

PART C – Decision under Appeal

The decision under appeal is the ministry's Reconsideration Decision of 12 June 2012 which held that the no assistance or supplement has been denied, discontinued or reduced and therefore the appellant's request is not open to reconsideration under section 17 of the Employment and Assistance Act.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), Section 17 Reconsideration and Appeal Rights
Employment and Assistance Regulation (EAR), Section 28 Amount of Income Assistance
Employment and Assistance Regulation (EAR), Schedule A

PART E – Summary of Facts

The appellant elected a hearing based on written submissions. From the documents submitted, the reconsideration decision and advocate's submission, the panel finds there is no dispute between the parties on the following facts:

The appellant is in receipt of income assistance benefit as a single person, her monthly benefit includes shelter allowance of actual costs up to \$375.00, before March 2012 this amount was \$330.00 (rent and phone); support allowance \$235.00; she also receives a dietary supplement allowance of \$40.00. From her monthly benefit \$20.00 a month is deducted as a repayment.

Until the end of February, 2012 the appellant was sharing accommodation and paying half the \$600.00/month rent. The appellant's roommate moved out at the end of February.

In a discussion which took place on February 24, the appellant informed the ministry representative she intended to stay at the location, though the appellant indicated she was not sure how she would pay the rent.

On February 29, 2012 the appellant's advocate contacted the ministry to inform the ministry the appellant had left the accommodation. The ministry updated records to show that the appellant no longer had accommodation (and therefore was no longer eligible for shelter benefits).

The evidence before the ministry at reconsideration included:

- Computer records of a discussion with a ministry representative dated Feb 24-2012 created at 1:12pm, indicating the appellant "states that she is staying at the (location), the current rent is \$600/month. building mgr confirmed...chq hold for EAW to discuss the following: 1) high rent rates which may affect eligibility for cs requests, 2)..."
- Computer records dated Feb 24-2012 created at 3:59 pm stating: "EAW released both shelter and support chqs."
- A computer record showing cheques held in the amount of \$30.00 and \$600.00.
- A Shelter Information form dated January 17/12 showing rent as \$600 per month, in the appellant's name and listing another adult as residing at the given address.
- A Shelter Information form dated January 18/12 showing rent as \$300 per month, in the appellant's name with no additional adult as residing at the given address.
- Computer case notes with a handwritten date of Jan. 17/12 stating in part: "Rent is shared, clt's (client's) portion is \$300/month and sec dep of \$150 is required..clt states she was evicted with roommate and is now homeless...issued (funds) to prevent undue hardship."
- Computer case notes with a handwritten date of Feb. 24/12 stating in part: "...he has moved out of rooms they shared...clt states she will continue to reside at (location). IO (Intake Officer) asked how she intended to pay the remainder of the rent being charged..(\$600); clt states she is not sure will have to take some time to determine what her options are" (remainder of note blacked out).

- Computer case notes with a handwritten date of Feb. 24/12 stating in part: "...clt has left (location) due to abusive boyfriend. Wkr updated ACC/SUPP and advised clt will need to submit ITR for future shelter funds".
- Computer case notes with a handwritten date of Mar. 1/12 stating in part: "...has moved out of accommodation..Wkr asked whether clt has attempted to access rent funds if she has moved out, (caller) states she will try today".
- Computer records dated Mar 5-2012 created at 2:45 pm stating: "they were both advised in order to get shelter....they will have to separate accommodations in order to receive rent portion" (remainder blacked out).
- Computer case notes, undated, stating in part: "clt states that she is still staying at (location), current rent is \$600/month. Building mgr confirmed ACC update. Wkr issued 2012 Mar shelter \$600/42 ...chq hold for EAW to discuss the following: 1) high rent rates which may affect eligibility for cs requests..."
- Three computerized MIS Cheques records showing two cheques issued 2012-02-24 to the appellant and landlord as cashed and one cancelled cheque.
- A form headed "Renting or Intending to Rent" from the landlord/agent dated May 1, 2012 listing the appellant and showing a rental rate of \$425.00 a month.

The advocate also included copies of information taken from the ministry website, headed Documents Required for the Eligibility Interview: August 5, 2011 and Allowable Shelter Costs: December 1, 2003.

The information attached to the appellant's submission was provided to the advocate by the ministry through the disclosure process. The panel finds these documents to be part of the records that were before the ministry at the time of reconsideration. The panel therefore admits the documents pursuant to section 22(4) of the Employment and Assistance Act.

Based on the evidence and parties submissions, the panel makes the following finds of fact:

The ministry representative confirmed the \$600/month rental rate with the landlord.

On February 24, 2012 the ministry representative then had two cheques created \$600.00 made out to the landlord and \$30.00 made out to the appellant. Both cheques were given to the appellant.

The cheque for \$30.00, made out to the appellant was cashed. The cheque for accommodation, made-out to the landlord, was also cashed.

On March 5, 2012 the ministry contacted the landlord regarding appellant's rent payment. The landlord stated they would be keeping some of the money because no notice was given.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that appellant received all the assistance she was eligible to receive for the month of March 2012 and that the appellant's assistance had not been denied, reduced or discontinued resulting in no right to reconsideration.

The relevant legislation is set out in the EAA, Section 17:

Reconsideration and appeal rights

17. (1) Subject to section 18, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide income assistance, hardship assistance or a supplement to or for someone in the person's family unit;
- (b) a decision that results in a discontinuance of income assistance or a supplement provided to or for someone in the person's family unit;
- (c) a decision that results in a reduction of income assistance or a supplement provided to or for someone in the person's family unit;
- (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
 - (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
- (e) a decision respecting the conditions of an employment plan under section 9 [employment plan].

(2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(3) Subject to a regulation under subsection (5) and to sections 9 (7) [employment plan], 18 and 27 (2) [overpayments], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

(4) A right of appeal given under subsection (3) is subject to the time limits and other requirements set out in this Act and the regulations.

And the EAR, Section 28 and Schedule A

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**Monthly support allowance**

Item	Family unit composition	Age or status of applicant or recipient	Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

Monthly shelter allowance

4 (2)

- (a) the family unit's actual shelter costs, and
 (b) the maximum set out in the following table for the applicable family size:

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

In brief, the appellant's position is that the ministry denied benefits to the appellant by issuing a cheque for the full amount of her rent without the appellant's specific permission, thereby denying her \$255.00 of employment assistance benefit. The ministry's position is that all benefits were paid, no assistance or supplements were denied, discontinued or reduced therefore the ministry's actions under section 17 of the *Employment and Assistance Act* are not open to reconsideration.

At the end of February, the ministry knew that the appellant's living circumstances were about to change. The ministry representative asked what the appellant intended to do; the appellant replied that she was going to stay in the same accommodation. When asked how the appellant was going to pay the rent, the appellant responded that she was not sure, she would need time think about it. The ministry representative contacted the landlord to confirm the rental rate. This discussion took place five days before month end when the March rent was due. On the same day, February 24th, the ministry representative ordered the cheque for \$600.00 made out to the landlord.

The advocate argues that the ministry did not have permission to pay more than \$300.00 to the landlord and made no effort to inform the appellant of its intention to pay the landlord the rent. What took place was the ministry created a cheque made out to the landlord but gave it to the appellant. Since the cheque was cashed, the appellant must have given the cheque to the landlord. The appellant would have known that the cheque was for the full rental amount because the amount directly impacted the cheque made out to the appellant; using the advocate's calculations the cheque would have been \$255.00 short, leaving only \$30.00. Yet there is no record of the appellant questioning or challenging the amount of the cheques, or the ministry's actions at the time. The panel cannot accept that the appellant was not informed and did not accept the decision of the ministry in paying the full amount to the rent before the appellant released the cheque to the landlord.

On the last day of February the appellant vacated the rental property. There is no information in the submissions as to whether any of the \$600 rent was returned the appellant or the ministry. In vacating the property, the appellant no longer had a fixed address and therefore made herself

ineligible for shelter allowance.

The advocate argues the ministry's actions were against policy, citing first a listing of documents required for the eligibility interview, even though the appellant's eligibility had already been established. The advocate then cites information I used to explain allowable shelter costs. In presenting this material, the advocate is asking this panel to determine that the ministry must rely solely on the January 18th Shelter Form, even though the relationship between the ministry and the appellant had been ongoing. The appellant stated she intended to stay in her current accommodation; the ministry had been paying for that accommodation. In light of the undisputed fact that more recent information had been conveyed to the ministry representative and confirmed by the landlord on February 24th the advocate argues the ministry should not have considered, or acted on, the more current information. The advocate encourages this panel to do so without ever taking the position that the information relayed by the appellant was an error or misunderstood. The panel does not accept this as a viable or reasonable way for the ministry to conduct its business.

The advocate sets out the proposition that the rent may not have increased based solely on one of the two people moving out of the accommodation and that by issuing a cheque made out to the landlord the ministry made it impossible for the appellant to choose to renegotiate her rent. This idea was never raised in discussion between the ministry representative and the appellant prior to the cheque being issued or prior to the appellant leaving the accommodation. Additionally, the ministry representative confirmed the rent with the landlord before ordering the cheque. While the panel accepts that the appellant has negotiated a lower rent as of May 1st this does not persuade the panel that the appellant could have done so at the time, indeed if that were the case why didn't she do so on or before February 25th? It is possible that there are different types of accommodation owned by the landlord or that circumstances have changed that allow for the reduced May 1st rental rate. The panel does not have enough information to accept the advocate's argument; it is a retroactive leap we are not prepared to make.

The panel finds that the ministry's explanation of ordering the March rent cheque made out to the landlord for the full amount of the appellant's rent and releasing that cheque to the appellant with the appellant's knowledge was reasonably supported by the evidence and that the appellant had accepted receipt for the full amount of the benefit entitlement in the two cheques issued to her in accordance with section 28 of the *Employment and Assistance Regulation*. Therefore, no assistance or supplement was denied, discontinued or reduced. The panel therefore finds the ministry's decision that there is no entitlement to a reconsideration decision under section 17 of the *Employment and Assistance Act* to be a reasonable application of the legislation in the circumstances and confirms the decision.