

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision dated January 14, 2014 which held that the Appellant was denied shelter allowance for the months of October, November and December 2014 for failing to provide verification of shelter costs for the requested period as required to determine shelter costs under section 4 and 5 of Schedule A of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

EAPWDR, Schedule A, sections 4 and 5

PART E – Summary of Facts

The evidence before the Ministry at reconsideration included the following:

1. Email from the Appellant to the Appellant's brother dated September 16, 2014 informing the that the Appellant needed until the 19th and for her brother to call "welfare" regarding another tenant's rent for the month of September. The Appellant suggested to her brother that the premises are flagged and the Ministry is not issuing the other renter's rent portion.
2. Email from the Appellant to a management company dated September 16, 2014 notifying the company that she was almost finished but she needed until the 19th and then she would be out for good.
3. Email from the management company to the Appellant dated September 18, 2014 informing the Appellant and her brother that it has not received the outstanding arrears and the arrears must be paid according to arbitration.
4. Email from the Appellant to the Appellant's brother and the management company dated September 19, 2014 indicating the Appellant planned on moving on the 30th
5. Email from the management company to the Appellant's brother dated September 22, 2014 asking for partial payment of outstanding rent.
6. Letter from the Appellant's brother dated October 10, 2014 advising that the Appellant was residing at the premises and will be residing there until further notice. The Appellant's brother also confirmed that he had paid rent to the rental company for the month of October 2014 and that the Appellant needs to reimburse him for the month's rent.

Employment and Assistance Request for Reconsideration dated January 6, 2015 the Appellant stated the following:

1. That the Appellant took in a letter as she was advised to do by the Ministry;
2. the landlord is not the management company and the management company owns the land;
3. the Appellant's brother owns the trailer on the land;
4. the Appellant's move was postponed until January 1, 2015;
5. October and November rent was still owed to the Appellant's brother; and
6. the Appellant was still residing at the premises until December 30, 2014 and she paid the her brother rent for December out of her support.

Notice of Appeal dated January 21, 2015, the Appellant stated the following:

1. That the Appellant lived in the premises until December 30, 2014;
2. the Appellant's brother is the landlord and owns the trailer; and
3. the Appellant was on a court appointed monitoring system until November 14, 2014.

Before the hearing, the Appellant submitted a document (no date) stating the following:

1. That in September 2014 the Appellant advised the Ministry that she was planning on moving and that her brother was going to move back in to premises when he sold his other residence;
2. the Appellant had an ankle bracelet for home monitoring until November 14, 2014;

3. the Appellant stayed on her brother's tenant;
4. the Appellant's brother leases the land the trailer is on from the management company;
5. the Appellant was able to get permission to move with her ankle bracelet;
6. the Appellant still has outstanding rent to pay to her brother for October and November 2014 needs to be reimbursed and December 2014 rent that the Appellant paid from her support allowance; and
7. due to lack of rental income that the Appellant's brother's phone has been disconnected and provided a new number.

At the hearing, the Appellant's brother confirmed that he was the Appellant's landlord and that the company claiming to be the Appellant's landlord is the Appellant's brother's landlord as he leases the land from the management company. The Appellant's brother is the Appellant's landlord.

The Ministry did not submit additional evidence on appeal and relied exclusively on the Reconsideration Decision.

The panel finds that the additional evidence provided by the Appellant clarified her situation and was admissible under section 22(4) of the *Employment and Assistance Act* as it corroborated the Appellant's previous information and was in support of the records before the Ministry at reconsideration.

PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision to deny the Appellant shelter costs for the months of October, November and December 2014 pursuant to the EAPWDR Schedule A, sections 4 and 5 is a reasonable application of the legislation in the circumstances of the Appellant or is a reasonably supported by the evidence.

Schedule A, sections 4 and 5 of the EAPWDR states that the monthly shelter allowance is the smaller of the actual shelter costs and the rate table. The legislation provides that the Ministry calculates the amounts to determine monthly shelter allowance for recipients. Schedule A sections 4 and 5 have been reproduced as follows:

(A) 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 a warrant in section 15.2 [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 15 (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:

Item	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820

8	8 persons	\$855
9	9 persons	\$890
10	10 persons	\$925

(B.C. Reg. 57/2007)

(2.1) The monthly shelter allowance for a family unit to which section 15.2 of the Act applies is the smaller of

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

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

(B.C. Reg. 73/2010)

Item	Family Unit Composition	Maximum Monthly Shelter
1	Two applicants/recipients, no dependent children and a warrant has been issued for one	\$375
2	Family with dependent children, family unit size = 2 persons	\$570
3	Family with dependent children, family unit size = 3 persons	\$660
4	Family with dependent children, family unit size = 4 persons	\$700
5	Family with dependent children, family unit size = 5 persons	\$750
6	Family with dependent children, family unit size = 6 persons	\$785

7	Family with dependent children, family unit size = 7 persons	\$820
8	Family with dependent children, family unit size = 8 persons	\$855
9	Family with dependent children, family unit size = 9 persons	\$890
10	Family with dependent children, family unit size = 10 persons	\$925

(B.C. Reg. 73/2010)

(3) For a family unit of more than 10 persons, the maximum monthly shelter allowance is calculated by adding an extra \$35 for each person by which the family unit size exceeds 10.

(4) Repealed (B.C. Reg. 62/2010)

(5) Despite subsection (2) (a) or (2.1) (a), if the actual shelter costs of a recipient increase as a result of the recipient remortgaging his or her place of residence, the amount of the mortgage payments is deemed, for the term of the new mortgage, to equal the amount before the remortgaging unless (B.C. Reg. 73/2010)

(a) the remortgaging was necessary because of the expiry of the mortgage term, and

(b) the amount borrowed under the mortgage is not increased.

(6) Despite subsection (2) or (2.1), the maximum monthly shelter allowance for a person who (B.C. Reg. 73/2010)

(a) is a sole recipient without dependants, and

(b) provides confirmation of pregnancy from a medical practitioner, nurse practitioner or a registrant of the College of Midwives of British Columbia is increased by up to \$195 per month for the duration of the pregnancy.

(B.C. Reg. 88/2008) (B.C. Reg. 73/2010)

(B) 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.

The Ministry

The Ministry argued that the Appellant did not provide verification of actual shelter costs for the months of October, November and December 2014 and was not eligible for shelter allowance for the

months requested as they were not able to determine what the shelter costs were.

The Appellant

The Appellant argued that she never changed her living arrangement and was eligible for shelter allowance for the requested months.

Discussion

The Ministry requires verification of actual shelter costs in order to determine and further provide shelter allowance to the recipients of disability assistance pursuant to Schedule A sections 4 and 5 of the EAPWDR.

The Appellant relied on a letter written by her brother and a monitoring device she was ordered to wear to confirm she was living in the same premises for the months of October, November and December 2014 and was eligible for shelter allowance for the requested months.

The Monitoring Device

The Appellant submitted she had a monitoring device installed on her ankle by court order and was prevented from leaving the premises. According to the Appellant this was sufficient proof that she remained in the premises during the months of October, November and December 2014.

The Appellant, however, indicated that the monitoring device was removed November 14, 2014 which supports that the Appellant may have been obligated to stay at the premises until November 14, 2014 but does not substantiate that she was living in the premises for the remainder of November through to the end of December 2014.

The Letter

The Appellant provided the Ministry a letter written by the Appellant's brother dated October 10, 2014 advising the Ministry that Appellant was residing at the same premises and would be residing at the premises until further notice. The Appellant's brother confirmed that he had paid rent to the management company and that the Appellant needed to reimburse him for October's rent.

The Appellant argued that the letter written by her brother should have been sufficient proof as it was her brother not the management company that was her landlord and an arrangement to stay at the premises during the months of October, November and December 2015 was made with her brother as her landlord.

There was much discussion as to the identity of the landlord and whether the landlord was the management company or the landlord was Appellant's brother. The Appellant's brother gave evidence at the hearing that he was the owner of the trailer and the management company was the owner of the land the trailer was located on. The Appellant's brother indicated that he made arrangements directly with his sister to continue to live at the premises for the months in question and wrote a letter to the Ministry to confirm her living arrangements as her landlord.

The Ministry submitted that the management company was the company listed in the arbitration documents as the Appellant's landlord and prior to the Appellant's eviction notice the management company directly received the Appellant's shelter allowance.

Regardless if the management company was the Appellant's landlord or the landlord was the brother (it should be noted that the Ministry was unable to contact the Appellant's brother to clarify the situation), there were many discrepancies with respect to the Appellant's accommodations which required the Ministry to verify the Appellant's shelter costs and further prompted them to investigate her living arrangements.

First, the Ministry was informed by the Appellant herself that she was moving out of the premises by September 30, 2014. The Appellant confirmed with the Ministry that she would provide current shelter verification for a new assessment.

This is further supported in an email dated September 16, 2014 whereby the Appellant notified her brother and the management company that she was almost finished and she would be out for good. In another email exchange dated September 19, 2014 the Appellant wrote to her brother stating that the Appellant would be out of the premises by the 30th.

Second, there is the matter of the eviction order received by the Ministry informing them that the Appellant had been evicted as of the mid-September 2014 pursuant to an arbitration order and that she was no longer living in the premises. The Ministry also followed up in December 2014 and the management company confirmed that the Appellant had not lived in the premises for the months of October, November and December 2014.

The legislation again states that monthly shelter allowance has to be calculated and is the smaller of the actual shelter costs and the rate table. The Ministry, understanding after being informed by the Appellant that she was moving at the end of September 2014, had a reasonable expectation to request verification of shelter costs.

The letter was written by the Appellant's brother arguably as the new landlord and possibly a change in shelter costs. This combined with the confusion over her accommodations in light of reports that she was not living in the premises and the formal eviction notice received by the Ministry prompted the Ministry to further investigation.

The Ministry again attempted on at least two different occasions to contact the Appellant's brother but was unsuccessful. Based on the information that was provided to them in the brother's letter they could neither determine the Appellants actual shelter costs nor could they confirm with certainty where the Appellant was living. While it may the Appellant lived in the premises in secrecy for three months as she claimed, the Ministry nevertheless required verification of shelter and actual shelter costs and these were never provided.

The Panel therefore finds the Ministry's determination that the Appellant be denied shelter allowance for the months of October, November and December 2014 was reasonably supported by the evidence and confirms the decision.