

APPEAL #

PART C – Decision under Appeal

This is an appeal of the reconsideration decision of the Ministry of Social Development (Ministry) dated December 19, 2012, in which the Ministry determined that the appellant was required to repay \$1,745.99 in income assistance that he was not eligible to receive, as provided by section 27(1) of the *Employment and Assistance Act*.

PART D – Relevant Legislation

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

PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with s. 22(3)(b) of the *Employment and Assistance Act*.

The appellant is a sole recipient of income assistance with no dependants who began receiving income assistance in or about November 2011.

The information before the Ministry at reconsideration included a copy of a Ministry overpayment chart for the period November 2011 through December 2012, as well as a Ministry shelter information form, date-stamped received by the Ministry August 31, 2012 ("SIF"). The information sections "renting or intending to rent at the following address" and "please complete either A or B" of the SIF are blank. The panel notes that the SIF has a section for "room and board (meals included)" (underlined on form) with the "note: Cost of room and board should include costs associated with food, maintaining the room, pro-rated utilities cost, and pro-rated property tax." This section of the SIF was blank, but the appellant's landlord completed the landlord section of the SIF and wrote, "maintains house and 2 acres in lieu of R/B" in the rent receipt section of the SIF. At reconsideration, the Ministry also had the appellant's written submission on reconsideration (date stamped received by the Ministry December 6, 2012), in which he stated that he had completed all the forms given to him to the best of his knowledge, but that he did not know he was supposed to "complete a shelter form." He also stated in his submissions on reconsideration:

No one ever questioned or showed me rules or regulations concerning my living situation. I had no idea what the \$235.00 a month covered. I thought it was for phone, bank charges, some personal effects and my own food.

In his hand-written submission in the notice of appeal of the reconsideration decision, the appellant wrote, "I want to know why I did not fill a shelter form out one year ago. If I was given one to fill out, I would not be in this situation." The appellant also attached his submissions on reconsideration (as reproduced above) to the notice of appeal.

The Ministry relied on the reconsideration decision, which states that, as described in the SIF signed by the appellant's landlord on August 30, 2012, the appellant maintains the house and 2 acres in lieu of room and board and the Ministry confirmed the appellant's living arrangements with his landlord. The Ministry's overpayment chart shows that between December 2011 and September 2012, the appellant received income assistance based on the support allowance for a single person of \$235 per month (as set out in EAR, Schedule A, section 2), although he received \$270 in December 2011 and \$209 in July 2012 (as he reported earning income of \$26). The reconsideration decision states that the Ministry has determined that the difference between the income assistance that the appellant received and the income assistance that he was eligible to receive is \$1,745.99.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry’s determination that the appellant received more income assistance than he was eligible for because he should have received \$60 per month during a period when he received approximately \$235 per month, and is liable for an overpayment of \$1,745.99 under section 27(1) of the EAA, is reasonable.

Applicable legislation

Under section 4 of the EAA, the “minister may provide income assistance or a supplement to or for a family unit that is eligible for it” subject to the regulations. Section 28 of the EAR provides that income assistance “may be provided to or for a family unit, for a calendar month, in an amount that is not more than the amount determined under Schedule A, minus the family unit’s net income determined under Schedule B.”

The determination of the amount of income assistance an individual may receive is set out under Schedule A, Income Assistance Rates, of the EAR. The appellant is a sole applicant with no dependants who receives room and board in exchange for looking after the property where he lives and there was no evidence before the panel or noted in the reconsideration decision that the appellant lives in a special care facility or that his landlords are family members. Accordingly, the sections of Schedule A of the EAR applicable to the appellant are sections 1, 2, 4 and in particular section 6:

Section 1 – Maximum amount of income assistance before deduction of net income

Subject to section 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28(a) [amount of income 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 sections 4 and 5 of this Schedule.

Section 2 – Monthly support allowance

(1) A monthly support allowance for the purpose of section 1(a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
- (b) the amount calculated in accordance with subsections (2) to (5) for each dependent child in the family unit [not applicable to the appellant]

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

Section 4 – Monthly shelter allowance

(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

Section 6 – People receiving room and board

(1) For a family unit receiving room and board other than in a facility mentioned in section 8 or 9 of this Schedule or from a relative referred to in subsection (2), the amount referred to in section 28(a) [amount of income assistance] of this regulation is the smaller of the following amounts:

(a) the sum of

(i) the actual cost of the room and board, plus

(ii) \$60 for each calendar month for each applicant or recipient, plus

(iii) \$40 for each calendar month for each dependent child in the family unit [not applicable to the appellant]

(b) the amount calculated under sections 1 to 5 of this Schedule for a family unit matching the applicant's or recipient's family unit.

The requirement to repay the Ministry for overpayments is set out in the EAA as follows:

Section 27 – overpayments

(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*].

Section 28 – Liability for and recovery of debts under the Act

(1) An amount that a person is liable to repay under this Act or the regulations is a debt due to the government that may be

(a) recovered in a court that has jurisdiction, or

(b) deducted, in accordance with the regulations from any subsequent income assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

The appellant's submissions indicate that when he applied for income assistance (sometime in the fall of 2011), he did not complete the SIF and that he did not know that he was not entitled to receive the \$235 monthly amount of monthly support assistance, which he thought covered expenses for phone, bank charges, some personal effects and his own food.

In its reconsideration decision, the Ministry determined that the appellant had received income assistance between December 2011 and September 2012 based on the support allowance amount for a single person of \$235 per month (as set out in EAR, Schedule A, section 2), but that the appellant was in fact only eligible during this period to receive income assistance of \$60 per month (as set out in EAR, Schedule A, section 6). The Ministry calculated the difference between the income assistance the appellant received and the amount he should have received as \$1,745.99, which the Ministry determined is an overpayment for which the appellant is liable under s. 27(1) of the

EAA.

Under section 6 of Schedule A of the EAR, the amount of monthly income assistance is the sum of the actual cost of the room and board plus \$60. The appellant's landlord indicated on the SIF that the appellant "maintains house and 2 acres in lieu of R/B." The panel notes that although the appellant indicated that he thought that the \$235 was meant to cover various costs, including his own food, he does not dispute that the "room and board" provided to him by his landlord includes his meals (his "board"). [The evidence is that the appellant received approximately \$235 per month in income assistance from December 2011 through September 2012, which exceeded the amount of support for which he is eligible (that being \$60 per month), resulting in an overpayment each month. Under section 27(1) of the EAA, the appellant is liable to repay the overpayment he received. Pursuant to section 27(2) of the EAA, the panel does not have the jurisdiction to review the actual amount of the overpayment that the appellant is liable to pay.

Accordingly, the panel finds that the Ministry's determination that there was an overpayment of income assistance for the period December 2011 to September 2012 under section 27(1) of the EAA and that under section 28(1) of the EAA, this overpayment must be repaid, is reasonable based on the evidence. The panel therefore confirms the Ministry's decision.