

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of May 20<sup>th</sup>, 2015 wherein the ministry determined that the appellant had received shelter allowance from February 2014 to March 2015 that she was not entitled to and now must repay the shelter allowance that she received to the ministry as stated in section 27 of the Employment and Assistance Act (EAA).

### PART D – Relevant Legislation

EAA – section 11, 27 and 28  
EAR – section 33, Schedule A section 4(2)

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Monthly invoice for cellphone;
- Account summary for credit card account;
- Bank statement covering the period of November 1<sup>st</sup>, 2014 to January 28<sup>th</sup>, 2015;
- Residential Tenancy Agreement (RTA) in name of the appellant and dated January 2015; the landlord has the same surname; Agreement indicates that the appellant will pay \$375 each month and the landlord will provide utilities, furniture, appliances, bedding, laundry, garbage collection, storage and parking for 1 vehicle;
- Ministry Shelter Information form dated February 3<sup>rd</sup>, 2014 which indicates the landlord and the appellant have the same surname; the rent receipt area is completed – dated February 4<sup>th</sup>, 2014 for month of February in amount of \$375 and a security deposit of \$187.50;
- Ministry Overpayment Chart covering period of February 2014 to March 2015 indicating the Assistance amount received \$8,558.21; Eligible - \$3,308.21; Overpayment Amount of \$5,250.00;
- Employment and Assistance Review form – in name of appellant and signed by appellant on March 2, 2015; The form indicates the appellant is a single person; born in Canada; does not have any monthly rent expenses and the rent is not shared; was not homeless in last 12 months; has an older model vehicle; has a small balance in her bank account; and has not disposed of any assets.
- Letter dated November 24<sup>th</sup>, 2014 to the appellant from a surgeon regarding a medical procedure;
- Letter dated September 24<sup>th</sup>, 2014 to the ministry from a medical specialist providing information on the appellant's medical condition and that she is unable to work at present time;
- Letter dated January 17<sup>th</sup>, 2014 from specialist advising the appellant is undergoing many medical appointments and investigations to determine the cause of the appellant's medical condition and that she is unable to work; that the MP sees her every 4 months;
- Prescription note from MP dated January 14<sup>th</sup>, 2014 that the appellant is currently undergoing treatment and is currently not working;
- Last page of an Application for Disability Assistance Form in the appellant's name dated February 4<sup>th</sup>, 2014;
- Request for Reconsideration dated April 21<sup>st</sup>, 2014;
- Letter dated May 18<sup>th</sup>, 2015 from the appellant to ministry providing the appellant's position regarding the ministry's decision of March 13<sup>th</sup>, 2015 that the appellant must repay \$5,250 for Shelter allowances;

The appellant is a single recipient of monthly income assistance which includes \$375 for shelter costs and \$235 for support allowance. On February 3<sup>rd</sup>, 2014 the appellant completed a Shelter Information form indicating her monthly rent expense would be \$375. The receipt area on this form was completed and signed by the landlord indicating receipt of \$375 rent and \$187.50 for a security deposit. An eligibility review of the appellant's file was started by the ministry on January 13<sup>th</sup>, 2015 and the ministry sent a letter to the appellant requiring her to submit documents to verify her situation and eligibility for income assistance. The appellant submitted an RTA dated January 2015 showing that she will pay \$375 a month which will include all utilities, appliances and furnishings. The appellant also submitted a copy of her bank statement, credit card statement and cell phone statement. On March 13<sup>th</sup>, 2015 the ministry reviewed the documents submitted and the appellant signed an Employment and Assistance Review form which indicated that she had no shelter costs. The ministry advised the appellant told the worker that she does not pay her parents money for shelter. The appellant told the ministry that the worker told her she could spend her shelter allowance how she wished, for travel, car insurance, payments, etc. The monthly shelter allowance for a family unit is the smaller of the family unit's actual shelter costs and the maximum set in the legislation for a single person, \$375.00. The appellant was approved for income assistance in February 2014 and between February 2014 and March 2015 she received \$5,250 (14 months x \$375) for shelter costs.

At the hearing the appellant stated that when she initially inquired about income assistance she spoke to an

associate worker and told her that she needed assistance for to help her cover her travel expenses for medical treatment. Her medical condition forced her to quit work. She stated that she had exhausted all her other options; her employment insurance benefits, sick leave and annual leave and her family were not able to provide financial assistance. The appellant stated that she could not wait another year either. The appellant stated that the worker told her she could use her shelter allowance to pay for her medical travel costs which totaled \$5,063.28, for which she has all the receipts. She stated that she paid her rent in February 2014 and then quickly realized she could not wait any longer to receive medical help. She stated she discussed the situation with the family and she decided to use the money she was receiving to pay her rent to cover her medical travel costs. She stated that she had not been on assistance in the past and trusted the ministry's (worker) advice. The appellant stated that after a year of treatment she is able to return to work and support herself. The appellant stated that a year ago she was on very strong pain medications which may have clouded her judgment but she understands the ministry's decision, she is just not sure how she will be able to repay the money or the procedures in place to repay the money.

In response to questions from the panel the appellant stated;

- she did not know that she had to inform the ministry that she was not paying rent and was utilizing those funds to cover her medical travel costs.
- that she kept her travel receipts and would submit them, if required.
- she also signed a RTA in February 2014;
- that when she signed the Shelter Information form it was her intention to pay her parents \$375 a month for rent but she quickly realized neither her nor her family were going to be able to cover her medical travel costs so she decided to use the shelter allowance for that purpose.
- that she did not pay any rent from March 2014 to March 2015.

The panel finds the appellant's oral testimony that she paid rent for the month of February 2014 is corroborated by the Shelter Information document; her testimony regarding the events surrounding her application for income assistance; and her testimony regarding the meeting she had with her parents regarding not paying rent but utilizing her shelter allowance to cover her travel costs is further information explaining the notation on the Employment and Assistance Review form and her comments to the worker that she did not have shelter costs or pay rent. The panel finds this testimony does contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence in accordance with section 22(4) of the EAA.

The panel finds the appellant's oral testimony regarding her taking pain medications at the time of income assistance application is new information that was not information that was before the ministry at the time of reconsideration and therefore is not admissible as evidence in accordance with section 22(4) of the EAA.

The ministry relied on the facts in the reconsideration decision.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of May 20<sup>th</sup>, 2015 wherein the ministry determined that the appellant had received shelter allowance from February 2014 to March 2015 that she was not entitled to receive and now must repay the shelter allowance that she received to the ministry as stated in section 27 of the Employment and Assistance Act (EAA).

The legislation considered:

### **Employment and Assistance Act**

#### **Reporting obligations**

##### Section 11

(1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time specified by regulation, must

(a) submit to the minister a report that

(i) is in the form prescribed by the minister, and

(ii) contains the prescribed information, and (B.C. Reg. 263/2002)

(b) notify the minister of any change in circumstances or information that

(i) may affect the eligibility of the family unit, and

(ii) was previously provided to the minister.

#### **Consequences for providing inaccurate or incomplete information**

##### Section 15.1

(1) The minister may take action under subsection (2) if the minister determines that

(a) income assistance, hardship assistance or a supplement was provided to or for a family unit that was not eligible for it,

(b) the income assistance, hardship assistance or supplement was provided to or for the family unit on the basis of inaccurate or incomplete information provided by the applicant or recipient

(i) under section 10 (1) (e) [*information and verification*], or

(ii) in a report under section 11 (1) [*reporting obligations*], and

(c) in the minister's opinion the applicant or recipient failed to take the necessary steps to ensure the accuracy or completeness of the information before providing it to the minister.

(2) In the circumstances described in subsection (1), the minister may reduce the income assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

#### **Overpayments**

##### Section 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*].

#### **Liability for and recovery of debts under Act**

##### Section 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.

**Monthly reporting requirement**

Section 29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

- (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed on paragraph (b), and
- (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation:
  - (i) change in the family unit's assets;
  - (ii) change in income received by the family unit and the source of that income;
  - (iii) change in the employment and educational circumstances of recipients in the family unit;
  - (iv) change in family unit membership or the marital status of a recipient.

**Employment and Assistance Regulation (EAR)****Monthly reporting requirement**

Section 33

(1) For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

- (a) the report must be submitted by the 5th day of each calendar month, and
- (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:
  - (i) whether the family unit requires further assistance;
  - (ii) changes in the family unit's assets;
  - (iii) all income received by the family unit and the source of that income;
  - (iv) the employment and educational circumstances of recipients in the family unit;
  - (v) changes in family unit membership or the marital status of a recipient;
  - (vi) any warrants as described in section 15.2 (1) of the Act.

**Schedule A – EAR****Maximum amount of income assistance before deduction of net income**

Section 1

(1) Subject to this section and sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income assistance*] of this regulation is the sum of

- (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.

**Monthly shelter allowance**

Section 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.

(2) The monthly shelter allowance for a family unit to which section 15.2 of the Act does not apply 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 size:

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

### How actual shelter costs are calculated

#### Section 4

(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's position is that the appellant received a shelter allowance of \$375 a month from February 2014 to March 2015 inclusive which she was not entitled to receive as she did not have any shelter expenses. The ministry argues this resulted in the appellant receiving income assistance (shelter allowance) which she must repay. The ministry argues that the appellant resided in her parent's home but did not pay rent. The ministry argues Schedule A, section 4(2)(a) of the EAR supports the ministry's position that because the appellant did not have shelter costs she was not entitled to receive a shelter allowance.

The appellant's position is that initially it was her intention to pay her parents \$375 per month for rent but she quickly realized that she needed medical attention and needed assistance to cover her medical travel expenses. The appellant argued that her family could not assist her financially so she made the decision to use the shelter allowance to cover her medical travel expenses for which she has kept all the receipts that total \$5,063.20.

Schedule A, section 5(2)(a) EAR states that when calculating the actual monthly shelter costs of a family unit only the rent for the family unit's place of residence is included; and Schedule A section 4(2) EAR states that the monthly shelter allowance for a family unit is the smaller of the family unit's actual shelter costs and the maximum set out in the Table, Schedule A, section 4(2)(b) EAR, i.e. maximum \$375 monthly for 1 person.

The evidence before the panel is that the appellant is a single recipient of income assistance; that she resides alone in her parent's residence and had agreed to pay \$375 a month in rent. The evidence is that she received shelter allowance covering the period of February 2014 to March 2015. The ministry's position that the appellant was not entitled to receive shelter allowance is supported by the information shown on the Employment and Assistance Review form that she did not have any shelter costs and by the appellant's testimony that she did not pay rent from March 2014 to March 2015.

The panel finds that the evidence supports that the appellant paid rent in February 2014 and therefore had shelter costs for that month. The panel finds that the ministry's position that the appellant was not entitled to receive a shelter allowance between March 2014 and March 2015 is supported by the evidence and was a reasonable application of the legislation and therefore the panel finds the ministry's decision that the appellant received shelter allowance that she was not entitled to receive was reasonable.

Section 27(1) EAA states that if income assistance is provided to a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the income assistance is provided, the recipient is liable to repay to the government the amount or value of the shelter allowance (income assistance) provided for that period.

The panel finds the ministry's decision that the appellant must repay the shelter allowance that she was not entitled to receive to the government is a reasonable application of the legislation.

The panel notes that section 27(2) states that 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*] and therefore the panel will not make a finding on the amount the appellant must repay.

The panel therefore finds that the Ministry's reconsideration decision is supported by the evidence and confirms the Ministry's decision.