

PART C – Decision under Appeal

This is an appeal of the reconsideration decision of the Ministry of Social Development and Social Innovation (Ministry) dated March 4, 2014, in which the Ministry reduced the Appellant's shelter allowance from \$660 per month (the maximum rate for a family unit of 3 persons) to \$360.92, based on the Ministry's determination of the Appellant's actual monthly shelter costs. The Ministry determined that a loan the Appellant is repaying to her family members for a special levy attached to her condominium is not a "shelter cost" as defined under section 5 of Schedule A to the *Employment and Assistance for Persons with Disabilities Regulation*.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 24 and Schedule A, sections 4 and 5.

PART E – Summary of Facts

The Appellant is designated a person with disabilities under the *Employment and Assistance for Persons with Disabilities Act* and receives monthly assistance as a single recipient with two dependent children.

The information before the Ministry at reconsideration included the following documents:

- A copy of the Appellant's statement of account dated January 31, 2013 for her condominium showing amounts charged and paid for building envelope levy on September 1, 2012, November 1, 2012 and January 1, 2013;
- A copy of one page of the minutes for the Appellant's strata council indicating the dates the special levy amounts were due;
- A copy of the Appellant's statement of account dated August 31, 2011 for her condominium showing her monthly strata fees;
- A copy of the unit entitlement assessment amounts for 2012 building envelope renovation project for the Appellant's condominium;
- A copy of the strata plan for the condominium unit in which the Appellant lives;
- A copy of a letter from a mortgage company to the appellant dated April 14, 2008 enclosing a copy of a Discharge of Mortgage for the Appellant's condominium;
- A copy of the Appellant's utility bill from the city in which she lives;
- A copy of the Appellant's bank statement for the period from February 28, 2013 through June 26, 2013;
- A copy of the Appellant's property tax notice for July 2013;
- A copy of the Appellant's Hydro bill for December 2013;
- A copy of the Appellant's cellular phone bill for January 2013;
- A copy of an invoice for comprehensive condominium insurance package for 2014; and
- A one-page handwritten letter from the Appellant's brother dated December 9, 2013 in which he wrote that he loaned the Appellant money for her mortgage payout and that the Appellant's mother also loaned the Appellant money to pay for the special levy. In this letter, the Appellant's brother indicates that the Appellant is repaying the loan back to her brother and mother at \$600/month.

At reconsideration, the Ministry also had the appellant's written submission dated February 18, 2014, in which the Appellant sets out that the amount of the special levy she had to pay to her strata council was \$41,764.53 to be paid in three different installments. She also indicated that she previously paid \$1061,81 in four different installments of \$265.45 for building engineering fee. In her submissions, she wrote that she was unable to get a loan from the bank for the special levy, so she borrowed money from her mother and her brother and she had agreed to pay them \$600.00 per month to repay the loan. In her submissions, the Appellant wrote that she considered the special levy part of her mortgage and thus part of her monthly shelter costs.

In her hand-written submission in her Notice of Appeal, the Appellant wrote, "although it was a special levy, I had no choice but to take out a loan, that went to my apartment payment, therefore it is part of my shelter costs."

The Appellant lives in a condominium that she owns. At the hearing, the Appellant said that she had a mortgage on her condo, but it was at a high rate of interest, so her family members loaned her

money to pay out her mortgage and she was repaying this loan to her family members. The Appellant's condo was subject to a special levy of \$41,764.56 to cover the costs of repairs to the building envelope and the Appellant said she had to pay the special levy in three installments of \$20,882.28 on September 1, 2012, \$10,441.14 on November 1, 2012, and \$10,441.14 on January 1, 2013. The Appellant said that she could not get a loan from a bank to cover the special levy and when she called the Ministry to ask if the Ministry could cover the special levy charge for her, the Ministry worker told her no. The Appellant said she borrowed more money from her family members to pay the special levy installments. The Appellant said she had committed to repaying \$600 per month to her family members for their loans and when she agreed to repay her family members this amount per month, she relied on receiving the maximum shelter allowance for her family unit of 3 persons, which is \$660 per month.

The Ministry said that the Appellant had received the maximum shelter allowance for her family unit, which was \$660/month. The Ministry said that once the Appellant's mortgage was paid out, she was no longer entitled to receive shelter allowance to cover the cost of her mortgage payments and the amount for her shelter allowance was reduced to reflect that she no longer had to make mortgage payments. The Ministry said that the Appellant's loan payments to her family members to repay her mortgage payout and the special levy on her condo are not recognized shelter costs as set out in the legislation.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the Ministry's decision to reduce the Appellant's shelter costs from the maximum rate for her family unit of \$660/month to \$360.92/month based on the Ministry's determination of her actual shelter costs, is reasonable.

Applicable legislation

Section 24 of the EAPWDR sets out that disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than the amount determined under Schedule A minus the family unit's net income determined under Schedule B. There is no issue before the panel or the Ministry that the Appellant's family unit has net income to be determined under Schedule B.

Schedule A of the EAPWDR sets out the disability assistance rates and sections 4 and 5 of Schedule A address monthly shelter costs. Section 4(1) of Schedule A of the EAPWDR defines "family unit" and the panel notes that the Appellant's family unit includes her and her two dependent children and this is not an issue on this appeal. The panel also notes that section 14.2 of the Act (*the Employment and Assistance for Persons with Disabilities Act*), consequences in relation to outstanding arrest warrants, does not apply to the Appellant.

Under section 4(2) of Schedule A of the EAPWDR, the monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of the family unit's actual shelter costs and the maximum set out in the table for the applicable family size. Under the table, the maximum monthly shelter allowance for a family unit of 3 persons is \$660.00 per month.

Section 5 of Schedule A of the EAPWDR sets out how actual shelter costs are calculated, indicating those items included as utility costs and those items included as the actual monthly shelter costs of a family unit as follows:

5(1) For the purpose of this section, utility costs for a family unit's place of residence include only the following costs:

- (a) Fuel for heating;
- (b) Fuel for cooking meals;
- (c) Water;
- (d) Hydro;
- (e) Garbage disposal provided by a company on a regular weekly or biweekly basis;
- (f) Rental of one basic residential single-line telephone.

(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 panel notes that subsections 5(3) and (4) of Schedule A of the EAPWDR are not relevant to this hearing.

The Appellant submits that the amount of money she is repaying to her family members for the loans they gave her to pay out her mortgage and to cover the special levy on her condo should be considered shelter costs by the Ministry. The Appellant says that she had to pay the special levy or she would have been forced to sell her condo and move. The Appellant said she had not pursued further with the Ministry if the Ministry would cover the cost of the special levy as maintenance and repair costs for her condo after the Ministry worker told her on the phone that the Ministry would not cover it.

The Ministry says that the Appellant receives monthly shelter costs to cover her utilities and her actual shelter costs, as set out in subsection 5(1) and 5(2) of Schedule A of EAPWDR. The Ministry says that the Appellant's debt to her family members which she is repaying every month is not a recognized shelter cost listed under section 5 of Schedule A of the EAPWDR because it is not a mortgage payment (as provided for in subs. 5(2)(b)). The Ministry also says that the Appellant did not receive prior approval from the minister to cover the costs of maintenance and repairs to her condo and her loan repayments to her family members don't fall under subs. 5(2)(f) of Schedule A of the EAPWDR.

The Appellant agrees that her family loaned her money and she paid out her mortgage on her condo. The Appellant also agrees that her family loaned her money to cover to special levy charges associated with her condo. Although the Appellant is repaying the loan to her family members, she no longer makes mortgage payments. Section 4(2) of Schedule A of the EAPWDR sets out that the Ministry will provide shelter allowance that is the lesser of the family unit's actual shelter costs – as defined in section 5 of Schedule A – or the maximum shelter allowance for the family unit. The maximum shelter allowance for the Appellant's family unit is \$660/month. However, the Appellant's actual shelter costs no longer include a mortgage payment, as set out in subsection 5(2)(b) of Schedule A of the EAPWDR, only those costs for utilities, strata fees, taxes and insurance, which the Ministry has determined amount to \$360.92 per month.

Accordingly, the panel finds that the Ministry's determination that the Appellant is not eligible for the maximum shelter costs for her family unit as she is no longer making mortgage payments and its decision to reduce her shelter allowance from \$660 to \$360.92 per month to reflect her actual shelter costs is reasonable based on the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant. The panel therefore confirms the Ministry's decision.