

PART C – Decision under Appeal

The Appellant appeals the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated February 6, 2014, in which the Ministry determined that the Appellant received an overpayment of the shelter allowance of his disability assistance in the amount of \$18,687.16 pursuant to Section 18 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), for which he is responsible to repay to the Ministry. The Ministry determined that the Appellant was not eligible for shelter allowance under section 4(2) of Schedule A of the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 18.
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 1 and 24 and Schedule A, sections 1 and 4.

PART E – Summary of Facts

The Appellant did not attend the appeal hearing, but was represented at the hearing by his advocate, his mother. The Appellant is a designated person with disabilities (“PWD”) and has been receiving disability assistance as a single person since his designation as a PWD in or about March 2009, based on the information in the Ministry’s Overpayment chart. The evidence before the Ministry at the reconsideration consisted of:

- Ministry Overpayment chart for the Appellant’s assistance months of March 2009 through December 2013, printed December 9, 2013 (9 pages);
- Copy of a letter from the Ministry to the Appellant dated December 10, 2013 (1 page) in which the Ministry advised the Appellant that it is reducing his assistance by \$375/month;
- Copy of a letter from the Ministry Investigative Officer dated December 10, 2013 (2 pages) in which the Ministry advised the Appellant that he had received assistance for which he was not eligible and an overpayment of \$20,538.58 had been recorded on his file;
- Copy of a letter from the Appellant’s mother to the Ministry dated December 5, 2013 (1 page) in which she responded to the Ministry’s file review request for information and wrote that the Appellant “lives at home with his parents and we had opted in lieu of rent payments [the appellant] purchases household groceries and completes household chores equal in value to \$375.00 monthly”;
- Copy of the Ministry’s Shelter Information form completed by the Appellant’s mother on his behalf and dated February 16, 2009; and
- Request for Reconsideration dated January 26, 2014 with attached 4-page written submission of the Appellant prepared by his mother.

The Appellant filed his notice of appeal February 18, 2014. On March 24, 2014, the Appellant filed additional submissions for the appeal hearing, consisting of the following documents:

- One page submission dated March 22, 2014 advising that the Appellant would not be attending the appeal hearing and the reason for his absence;
- One page submission on appeal signed by the Appellant’s parents;
- Two-page submission “brief review” dated March 22, 2014;
- Four-page submission “tribunal appeal/reconsideration decision” dated March 22, 2014;
- One-page submission “debt future” dated March 22, 2014;
- One-page submission “parenting” dated March 22, 2014;
- Eight-page submission “contact log” dated March 22, 2014;
- Copy of Ministry’s Shelter Information form completed by the Appellant’s mother on his behalf and dated February 16, 2009 (this document was before the Ministry as noted above); and
- Four pages of copies of Ministry Notice of Deposits for the Appellant dated November 20, 2013, December 18, 2013, January 22, 2014, and February 26, 2014.

The Appellant’s advocate said that she prepared the additional submissions for the hearing so that the panel had a complete understanding of the experience the Appellant and his family have had dealing with the Ministry. She told the panel she included the copies of the Appellant’s most recent Ministry generated deposit slips to show that the information on the deposit slips is confusing, particularly for a PWD, and pointed out that the February 26, 2014 indicates that the Appellant’s shelter portion of his disability assistance is \$375, although this is no longer the case. The Ministry’s

representative did not object to the admission of the additional submissions and documents provided by the Appellant, but noted that some of the information in the submissions and on the February 26, 2014 deposit slip occurred after the Ministry's reconsideration decision of February 6, 2014.

The panel notes that the bulk of the additional written submissions and documents submitted by the Appellant reiterate information that was before the Ministry at the time of the reconsideration decision and admits the additional submissions as written testimony in support of information before the Ministry under subs. 22(4)(b) of the *Employment and Assistance Act*. The panel notes the Ministry's objection that some of the information contained in the submissions arose after the reconsideration decision (for example, the recitation by the Appellant's mother of her conversations with various Ministry representatives from February 18 through March 20, 2014) and does not contain information relevant to the issue on appeal and the panel places no weight on this information.

The Appellant was designated a PWD in or about March 2009. On February 16, 2009, the Appellant's mother completed the Ministry Shelter Information form on his behalf and this form was before the Ministry at reconsideration and the Ministry representative confirmed at the hearing that the copy in the appeal materials is the Shelter Information form on record for the Appellant. This Ministry generated form has designated sections A and B, one of which is to be completed by the applicant. Section A is for applicants who are renting and seeks standard information about the amount of rent the applicant will pay, whether a security deposit is required, as well as the number of adults at a given address. Section B is for applicants who are paying room and board and seeks information about the monthly amount. On the Appellant's Shelter Information form completed February 16, 2009 both Sections A and B are blank. At the hearing, the Appellant's mother said that she completed the form at the counter of the Ministry office in the presence of a Ministry worker and she said she left sections A and B blank and could not remember any discussion with the Ministry worker at the time she completed the form at the Ministry office. On the section of the Appellant's Shelter Information form "Landlord Information," the Appellant's mother's name appears as registered owner, with the family home address provided. The Appellant's mother signed this section of the form as the landlord.

The Ministry's Shelter Information form states, "We require a rent receipt in addition to this form immediately upon payment of the first month's rent (if your rent is not paid directly to the landlord by MHSD). All information may be verified. A rent receipt is attached to this form for your convenience." On the shelter information form, the bottom portion includes a "rent receipt" below a dotted line with sections for the date, the month, the amount of rent, whether it is room and board or a security deposit, and the landlord's signature. On the Appellant's February 16, 2009 Shelter Information Form, the Appellant's mother signed the rent receipt over "landlord's signature" but the rest of the rent receipt portion of the form is blank.

As indicated in the Ministry's Overpayment charts, the Appellant began receiving disability assistance in March 2009, which included \$375 per month for shelter allowance, and continued to receive this shelter allowance through December 2013. As noted in the Ministry's December 10, 2013 letter to the Appellant, on November 15, 2013, the Ministry requested the Appellant to provide it with rent receipts for proof of payment. In the letter to the Ministry from the Appellant's mother of December 5, 2013, the Appellant's mother indicated that the Appellant lives with his parents and purchases groceries and completed household chores in lieu of rent. On December 10, 2013, the Ministry advised the Appellant that he was not eligible for shelter allowance and reduced his assistance by

\$375/month (the portion of shelter allowance).

Also on December 10, 2013, a Ministry Investigative Officer advised the Appellant that as a result of a file audit, the Ministry had determined that the Appellant had received assistance for which he was not eligible and recorded an overpayment of \$20,538.58. In this letter, the Ministry Investigative Officer wrote, "This overpayment occurred as a result of a failure to provide documentation to verify your address and/or shelter costs from March 2009 December 2013. You declared that you were living at [Appellant's home address] and paying \$375.00 in monthly shelter costs. The ministry has insufficient documentation of your shelter costs to establish that you were eligible for the shelter allowance you received for the time period noted."

The panel notes that the evidence of the Appellant's mother on his behalf is that at no time did the Appellant indicate to the Ministry that he was paying \$375 per month in monthly shelter costs, as reflected in the blank sections of the February 16, 2009 Ministry Shelter Information form.

The panel notes that in its Ministry's reconsideration decision, the Ministry determined that as a result of changes in the applicable legislation in 2003 which applied to the Appellant, he was entitled to receive \$75 per month as guaranteed shelter allowance from July 2009 to May 2010 (11 months) and that the overpayment amount for December 2011, December 2012, and January 2013 were adjusted, and the Ministry reduced the amount of the overpayment owing by \$1,851.42 (changing the amount owing as overpayment from \$20,538.58 to \$18,687.16).

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's February 6, 2014 reconsideration decision, in which the Ministry determined that the Appellant received an overpayment of his disability assistance for shelter allowance for which he was not eligible in the amount of \$18,687.16 for the period from March 2009 through December 2013 pursuant to Section 18 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. The Ministry determined that the Appellant was not eligible for shelter allowance under section 4(2) of the EAPWDR.

The panel notes that in the Ministry's reconsideration decision, the Ministry did not indicate to the Appellant the sections of the legislation upon which it relied in reaching its decision (this section of the reconsideration template is left blank, no reference is made to the provisions of the legislation in Appendix A the reconsideration decision reasons, and although excerpts of the legislation are included as Appendix B, there is no reference to the specific applicable Act or Regulation).

Section 24 of the EAPWDR sets out the amount of disability assistance to be provided in a calendar month and states that the amount is not more than that amount determined under Schedule A of the EAPWDR, minus the family unit's net income determined under Schedule B of the EAPWDR. The panel notes that the Appellant's net income is not in issue on this appeal.

Schedule A of the EAPWDR states in section 1(1) that the amount of disability assistance referred to in section 24(a) of the EAPWDR is the sum of (a) the monthly support allowance under section 2 of Schedule A 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 Schedule A. The amount of the Appellant's monthly support allowance under section 2 of Schedule A is not in issue on this appeal.

Subsection 4(2) of Schedule A of the EAPWDR provides that the monthly shelter allowance for a family unit to which section 14.2 of the EAPWDA does not apply (and there is no issue that section 14.2 of the EAPWDA does not apply to the Appellant) is the smaller of (a) the family unit's actual shelter costs and (b) the maximum set out in the table for the applicable family size. For a family unit of 1 person (the Appellant's family unit), the monthly shelter costs set out in the applicable table is \$375. Section 5 of the EAPWDR sets out how actual shelter costs are calculated and the panel notes that this is not in issue on this appeal.

Section 18 of the EAPWDA addresses overpayments and states:

- (1) If disability 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 16(3) [reconsideration and appeal rights].

In her submissions on the Appellant's behalf, the Appellant's mother acknowledged that the Appellant received \$375 per month for shelter allowance from March 2009 through December 2013, during which time the Appellant was living with his parents in a "mini suite" in their home, purchasing groceries and providing household chores in lieu of paying rent. However, the Appellant's mother

told the panel that the shelter allowance was paid to the Appellant through the Ministry's own error – the Appellant's mother did not complete the Shelter Information Form in February 2009 – the sections A and B are both blank and there is no information provided on this form about the amount the Appellant was paying in rent or whether he was receiving room and board. The Appellant's mother told the panel that she received no assistance from the Ministry workers when she was completing the Shelter Information form on her son's behalf and argued that the Ministry issued the shelter allowance to her son in error based on the incomplete Shelter Information form. The Appellant's mother told the panel that the Ministry never advised her son (or her) that he needed to submit rent receipts to prove he was eligible for shelter allowance and that the first they were aware that he was not eligible for the shelter allowance was in December 2013, almost 5 years after the Appellant was first designated a PWD. The Appellant's mother was very concerned about how her son will repay the debt he has now accrued to the Ministry and told the panel that the Ministry will deduct approximately \$30 per month from the Appellant's disability assistance for the next 50 years. The Appellant's mother stressed in her submissions to the panel that her son, despite his disabilities, is very hard working, does a lot of volunteer work, and has obtained seasonal work which he finds rewarding. The Appellant's mother expressed a great deal of frustration with the way the Ministry has treated her and her son as they have tried to get information about the shelter allowance to which he may be entitled, and how to address the overpayment situation.

The Ministry representative acknowledged at the hearing that the Appellant's Shelter Information form completed in February 2009 was deficient in that sections A and/or B were not completed (so the Ministry had no information before it about the amount the Appellant was to pay for rent or whether he was receiving room and board) and the rent receipt portion of the form was also incomplete, showing only the Appellant's mother's signature as landlord. However, the Ministry's representative submitted that the onus is on the Appellant to provide the Ministry with accurate information about his eligibility for shelter allowance (for example, to provide the Ministry with monthly receipts to show the amount that he is paying in rent, or for room and board). The Ministry's position is that although the Ministry in error issued the Appellant monthly shelter allowance of \$375 for several years, the Appellant is still responsible for the overpayment as he was not eligible to receive the shelter allowance in the first place.

At the hearing, the panel advised the Appellant's mother that the panel can only confirm or rescind the Ministry's reconsideration decision and that because of section 18(2) of the EAPWDA, the panel has no jurisdiction to reduce the amount of the overpayment.

The panel finds it very troubling that the overpayment in this case arose as a result of a mistake on the part of the Ministry in processing the Appellant's deficient Shelter Information form in February 2009. The panel also accepts the evidence of the Appellant's mother that the Ministry did not advise the Appellant (or his mother) at the time the Shelter information form was submitted or anytime before November 2013 that the Appellant was required to submit proof that he was eligible for the shelter allowance (for example, the Ministry did not ask the Appellant to provide copies of rent receipts to confirm his ongoing eligibility for shelter allowance until it commenced its audit in November 2013). However, the panel notes that there is no provision in the legislation allowing the Ministry or this panel to reduce or eliminate an overpayment that was accrued as a result of an innocent mistake or an error on the part of the Ministry.

The Appellant does not deny that he received \$375 per month for shelter allowance from March 2009 through December 2013. The Appellant's mother acknowledged that her son did not pay her rent and she did not issue rent receipts as the Appellant purchased groceries and provided assistance with household chores in lieu of rent. Accordingly, the panel finds that the Appellant received monthly shelter allowance between March 2009 and December 2013 for which he was not eligible, as he was not paying rent to his family.

The panel acknowledges that administrative errors on the part of the Ministry contributed significantly to the approval and continuation of the Appellant's shelter allowance over a five-year period. However, it is the reasonableness of the Ministry's application of the applicable legislation that falls within the panel's jurisdiction, and for this reason, the panel finds that the Ministry reasonably determined the Appellant received an overpayment of the shelter allowance of his disability assistance between March 2009 and December 2013, and the legislation provides that the appellant is responsible to repay this overpayment. As provided by s. 18(2) of the EAPWDA, this panel cannot address the amount of overpayment that the Appellant is liable to repay. Accordingly, the panel finds that the Ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the Appellant. The panel confirms the Ministry's decision.