

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated October 22, 2015 which denied the appellant's request for the maximum shelter allowance for a one-person family unit of \$375. The ministry found that the smaller amount is the appellant's actual shelter cost of \$367 and is, therefore, the amount allowable according to Section 4 of Schedule A of the *Employment and Assistance Regulation* (EAR).

## PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Schedule A, Sections 4 and 5

## PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act (EAA)*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Shelter Information form dated June 17, 2015 which indicated that the appellant's portion of the rental amount is \$310, that utilities are not included in the rental rate and the start date is August 1, 2015;
- 2) Receipt dated June 28, 2015 for "PC Mobile" for \$15 and \$25 with a handwritten note "monthly cell phone \$40.00";
- 3) Letter dated July 15, 2015 in which the appellant wrote that a copy of her cell phone receipt for \$40 is attached and her equal payment monthly plan estimate for hydro is \$27. The appellant asked if there is financial assistance for re-direction of mail; and,
- 4) Request for Reconsideration dated September 28, 2015, with attached letter from the appellant dated October 12, 2015.

In her Request for Reconsideration, the appellant wrote that:

- She has been on assistance since 2011 but she did not receive any income for her mortgage, property taxes, house insurance premiums, maintenance fees or utility costs (fuel for cooking meals, heat, water, hydro, garbage disposal, phone) and she was forced to foreclose and move to a rental situation. She asked if she has a back payment owing to her from 2011.
- Her next living situation was a rental at \$500 per month. The ministry provided \$375 towards shelter and she paid the balance of \$125. She did not receive income assistance for utilities.
- She moved to a rental-assisted accommodation for August 1, 2015 and she now receives assistance for her hydro and phone.
- She receives a total cheque from the ministry for \$555 monthly, from which she pays rent of \$310, phone of \$40 and bus for \$91, and she has to cover many expenses from the remaining amount.

In her Notice of Appeal dated November 2, 2015, the appellant expressed her disagreement with the ministry reconsideration decision and wrote that:

- The money received is below the recognized poverty amount.
- A phone and a bus pass are required to find employment and for a basic standard of living.
- She requested a reply to her questions raised in her October 12, 2014 letter.
- All oral communications received have been contradictory and/or conflicting in nature.

Prior to the hearing, the appellant provided a letter to the tribunal dated November 24, 2015 subsequently amended by email dated November 29, 2015. The additional points raised by the appellant include:

- Although the ministry has encouraged her to go on disability, she believes she is not disabled but rather a victim of crime.
- She presently receives \$367 per month for shelter and the maximum shelter amount is \$375. The maximum allowable shelter is \$8 more per month, which is important but this is an exhausting process.
- She is still not clear if she was entitled to additional amounts in 2011 under Schedule A of the Employment and Assistance Regulation.
- She had no rental assistance for 2013 to 2015 for rent she paid out of pocket, being \$125

above the shelter amount of \$375 (i.e. no phone, hydro, etc.)

The ministry relied on the reconsideration decision as its submission on the appeal. The information included:

- The appellant has been in continuous receipt of income assistance since May 2011. Her current monthly assistance amount is \$602, consisting of \$235 for support and \$367 for shelter.
- On June 23, 2015 the appellant submitted a Shelter Information form indicating that she would be moving to new accommodation effective August 1, 2015 and her share of the rent was \$310.
- Subsequently, the appellant requested hydro costs and phone costs be added to her shelter allowance.
- The ministry approved actual shelter allowance for hydro costs of \$27 per month as well as phone costs of \$30 per month, which was the amount determined to be the equivalent of a land line.

## PART F – Reasons for Panel Decision

At issue on the appeal is whether the ministry's decision, which denied the appellant's request for the maximum shelter allowance of \$375, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Schedule A, Section 4(2) of the EAR provides as follows:

### Monthly shelter allowance

4 (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
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

Schedule A, Section 5(1) and (2) provides as follows:

### 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;

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- (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.

#### *Ministry's position*

The ministry's position, as set out in the reconsideration decision, is that Section 4(2) of Schedule A of the EAR sets out that the monthly shelter allowance for a family unit is the smaller amount of the actual shelter costs and the maximum set out in the table for a one-person family unit, which is \$375 and, in the appellant's case, the smaller amount is her actual shelter costs of \$367. The ministry wrote that Section 5(2) of Schedule A of the EAR stipulates that only the listed items are included when calculating the actual monthly shelter costs of a family unit, specifically: rent, mortgage, property taxes, insurance payments and repairs and maintenance if the residence is owned by the recipient and utility costs. The ministry wrote that Section 5(1) of Schedule A of the EAR limits utility costs to heating or cooking fuel, garbage disposal, hydro, water and phone. The ministry wrote that the appellant's allowable actual shelter costs are \$310 for rent plus utility costs for hydro of \$27 and the equivalent of the rental of one basic residential single-line telephone for \$30, for a total of \$367 which is smaller than the maximum amount for shelter of \$375. The ministry wrote that the reconsideration decision is limited to the denial of the appellant's request for the maximum shelter allowance of \$375 for her current residence, and her request for back payments for actual shelter costs in 2011 must be pursued separately with the ministry.

#### *Appellant's position*

The appellant's position is that if her additional expenses were considered by the ministry, she would be entitled to the maximum monthly shelter allowance of \$375. The appellant argued that she receives a total cheque from the ministry for \$555 monthly, from which she pays rent of \$310, phone of \$40 and bus for \$91, and she has to cover many other expenses from the remaining amount. The appellant argued in her Notice of Appeal that the money received from the ministry is below the recognized poverty amount. The appellant argued that a phone and a bus pass are required to find employment and for a basic standard of living. The appellant argued that she has been on assistance since 2011 and she would like the ministry to review whether she is entitled to back payments for the amounts she paid in 2011 for her mortgage, property taxes, house insurance premiums, maintenance fees or utility costs (fuel for cooking meals, heat, water, hydro, garbage disposal, phone).

#### *Panel decision*

The provisions of Schedule A, Section 4 of the EAR require that the ministry calculate the amount of the family unit's actual shelter costs in order to determine whether it is smaller than the maximum monthly shelter amount set out in the table for the applicable family unit which, for a one-person family unit, is \$375.00. Section 5 of Schedule A sets out a description of how actual shelter costs are calculated and provides a defined list of eligible expenses which include "only" the listed items [Section 5(2)] and "utility costs" include "only" the listed costs [Section 5(1)]. The ministry is bound to apply the legislation as it is worded, with a limited discretion to include items which are closely similar in nature to the item listed. The panel finds that the ministry has canvassed the lists set out in Schedule A, Section 5 (1) and (2) and has reasonably determined that the appellant's actual shelter costs include rent for the family unit's place of residence at \$310 per month as well as "utility costs" of

hydro at \$27 per month and the equivalent of the rental of one basic residential single-line telephone at \$30 per month, for a total of \$367 per month. In her letter dated July 15, 2015, the appellant wrote that her equal payment monthly plan “estimate” for hydro is \$27, which is covered as utility costs under Section 5(1)(d) of Schedule A, and it may be that this is a variable amount subject to change in the future.

Although the appellant argued that her cell phone costs are actually \$40 per month and that she requires a bus pass of \$91 per month, the panel finds that cell phone costs are not listed in Section 5(1) of Schedule A and that the ministry reasonably allowed \$30 per month as the equivalent for the rental of one basic residential single-line phone under Section 5(1)(f). The panel also finds that the ministry reasonably determined that a bus pass is not included as part of the list of costs in Section 5(1) or (2) of Schedule A of the EAR which make up actual “shelter” costs and does not include transportation costs.

As well, while the total of the amounts listed by the appellant is \$468, including rent of \$310, hydro of \$27, cell phone of \$40, and a bus pass for \$91, the panel notes that Section 4 of Schedule A stipulates that the monthly shelter allowance for a family unit is the smaller of the two amounts and, therefore, any actual shelter costs that total more than the maximum monthly amount will be capped at \$375 for a one-person family unit. The panel finds that the ministry reasonably limited the reconsideration decision to the denial of the appellant's request for the maximum shelter allowance of \$375 for her current residence, as the ministry had not yet made a decision on her request for 2011 that would be subject to reconsideration pursuant to Section 17(1) of the EAA.

#### *Conclusion*

The panel finds that the ministry's decision, which denied the appellant's request for the maximum shelter allowance for a one-person family unit of \$375 was reasonably supported by the evidence. Therefore, the panel confirms the ministry's reconsideration decision.