



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of September 8, 2015 in which the ministry determined that the appellant received disability assistance shelter costs of \$2,499.30 in 2013 and \$2,737.87 in 2014 for which she was not eligible under Schedule A of the Employment and Assistance for Persons with Disabilities Regulation and is liable to repay.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 18 (1), 19

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Schedule A, Sections 4(2.1), 5.

PART E – Summary of Facts

The hearing was originally set down to be heard on October 5, 2015. At the outset of the hearing the appellant requested an adjournment, for the following reasons:

1. In the previous week she had requested the assistance of an advocate and was initially referred to an advocacy office in another city. She then contacted the appropriate local advocacy office, and on Thursday, October 1, 2015 met with an advocate, and signed a Release of Information (ROI) form to enable disclosure of her personal information. She believed that the advocate would fax the ROI to the tribunal office.
2. The appellant left the Appeal Record (AR) with the advocate for her perusal, and it was not returned to her before the hearing. The AR is lengthy and contains evidence from several sources.
3. On Friday, October 2nd a voicemail message was left on the appellant’s phone by the advocate, saying that she was unable to attend the hearing, and needed more time to study the documents in the AR. The appellant did not receive the message until 4:00 pm that day.
4. The appellant attempted to attend the hearing in person, but due to unforeseen circumstances and accessibility issues was unable to do so. She attended via teleconference and as noted earlier did not have access to the AR.

The ministry representative did not oppose the adjournment. Taking into account the reasons for the requested adjournment, the lack of hardship faced by either the appellant or the ministry and the overall fairness of the appellant’s request, the panel chair granted an adjournment.

The appellant is a recipient of disability assistance (DA) with 4 dependents. The evidence before the ministry at the time of reconsideration relevant to this appeal is as follows:

1. July 21, 2015 letter from the ministry informing the appellant that she had received an overpayment for shelter expenses during 2013 and 2014 totaling \$5,237.17 to which was attached a chart of overpayment calculations for 2013 and 2014, namely:

	<u>2013</u>	<u>2014</u>
Shelter Allowance received by appellant	\$8,090.22	\$8,099.47
Monthly average shelter costs incurred by appellant (2013= \$465.91 X 12) (2014=\$446.80 X 12)	<u>\$5,590.92</u>	<u>\$5,361.60</u>
Overpayments	\$2,499.30	\$2,737.87

TOTAL OVERPAYMENTS in 2013 and 2014: \$2,499.30 + \$2,727.86 = \$5,237.17

2. Request for reconsideration signed by the appellant on September 2, 2015 in which she states that she paid different amounts for utilities over the year, and does not feel she owes any money;
3. The appellant’s municipal property tax account activity statement for the period May 27, 2008 – June 30, 2015;
4. The appellant’s residential hydro utility billing history for the period January 17, 2013 – June 18, 2015, showing 2013 invoices totaling \$1,587.62 and 2014 invoices totaling \$1,346.33;
5. The appellant’s residential heat utility billing history for the period January 8, 2013 – December 30, 2014 showing 2013 invoices totaling \$1,660.15 and 2014 invoices totaling \$1,734.55;
6. 2013 municipal property tax notice relating to the appellant’s residence showing current taxes



payable as follows:

- a. No grant: \$2,959.66
 - b. Basic homeowner grant: \$2,189.66
 - c. Additional grant: \$1,914.66
7. 2014 municipal property tax notice relating to the appellant's residence showing current taxes payable as follows:
- a. No grant: \$3,037.78
 - b. Basic homeowner grant: \$2,267.78
 - c. Additional grant: \$1,992.78
8. The appellant's monthly banking statements for the years 2013 and 2014;
9. The ministry's 3-page handwritten calculation of the appellant's shelter amounts and shelter costs, detailed as follows:
- a. shelter amounts received by the appellant in 2013 totaling \$8,090.22 and actual 2013 shelter costs (averaged monthly) incurred by the appellant totaling \$5,590.92, resulting in an overpayment of \$2,499.30;
 - b. shelter amounts received by the appellant from the ministry in 2014 totaling \$8,099.47 and actual 2014 shelter costs (averaged monthly) incurred by the appellant totaling \$5,361.60, resulting in an overpayment of \$2,737.87.

At the hearing the appellant stated that she did not believe that the ministry was correct in the way it calculated her shelter costs.

The ministry representative relied on the reconsideration decision, but explained that the determination of monthly average shelter costs used in the reconsideration decision differed from the method used prior to reconsideration. She added that throughout 2013 and 2014 the ministry based the appellant received the maximum shelter allowance for a recipient and 4 dependents, even though the appellant did not have 4 dependents in 2013. She stated further that in calculating the appellant's average monthly shelter costs the ministry "rounded up" the costs in the appellant's favour. For example, although the appellant's average monthly hydro costs were \$95, the ministry rounded up that figure to \$100.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry decision determined that the appellant received disability assistance shelter costs in 2013 and in 2014 for which she was not eligible and is liable to repay.

Applicable legislation:

EAPWDR:

Schedule A

Monthly shelter allowance

4 (2.1) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the [maximum allowable for the applicable family size]

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.

EAPWDA:
Overpayments

18 (1) If disability 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 16 (3) [*reconsideration and appeal rights*].

Liability for and recovery of debts under Act

19 (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 disability 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.

The appellant argues that her 2013 and 2014 average monthly shelter costs are higher than those determined by the ministry. She agrees that her basic phone costs in 2013 and 2014 averaged \$35 monthly, and that the ministry's calculation of her average monthly cost for municipal services (water and waste pickup) in 2013 and 2014 was \$68. However, she believes that the ministry unreasonably determined her average monthly costs for property taxes, hydro and heat by considering her bank account activity, rather than the actual amounts billed in each year, and in so doing failed to appreciate that in some months she made partial payments or no payments at all. [The appellant does not deny that she received shelter allowances of \\$8,090.22 in 2013 and \\$8,099.47 in 2014.](#)

The ministry relies on the reconsideration decision, which determined that the appellant received shelter allowance in 2013 totaling \$8,090.22 and had shelter costs in 2013 (averaged monthly) totaling \$5,590.92, resulting in an overpayment of \$2,499.30. Shelter allowance received by the appellant from the ministry in 2014 totaled \$8,099.47 and actual 2014 shelter costs (averaged monthly) incurred by the appellant totaling \$5,361.60, resulting in an overpayment of \$2,737.87.

Panel Decision

EAPWDR Schedule A Section 4(2.1) stipulates that a family unit's shelter allowance is the smaller of the applicable shelter allowance and the family unit's "actual shelter costs", which in the circumstances of the appellant consist of: basic phone, hydro, heat, municipal services and property

taxes. The appellant does not deny that she received shelter allowances of \$8,090.22 in 2013 and \$8,099.47 in 2014. The appellant also does not dispute the ministry's finding that her monthly average phone costs in 2013 and 2014 were \$35, and her monthly average municipal services costs in 2013 and 2014 were \$68.

However, the ministry's determination of the "actual costs" of the remaining monthly average shelter costs (hydro, heat and property taxes) do not match the amounts that were billed to the appellant by the vendor/suppliers. These amounts were before the ministry at the time of reconsideration, and are listed herein as documents 5 (hydro), 6 (heat), 7 (2013 property taxes) and 8 (2014 property taxes) in the Summary of Facts. These annual billed amounts and monthly averages are as follows:

Hydro (AR pp. 38-39)

2013 total amount billed = \$1,587.62. Monthly average (1,587.62/12) = \$132.30

2014 total amount billed = \$1,346.33 Monthly average (1,346.33/12) = \$112.19

Heat (AR pp. 40-42)

2013 total amount billed = \$1,453.17 Monthly average (\$1,453.17/12) = \$121.10

2014 total amount billed = \$1,368.35 Monthly average (\$1,368.35/12) = \$114.03

Property taxes (AR pp. 59, 157)

2013 total current taxes (Column C) = \$1,914.86 Monthly avg (\$1,914.86/12) = \$159.57

2014 total current taxes (Column C) = \$1,992.78 Monthly avg (\$1,992.78/12) = \$166.07

Monthly average shelter costs:

	<u>2013</u>	<u>2014</u>
Phone	35.00	35.00
Munic services	68.00	68.00
Hydro	132.30	112.19
Heat	121.10	114.03
Property tax	<u>159.57</u>	<u>166.07</u>
TOTAL	\$515.97	\$495.29

Annual shelter costs:

(monthly average X 12): \$6,191.64 \$5,943.48

The panel finds that the ministry reasonably determined that the appellant received shelter allowances in 2013 and 2014 for which she was not eligible under EAPWDR 4 (2.1) because the amounts received by her exceeded her actual shelter costs. The panel also finds that the ministry reasonably determined pursuant to EAPWDA Section 18(1) that the appellant is liable to repay the excess amounts received for which she was ineligible, and that pursuant to Section 18(2) the amount of repayment is not appealable to this tribunal.

The panel therefore determines that the decision being appealed was a reasonable application of the applicable enactment in the circumstances of the appellant, and confirms the decision.