



PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated December 22, 2015 that determined that the appellant was not eligible for a shelter allowance because the appellant was not able to provide the information required by sections 4 and 5 of Schedule A of the Employment and Assistance Regulations (EAR). Specifically, the ministry concluded that the appellant’s actual shelter costs could not be determined because the appellant claims to live at an address at which he is not eligible to live.

PART D – Relevant Legislation

EAR section 28, Schedule A sections 1, 4 and 5

PART E – Summary of Facts

The documentary evidence before the ministry at reconsideration included the following:

1. A ministry *Shelter Information* form dated November 12, 2015 that reports that the appellant has rented accommodation at address X as of November 1, 2015. The form indicates that the total monthly rent is \$1029 and the appellant's portion is \$400 plus a security deposit of \$200. The form lists Person A as the "Name of Landlord or Property Manager/Agent"
2. A hand-written note dated December 15, 2015 from Person A which states (in part) "*This is to verify that (the appellant) is a tenant of mine at (address X) and has been since November 1st, 2015.*"
3. The appellant's *Request for Reconsideration* signed and dated on December 14, 2015. In his reasons for requesting reconsideration, the appellant states "*I do reside at (address). I have since November 1/2015. The manager is lying. I was never removed by police. I never been told that I'm not allowed on the property. I'm still living at this address.*"

In the *Reconsideration Decision*, under *Summary of Facts*, the ministry states that the appellant is in receipt of income assistance as a sole recipient and that the appellant last received shelter funds in February, 2015. It also reports that on November 30, 2015, a ministry worker confirmed with the property manager of address X that the appellant is not allowed on the property and had been previously removed by police two weeks prior. The ministry states that the property manager also reported that the person who signed the *Shelter Information* form did not have permission to do so.

The appellant's *Notice of Appeal* was signed and dated on December 30, 2015 and stated that the reason for the appeal was "*I have a police report proving the property manager is lying to you (Welfare).*"

At the hearing the appellant explained that he sublets accommodation at address X from (and shares that accommodation with) Person A. He further explained that prior to his sublet there had been a previous sub-tenant (Person B) who received assistance funding from the ministry. It was his expectation that this arrangement would continue as before and he did not understand why the ministry did not do so. The appellant submitted a (redacted) Police Report as new evidence that described an incident on October 27, 2015 involving the appellant. The report concluded that "As it was clear that this was a civil matter, both (the appellant) and (redacted) were advised to contact the landlord tenancy branch." The ministry had no objection to the admission of this evidence. The appellant explained that he was providing the report to confirm his claim that the building manager lied when he stated that the police had removed him from the property and that he was not allowed on the premises. The panel determined that this evidence was in support of the appellant's claims in the *Request for Reconsideration* and the *Notice of Appeal* and therefore admitted this evidence in accordance with section 22(4) of the EAA.

The appellant also submitted as new evidence a five-page *Residency Tenancy Agreement* for address X dated July 31, 2014 between the (former) landlord of the property and Person A. This form confirms that Person A did at that time have a legal agreement to rent the accommodation in question. The ministry objected to the admission of this evidence because the tenancy agreement makes no mention of the appellant but instead was made between Person A and the former landlord. The panel determined that the evidence did confirm that Person A had a legal tenancy under that agreement and was therefore in support of the information before the ministry at the time of reconsideration. Accordingly, the panel admitted this new evidence in accordance with section 22(4)

of the EAA. In response to questions from the panel the appellant confirmed:

1. He owes Person A for rent back to November 1, 2015 but has so far not paid any rent. He explained that he has not done so because he has not received shelter funds from the ministry.
2. Person A had sublet accommodation at address X to Person B while the building was owned by a previous landlord. Person B moved out and the appellant moved in assuming the same arrangement would apply for him as had applied for Person B. The appellant acknowledged that the building had a new owner.

The ministry indicated that it was relying upon the Reconsideration Decision to outline the ministry position. In response to questions from the panel the ministry confirmed:

1. The references to the "property owner" in the Reconsideration Decision should instead refer to the "property manager".
2. Ministry records indicate that there was a telephone conversation between a ministry worker and the property manager on November 30, 2015 which (among other things) confirmed that Person A was not authorized by the property owner (landlord) to sublet her accommodation.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry’s decision that determined that the appellant was not eligible for a shelter allowance because the appellant did not meet the requirements of sections 4 and 5 of Schedule A of the EAR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in concluding that the appellant’s actual shelter costs could not be determined because the appellant claims to live at an address at which he is not eligible to live?

The relevant legislation is as follows:

From the EAR:

Amount of income assistance

28 Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Schedule A

Income Assistance Rates

(section 28 (a))

Maximum amount of income assistance before deduction of net income

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

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
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



(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:

Item	Column 1 Family Unit Composition
1	Two applicants/recipients, no dependent children and a warrant has been issued for one
2	Family with dependent children, family unit size = 2 persons
3	Family with dependent children, family unit size = 3 persons
4	Family with dependent children, family unit size = 4 persons
5	Family with dependent children, family unit size = 5 persons
6	Family with dependent children, family unit size = 6 persons
7	Family with dependent children, family unit size = 7 persons
8	Family with dependent children, family unit size = 8 persons
9	Family with dependent children, family unit size = 9 persons
10	Family with dependent children, family unit size = 10 persons

(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, s. (a).]

(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

(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

(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.

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.

Appellant's Position

The appellant argues that the ministry gave greater weight to the evidence presented by the building manager than to his evidence and this was inappropriate as the appellant presented evidence that he claims demonstrates that the building manager lied. He stated that he continues to live in his (sublet) accommodation and has not had any further contact with the building manager.

Ministry's Position

The ministry argues that Person A is not authorized by the landlord to sublet her accommodation and had no authority to represent herself as the "landlord or property manager" on the *Shelter Information* form. Accordingly, the ministry argues that the appellant is not eligible to live at address X and has not provided verifiable actual shelter costs. The ministry also argues that the issue of whether or not the police removed the appellant from the premises, or advised him that he was not allowed on the premises, is irrelevant to the primary issue in this appeal, which in the ministry's opinion, centers upon whether the appellant is authorized by the landlord to be a tenant.

Panel Decision

The panel reviewed the Police Report submitted by the appellant and noted that there was no mention in the report of the police removing the appellant from the premises nor did it indicate that the appellant was not allowed on the premises. The panel appreciates that this supports the appellant's contention that the police did not remove the appellant from the premises nor advise him that he was not allowed on the premises. Nonetheless, the panel appreciates the ministry's argument that the primary issue in this appeal concerns whether the appellant is authorized by the landlord to be a tenant, and thereby, whether he has presented verifiable actual shelter costs.

Section 4(2) of Schedule A of the EAR specifies that the monthly shelter allowance for a family unit is the smaller of the family's actual shelter costs, and the maximum set out in the applicable table (for the appellant this would be \$375). Section 5(2) of Schedule A of the EAR specifies that when calculating actual shelter costs one of the items included is rent for the family unit's place of rent. Accordingly, it is incumbent upon the appellant to demonstrate that he has incurred actual rental costs.

The panel notes that the Residential Property Agreement submitted by the appellant at the hearing includes the following clause:

13. Additional Occupants. No person, other than those listed in paragraphs 1 and 2 above, may occupy the rental unit. A person not listed in paragraph 1 or 2 above who resides in the rental unit for a period in excess of fourteen cumulative days in any calendar year will be considered to be occupying the rental unit contrary to this Agreement and without right or permission of the landlord. This person will be considered a trespasser. A tenant anticipating an additional person to occupy the rental unit must promptly apply in writing for permission from the landlord for such person to become an approved occupant. Failure to apply and obtain the necessary approval of the landlord in writing is a breach of a material form of this Agreement, giving the landlord the right to end the tenancy after

proper notice.

The panel notes that the Residential Tenancy Agreement lists only person A as the tenant at address X in paragraph 1 (no names are specified in paragraph 2) and that the Agreement indicates that Person A does not have the authority to sublet her accommodation at address X to the appellant. Moreover, the appellant's name does not appear on the Residential Tenancy Agreement and the appellant provided no evidence to indicate that he has applied to the landlord to be approved as a tenant. Further, the panel notes that the ministry was advised by the property manager that the appellant did not have the landlord's permission to reside at Person A's residence and the appellant provided no evidence that he has a valid tenancy agreement to reside at address X. Accordingly, the panel concluded that there is no evidence that the appellant has a valid tenancy agreement to reside at address X.

The Residential Tenancy Agreement document provided by the appellant has Person B's name hand-written in paragraph 1 but there is no signature or initials to indicate who wrote Person B's name on the document. Accordingly, the panel concluded that there is no evidence to indicate that the former landlord agreed to Person A subletting accommodation at address X to Person B. In any case, even if this arrangement had been approved by the previous landlord, it would not be binding upon the new landlord, especially in light of the restriction upon such an arrangement in the Residential Tenancy Agreement. Accordingly, the panel did not accept the appellant's argument that he should be entitled to sublet from Person A because of his claim that such a practice existed with Person B.

Finally, the appellant indicated to the panel that to date he has paid no rent for accommodation at address X (although he claims that he has a debt to Person A for the accumulated rental costs). Accordingly, the panel concluded that the appellant has provided no evidence of a valid tenancy agreement and has provided no evidence of having incurred actual shelter costs.

The panel concluded that the ministry reasonably determined that the appellant is not authorized to be a tenant in that accommodation and the evidence provided by the appellant to establish his shelter costs are accordingly not verifiable.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's determination that the appellant has not met the requirements of sections 4 and 5 of Schedule A of the EAR to receive shelter support was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel therefore confirms the ministry's reconsideration decision.