

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") Reconsideration Decision dated October 29, 2014 which found that the appellant was required to repay to the ministry employment assistance in the amount of \$750.00 that he received for shelter for the months of April and May 2014 and for which he was not eligible pursuant to section 27 of the Employment and Assistance Act ("EAA").

PART D – Relevant Legislation

Employment and Assistance Act (*EAA*) sections 10, 27 and 28
Employment and Assistance Regulation (*EAR*) Schedule A, section 5

PART E – Summary of Facts

The evidence before the ministry at the time of the Reconsideration Decision consisted of copies of the following:

1. The appellant's undated Request for Reconsideration;
2. A letter dated September 17, 2014 from the ministry to the appellant ("the Ministry Letter");
3. A ministry Overpayment Chart dated September 15, 2014;
4. One page of the appellant's hydro bill dated June 24, 2014;
5. One page of the appellant's telephone bill dated June 14, 2014;
6. A bank transaction history printout for the period of April 1, 2014 through July 10, 2014;
7. A bank transaction history printout for the period of November 28, 2013 through May 28, 2014;
8. A bank statement account summary for the appellant for May 2014;
9. Bank transaction history printouts for November 4, 2013, March 26, 2014 and March 27, 2014;
10. One page of a gas bill for another person dated January 23, 2013;
11. One page of a gas bill for another person dated January 26, 2014; and
12. A bank transaction history printout for January 29, 2014.

No new evidence was submitted by the appellant or the ministry.

The appellant is a sole recipient of income assistance and has no dependants. The appellant was notified in the Ministry Letter that the ministry had reviewed his receipt of assistance between March 1, 2014 and August 31, 2014 and it determined that he may have received a shelter allowance in the amount of \$750.00 between April 1, 2014 and May 31, 2014 for which he was not eligible. A copy of the Overpayment Chart was enclosed with that letter. Following a ministry review of the appellant's income assistance file, it was determined that as the appellant was unable to provide documentation showing he had required shelter costs for April and May 2014, he had received a shelter allowance of \$375.00 for each of those months for which he was not eligible and as a result, the appellant was required to repay \$750.00 to the government.

In the Request for Reconsideration, the appellant states that the ministry decision is based on false information, that his sister never provided him with rent receipts and that he is currently taking his sister to court for stealing his possessions. The appellant states further that he believes that his sister is providing false information to the ministry including that he did not pay rent. On the Request for Reconsideration, the appellant has made notes next to portions of the applicable legislation as set out by the ministry. Next to "fuel for heating" the appellant has noted "30". He has also noted "65" next to "hydro", he has noted "10" next to "garbage disposal provided by a company on a regular weekly or biweekly basis", he has noted "35" next to "rental of one basic residential single-line telephone", he has noted "450.00/mo" next to "rent for the family unit's place of residence" and he has noted "95/mo" next to "utility costs".

In the appellant's Notice of Appeal dated November 7, 2014, he writes that the ministry's Reconsideration Decision is "based on mis-information."

At the hearing, the appellant stated that he doesn't understand how the ministry reached the Reconsideration Decision but assumes that it was based on mis-information provided by his sister who he is estranged from. He says during the months in question, he paid rent at his residence but that his sister did not provide him with receipts.

In response to questions, the appellant stated that for a period of approximately 8 years, including the period in question, he lived in a house that was owned by his mother and that he paid monthly rent of \$350.00 to her for the duration. Prior to his mother's death in April 2014, he paid rent by direct deposit to his mother's bank account and subsequent to her death he continued paying rent to her estate. The appellant stated that he received his monthly employment assistance cheque which he would then cash and deposit a portion to the estate bank account for his rent. The appellant stated that he never received receipts for rent and did not have copies of the deposit slips for these payments.

At the hearing, the ministry stated that it received an anonymous tip indicating that the appellant did not have required shelter costs in April and May 2014 despite the fact that at that time he was receiving employment assistance which included a \$375.00 shelter allowance. Following receipt of that information, pursuant to section 10 of the *EAA* the ministry investigated the appellant's file and requested that he provide documentation to demonstrate that he in fact did have shelter costs in April and May 2014. While some documents were provided including bank and utility records, the ministry was not satisfied that they established the appellant's rental costs as requested and it concluded that he was not eligible for the \$375.00 shelter allowance for either April or May 2014 and that he was required to repay a total of \$750.00 to the government.

In response to questions, the ministry stated that it had tried unsuccessfully to contact the appellant's sister, who was executrix of their mother's estate, to obtain information regarding the appellant's rental situation. The ministry stated that based on the information it had considered, the appellant no longer had required shelter costs after his mother's death.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's Reconsideration Decision which found that the appellant was required to repay to the ministry employment assistance in the amount of \$750.00 that he received for shelter for April and May 2014 and for which he was not eligible pursuant to section 27 of the Employment and Assistance Act (“EAA”).

Section 10 of the *EAA* provides the ministry with the means to determine and audit eligibility for income assistance as follows:

Information and verification

10. (1) For the purposes of

(a) determining whether a person wanting to apply for income assistance or hardship assistance is eligible to apply for it,

(b) determining or auditing eligibility for income 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 income 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 income 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 income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

Sections 27 and 28 of the *EAA* addresses the issues of assistance overpayments and repayment as follows:

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*].

28 (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

- (a) recovered in a court that has jurisdiction, or
 - (b) deducted in accordance with the regulations, from any subsequent income assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.
- (2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).
- (3) An agreement under subsection (2) may be entered into before or after the income assistance, hardship assistance or supplement to which it relates is provided.
- (4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

Section 5 of Schedule A to the *EAR* sets out how actual shelter costs are calculated as follows:

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.

The appellant argues that he paid rent in April and May 2014 and as such he was eligible for a shelter allowance for each month.

The ministry's position is that the appellant received a shelter allowance as part of his monthly employment assistance in the amount of \$375.00 in each of April and May 2014 for which he was not eligible as he had no required shelter costs during those months. The ministry argues further that because he was not eligible to receive this assistance, the appellant must repay a total of \$750.00 to the ministry.

Section 10(1)(b) of the *EAA* provides the ministry with a means of investigating or auditing a person's eligibility for income assistance, hardship assistance or a supplement. Section 10(2) of the *EAA* provides that the ministry may direct a recipient of income assistance to provide verification of his or

her eligibility and, should the person fail to comply with such a direction, the minister may declare the person ineligible for income assistance, hardship assistance or a supplement for the prescribed period pursuant to section 10(4).

In the present case, following receipt of an anonymous tip, the ministry undertook an investigation of the appellant's file to determine whether he was eligible for income assistance that he had received between March 1 and August 31, 2014. As part of its investigation, the ministry requested that the appellant provide to it documentation to support his claim that he had paid rent at his residence. The ministry, after reviewing documents provided by the appellant, determined that he did not have required rent costs at his residence in April or May 2014 and as such he was not eligible for the \$375.00 shelter allowance for either month and accordingly it notified him that he was required to repay to the government \$750.00.

While the appellant did provide some documentation in the form of bank statements and utility bills, only the June 24, 2014 hydro bill notes the address of the residence in which he says he paid rent and that bill covered charges from May 23, 2014 through June 19, 2014. None of the other bills note the address of the appellant's residence. Further, while the appellant's March 26, 2014 bank history transaction statement notes a deposit of \$610.00 (which is the amount of his monthly employment assistance benefit) and a cash withdrawal of \$350.00, there is no corresponding documentation such as a deposit slip to support the appellant's argument that he deposited the rent to his mother's estate bank account in either April or May 2014 or for any other month over the course of the 8 years that the appellant lived at that residence. Based on the aforementioned, the panel finds that the ministry reasonably determined that the appellant was not eligible for a shelter allowance in April or May 2014 and that accordingly, he is required to repay \$750.00 to the government pursuant to section 27 of the *EAA*.

The panel finds that the ministry's determination that the appellant is required to repay the income assistance he was not eligible to receive was a reasonable application of the applicable enactment in the circumstances of the appellant and the panel therefore confirms the Reconsideration Decision.