



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision of August 12, 2015 wherein the ministry determined that the appellant received disability assistance for which she was not eligible under section 3 of the Employment and Assistance for Persons with Disabilities Regulation because the appellant received shelter allowance for the months of November and December 2014 as well as January 2015 for which she was ineligible. The ministry determined that she is required to repay the amount to the ministry as per Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 18.

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 1, 3,5, and 18  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule A sections 4 and 5

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A ministry overpayment chart in the name of the appellant calculating an over payment of \$375 for each of November 2014, December 2014, and January 2015 for a total overpayment of \$1125. The comment for each of the months reads, “Client did not have shelter costs, did not pay rent.”
- A letter addressed to the appellant from the ministry dated April 30, 2015. The letter informs the appellant that the ministry has determined she received an overpayment of \$1125 in shelter costs.
- An undated letter from the appellant. The appellant writes:
  - She called the ministry and left 9 messages and sent faxes but none were returned.
  - On January 28<sup>th</sup> she called the apartment manager at the building in which she was living and had the manager call the ministry to confirm she had been living there.
  - She had a receipt from her landlord but threw it away.
  - She feels the ministry refused to call the landlord to confirm where the appellant was living.
  - The ministry told her their records show she suffered a head injury however the appellant refutes that.
  - She feels her shelter amount is an entitlement and is protected under the Charter of Canada.
  - The ministry is being mean spirited by taking the money back from her.
- A ministry form, “Request for Reconsideration” dated July 20, 2015. The appellant writes:
  - She is aware of the Canadian Charter of Rights and Freedoms.
  - She called the ministry and left 9 messages and sent faxes but none were returned.
- A letter dated January 30, 2015 written by the appellant to the ministry. The appellant writes:
  - It is abusive to withhold her disability benefits for February 2015.
  - Her rights under the Canadian Charter of Rights and Freedoms guaranteeing her disability benefits and has been violated.
  - She has been homeless and sleeping in her vehicle because she has no money to rent accommodations.
  - It is none of the ministry’s business to know where she spent the shelter portion of her disability entitlement.
  - She has compiled as much as possible to meet the ministry’s demands.
- An undated letter submitted written by the appellant submitted with her Notice of Appeal. The appellant writes:
  - The ministry has not made an effort to confirm her rental.
  - She is entitled to her entire disability benefit for November, December 2014 and January 2015 and the ministry does not need her rental receipts.
  - The ministry had the opportunity to confirm her rental situation with the apartment manager however the ministry did not call to confirm.
  - The ministry could have called the person she was subletting from and he would have confirmed she lived there.
  - The ministry is arbitrarily deducting money from her benefit cheque.

Prior to the hearing, the appellant submitted a new piece of evidence. The appellant submitted a letter dated August 31, 2015 addressed to her from a property management organization. This brief

letter states that the property manager wrote a letter to the tenant from whom the appellant argues she was subletting. The letter confirms the property manager was investigating the appellant's claim that she was paying the tenant \$550 per month and a \$200 damage deposit for an "illegal sublet tenancy." The appellant did not provide an explanation to the panel of how this letter supports her argument. The ministry did not raise any objections to admitting this letter as evidence. This letter was admitted as evidence as per the Employment and Assistance Act section 22 (4). The panel found that the evidence contained in the document is in support of evidence that was before the ministry at the time of the reconsideration because it restates the appellant's statement that she was subletting from this tenant.

At the hearing, the appellant told the panel she has provided all the evidence to the ministry that is needed to confirm that she was paying rent for November and December 2014 and for January 2015 and that the ministry does not need rent receipts from her. She argued the Canadian Charter of Rights and Freedoms guarantees her disability benefits including a shelter benefit. She added that the ministry has made contradictory comments to her. The appellant left the teleconference shortly after speaking and was not present for the ministry's testimony.

At the hearing, the ministry told the panel that although the appellant is not required to submit monthly rent receipts on an ongoing basis, the ministry became aware that the appellant moved when the appellant's mail was returned and the ministry has the obligation to request confirmation of a rental arrangement. The ministry said the appellant submitted three Shelter Confirmation forms, however they were all incomplete and lacked the information necessary to determine her rental arrangement for November and December 2014 and January 2015. The ministry reviewed the reconsideration decision including the phone calls that the ministry made to the property manager and the tenant from whom the appellant said she was subletting. The property manager told the ministry there was no record of the appellant living there. The tenant told the ministry that the appellant had lived with him in November 2014 but did not pay rent and he couldn't recall how long she stayed there.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable in its determination that the appellant received disability assistance for which she was not eligible under section 3 of the Employment and Assistance for Persons with Disabilities Regulation because the appellant received \$375 of shelter allowance for the months of November and December 2014 and January 2015 for which she was ineligible. The ministry determined that she is required to repay the disability assistance she was not eligible for to the ministry as per Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 18.

The relevant legislation is as follows:

### Employment and Assistance for Persons with Disabilities Act

#### **Eligibility of family unit**

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

#### **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.

#### **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*].

### Employment and Assistance for Persons with Disabilities Regulations Schedule A

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 warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) 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 set out in the following table for the applicable family size:

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

(2.1) The monthly shelter allowance for a family unit to which section 14.2 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:

Item	Column 1	Column 2
	Family Unit Composition	Maximum Monthly Shelter
1	Two applicants/recipients and no dependent children and a warrant has been issued for one	\$375

#### **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;

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- (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.

### Arguments of the Parties

The argument of the appellant is that her disability benefits, including her shelter allowance, is an entitlement protected under the Canadian Charter of Rights and Freedoms. The appellant argues she was subletting for the months of November and December 2014 and January 2015 and therefore did not receive a \$1,125 overpayment.

The ministry argues that the appellant received disability assistance she was ineligible for because she received \$375 of shelter allowance per month but that there is insufficient evidence to show how much rent was paid for the months of November and December 2014 and January 2015. The ministry argues the appellant has not provided confirmation of her rental situation for the months in question and is therefore ineligible for the shelter portion of her disability payment for that period of time.

### Panel findings

According to the EAPWDA Section 3, the appellant is required to meet the initial and continuing conditions of eligibility. When the ministry became aware that the appellant's rental situation may have changed, the panel finds that it was reasonable for the ministry to request a confirmation of where she has been living and how much rent she has been paying since she moved. The appellant's rental situation is relevant because the amount of shelter allowance she receives monthly is based on the amount of rent she pays as per EAPWDR Schedule A. The panel finds the ministry was reasonable to request confirmation of the appellant's rental situation for the months of November and December 2014 and January 2015.

Regarding the appellant's argument that her rights under the Canadian Charter of Rights and Freedoms have been violated, the panel does not have jurisdiction to hear such an argument. Section 19.1 of the Employment an Assistance Act states that section 45 of the Administrative Tribunals Act (ATA) applies to the tribunal. The ATA Section 45(1) reads, "the tribunal does not have

jurisdiction over constitutional questions relating to the Canadian Charter of Rights and Freedoms.”

The panel considered that, although the appellant provided the ministry with three Shelter Confirmation forms, they were incomplete. The shelter forms were not provided in the appeal package, but the ministry representative confirmed that he had copies of the forms from the appellant’s file, and that they were ‘as described’ in the reconsideration decision. The appellant did not dispute that the forms were incomplete and did not provide the panel with new evidence to confirm her rental situation for the months in question. The panel considered that after the ministry received the incomplete Shelter Confirmation forms, the ministry made calls to the property manager and the tenant from whom the appellant stated she was subletting. The panel considered the fact that these calls did not result in confirming where the appellant was living or rent she was paying for the months of November and December 2014 and January 2015. Regarding the new evidence the appellant provided, the letter from the property management organization, the panel finds this letter does not confirm her rental situation for the months in question. The letter simply confirms the property management organization was investigating the appellant’s claim that she was subletting during that time. Therefore the panel finds the ministry reasonably determined the appellant received disability assistance for which she was not eligible and that section 18 of the EAPWDA requires repayment. The amount of the repayment is not subject to appeal pursuant to section 18.2 of the EAPWDA.

The panel finds that the ministry decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(1)(a) and 24(2)(a) of the EAA.