

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of December 16, 2013 wherein the ministry determined that the appellant incurred an overpayment of \$4031.42 and is required to repay the amount to the ministry as per Employment and Assistance Act (EAA) section 27.

PART D – Relevant Legislation

Employment and Assistance Act, section 27
Employment and Assistance Regulation, section 28
Employment and Assistance Regulation, Schedule A section 2
Employment and Assistance Regulation, Schedule A section 6

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A ministry Overpayment Chart calculating the appellant's assistance from February 2013 to Dec 2013. The resulting calculation states an overpayment of \$4031.42
- An Overpayment Notification letter dated November 22, 2013 addressed to the appellant stating that he had received an overpayment of \$4031.42 and is required to repay the amount.
- A letter dated January 23, 2013 signed by the appellant's parents. The letter states that the appellant lives with his parents and that he pays no money to them for room and board.
- A letter dated November 15, 2013 signed by the appellant's parents. The letter states that the appellant lives with his parents and that he currently pays \$100 per month for room and board however, he would pay \$300 per month if he were able to.
- A letter dated November 29, 2013 signed by the appellant and written with the assistance of an advocate. The letter states that the appellant has been paying his parents \$100 per month rent and that his file is missing the shelter information form that confirms this. The letter adds that there has been a misunderstanding regarding his living expense and whether it is rent or room-and-board. The letter concludes that the appellant has been paying \$100 per month in rent and asks that his overpayment be adjusted accordingly.

At the hearing the appellant told the panel that when he applied for income assistance he did so at the ministry office with a worker since he was not comfortable completing the application on-line. The worker asked him about 80 questions and he answered them all truthfully. For additional information he authorized the ministry to gather his personal information from other sources such as banking, landlord, criminal records, etc. The appellant told the panel that he has spoken to at least 6 different workers at the ministry since he applied for assistance in February 2013 and none of them noticed that there was an error in his file regarding his living arrangements. He added that he was disappointed that the error was not caught sooner considering that so many workers had viewed his file. The appellant said that neither he nor his parents were clear on the difference between rent vs. room and board and he considered his monthly payment to his parents as rent. His parents provided a letter to the ministry in January 2013 that the appellant "contributed \$100 each payday to the household budget" and that since his heart attack "he has been unable to make any contributions to his room and board."

The appellant told the panel that he had a heart attack a few years ago and is still under the care of his physician to maintain his health. His physician told him he needs to reduce his stress level in order to remain healthy. The appellant added that this issue with the reduction in his assistance and the subsequent demand to repay the overpayment has added a tremendous amount of stress to his life. He said that he understands that the ministry made a mistake but that the reduced amount that he qualifies for is only \$235 and that it is not possible for him to survive on that amount.

The panel asked the appellant to describe what he receives from his parents for the \$100 per month that he pays and the appellant said he has his own room and that he eats all his meals with his parents. He said that the payment includes all utilities however he pays his father for gas if he uses the car.

The ministry told the panel that it was during a routine audit of the appellant's file that an error was discovered. It was found that the appellant was being paid a shelter allowance that reflected a

monthly rent of \$375 however in his application the appellant had provided confirmation that he was paying \$100 per month room and board with his parents. The ministry conceded that the error was administrative and in no way suggests that the appellant was untruthful in his application. The ministry explained to the panel that room and board is described as the costs associated with food, maintaining the room, utilities, and property taxes. The ministry took the definition of room and board from a blank Shelter Information form.

The panel finds:

- The appellant lives at home with his parents and pays them \$100 per month.
- The appellant provided the ministry with a letter from his parents at the time of application that accurately confirmed the nature and cost of his living arrangements.
- The appellant was paid a monthly shelter allowance monthly from February 2013 to December 2013.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding the appellant had received an overpayment and was therefore required to repay the ministry \$4031.42.

The relevant legislation is as follows:

Employment and Assistance Act, section 27

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].

Employment and Assistance Regulation, section 28

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. Employment and Assistance Regulation,

Schedule A section 2

(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 (4) for each dependent child in the family unit.

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

(2) If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to

(a) the maximum adjustment, minus

(b) the sum of

(i) the family bonus, if any, paid to the family unit for the preceding calendar month, and

(ii) the amount of the supplement, if any, provided to or for the family unit under section 61 [supplement for delayed, suspended or cancelled family bonus] of this regulation for the current calendar month.

(3) In calculating the adjustment under subsection (2), an amount that, under the Income Tax Act (British Columbia) or the Income Tax Act (Canada), is deducted or set off from the family

bonus must be treated as if it were paid to a person in the family unit.

(4) The support allowance under subsection (1) for a calendar month is not increased under subsection (2) if a person in the family unit refuses to

(a) apply for the family bonus for the preceding calendar month, or
(b) accept the family bonus for the preceding calendar month
in respect of a dependent child in the family unit who is, or may be, a qualified dependant within the meaning of the *Income Tax Act* (Canada).

(5) If a family unit includes a person who

(a) immediately before reaching 19 years of age was a dependent child in the family unit, and
(b) reached that age while attending secondary school,
the person is deemed to be a dependent child, for the purposes of this section, until the earlier of

(c) the end of the school year in which the person reaches the age of 19 years, and
(d) the date the person stops attending secondary school.

Employment and Assistance Regulation, Schedule A section 6

6 (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;

(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.

(2) 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;

(b) Repealed. [B.C. Reg. 62/2010, s. (a).]

The argument of the appellant is that he doesn't think its fair that he is required to repay the excess funds that he received since the overpayment was caused by a ministry error. The appellant argues that he will not be able to support himself on the amount of \$235 per month. The appellant contends that the \$100 per month that he gives to his parents is rent rather than room and board.

The argument of the ministry is that the appellant received an overpayment of \$4031.42 due to an administrative error and, even though the error was not the appellant's fault, he is required to repay the funds to the ministry.

The panel considered all the evidence provided in the appeal record as well as oral testimony from both the ministry and the appellant at the hearing.

The panel considered the appellant's argument that he pays his parents for rent versus room and board. At the hearing the appellant told the panel that the \$100 per month that he pays his parents is intended to cover the costs of food, utilities, and his room. The panel considered the ministry's

definition of room and board as an amount that includes food, maintaining the room, utilities, and property taxes. The panel finds that the ministry was reasonable to determine that the money the appellant pays to his parents is room and board.

Based on the panel's finding that the A pays room and board rather than rent, the panel finds that the ministry reasonably determined the appellant did receive an overpayment for shelter allowance. The panel accepts that the fault of the error lies with the ministry and that the appellant disclosed the correct information to the ministry at the time of his application, however, the EAA section 27 states that if assistance is given to a person who is not eligible for it, the overpayment must be repaid. The panel finds that the ministry was reasonable to determine that the appellant must repay the overpayment.

The panel finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's decision.