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PART C – Decision under Appeal

The appellant appeals the Reconsideration Decision of the Ministry of Social Development and Social Innovation (ministry) dated August 14, 2014, in which the ministry made the following determinations:

1. That the appellant was not eligible for a shelter allowance for the month of July 2014;
2. That the method of payment of the shelter allowance was not a decision that the minister could reconsider; and
3. That the Reconsideration Decision was limited to a determination of the appellant's eligibility for a shelter allowance for July 2014 and not the month of August 2014.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 10 and 16
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 24 and 75.1

PART E – Summary of Facts

The appellant receives monthly disability assistance as a sole recipient. The information before the ministry at reconsideration included the following:

1. The appellant's Request for Reconsideration dated August 8, 2014 ("RFR #2") which attaches written submissions signed by the appellant; and
2. A Request for Reconsideration dated July 31, 2014 ("RFR #1").

Admissibility of Additional Evidence

Prior to the hearing the appellant sought to have additional documents admitted as evidence. The documents, collectively referred to as "the Appeal Documents," include the following:

1. A blank Notice of Appeal signed by the appellant and dated August 28, 2014;
2. Written submissions prepared by the appellant ("the Appeal Submissions");
3. A letter from the appellant's physician dated August 26, 2014 indicating that the appellant has an injury caused or aggravated by a motor vehicle accident which occurred in 2014 and further commenting that the appellant is homeless which affects his ability to heal ("the GP Letter");
4. A copy of the appellant's provincial medical insurance card;
5. A copy of the appellant's provincial identity card;
6. A receipt reflecting the appellant's payment of rent for the month of June 2014 ("the June Receipt");
7. A copy of a letter sent by the ministry to the appellant dated August 14, 2014 with some portions underlined by the appellant;
8. A ministry Shelter Information form indicating a rental arrangement for the appellant commencing September 1, 2014;
9. A ministry Shelter Information form indicating a rental arrangement for the appellant commencing June 1, 2014; and
10. A business card from the RCMP with two police file numbers written on the back.

The ministry did not object to the Appeal Documents being admitted as evidence in this appeal. However, after reviewing the Reconsideration Decision and the original ministry decision, the panel notes that the following individual documents were either not before the ministry at reconsideration or are not in support of the information and records that were before the minister when the decision being appealed was made and are therefore inadmissible:

1. The blank Notice of Appeal signed by the appellant and dated August 28, 2014;
2. The GP Letter; ("the GP Letter");
3. The copy of the appellant's provincial medical insurance card;;
4. The copy of the appellant's provincial identity card; and
5. The business card from the RCMP with two police file numbers written on the back.

For the balance of the Appeal Documents, the panel finds that they are admissible pursuant to section 22(4)(b) of the *Employment and Assistance Act* as they are written testimony in support of the information and records that were before the minister when the decision being appealed was made.

Admissibility of Oral Evidence

The appellant gave oral evidence at the hearing. This evidence reflected his difficulty in finding rental accommodation and its impact on his life. The panel finds inadmissible any oral testimony that is consistent with the five Appeal Documents found to be inadmissible above. The panel further finds that the appellant's

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additional oral evidence is admissible pursuant to section 22(4)(b) of the *Employment and Assistance Act* as oral testimony in support of the information and records that were before the minister when the decision being appealed was made.

In the Reconsideration Decision, the ministry notes that the appellant contacted the local ministry office on July 22, 2014 to make enquiries about a shelter allowance and the appellant was asked to provide confirmation of his shelter arrangements. The following day, the appellant requested a reconsideration of the decision not to issue him a shelter allowance and he further requested that any shelter funds be issued to him rather than a landlord. In response to this, the ministry advised the appellant that he could still receive shelter funds provided that he forward confirmation of his shelter arrangements to the ministry.

On July 28, 2014, a ministry worker advised the appellant that it was not necessary for him to provide a ministry form as confirmation of his shelter arrangements and that a residential tenancy agreement would be sufficient. The appellant at that time advised the ministry that he had not yet found a place to rent but that he wanted the shelter funds to find a place to rent.

RFR #1 indicates that there are few vacancies in the community where the appellant lives, particularly in the summer.

In the written submissions attached to RFR #2, the appellant writes that he is appealing the decision "on the landlord direct payment." The appellant also writes that "The landlord should be paid on the first of each month" and that if payment of rent is made directly by the ministry, this coincides with the appellant's "check day" which is always before the first of the month. The appellant writes that if there is something wrong with the rental property, if he is responsible for paying the rent he can then withhold it until the problem is fixed. Lastly, the appellant writes that by paying the landlord directly, he avoids having to disclose to the landlord his financial situation and the fact that he receives disability assistance which opens him to the possibility of discrimination.

At the hearing, the appellant referenced his written submissions and stated further that he does not understand why he does not receive shelter funds directly in order that he may rent a home. He stated that he wanted the direct payments to landlords stopped permanently.

In response to questions, the appellant stated that he submitted an "intent to rent" form to the ministry for the month of July but that the landlord didn't want to wait for the ministry to forward the rent money. The landlord rented to someone else who was able to provide cash upfront, and, as a result, the property was no longer available. On further questioning, the appellant agreed that the "intent to rent" form was actually the September 1, 2014 Shelter Information form, but he said the landlord wanted to rent the property for the month of August 2014. The appellant also stated that rental accommodation in his community during the summer months is very limited but that if he has money available immediately, he can look at available properties and rent them right away rather than wait for the ministry to forward the funds to the landlord which can take up to five days. Finally, the appellant stated that he is currently living in a motel with two other people but during July and August 2014 he was homeless as the house he lived in during June 2014 had been sold.

At the hearing, the ministry stated that the Reconsideration Decision is based on the lack of rental information provided by the appellant to the ministry's local office and that the appellant has to submit actual rental costs prior to funds being made available. The ministry stated that if there are no documents, the ministry cannot calculate the shelter allowance.

In response to questions, the ministry stated that eligibility for a shelter allowance is based on actual costs and reiterated that without the rental information, the allowance cannot be calculated. The ministry stated that there is some provision for backdating shelter allowances.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decisions as follows were reasonable:

1. Denying the appellant's request for a shelter allowance for the month of July 2014;
2. Determining that the method of payment of the shelter allowance was not an issue that could be the subject of a ministry reconsideration; and
3. Determining that the Reconsideration Decision was restricted to a determination of the appellant's eligibility for a shelter allowance for July 2014 and not the month of August 2014.

The criteria to be applied by the ministry in determining a person's eligibility for disability or hardship assistance or a supplement is found in the *EAPWDA* as follows:

Information and verification

10 (1) For the purposes of

- (a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,
- (b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,
- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
 - (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
 - (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.
- (2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.
 - (3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).
 - (4) If an applicant or a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.
 - (5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

The criteria to be applied by the ministry in determining what decisions it may reconsider is found in the *EAPWDA* as follows:

PART C – Decision under Appeal

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PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decisions as follows were reasonable:

1. Denying the appellant's request for a shelter allowance for the month of July 2014;
2. Determining that the method of payment of the shelter allowance was not an issue that could be the subject of a ministry reconsideration; and
3. Determining that the Reconsideration Decision was restricted to a determination of the appellant's eligibility for a shelter allowance for July 2014 and not the month of August 2014.

The criteria to be applied by the ministry in determining a person's eligibility for disability or hardship assistance or a supplement is found in the *EAPWDA* as follows:

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- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
 - (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
 - (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.
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 - (4) If an applicant or a recipient fails to comply with a direction under this section, the minister may declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.
 - (5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

The criteria to be applied by the ministry in determining what decisions it may reconsider is found in the *EAPWDA* as follows:

Reconsideration and appeal rights

16 (1) Subject to section 17, a person may request the minister to reconsider any of the following decisions made under this Act:

- (a) a decision that results in a refusal to provide disability assistance, hardship assistance or a supplement to or for someone in the person's family unit;
 - (b) a decision that results in a discontinuance of disability assistance or a supplement provided to or for someone in the person's family unit;
 - (c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit;
 - (d) a decision in respect of the amount of a supplement provided to or for someone in the person's family unit if that amount is less than the lesser of
 - (i) the maximum amount of the supplement under the regulations, and
 - (ii) the cost of the least expensive and appropriate manner of providing the supplement;
 - (e) a decision respecting the conditions of an employment plan under section 9 [*employment plan*].
- (2) A request under subsection (1) must be made, and the decision reconsidered, within the time limits and in accordance with any rules specified by regulation.

(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.

(5) The Lieutenant Governor in Council may designate by regulation

- (a) categories of supplements that are not appealable to the tribunal, and
- (b) circumstances in which a decision to refuse to provide disability assistance, hardship assistance or a supplement is not appealable to the tribunal.

The criteria the ministry must apply in determining a person's rate of assistance is provided in the *EAPWDR* as follows:

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.

The criteria the ministry must apply in determining how assistance is provided in the *EAPWDR* as follows:

How assistance is provided

75.1 The minister may provide

- (a) disability assistance or hardship assistance to or for a recipient by cheque or electronic funds transfer or in vouchers, and
- (b) a supplement to or for a recipient by cheque or electronic funds transfer or in vouchers or in kind.

[en. B.C. Reg. 8/2008.]

Positions of the Parties

In his Notice of Appeal dated August 20, 2014, the appellant writes that if he had received his monthly assistance check including the amount for shelter he could have paid his rent at the property at the time he signed the intent to rent but instead the landlord decided to rent the house immediately.

The appellant argues that his shelter allowance should be paid to him directly and not to the landlord. He argues further that the issue to be considered should not be restricted to his July 2014 shelter eligibility.

The ministry's position is that the appellant was not eligible for a shelter allowance for July 2014 because he had not provided confirmation of shelter arrangements to the ministry for that month and as such it was not possible to calculate his shelter allowance.

The ministry further takes the position that it was bound in the Reconsideration Decision to only decide the Issue of the appellant's entitlement to a shelter allowance for July 2014 as a decision had not been made by the ministry's local office with respect to the appellant's entitlement to a shelter allowance for August 2014.

Finally, the ministry takes the position that the decision of how and to whom the appellant's shelter allowance is issued is not one that can be the subject of ministry reconsideration as it does not meet the requirements of section 16 of the *EAPWDA*.

Analysis

Shelter Allowance Eligibility

Section 10 of the *EAPWDA* provides the ministry with the discretion to request from a person, information and verification of information when determining their eligibility for disability or hardship assistance or a supplement. Section 10(4) of the *EAPWDA* provides that where a person fails to comply with a direction to provide information or verification under this section, the minister may declare that person ineligible for disability or hardship assistance or a supplement.

In the present case, the ministry requested from the appellant shelter information in order that it could in accordance with Schedule A calculate what, if any, shelter allowance he was eligible for in July 2014. The appellant did not provide this information and as a result, the ministry was unable to calculate the appellant's shelter allowance and as such it determined that he was not eligible for a shelter allowance for July 2014.

At the hearing and in the Appeal Submissions, the appellant argued that signing an "intent to rent" form puts him in a position of having to disclose personal medical and financial information to a potential landlord given that he is disabled and receiving ministry financial assistance. However, the panel notes that the appellant signed Shelter Information forms provided by the ministry for both June and September 2014. There is no evidence to suggest that a similar form was provided by the appellant to the ministry for July 2014.

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Given the aforementioned, the panel finds that the ministry's determination that the appellant was not eligible for a shelter allowance for July 2014 was reasonable.

Can the Minister Reconsider How and to Whom Assistance is Issued?

Section 16 of the *EAPWDA* sets out those decisions that the minister may reconsider. The decisions include a refusal to provide, a reduction or discontinuance of disability assistance, hardship assistance or a supplement or a decision with respect to the amount of a supplement.

In the present case, the ministry says that it has the discretion pursuant to section 75.1 of the *EAPWDR* as to whether shelter allowance funds are issued directly to a landlord or client. In this case, it says it will only issue the funds directly to a landlord and that decision is not one that the minister may reconsider.

The appellant argues that the ministry's decision puts him at a disadvantage as he is unable to compete against other potential renters who have available funds in a very limited rental market. The appellant says that it takes up to five days for the ministry to process his request by which time the available premises are typically rented to others.

Section 16 of the *EAPWDA* is clear as to the decisions that the minister may reconsider. A decision as to the method that shelter allowance funds are distributed does not fall within any of the listed decisions that may be reconsidered. As such, the ministry's determination that it could not reconsider its decision as to how and to whom the appellant's shelter allowance is issued was reasonable.

Reconsideration of July 2014 Shelter Allowance Eligibility Only

The appellant says that this appeal should not be limited to his July 2014 shelter allowance eligibility. The Reconsideration Decision clearly states that it is a reconsideration of the appellant's July 2014 shelter allowance eligibility only.

On review of the original decision of the minister, dated July 29, 2014, there is no indication that the appellant had requested or that he had been denied a shelter allowance for any month other than July 2014. Similarly, the Reconsideration Decision references the fact that a decision had not yet been made at the appellant's local ministry office regarding his August 2014 shelter allowance eligibility. Although at the hearing the appellant orally submitted that the accommodation listed on the Shelter Information form dated September 1, 2014 was really available for August 2014, there is no evidence that he had either requested from the ministry or that he had been denied a shelter allowance for August 2014.

Based on the aforementioned, the panel finds that the ministry's decision that the Reconsideration Decision would be limited to a reconsideration of the denial by the ministry of a shelter allowance for the appellant for July 2014 was reasonable.

Conclusion

The panel finds as follows:

1. The ministry's determination that the appellant was not eligible for a shelter allowance for the month of July 2014 was a reasonable application of the applicable enactment in the circumstances of the appellant;
2. The ministry's determination that it may not reconsider the decision of how and to whom the appellant's shelter allowance is issued was a reasonable application of the applicable enactment in the

circumstances of the appellant; and

3. The ministry's determination that the Reconsideration Decision was limited to a determination of the appellant's shelter allowance eligibility for July 2014 only and not August 2014 was reasonably supported by the evidence.

Given the aforementioned, the panel therefore confirms the Reconsideration Decision.