

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated 20 December 2013 which held that the appellant was not eligible for a \$375 shelter allowance for November 2013. The ministry determined that, pursuant to section 4(2) of Schedule A of the Employment and Assistance for Persons with Disabilities Regulation, the eligible shelter allowance is the smaller of the maximum rate set out in the table under section 2(4)(b) of Schedule A and the appellant's actual shelter allowance for that month of \$135.45, based on hotel receipts submitted by the appellant. As a sole recipient of disability assistance, the appellant's eligible rate of assistance for November 2013 is therefore calculated as follows: support allowance (\$531.42) + shelter allowance (135.45) – net income (CPP benefits of \$577.84) = \$89.03.

The ministry did not accept the appellant's proposition that his maximum monthly eligible amount = support allowance (\$531.42) + shelter allowance (max \$375) – net income (CPP benefits of \$577.84) = \$328, with the legislative intent being that he should be reimbursed dollar for dollar of shelter costs up to the maximum for which it was determined that he was eligible.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 19.1

Administrative Tribunals Act, sections 44 and 46.3

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 16

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 24 and Schedule A, section 4

PART E – Summary of Facts

With the consent of both parties the hearing was conducted as a written hearing pursuant to section 22(3)(b) of the *Employment and Assistance Act* (EAA).

The evidence before the ministry at reconsideration included the following:

- From the ministries files: the appellant is a recipient of disability assistance; he submitted receipts for hotel stays in November in the amount of \$135.45.
- The appellant's Request for Reconsideration, dated 09 December 2013, attached to which was a 4 page submission. In the submission, the appellant writes that he sleeps outside. His intent is to use the shelter allowance to avoid rain and cold by renting on selected nights in a hotel. He also needs some money from the ministry in order to be eligible for a bus pass so that he can look for an apartment. Even sleeping outside, he has shelter costs – sleeping equipment is expensive as it must be light, compact and quick drying; this costs about \$20/month. A huge cost is also incurred because he does not have a stove and fridge, as he would in an apartment; as a result he is forced to spend an additional \$150/month on prepared food – an "opportunity cost" incurred from not having a fridge and stove.

The balance of the appellant's Request for Reconsideration and attached submission goes to argument (see Part F, Reasons for Panel Decision, below for a summary of his position).

The appellant's Notice of Appeal is dated 27 January 2014. His Reasons for Appeal go to argument, summarizing his submission at reconsideration (see Part F below).

The ministry provided a written submission dated 26 February 2014 (see part F below).

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that the appellant was not eligible for a \$375 shelter allowance for November 2013 was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. More specifically, the issue is whether the ministry reasonably determined that pursuant to section 4(2) of Schedule A of the EAPWDR, the eligible shelter allowance is the smaller of the maximum rate set out in the table under section 2(4)(b) of Schedule A and the appellant's actual shelter allowance for that month of \$135.45, based on hotel receipts submitted by the appellant and therefore as a sole recipient of disability assistance, the appellant's eligible rate of assistance for November 2013 is calculated as follows: support allowance (\$531.42) + shelter allowance (135.45) – net income (CPP benefits of \$577.84) = \$89.03.

A related issue is whether the ministry was reasonable in rejecting the appellant's proposition that his maximum monthly eligible amount = support allowance (\$531.42) + shelter allowance (max \$375) – net income (CPP benefits of \$577.84) = \$328, with the legislative intent being that he should be reimbursed dollar for dollar of shelter costs up to the maximum for which it was determined he was eligible.

The relevant legislation is from the EAPWDR:

Amount of disability assistance

24 Disability 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.

And from Schedule A of the EAPWDR:

Monthly shelter allowance

4

(2) The monthly shelter allowance for a family unit to which section 14.2 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 | Column 2 |
|------|------------------|-------------------------|
| | Family Unit Size | Maximum Monthly Shelter |
| 1 | 1 person | \$375 |

How actual shelter costs are calculated

5

(2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:

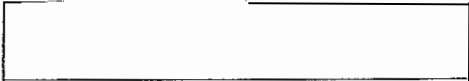
- (a) rent for the family unit's place of residence;
- (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;
- (c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
- (d) property taxes for the family unit's place of residence if owned by a person in the family unit;
- (e) utility costs;
- (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

The appellant's position, as set out in his Request for Reconsideration and summarized in his Notice of Appeal, is that the issues he is raising apply not only to his November 2013 assistance but also to previous and subsequent months, as well as to other ministry clients whose monthly net income is above the legislated monthly income support rate and less than the applicable monthly income support plus maximum shelter support rate (for him, \$906.31 for a sole recipient). In his case, his monthly CPP income (2013 rates – \$577.84) exceeds the support rate (\$531.42) by \$46.42. The appellant argues that deducting this amount from the shelter expenses he claimed is a “tax” which is discriminatory and results in serious hardship for himself and others in the circumstances, and which may have human rights implications. The appellant also submits that the deduction leads to the absurd result that he must stay in a hotel periodically at his own expense just to keep his disability assistance file open.

The appellant agrees that his CPP income is \$46.42 in excess of his support allowance and must be deducted from his shelter allowance to result in maximum assistance of \$328. He explains however that after taking his CPP income into account, he should be able to submit monthly rent of \$328 and be reimbursed in full. Instead another \$46.42 will be deducted from that \$328, leaving assistance at only \$281.58 with maximum disposable income reduced to \$858.92 instead of \$906.31. He also points out that his CPP benefits are indexed to inflation and this problem will compound over time. Further, he argues that at the beginning of any month, if actual expenses for the month include an extraordinary expense such as a credit card bill, it would be difficult for him to qualify for his shelter allowance by spending the \$46 on hotel rent to avoid bad weather. Thus because the initial cost has to be paid before he can get any the shelter assistance for the month, a conflict is created that can easily keep him out in the rain for a whole month at a time. He believes there are Charter of Rights issues implied by this conflict.

He submits that the legislated intent is that “Receipts should be reimbursed dollar for dollar up to the max that was determined that the client is eligible for.” [appellant's emphasis] – in his case \$328.

The position of the ministry, as set out in its submission, is that the calculation of assistance under



Section 24 and schedules A and B of the EAPWDR applies to all recipients, and to every month of assistance. The ministry does not have the discretion to change the calculation. The varying amount of assistance the appellant receives is a result of his varying shelter expenses.

The ministry reiterated that the maximum amount of assistance that can be issued for the appellant is his support allowance of \$531.42, plus his actual shelter costs up to \$375, less his \$577.84 monthly CPP income. Because the appellant's CPP income exceeds his support allowance, the difference of \$46.42 will always be deducted from the shelter expenses.

Panel findings

The panel will first address the human rights and constitutional (Canadian Charter of Rights and Freedoms) arguments raised by the appellant. The *EAPWDA* provides that an appeal of the outcome of a reconsideration decision is to be made to the Employment and Assistance Appeal Tribunal established under the *Employment and Assistance Act* (EAA): from the *EAPWDA*:

Reconsideration and appeal rights

16(3) Subject to a regulation under subsection (5) and to sections 9 (7) [*employment plan*], 17 and 18 (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 the *Employment and Assistance Act* and the regulations under that Act.

The EAA imports certain provisions from the *Administrative Tribunals Act*:

Application of *Administrative Tribunals Act*

19.1 Sections 1 to 6, 7 (1) and (2), 8, 9, 30, 44, 46.3, 55, 56, 58 and 61 of the *Administrative Tribunals Act* apply to the tribunal.

The relevant sections imported into the *EAA* are:

Tribunal without jurisdiction over constitutional questions

44 (1) The tribunal does not have jurisdiction over constitutional questions.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to the tribunal

Tribunal without jurisdiction to apply the *Human Rights Code*

46.3 (1) The tribunal does not have jurisdiction to apply the *Human Rights Code*.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to the tribunal.

From the above, it is clear that the Tribunal, and this panel of the Tribunal, does not have the jurisdiction to address the appellant's human rights and Charter arguments.

With respect to the calculations made by the ministry, the appellant accepts that his monthly CPP income exceeds his monthly support allowance by \$46.42. He argues that this amount should be deducted from his monthly maximum shelter allowance of \$375, leaving \$328 as his maximum shelter allowance amount and that he should be reimbursed dollar for dollar for any shelter expenses

up to that amount. His formula is:

Shelter (max) – (Net income – Support) = Eligible assistance (max), with Actual shelter costs reimbursed up to that max.

Or, rewriting: *Support + Shelter (max) – Net income = Eligible assistance (max), with Actual shelter costs reimbursed up to that max.*

The panel does not consider this approach consistent with the legislation, except when *Actual shelter costs* \geq *Shelter (max)*. As the ministry pointed out, the amount of assistance as determined under section 24 of the EAPWDR requires calculating the amount of eligible assistance under Schedules A and B before deducting net income. The amount of shelter allowance under Section 4(2) of Schedule A is included in the first part of that calculation and depends on actual shelter costs, up to a maximum. By comparison to the appellant's formula, the legislated formula is:

Support + Shelter (Actual up to a max) – Net income = Eligible assistance

As the ministry applied the legislated formula, the panel finds that the ministry's decision that determined the appellant's disability assistance for November 2013 was \$89.03, taking into account his CPP income and his actual shelter costs, was a reasonable application of the legislation in the circumstances of the appellant.

The panel notes that in his submission the appellant referred to other costs associated with his "sleeping outside," including \$20/month for maintaining his equipment and \$100/month as an "opportunity cost" associated not having a fridge and stove. In its reconsideration decision the ministry referred to section 5 of Schedule A of the EAPWDR, noting that eligible shelter costs were limited to the items listed. As these other costs are not included in the listed items, the panel finds that the ministry reasonably determined that these costs are not eligible shelter costs under the legislation.

The panel therefore confirms the ministry's decision.