representative from the ministry said that the appellant's file did not show that any subsequent Shelter Information Form had been completed. He suggested that because the appellant continued to receive benefits, i.e. a comfort allowance during the period when he had been living in the facility, his file had not been closed and therefore a fresh Shelter Information Form had not been drawn up.

The representative from the ministry explained that the change in who received the ministry's cheque had not resulted from anything to do with the appellant's personal situation. He said that normally the ministry would issue the cheque to the landlord (supplier) either if the landlord (supplier) requested it, or if the ministry were issuing a crisis supplement for shelter direct to the landlord, but in the case of the appellant the ministry had not issued a crisis supplement. He said that the ministry had no problem with a parent charging rent to someone such as the appellant.

Regarding the letter from the appellant's father dated February 8, 2011 the ministry's representative was asked when it had been received by the ministry. His response was that it had been received sometime in 2012 and surmised that the year noted on the letter was incorrect and should read February 8, 2012.

The panel's finding of facts is as follows:

1. The appellant has been in continuous receipt of Income Assistance as a single person
2. The appellant lived in a facility until sometime in 2008 at which time he moved into his parents' home. He returned to the facility in July, 2009, returning to his parents' home in December 2009 and remained there until November 2011.

## PART F – Reasons for Panel Decision

The decision to be determined is whether the ministry's decision at reconsideration was reasonably supported by the evidence. At that time the ministry determined that the appellant had received shelter allowances for which he was not eligible from March 2009 to July 2009 and from December 2009 to November 2011. The ministry found the appellant ineligible for this benefit because they determined that during those periods the appellant was paying for room and board to his parents and Schedule A Section 6 (2) of the *Employment and Assistance Regulation (EAR)* stipulates that a person is not eligible for shelter allowances if they are paying room and board to a parent.

Consequently, the ministry found that under Section 27 (1) of the *Employment and Assistance Act (EAA)* the appellant is liable to repay the funds that he was not eligible to receive, and they point out that under Section 27 (2) of the *EAA* the amount of the overpayment is not open to appeal.

The relevant legislation is to be found in Section 28 and Schedule A of the *EAR*, sections 2 (1), 4 (2) and 6 (2) as well as Sections 27(1) and (2).the *EAA*

Section 28 of the *EAR* states that, "*Income assistance may be provided to or for a family unit, for a calendar month, in the 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.*"

Section 2 (1) of Schedule A of the *EAR* states that, "*the monthly support allowance for the purpose of section 1 (a) is the sum of the amount set out in Column 3 of the following table for a family unit described in Column 1 of the applicant or a recipient described in Column 2.*" For a sole applicant/recipient and no dependent children Column 3 states that the amount of Support is \$235.00.

Section 4 (2) of Schedule A of the *EAR* states that "*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.*" The table indicates for one person the Maximum Monthly Shelter Allowance is \$375.

Section 6 (2) of Schedule A of the *EAR* states that "*If a family unit receives room and board from a parent or child of an applicant or a recipient in the family unit, only the following amounts may be provided: (a) the support allowance that is applicable under sections 2 and 3 of this Schedule to a family unit matching the applicant's or recipient's family unit.*"

The relevant sections of the *EAA* read as follows: **Overpayments** 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 to repay under subsection (1) is not appealable under section 17 (3) [reconsideration and appeal rights].*

At reconsideration the ministry set out their argument stating that the appellant had been issued the maximum of \$610 support and shelter allowances for the period of March 2009 to July 2009 and December 2009 to November 2011. They state that during the period March 2009 to July 2009 this

entire amount had been issued directly to the appellant, but that during the period December 2009 to November 2011, \$550 had been issued directly to the appellant's father and the balance of \$60 had been issued directly to the appellant.

The ministry states that they first advised the appellant of the issue between room and board paid to a parent and rent only being paid to a parent, and recount that the appellant had asked if he were to start paying rent whether he would then be eligible for both shelter and support. They tell of the appellant then providing a letter from his father stating that the appellant was being charged \$375 rent, this being the maximum shelter allowance. They note that when the appellant requested reconsideration he had provided a further letter from his father stating that the appellant had always been charged for rent, not room and board. However, argue the ministry, their review of the original Shelter information provided by the appellant clearly indicates that the intention was to reflect that he was being charged for room and board.

Thus the ministry concludes, the appellant had been paying for room and board to his parents and is consequently not eligible for the shelter allowances he received between March 2009 and July 2009 and between December 2009 and November 2011. They argue that the appellant is therefore required to repay the funds and point out that under Section 27 (2) of the *EAA* the amount of the overpayment is not open to appeal.

At the start of her arguments on behalf of the appellant, his advocate stated that the ministry had mischaracterized his appeal. She was referring to the sentence at the top of the Reconsideration Decision stating that, "The minister is not able to approve your request to waive repayment of assistance you were not eligible to receive". The appellant is not asking for a waiver, said the advocate. Rather, she said, the appellant's argument was and is that his benefits had always been for rent and food, not for room and board.

She pointed to the letters from the appellant's father (November 23, 2011, February 8, 2011 and April 5, 2012) supporting the appellant's position that his financial arrangement with his parents was for rent and food and not for room and board.

She asked the appellant whether in December 2011, he had received from the ministry the amount of \$375 as a shelter allowance. The appellant replied that he could not recall. His only recollection was that the ministry had told him that he owed them monies because of overpayment.

The representative from the ministry drew the panel's attention to the Shelter Information Form containing the information clearly provided in the box headed "Room and Board (meals included)" and with no ticks in the boxes headed "Client's Portion of Rental Amount" and "Total rent (if shared)."

The ministry's representative also pointed to the Rent Receipt, dated March 1, 2009 below the Shelter Information Form, signed by the appellant's Landlord, his father, and the information contained there. There is a tick in the box for Rent, and beside the dollar sign the numbers "55" have been entered then crossed out. The box for Room and Board is ticked, and beside it is written \$550. It was based on this form and rent receipt, said the ministry's representative that the ministry realized that the appellant had been getting a shelter allowance for which he was not eligible.

In answer to a question from the appellant's advocate the ministry's representative acknowledged that the issuing of the allowances to the appellant had not been based on wrong information provided by the appellant but rather on the ministry's own error. In answer to a further question from the appellant's advocate the ministry's representative stated that for December 2011, a period outside of the period covered by the ministry's reconsideration decision, the appellant had received the full support allowance of \$235, plus a shelter allowance of \$140, a Comfort allowance (for the period in the facility) plus a Christmas Bonus – totaling \$610.00. The representative of the ministry confirmed that this payment had been made after receipt by the ministry of the appellant's father's letter dated November 23, 2011 stating that the appellant had been charged for rent and not for room and board. The ministry accepted this letter, stated the ministry's representative, and in the context of the Summary of Facts by the ministry at reconsideration, found the letter to be in response to the ministry's request to the appellant on November 23, 2011 for verification of change.

The relevant section of the Summary of Facts reads as follows. "On November 23, 2011 you were advised that when a person resided with their parents in a room and board situation, they are not eligible for shelter allowances. You were advised that your file had been updated accordingly and you would now be issued only support allowances. You asked if you started paying rent to your family would you then be eligible for shelter and support allowances. You were advised you would be required to provide verification of the change. You submitted a note from your father stating you would now be paying rent of \$375."

The appellant's advocate questioned the ministry's representative on the ministry's statement on the Request for Reconsideration Form where the ministry noted overpayments of \$375 per month from March 2009 to July 2009 and from December 2009 to November 2011 and of \$245 in November 2009. How, she asked, did the ministry know that the overpayment was due to the distinction between the appellant paying his parents for rent as against paying for room and board. The response from the ministry's representative was that this was ascertained through the ministry's system which had a separate screen for room and board/ private as against room and board/family. He agreed that these screens are not provided in the Record.

The panel finds that the ministry did not misrepresent the appellant's appeal, despite the sentence referred to by the appellant's advocate. Rather, in their decision at reconsideration they take the appellant through the legislation and resulting calculations which were applied in his case. They spell out the details of the support allowances and the shelter allowances payable to a single person. They recount the payments made to the appellant and those made for him but paid to his father. They then look at the legislation governing the eligibility for shelter allowances for a person paying room and board to a parent and tell of their discussions with the appellant on that matter, the appellant's response and his provision of a letter from his father. They then turn to the appellant's request for reconsideration and refer to a further letter from the appellant's father, but state that their review of the original Shelter Information clearly indicates that the intention was to reflect the appellant being charged for room and board. This leads to their conclusion that this was in fact the case, and to their determination that the appellant was not eligible for the shelter allowances he had received between March 2009 and July 2009 and between December 2009 and November 2011 and that based on the relevant section of the *EAA* repayment by the appellant was required.

The question at the heart of the appellant's eligibility for shelter allowances is whether the shelter

allowances granted to the appellant were being paid to his father for rent or for room and board during the period under review: March 2009 to July 2009 and December 2009 to November 2011. The ministry relied on the Shelter Information Form completed by the appellant's father and the Rent Receipt signed by him on March 1, 2009. The form is a simple one. The person completing it has a choice to tick boxes denoting rent or room and board. Further the form indicates what room and board refers to by spelling out, "Room and Board (Meals Included)". It is this box that the appellant's father filled out. On the Rent Receipt it is clear that the appellant's father first ticked the box for Rent, started filling out an amount and then crossed it out, then ticked the box for Room and Board and wrote in the amount of \$550. To the panel this signifies that the appellant's father understood the difference between rent and room and board and indicated that he was being paid for room and board.

In the subsequent letters from the appellant's father there is no explanation given as to why having filled out the Shelter Information Form and Rent Receipt form as he did, he was changing the information. No explanation of having misunderstood the wording on the Shelter Information Form or the Rent Receipt is offered. The panel also lacks any verifiable independent documents such as banking records from either the appellant or his father to discredit the Rent Receipt for room and board signed by the appellant's father.

Further, the panel regards as significant the un-contradicted sequence of events as recounted in the Reconsideration Decision: 1. The appellant is advised of the issues between room and board with a parent and rent only to a parent. 2. The appellant asks if he were to start paying rent would he then be eligible for both shelter and support. 3. The production of a letter from the appellant's father – dated November 23, 2011 stating that he charges the appellant monthly rent not room and board. Also the un-contradicted statement in their summary of facts on which their decision is based. 1. On November 23, 2011 the appellant was advised that when a person resides with their parents in a room and board situation, they are not eligible for shelter allowances. 2. The appellant asked if he started paying rent to his family would he then be eligible for shelter and support allowances. 3 The appellant is advised that he would be required to provide verification of the change. 4. The appellant submitted a note from his father stating that he charges the appellant monthly rent, not room and Board. This is the note which the representative from the ministry was asked about at the hearing and which was characterized as being sent as verification of change.

This sequence of events, together with the information provided by the appellant's father on the Shelter Information Form and the Rent Receipt Form persuade the panel that the decision of the ministry at reconsideration that for the periods March 2009 to July 2009 and between December 2009 and November 2011 the appellant received shelter allowances for which he was not eligible was reasonably supported by the evidence.

The ministry takes note of the letter from the appellant's father dated February 8, 2011, but which appears to have been written on February 8, 2012 in which his father states that. "I confirm it always was rent and not room and board". This letter gives no explanation for the difference between this information and the information on the Shelter Information Form and the Rent Receipt Form signed by the appellant's father. Lacking such an explanation the panel finds it reasonable that the ministry gave it less weight than they did the information on the Shelter and Rent Receipt Forms.

That the ministry appears to have accepted the father's letter of November 23, 2011, denoting a change, and apparently paid the appellant both shelter and support allowances for December 2011 is outside of the period under review in the reconsideration decision.

In conclusion the panel finds the ministry's decision at reconsideration that the appellant was not eligible for Shelter Allowances for the periods March 2009 to July 2009 and December 2009 to November 2011 to be reasonably supported by the evidence. Section 27 (1) of the *EAA* requires a person to repay funds they are not eligible to receive. Regarding the amount of funds overpaid and liable to repayment the panel lacks jurisdiction.

Based on its analysis, the panel confirms the ministry's decision at reconsideration.