

PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated January 21, 2014 that denied the Appellant additional assistance to replace the \$425.00 for December that was sent to the Appellant's previous landlord as this exceeds the monthly allowable assistance under Section 24 (a) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 24, Section 77, and Schedule A.

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included the following:

- An eviction notice to end the Appellant's tenancy, dated September 1, 2013 and effective October 31, 2013.
- A letter from the Appellant's Advocate to the Appellant's landlord, dated September 30, 2013, giving notice to end tenancy by the end of October 2013.
- An email from an Advocate for the Appellant to the Ministry, dated November 12, 2013 sent at 1:40pm, stating that the Appellant is currently staying in a shelter under the Alcohol and Drug Program.
- An email from the Appellant's Advocate to the Ministry, dated November 14, 2013 sent at 3:49pm, requesting that the Ministry make sure that the Appellant's December rent cheque does not go to the Appellant's previous address.
- An email from the Ministry to the Appellant's social worker, dated November 15, 2013 sent at 8:30am, stating that the Appellant is now in supportive recovery and will not need to pay rent at his current location.
- An email from the Ministry to the Appellant's Advocate, dated November 19, 2013 sent at 3:24pm, stating that the Ministry representative, "has no idea what happened. But sorry, I think I messed up." She states that \$425.00 of the Appellant's support money was mailed by mistake to the Appellant's previous landlord and asks whether the Advocate thinks that the landlord may return the money.
- An email from the Ministry to the Appellant's Advocate, dated November 19, 2013 sent at 3:54pm, stating that the Ministry cannot cancel or reissue the cheque and asking whether the landlord knows if the cheque was sent in error.
- An email from an advocate for the Appellant to the Ministry, dated November 20, 2013 sent at 5:01pm, stating that the Appellant believes that his previous landlord may have received the bulk of his support money for November.
- An email from the Appellant's Advocate to the Ministry, dated November 22, 2013 sent at 9:35am, explaining that the Appellant gave 30 days notice on September 30, 2013 to his landlord to move out by November 1, 2013. The landlord received rent for November and kept the Appellant's damage deposit. The Appellant moved out November 4, 2013. The Appellant is now staying at the shelter and the Ministry was notified that no further rent cheques should be sent to the Appellant's previous landlord. The Advocate explains that unfortunately there was mistake by the Ministry and the rent cheque for December was sent to the previous landlord.
- An email from the Ministry to an Advocate for the Appellant, dated November 22, 2013 sent at 10:48am, stating that the Ministry representative reviewed the Appellant's situation with her supervisors and the Ministry is unable to replace the Appellant's money. The supervisor advised the appellant to seek help from the landlord tenancy branch.
- An email from the Ministry to an advocate for the Appellant, dated November 22, 2013 sent at 2:36pm, stating that the error was her fault and she is very sorry. The Ministry representative states that she forgot to remove the Appellant's previous landlord from the supplier list.
- An email from an advocate for the Appellant to the Ministry, dated November 22, 2013 sent at 3:35pm, stating that the Advocate contacted the Appellant's previous landlord to repay the mis-sent rent money. The previous landlord refused to return the money unless they take him to court.
- An email from the Ministry to the Appellant's Advocate, dated November 25, 2013 sent at 9:51am, stating that the Ministry would look into the problem.



- An email from the Appellant's Advocate to the Ministry, dated November 25, 2013 sent at 1:23pm, asking for confirmation that the cheque sent to the Appellant's previous landlord on November 20, 2013 was intended to pay the December rent and reiterating that the Appellant had requested that the rent payments should be stopped.

Three days prior to the hearing, the Appellant provided following additional documentary evidence:

- A letter from the Appellant's Supportive Recovery Program, dated February 17, 2014, confirming that the Appellant is currently living in their facility and has been there since his intake on November 12, 2013. The Program has not received any funds from the Ministry as no shelter or food funding is required.

At the hearing, the Appellant and the Appellant's advocate provided additional oral evidence that they did contact both the residential tenancy branch and the previous landlord in an attempt to have the money returned. The tenancy branch was unable to assist the Appellant because he was no longer a tenant of the landlord when the rent was paid. The landlord refused to return the December money because of the damage done to the residence before the tenant moved out. They also stated that the Ministry subsequently sent another cheque taken from the Appellant's January support money, but the landlord agreed to return the January money.

At the hearing, the Ministry provided additional oral evidence that the error likely arose from the setup of the computer system used by the Ministry. When the Appellant moved out of his rental accommodation, the Ministry removed the shelter benefit from his account (as money for shelter is not required by the Supportive Recovery Program), but forgot to remove the landlord from the supplier's list. Because the Appellant's December support money was available, the rent cheque was deducted from the Appellant's support benefits for that month. The Ministry has no ability to re-issue support money, nor do they have the authority to recoup the funds from the landlord. In response to questioning from the Appellant, the Ministry stated that they couldn't cancel the cheque to the landlord after it had been issued because it was issued in the landlord's name and he likely endorsed the cheque. The Ministry cannot recoup funds from a person who is not receiving benefits and cannot replace a lost or stolen assistance cheque under EAPWDR Section 77 if the cheque has been endorsed.

The panel determined the additional oral and documentary evidence was admissible under section 22(4) of the EAA as it was in support of the records before the Minister at reconsideration. The additional evidence clarifies the Ministry's error and the Appellant's response.

The panel finds that the Appellant moved out of his rental accommodation by early November 2013. The Appellant was living at a shelter in a Supportive Recovery Program beginning on November 12, 2013. The Ministry was notified of these changes by November 12, 2013. On November 14, 2013, the Appellant's Advocate requested that rent cheques should not continue to be mailed to the Appellant's previous landlord. Because the Ministry forgot to remove the previous landlord from the suppliers list, the computing system issued a cheque in the amount of \$425.00, subtracted that amount from the Appellant's December support money, and improperly mailed it to the Appellant's previous landlord on November 20, 2013. When contacted, the previous landlord refused to return the money.

PART F – Reasons for Panel Decision

Section 24(a), Section 77, and Schedule A of the Employment and Assistance for Persons with Disabilities Regulation provides the following:

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.

Replacement of lost or stolen assistance cheque

77 If satisfied that an unendorsed assistance cheque has been lost or stolen, the minister may issue a replacement as long as,

- (a) in the case of theft, the matter has been reported to police, and
- (b) in the case of loss or theft, the recipient
 - (i) makes a declaration of the facts, and
 - (ii) undertakes to promptly deliver the lost or stolen cheque to the minister if it is recovered.

SCHEDULE A Disability Assistance Rates(*section 24 (a)*)

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of (B.C. Reg. 197/2012)

- (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.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*. (B.C. Reg. 197/2012)

Monthly support allowance

2 (0.1) For the purposes of this section:

“**deemed dependent children**”, in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

“**maximum adjustment**”, in relation to a family unit, means the amount the family unit would receive for a calendar month as the national child benefit supplement if

- (a) the family unit were entitled to receive the national child benefit supplement for the calendar month,
- (b) the income of the family unit, for the purposes of calculating the national child benefit supplement, were zero, and
- (c) all dependent children and all deemed dependent children in the family unit were qualified dependents within the



meaning of the *Income Tax Act* (Canada);

“warrant” has the meaning of warrant in section 14.2 [consequences in relation to outstanding arrest warrants] of the Act. (B.C. Reg. 73/2010) (B.C. Reg. 197/2012)

(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. (B.C. Reg. 197/2012)

Table 1

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$531.42

Prorating of support allowance

3 In the calendar month that contains the date of the applicant's submission of the application for disability assistance (part 2) form, the monthly support allowance is prorated based on the number of days remaining in that calendar month, beginning with the date of that submission. (B.C. Reg. 306/2005)

Monthly shelter allowance

4 (1) For the purposes of this section:

“family unit” includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

“warrant” has the meaning of warrant in section 14.2 [consequences in relation to outstanding arrest warrants] of the Act. (B.C. Reg. 73/2010)

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of (B.C. Reg. 73/2010)

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Table

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

How actual shelter costs are calculated

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.

(3) If utility costs fluctuate, they may be averaged over the periods

(a) beginning on October 1 and ending on March 31, and

(b) beginning on April 1 and ending on September 30.

(4) If 2 or more family units share the same place of residence, the actual shelter costs of any one of them are the smaller of

(a) the amount calculated by

(i) dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence, and

(ii) multiplying the result by the number of persons in that one family unit, and

(b) the amount declared by the family unit as the shelter costs for that family unit.

People receiving room and board

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 24 (a) [amount of disability assistance] of this regulation is the smaller of

(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, and

(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)

People over 65 years of age

7 (1) For a family unit that includes at least one dependant and a person with disabilities who has reached 65 years of age and receives federal old age security payments, the amount referred to in section 24 (a) [amount of

disability assistance] of this regulation is the sum of

(a) the support allowance that is applicable under section 2 and 3 of this Schedule for a family unit matching the applicant's or recipient's family unit, plus

(b) the maximum shelter allowance that is applicable under section 4 of this Schedule for a family unit matching the applicant's or recipient's family unit.

(2) Subsection (1) applies regardless of the family unit's actual shelter costs or whether the family unit is sharing residential accommodation or receiving room and board.

People receiving special care

8 (1) For a person with disabilities who receives accommodation and care in a special care facility (other than a special care facility described in subsection (3)) or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 24 (a)

[amount of disability assistance] of this regulation is the sum of

(a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus

(b) a comforts allowance of \$95 for each person for each calendar month. (B.C. Reg. 164/2005)

(2) If the special care facility under subsection (1) is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the applicant or recipient is in the alcohol or drug treatment centre:

(a) actual shelter costs for the applicant's or recipient's usual place of residence up to the amount under section 4 for a family unit matching the applicant's or recipient's family unit;

(b) a monthly support allowance for the applicant's or recipient's family unit, equal to the amount calculated under sections 2 and 3 of this Schedule minus the portion of that allowance that would be provided on account of the applicant or recipient.

(3) For a person with disabilities who receives accommodation and care in a special care facility operated by a service provider as defined in section 1 of the *Community Living Authority Act*, the amount referred to in section 24 (a) [amount of disability assistance] of this regulation is the sum of

(a) the support allowance that is applicable under sections 2 and 3 of this Schedule for a family unit matching the applicant's or recipient's family unit, plus

(b) the maximum shelter allowance that is applicable under section 4 of this Schedule for a family unit matching the applicant's or recipient's family unit.

(B.C. Reg. 70/2007)

People in emergency shelters and transition houses

9 For a family unit receiving accommodation and care in an emergency shelter or transition house, the amount referred to in section 24 (a) [amount of disability assistance] of this regulation is

(a) the actual cost, if any, to the family unit of the accommodation and care at the rate approved by the minister for the type of emergency shelter or transition house, plus

(b) the support allowance calculated under sections 2 and 3 of this Schedule for a family unit matching the family unit of the applicant or recipient. (B.C. Reg. 316/2008)

The Ministry does not deny that their administrative error caused \$425.00 of the Appellant's December support money to be improperly sent to the Appellant's previous landlord, but argues that the Ministry is unable to re-issue support money and does not have the authority to recoup the funds from the landlord. Because the cheque to the Appellant's previous landlord was taken from the

Appellant's December support money, the Ministry cannot issue additional funds to replace that amount without exceeding the maximum allowable disability assistance for that month according to EAPWDR Section 24(a) Schedule A. Because the cheque was issued in the landlord's name and was endorsed, the Ministry is also unable to re-issue a lost or stolen cheque under EAPWDR Section 77.

The Appellant argues that he notified the Ministry on multiple occasions that he was no longer a tenant by mid-November and that the Appellant's advocate specifically requested by email that rent cheques to the Appellant's previous landlord be discontinued. The Appellant does not understand why the cheque wasn't cancelled and why rent continued to be deducted from his support payments after he notified the Ministry that he had moved out. The Appellant argues that it is not his fault that the payment was made in error to his previous landlord. He argues that the Ministry apologized, but refuses to replace his missing December assistance.

In this circumstance, the panel finds that the Appellant made every reasonable effort to inform the Ministry about his change in circumstance as well as to recoup the funds after the Ministry error. The mis-direction of the Appellant's support money was the result of an administrative error by the Ministry.

However, the EAPWDR Section 24(a) and Schedule A does not allow for the provision of additional funds, even if the Ministry makes an error. The legislation sets down that "disability assistance may be provided to or for a family unit". The Ministry provided assistance for the Appellant. There is no provision in the legislation for re-issuing or providing additional funds in the case of a Ministry error.

The Ministry may issue a replacement for a lost or stolen assistance cheque under EAPWDR Section 77 if the cheque was not endorsed. In this case again, although the cheque was endorsed because of the Ministry's administrative error, the legislation only provides for a replacement cheque if the assistance cheque was not endorsed.

Thus, the panel finds that the Ministry's determination to deny the appellant funds to replace \$425.00 sent to the Appellant's previous landlord was a reasonable application of the EAPWDR Section 24 (a) Schedule A and confirms the Ministry's reconsideration decision.