

## PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (“the ministry”) dated March 19, 2012 which determined that the appellant was not eligible for 3 months shelter allowance under s. 8 of Schedule A of the *Employment and Assistance Regulation (EAR)* while he received care and accommodation in facility “A” because facility “A” (1) does not fall within the definition of “special care facility” set out in s. 1 of the *EAR* as it is not a licensed community care facility under the *Community Care and Assisted Living Act (CCALA)* and (2) is a supportive recovery house not an alcohol and drug residential treatment centre.

## PART D – Relevant Legislation

*Employment and Assistance Regulation (EAR)*,  
s. 1 (“special care facility”), s. 28, and s. 8 of Schedule A

*Community Care and Assisted Living Act (CCALA)*, s1. and s. 11

## PART E – Summary of Facts

The evidence of the ministry at reconsideration is that the appellant has been in continuous receipt of income assistance as a single employable person since January 2008. In November 2011, the appellant advised the ministry that he would be going to facility "A" and requested continued shelter allowance while he was at facility "A." The appellant's request was denied. On February 8, 2012, facility "A" confirmed that the appellant had been admitted on February 1, 2012. On February 10, 2012, the appellant stated that he did not have enough time to move his belongings when he was admitted to facility "A" and requested a shelter allowance for March. On February 13, 2012, the appellant advised that his landlord had agreed that if the appellant paid 3 months of rent, the landlord would allow the appellant to keep his belongings at his rental accommodation for the remainder of his stay at facility "A." On February 14, 2012, the appellant's advocate requested that 3 months of shelter allowance be paid to the appellant's landlord. The request was denied and the appellant requested the minister reconsider the decision.

In a February 24, 2012 Request for Reconsideration, the appellant writes that on approximately January 27<sup>th</sup> he was advised by the ministry that his rent would be covered while he was in treatment. Acting on this information, the appellant opened a bank account into which the shelter allowance could be directly deposited so that during his stay at facility "A" he could then transfer the shelter funds to his landlord's account. On January 31<sup>st</sup>, less than 24 hours before he was to leave for facility "A", the appellant attended the ministry office to provide his direct deposit form and was advised that he would not receive shelter benefits because facility "A" was not a "treatment" centre. Feeling that he needed treatment, the appellant proceeded to attend facility "A" with the intention of arranging storage for his possessions with his landlady once in treatment. The appellant adds that he was advised on numerous occasions that his rent would be covered while in treatment at facility "A".

Also before the ministry at reconsideration was a letter dated March 14, 2012 from a director of BC Housing to the ministry stating that facility "A" is currently funded through the Ministry of Social Development per diems and through a BC Housing Subsidy but that the director is unaware of other funders at this time.

Additional documentation in the appeal record at the time of reconsideration is a copy of the ministry's policy respecting "Alcohol and Drug Residential Treatment" which states that ministry "clients who are residents of alcohol and drug residential treatment facilities funded by the Ministry of Health may be eligible for the standard user fee and a comforts allowance." The policy statement continues to advise that, in addition, clients in the alcohol or drug treatment centre may be eligible for actual shelter costs for the client's usual place of residence.

At the hearing, the appellant stated that up until January 31, 2012 his request for shelter allowance for 3 months had not been denied. Instead, he had been advised on two occasions by two different ministry staff members that he would receive continued shelter allowance for three months and, in reliance on this information, he arranged to have his shelter allowance directly deposited into his bank account to enable him while attending facility "A" to pay his landlord. The appellant stated that the ministry had asked how long his stay at facility "A" would be and upon advising that his stay would be longer than 3 months the appellant was told that the ministry would only provide shelter for 3 months of that stay. The appellant stated that he did not make note of either the names of the two ministry staff members or the specific dates of the conversations. The appellant added that he believed that both of the ministry staff who advised the appellant that he would continue to receive a

shelter allowance for the first 3 months of his stay at facility "A" were well intentioned and believed that facility "A" was a "special care facility" under the legislation.

At the hearing, the ministry stood by the reconsideration decision and stated that actual cost of accommodation and care referenced in s. 8(1)(a) of Schedule A of the *EAR* has the same meaning as "per diem" funding.

The panel admitted the oral testimony of the appellant and the ministry under s. 22(4) of the *Employment and Assistance Act* as being in support of the information and records before the ministry at reconsideration.

## PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry reasonably determined that the appellant was not eligible for 3 months shelter allowance under s. 8 of Schedule A of the *Employment and Assistance Regulation (EAR)* while he received care and accommodation in facility "A" because facility "A" (1) does not fall within the definition of "special care facility" set out in s. 1 of the *EAR* as it is not a licensed community care facility under the *Community Care and Assisted Living Act (CCALA)* and (2) is a supportive recovery house not an alcohol and drug residential treatment centre.

### ***Employment and Assistance Regulation***

**1** (1) "**special care facility**" means a facility that is a licensed community care facility under the *Community Care and Assisted Living Act* or a specialized adult residential care setting approved by the minister under subsection (3);

(3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a licence under the *Community Care and Assisted Living Act* is not required.

### **Amount of income assistance**

**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***

#### **People receiving special care**

**8** (1) For a person who receives accommodation and care in a special care facility or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of

- (a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus
- (b) a comforts allowance of \$95 per person for each calendar month.

(2) If the special care facility is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the applicant or recipient is in the alcohol or drug treatment centre:

- (a) actual shelter costs for the applicant's or recipient's usual place of residence up to the amount under section 4 for a family unit matching the applicant's or recipient's family unit;
- (b) a monthly support allowance for the applicant's or recipient's family unit, equal to the amount calculated under sections 2 and 3 of this Schedule minus the portion of that allowance that would be provided on account of the applicant or recipient.

## ***Community Care and Assisted Living Act***

### **Definitions**

1 In this Act:

**"community care facility"** means a premises or part of a premises

(a) in which a person provides care to 3 or more persons who are not related by blood or marriage to the person and includes any other premises or part of a premises that, in the opinion of the medical health officer, is used in conjunction with the community care facility for the purpose of providing care, or

(b) designated by the Lieutenant Governor in Council to be a community care facility;

**"director of licensing"** means the director of licensing designated under section 3 and includes, for the purposes of a delegation made under section 3 (2), the person to whom the delegation is made;

**"licence"** means a licence issued under section 11;

### **Powers of medical health officer**

11 (1) Subject to this Act and the regulations, a medical health officer may issue to an applicant a licence to operate a community care facility and specify in the licence the types of care that may be provided in the community care facility.

The appellant's position is that he was advised on two separate occasions by two different ministry staff members that he was eligible for a shelter allowance for 3 months while in treatment at facility "A" and the question of whether he was in a supportive recovery house or alcohol treatment facility should not make a difference.

The ministry's position is that the appellant is not eligible for the requested shelter allowance for 3 months while he stayed at facility "A" because s. 8(2) of Schedule A of the *EAR* is not applicable to the appellant's circumstances for two reasons: (1) facility "A" is not a "special care facility" as defined in s. 1 of the *EAR* because it is not licensed under the *CCALA* through the Ministry of Health; and (2) facility "A" is not a special care facility which is an alcohol or drug treatment centre.

With respect to the ministry's denial of the requested shelter allowance for 3 months on the basis that that facility "A" was not a "special care facility" within the meaning of s. 1(1) of the *EAR* because it was not licensed under the *CCALA*, the panel finds that no evidence has been provided disputing that facility "A" is not so licensed. However, the ministry does not address whether facility "A" falls within the meaning of a "special care facility" set out in s. 1(3) of the *EAR* which includes facilities described as a "specialized adult residential care setting" that provide accommodation and care for adults for which a licence under the *CCALA* is not required.

While the panel finds the ministry's reconsideration decision unreasonable in its failure to address whether facility "A" is a "special care facility" as defined in s. 1(3) of the *EAR*, the panel finds that the evidence respecting how facility "A" is funded indicates that facility "A" is a special care facility

described in subsection (3). The ministry's March 14, 2012 letter identifies facility "A" as being funded through ministry "per diems" which the ministry confirmed at the hearing as being the "actual cost" funding provided under s. 8(1) of Schedule A of the *EAR*. Income assistance provided under s. 8 of Schedule A for the actual cost of accommodation and care and a monthly comforts allowance of \$95 extends only to persons receiving accommodation and care in a "special care facility" or a private hospital (not in issue in this case). Therefore, as facility "A" is so funded, the panel finds that it was not reasonable for the ministry to determine that facility "A" is not a special care facility.

The remaining issue is whether the ministry was reasonable in denying the appellant's request for shelter allowance on the basis that shelter costs may only be provided under s. 8(2) of Schedule A of the *EAR* respecting a special care facility that is an "alcohol or drug treatment centre" and that facility "A" is not such a treatment centre but is rather, a 9-12 month recovery house. While the appellant argues that he was in need of treatment and it should not make any difference whether he was in a supportive recovery house or an alcohol or drug treatment centre, the legislation limits the provision of a shelter allowance to persons in a specific type of special care facility - an alcohol or drug treatment centre. The panel notes that the legislation does not define "alcohol or drug treatment centre." The ministry argues that the distinction between a 9-12 month supportive recovery house and an alcohol and drug treatment centre (which the ministry appears to argue is for a shorter period) is borne out by the different source of funding for the two types of facilities. Though not expressly stated, the ministry infers that alcohol and drug treatment centres are funded through the Ministry of Health whereas recovery houses are not and that the different funding source is based on the nature of the care provided. The policy statement which addresses the eligibility of ministry clients residing in alcohol and drug residential treatment facilities funded by the Ministry of Health is provided as support for the ministry's position. The panel finds that the evidence from BC Housing clearly establishes that facility "A" does not receive funding from the Ministry of Health. In the absence of any evidence to dispute the ministry's distinction between an alcohol and drug treatment centre and a recovery house, a distinction which the appellant appears to acknowledge and which is supported by the letter from BC Housing and consistent with the ministry's policy statement respecting "Alcohol and Drug Residential Treatment", the panel finds that the ministry has reasonably characterized facility "A" as not being an alcohol and drug treatment centre. Therefore, the panel finds that the ministry reasonably determined that the appellant was not eligible for a shelter allowance under s. 8(2) of Schedule A of the *EAR* because he was not residing in a special care facility which was an alcohol and drug treatment centre.

The panel finds that the ministry's reconsideration decision was a reasonable application of the legislation in the appellant's circumstances and confirms the decision.