

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 20, 2013, which denied the appellant reimbursement for a security deposit. The ministry determined that the appellant did not meet the statutory requirements set out in section 56 of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation because he has 2 outstanding security deposits and his request does not meet the legislative criteria to enable the ministry to issue a 3rd. The ministry also determined that because the appellant has already secured the residence, he is not homeless, or in imminent danger of becoming homeless.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (EAPWD) Regulation section 56.

PART E – Summary of Facts

Evidence before the ministry at the time of reconsideration consisted of:

- A copy of the appellant's Request for Reconsideration dated June 12, 2013.
- A copy of a Ministry Decision Report Highlight May 14, 2013.
- A copy of a Ministry Assignments and Agreements List dated May 14, 2013.
- A copy of a Ministry Cheque History (Query) for the appellant benefit month May 2013.
- A copy of a Residential Tenancy Agreement signed by the appellant May 6, 2013.
- A copy of an interact transaction dated May 5, 2013, to an apartment management company in the amount of \$325.00.
- A copy of an interact transaction dated May 24, 2013, to an apartment management company in the amount of \$650.00.
- A copy of a Ministry Assisting Clients With Reconsideration check list.
- A second copy of the same interact transaction listed above dated May 5, 2013, to an apartment management company in the amount of \$325.00 along with a copy of a security receipt dated May 13, 2013, made out to the appellant for the amount of \$325.00.

In section 3 of the appellant's Request for Reconsideration he states that he moved mid month from a house which was turning into a grow-op. He did not get his damage deposit back. He states that he does not wish to point fingers; he just decided to go, as it was better for his health. He enclosed copies of receipts for both his damage deposit and his rent. The appellant states that his landlord deducted part of June's rent to cover the last half of May, leaving him short for half of his June rent. The appellant reports that he, "originally asked for damage deposit after paying a half month's rent".

The Decision Report Highlight May 14, 2013, provides evidence that the appellant is the primary applicant of a family unit and is a person with disabilities, is in receipt of ongoing disability assistance, and that the hardship code does not exist for this case. The appellant received disability assistance for support, shelter or comforts for the months of April and May 2013, and was approved for ongoing disability assistance for support, shelter or comforts for the month of June 2013.

The report indicates that family unit is not eligible for a supplement to pay a security deposit because the family unit has two or more outstanding security deposits owing to the ministry that have not been recovered or repaid. The appellant is not separating from an abusive spouse, the family unit's rented residential accommodation is not being sold or demolished and a notice to vacate has not been given, nor has the appellant's rented residential accommodation been condemned. In conclusion the report states that the ministry is not satisfied that the family unit is homeless, or at imminent risk of becoming homeless, and therefore the regulatory requirements set out in section 56 of the EAPWD Regulation are not met.

The copy of a Ministry Assignments and Agreements List dated May 14, 2013, shows that the appellant had the following outstanding assignment repayments listed:

Assignment	Date		Original	Payment		Collection
Repayment	Created	Status	Amount	Credits	Balance	Start Date
SEC. DEP.	2013 Jan. 07	Recover	\$250.00	0	\$250.00	2013 FEB. 15
SEC. DEP.	2012 Feb. 23	Recover	\$375.00	\$102.50	\$272.50	2012 APR. 20

The copy of a Ministry Cheque History (Query) for the appellant benefit month of May 2013, shows that he had a total of \$20.00 deducted from his May disability assistance cheque.

The Residential Tenancy Agreement signed by the appellant May 6, 2013, reports that his residency in the unit is effective May 15, 2013, and the unit is rented to him on a month to month basis for \$650.00 per month. The agreement also shows damage deposit of \$325.00 was agreed to by the appellant.

After the ministry Reconsideration Decision was made and prior to the hearing the appellant reported the following in the Reasons section of his Notice of Appeal dated June 26, 2013; "I have a receipt for my damage deposit. THIS IS NOT A Damage deposit issue. It is a rental issue. 1/2 months rent of \$325.00 I can not afford to cover this I will have to move again. Please don't make this happen."

The appellant also submitted a copy of a document to the Tribunal showing a bank transaction for \$325.00 and a receipt for his damage deposit for the same amount which was already part of the appeal record. The additional submission was faxed to the Tribunal July 15, 2013.

At the hearing the appellant reported that prior to moving to his current address he was renting an attic room in a house from a landlord he did not know well. He reported that he learned that his landlord might be doing something illegal in the basement of the house and was worried for his own safety. The appellant was able to find new accommodation on short notice from an understanding landlord who told him he could move in May 15, 2013. The appellant said he did not know why, but he had the impression that he was not required to pay rent for the last two weeks of May. When he paid his rent for June the landlord then told him he was responsible for the last two weeks of May's rent, plus the full month of June. The appellant submitted a 10 day eviction notice at the hearing, dated June 10, 2013, which was not signed or on company letterhead. When the appellant was asked why the document was not signed he stated that his landlord must have forgotten to sign it. The appellant reported that he showed the document to the ministry's office but the person there said nothing could be done as his file was already with the Employment and Assistance Appeal Tribunal. In order to avoid eviction the appellant reported that he borrowed \$325.00 from his sister, who got an advance from his mother's estate which he now needs to repay as soon as possible.

The appellant acknowledged that the ministry was under the impression that he was requesting reimbursement of \$325.00 for his damage deposit, when what he was actually requesting was an additional \$325.00 for his June rent. The appellant said he had raised this issue with the ministry but they must have misunderstood. He said he was told that the matter would be sorted out at his hearing.

The appellant concluded by stating that he currently receives \$886.00 per month, is paying back \$20.00 per month for damage deposits, and understands that he is not eligible to receive reimbursement for a 3rd security deposit at this time. He reported that he is currently paying \$650.00 for rent, \$70.00 per month for car insurance, \$35.00 per month for his cell phone and \$35.00 per month for his internet service. The appellant reported that he has very little left after that, uses the food bank on a regular basis, and can not afford to pay his sister back.

The ministry stood by the record stating that the subject of reconsideration decision was eligibility for reimbursement of a damage deposit. In response to a question from the panel the ministry reported that there was no dispute that the appellant had met all of the regulatory requirements set out in section 56 (1)(2) and (3) of the EAPWD Regulation however, none of the provisions set out in section (4) had been met.

The panel admitted the eviction notice submitted by the appellant at the hearing, his oral testimony, and written testimony in his Notice of Appeal under Section 22(4) of the Employment and Assistance Act, as they were found to be in support of information and records that were before the ministry at the time of reconsideration,

and helped the panel to clarify the appellant's interpretation of the facts, as he saw them, The ministry did not object.

The panel makes the following findings of fact from the evidence presented:

- The appellant is a single person who received disability assistance for support, shelter or comforts for the months of April and May 2013, and was also approved for ongoing disability assistance for support, shelter or comforts for the month of June 2013.
- The appellant has two security deposits owing to the ministry that have not been recovered or repaid.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision which denied the appellant reimbursement for a security deposit was a reasonable application of the legislation or was reasonably supported by the evidence. The ministry determined that the appellant did not meet the statutory requirements set out in section 56 of the EAPWD Regulation because he has 2 outstanding security deposits and his request does not meet the legislative criteria to enable the ministry to issue a 3rd. The ministry also determined that because the appellant has already secured the residence he is not homeless, or in imminent danger of becoming homeless. In arriving at their decision the ministry relied upon the following legislation:

EAPWD Regulation

Supplement to pay a security deposit

56 (1) In this section:

"cooperative association" means a cooperative association as defined in the *Real Estate Development Marketing Act*;

"security deposit" means a security deposit as defined in the *Residential Tenancy Act*, or an amount required by a cooperative association to be paid by a recipient to the cooperative association for the same or a similar purpose as a security deposit under the *Residential Tenancy Act*.

- (2) The minister may provide a security deposit to or for a family unit that is eligible for disability assistance or hardship assistance if
 - (a) the security deposit is necessary to enable the family unit to rent residential accommodation,
 - (b) the recipient agrees in writing to repay the amount paid under this section, and
 - (c) the security deposit does not exceed 50% of one month's rent for the residential accommodation.
- (3) The minister may recover the amount of a security deposit provided under subsection (2) by deducting \$20 for each calendar month, or a greater amount with the consent of a recipient, from disability assistance or hardship assistance provided to or for the family unit starting with the disability assistance or hardship assistance provided for the calendar month following the calendar month during which the security deposit is paid.
- (4) The minister must not provide more than 2 security deposits to or for a family unit unless
 - (a) only one of the security deposits has not been recovered or repaid,
 - (b) the family unit requires up to one more security deposit to change rented residential accommodation
 - (i) because the recipient is separating from an abusive spouse, or
 - (ii) because the family unit's rented residential accommodation
 - (A) is being sold or demolished and a notice to vacate has been given, or
 - (B) has been condemned, or
 - (c) the minister is satisfied that the family unit is homeless or at imminent risk of becoming homeless.
- (5) For the purposes of subsection (3), **"security deposit"** includes a security deposit provided on or after April 1, 2002 under the
 - (a) Disability Benefits Program Regulation, B.C. Reg. 79/97,
 - (b) Income Assistance Regulation, B.C. Reg. 75/97,

- (c) Youth Works Regulation, B.C. Reg. 77/97, or
- (d) Employment and Assistance Regulation.

[am. B.C. Regs. 518/2004, s. 8; 315/2008, s. (b).]

The panel finds that there is no dispute by either party that the appellant had met all of the regulatory requirements set out in section 56 (1)(2) and (3) of the EAPWD Regulation.

The ministry's position is that the appellant is not eligible to receive reimbursement of \$325.00 for his security deposit because he has two security deposits owing to the ministry that have not been recovered or repaid, and as he has already secured the residence he is not homeless, or in imminent danger of becoming homeless. The appellant's position is that he is not requesting reimbursement for his security deposit but rather additional funds in the amount of \$325.00 to cover half of his June 2013, rent.

The panel finds that although the appellant has presented arguments in both his Notice of Appeal and at the hearing stating that he is not requesting reimbursement of his damage deposit, but rather additional rent money for the month of June 2013, the ministry's reconsideration decision only deals with one issue, that of reimbursement of the appellant's May 2013, damage deposit. For this reason the only issue that the panel has jurisdiction to consider is the appellant's eligibility for reimbursement of his May 2013, damage deposit.

The panel therefore finds based on the evidence presented in the Assignment and Agreements lists dated May 14, 2013, the ministry reasonably determined that the appellant has two security deposits owing to the ministry that have not been recovered or repaid and therefore does not meet the regulatory requirements set out above in section 56 (4)(a) of the EAPWD Regulation. The panel further finds that ministry records indicate the appellant is the only person in the family unit, and no evidence was presented demonstrating that he required a third security deposit to change his residential accommodation because he is separating from an abusive spouse, that his rented accommodation is being sold or demolished and a notice to vacate has been given, or that his rented residential accommodation has been condemned. For these reasons the panel finds that the ministry reasonably determined that the appellant has failed to meet any of the regulatory requirements set out above in section 56 (4)(b)(i) or (ii) of the EAPWD Regulation.

The panel also finds that while the appellant submitted a 10 day eviction notice for unpaid rent of \$325.00 dated June 10, 2013, at the hearing the panel did not give this evidence a great deal of weight as the eviction notice was unsigned, not written on company letterhead, and no other documental evidence was presented to substantiate its validity. Based on the evidence presented the panel finds that the ministry reasonably determined that as the appellant had already secured his residence, was not homeless, or at imminent risk of becoming homeless, he does not meet the regulatory requirements set out above in section 56 (4)(c) of the EAPWD Regulation.

The panel finds that ministry's reconsideration decision that the appellant had not met the regulatory requirements set out in section 56 of the EAPWD Regulation was reasonably supported by the evidence and confirms the ministry's decision.