

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry)'s reconsideration decision dated February 3, 2014 finding the Appellant was not eligible for a shelter allowance for the period from July to December 2013, pursuant to section 6(2) of Schedule A of the Employment and Assistance Regulation (EAR) and therefore, since she received that allowance, she has incurred an overpayment of \$1406.63 which she is required to repay under section 27 of the Employment and Assistance Act (EAA).

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 27  
Employment and Assistance Regulation (EAR), section 28(a), Schedule A, section 28(b), Schedule B



## PART E – Summary of Facts

The Appellant's mother participated as advocate for the Appellant at the hearing, providing all oral evidence.

The Appellant lives with her mother, has no dependants and has been receiving assistance since January 2013 as a sole recipient. In July 2013, the Appellant submitted a shelter form to the Ministry confirming she would be living with and paying room and board to her mother in the amount of \$425 per month. From July until December 2013, the Appellant was in receipt of assistance for shelter and support in the amount of \$425 plus a comforts allowance of \$60.

By letter dated December 17, 2013 the Ministry advised the Appellant of the results of a review of the Appellant's file finding that she had received an overpayment as a result of an error made by the Ministry. In a second letter dated December 17, 2013, the Ministry advised the Appellant that her assistance had been reduced. On February 10, 2014, the Appellant submitted her Notice of Appeal of the Ministry's decision regarding the reduction in assistance and the requirement to repay the overpayment.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's decision finding the Appellant is not eligible to receive shelter assistance because she lives with and pays room and board to her mother as set out in section 6(2) of section 28(a) of the EAR, Schedule A; that the Appellant is eligible for support assistance in the amount set out in section 2(1)(a) of section 28(a) of the EAR, Schedule A as she is a sole applicant under the age of 65 years, with no dependent children; and that by receiving both shelter and support payments from July to December 2013, the Appellant has incurred an overpayment of \$1406.63 which the Appellant is required to repay to the ministry according to section 27 of the EAA.

The relevant legislation is section 27 of the EAA, and sections 28(a) of Schedule A and 28(b) of Schedule B, EAR

### Overpayments

**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*].

### Maximum amount of income assistance before deduction of net income

**1** (1) Subject to this section and sections 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.

### Monthly support allowance

**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

### People receiving room and board

**6** (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.

### Exemption — earned income

**3** (1) Subject to subsection (2), the amount of earned income calculated under subsection (6) is exempt for a family unit.

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- (6) The exempt amount for a family unit that qualifies under this section is calculated as follows:
- (a) in the case of a family unit to which subsection (3) applies, the exempt amount is calculated as the lesser of
    - (i) \$200, and
    - (ii) the family unit's total earned income in the calendar month of calculation;

On appeal, the Appellant's advocate indicated that the Appellant had asked the Ministry how to apply for income assistance and she followed their instructions. In her application for assistance she indicated that she would be living with and paying room and board to her mother. She indicated that the Ministry approved the application and provided shelter and support assistance from July 1 to December 2013.

The Ministry's position at appeal was that the approval of the Appellant's application was made in error, mistakenly classifying it as room and board private rather than room and board parent. Upon review of the file, the Ministry determined that as a sole recipient paying room and board to her parent she was eligible for only the monthly support allowance.

The panel finds the Ministry's determination that the Appellant was not eligible for shelter assistance was a reasonable application of the applicable enactment in the circumstances of the Appellant, namely section 6(2) of Schedule A, EAR. Consequently, the panel finds that the Appellant received assistance for which, under the legislation, she was not eligible because she lives and pays room and board to her mother.

The Appellant's advocate indicated that the overpayment is due to the Ministry's error and the Appellant should not be held responsible for their error. The Appellant is mentally unwell and the requirement to repay the debt adds to her stress; that she was not at fault and the Ministry is not taking responsibility for its own error.

The Ministry's position on appeal was that the Appellant was required to repay the overpayment. The Ministry is bound by the legislation, which clearly provides that if a recipient receives assistance for which he or she was not eligible, he or she is liable to repay the amount of the overpayment. Upon review of the Appellant's file, the Ministry found that she was not eligible for shelter allowance and calculated the amount of overpayment for the period in question to be \$1406.63. The Ministry indicated that there was no issue of the Appellant being at fault, that the issue was correcting an error which had resulted in an overpayment.

The panel finds the Ministry's determination that the Appellant is required to repay the overpayment was a reasonable application of the applicable enactment in the circumstances of the Appellant. The panel found that the legislation, section 27 and 28 of the EAA, clearly set out the requirement for repayment in situations like that of the Appellant because she had received assistance for which she was not eligible.

Accordingly, the panel finds that the Ministry's decision to find that the Appellant was only eligible for support allowance and is required to repay the shelter overpayment was a reasonable application of the relevant legislation and confirms the Ministry's reconsideration decision.