

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation ("Ministry") September 30, 2014 reconsideration decision determining that the Appellant was not eligible for a shelter allowance while living in a room & board situation with her father in his home, from October 2010 until July 2014, as per Section 5 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA) and Schedule B, Section 6 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – Section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Schedule B Section 6
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Schedule A Section 6

PART E – Summary of Facts

The Panel heard oral arguments from the Ministry's representative, oral evidence from the Appellant's witness and oral argument from the Appellant, and reviewed the evidence submitted in the written record.

The Ministry relied upon the following evidence in the appeal record:

- On February 19, 2011, the Appellant's father wrote a note indicating that the Appellant paid him \$500/month room and board.
- On June 5th, 2014 the Ministry reviewed the Appellant's file and requested information regarding the Appellant's shelter costs.
- On June 17, 2014, a Ministry worker spoke with the Appellant and was advised that the Appellant lived in a room & board situation with her father, and did not have a formal tenancy agreement.
- On July 17, 2014, the Ministry reviewed a letter from the Appellant's father confirming that the Appellant had been living in a room and board situation with her father.
- On July 23, 2014, the Appellant advised the Ministry that she pays rent, not room and board, and that her father erred in stating it was room and board.
- On August 7, 2014, the Ministry spoke to the Appellant's father. The Ministry states that the Appellant's father stated he received room and board from his daughter; he pays the utilities and gives his daughter money to buy their food. He then stated that he "now understands the difference" between rent and room and board and it will be rent from this point forward.
- On August 19, 2014, the Appellant spoke to the Ministry and indicated she was now paying her own separate bills and groceries, and that the Appellant's father was confused about the difference between "room and board" and "rent".
- On August 20, 2014, the Appellant again advised the Ministry that she was paying rent, not room and board, and asked the Ministry to speak to her father again to clarify. The Ministry states that the Appellant's father indicated that \$500 per month included the room, access to the rest of the house, use of the kitchen, and all bills other than the Appellant's cell phone. The \$500 also covered food as he would give the Appellant his interact card to pay for groceries as he has trouble getting out of the house. The \$500 was room and board, however this has now been changed to rent, and the Appellant is now responsible for paying for her own food.
- On September 17, 2014, the Appellant's father wrote a third note to "follow up of information that was previously provided" stating, "My daughter ... pays \$500 monthly rental. Occasionally on a monthly basis, she will contributes some cash for groceries, and helps out with utilities."

The Ministry provided the following corroborating evidence as part of the appeal record:

- A hand-written note dated February 19, 2011, stating, "My daughter.... Pays \$500 monthly for room and board. After a fire in her bedroom I gave her \$980 to buy some new clothes and winter boots."
- A hand-written note from the Appellant's father, dated June 16, 2014, stating, "Please be advised that my daughter.... Has lived (is living) with me..." She. "pays \$500 each month room and board, which includes utilities."
- A hand-written note from the Appellant's father, dated September 17, 2014, stating, "My daughter ... pays \$500 monthly rental. Occasionally on a monthly basis, she will contributes some cash for groceries, and helps out with utilities."

The Witness, the Appellant's father, provided the following verbal evidence at the Hearing:

The Appellant and her father have lived together in his house for the past four years. She originally rented a townhouse from him, it was located further down the street. There was a fire at the townhouse and so the Appellant moved into his basement. The Appellant pays \$500 per month rent and occasionally does washing, cleaning, cooking and shopping for her father. Because the Appellant's father relies on a walker, he doesn't go out much and relies on the Appellant to do all the grocery shopping. He clarified that his daughter has her own fridge and microwave downstairs; the basement was wired and renovated to accommodate this when his daughter moved in. He also noted that his daughter buys his groceries and cooks for him, but she doesn't eat what he eats, stating, "She doesn't like liver and onions!" He pays bills through the bank, and utility bills are automatically withdrawn from his bank account. He noted that the fridge and microwave belong to the Appellant, that she brought them with her when she moved from the townhouse.

The Ministry asked the witness if he declared the Appellant's rent as rental income for tax purposes when she rented the townhouse. He indicated that he did. The Ministry asked him if, since the Appellant moved into his home, if he declared

the money as rental income, and he stated he did not.

The panel asked the witness if the Appellant bought groceries using her own money. He responded, "Sometimes." When asked to clarify how frequently "sometimes" meant, he clarified that the Appellant would purchase her own groceries two or three times in the course of a week.

The Appellant provided the following evidence:

- In the appeal package, the Appellant wrote, "My father does not realize the difference between Room & Board and Rent. He has alzimers – can't remember and gets confused. I do pay rent \$500.00 and I have to pitch in for food and utilities."

At the appeal tribunal, the Appellant provided the following verbal evidence:

- The Appellant states she pays rent, a portion of utilities, pays for her own food, and gas for the car. This leaves her about \$200 per month to spend. She pays approximately \$120 per month towards the utilities.
- The Appellant agrees that she uses her father's debit card to purchase groceries, and that she cooks for him, but that she also has her own food that she purchases herself and cooks for herself. She indicates that when she moved into her father's home, they had to do renovations to create a suite for her, and a kitchen area which includes a fridge and microwave. It is not a full kitchen and she uses her father's stove upstairs as well.
- The Appellant states that her bank records do not show grocery purchases because she pays for the groceries using cash, which she withdraws at the pub using the "cash back" feature.
- The Appellant states she doesn't know why her father said on the 2nd note that it was Room and Board. She states that he doesn't clearly understand the difference between rent and room and board, and gets confused easily.
- The Appellant notes that she has a severe mental health impairment and is on disability and the stress from this situation is doing her harm and she is requesting to see her psychiatrist again.

The Panel finds that all the evidence and argument provided by the Ministry, Appellant and witness is admissible as per Section 22(4) of the Employment and Assistance Act because it is consistent with and in support of the information before the Ministry at the time of the reconsideration.

PART F – Reasons for Panel Decision

The issue before the Panel is whether the Ministry reasonably determined the Appellant was in a room and board situation with her father, and therefore not eligible for a shelter allowance, as per Section 5 of the EAPWDA and Schedule B, Section 6 of the EAPWDR.

Section 5 of the EAPWDA states:

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

Schedule B, Section 6 of the EAPWDR states:

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:
 (a) any income tax deducted at source from employment insurance benefits;
 (b) essential operating costs of renting self-contained suites.

The legislation included and referred to in the content of the Reconsideration Decision is actually Schedule A, Section 6 of the EAPWDR. For the purposes of this Decision, the panel finds that reference to Schedule B was a typographical error.

Schedule A, Section 6 of the EAPWDR states:

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, s. (b).]

The Parties' Positions

The Appellant's position is that she and her father have had a rental arrangement since she moved into the basement of his house, despite what he wrote on the first two notes. To support her argument, she noted the following: she has been living in her own part of the house with her own fridge and microwave since she moved in; she has a prior history of renting from her father; her father is on a fixed income and would not be able to afford to provide for her; and her father's statement that she sometimes purchases her own groceries as well as her father's note from September 2014 which states the same. The Appellant states she purchases groceries with cash she takes out when she visits the pub. She also states her father was confused regarding the difference between room and board and rental arrangements. The Panel further notes that when providing evidence, the Appellant's father clarified that "occasionally" purchasing her own groceries meant two or three times per week, and stated that his daughter pays him rent.

The Ministry provided the following verbal argument at the hearing:

- The Ministry's decision was based on the two written notes from the Appellant's father indicating the arrangement was for room and board, and on a conversation on August 7, 2014 with the Appellant's father where he stated it was room and board and not rent. In the Ministry's opinion, he understood the difference and stated it would be

rent in the future. They also rely on a conversation with the Appellant on June 17, 2014.

- The Ministry notes that the Appellant has not provided any evidence that she purchases her own groceries. They indicate that they requested copies of her bank statements, which she provided, and these show transactions at a pub, liquor store, and various retail outlets, but no purchases at grocery stores and no cash withdrawals at the bank or ATM.
- The Ministry stated that because the basement suite does not have a full kitchen, it is not a "self contained suite" under the residential tenancy act. When questioned by the panel regarding whether this was germane to the issue of rent vs room and board, the Ministry conceded that it was not relevant to this discussion as it is possible to rent a room, not just a self-contained suite.
- Finally, they rely on the father's statement that, since she moved into his home, he does not declare his daughter's payments to him as rental income on his income tax return. When she rented the townhouse, he did declare rental income.
- The note provided by the Appellant's father on September 17, 2014 indicates his daughter "will" contribute money for groceries. This is consistent with a conversation with the Appellant on August 19, 2014 where the Appellant stated she is "now" paying her own separate bills and groceries, and a conversation with the Appellant's father on August 7, 2014 where he stated that "it will be rent from this point forward." The Ministry accepts that the Appellant is paying rent to her father from August 2014 onwards.
- According to the legislation, when someone is in a room & board situation with a parent or child, they are not eligible for the shelter portion of assistance, only the support. In the Appellant's case, this would be \$235 per month.

Panel Decision:

Schedule A, Section 6(2) of the EAPWDR states that in the case of person receiving room and board from a parent or child, the recipient is eligible only for the support portion of their disability assistance allowance. After a file review in 2014 the Ministry requested additional information to clarify the situation and subsequently determined that the Appellant was receiving room and board from her father.

The Appellant argues that she contributes to the utilities. The Ministry argues that she does not pay for the utilities. For the purpose of differentiating between rent and room and board, the panel finds that this matter is inconsequential, as utilities may or may not be included in a rental agreement. The panel also finds the discussion about whether the Appellant rented a part of the house vs a self-contained suite was not germane to the issue, which was whether the Appellant was renting from her father or receiving room and board from her father.

The Appellant and her father agree that she used his debit card to purchase groceries. While she indicates she also purchases groceries with her own money, she was unable to provide any evidence of this to the Ministry. The Appellant's father declared rental income to Revenue Canada when his daughter rented his townhouse; since she moved into his basement, he has not declared rental income. The Appellant's father characterized the arrangement as room and board, both verbally and in writing. The panel finds that the Appellant's father regarded the current arrangement as different in nature from his previous rental arrangement with his daughter, and that since she moved into his basement, she has been receiving room and board from her father.

For these reasons, the Panel finds that the Ministry's reconsideration decision denying the Appellant shelter allowance for the period of October 2010 to July 2014 is reasonably supported by the evidence.