

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of November 9, 2015 wherein the ministry determined the appellant received shelter allowance which he was not eligible to receive and, in accordance with section 27 of the *Employment and Assistance Act* (“EAA”), he is required to repay that amount to the government.

Specifically, the ministry determined the appellant was receiving room and board in his parent’s home from October 2014 through October 2015 and therefore was not entitled to the monthly shelter allowance set out in Schedule A, section 4 *Employment and Assistance Regulation* (“EAR”) that he received.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 27
Employment and Assistance Regulation (EAR) - Schedule A sections 1, 4 and 6

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Overpayment Chart covering the period of October 2014 through October 2015;
- Cheque history printouts covering the period of October 2014 through October 2015;
- Rental Agreement dated October 1, 2014 indicating the appellant will pay his landlady \$600 per month for room and board;
- Reply to job application dated October 9, 2015;
- Request for Reconsideration dated November 2, 2015 with 3 page submission from the appellant attached providing reasons and arguments supporting his position.

On October 6, 2014, during a re-application for assistance, the ministry received an agreement, titled Rental Agreement listing the appellant, as tenant, and his mother, as landlord. The agreement stated he will pay the landlord the sum of \$600 per month on a month to month basis for room and board. The agreement is signed and dated by both parties. On October 23, 2014 during an interview with the ministry (“EAW”) the appellant stated he rented a room in his mother’s basement for \$375 per month. On October 24, 2014 the EAW adjusted his file by adding the shelter cost as rent rather than room and board with a parent.

On October 5, 2015 an EAW spoke with the appellant on the phone and he confirmed that he is residing with his mother. The EAW spoke with his mother (landlord) who confirmed the appellant is paying \$600 a month for room and board. The EAW determined the appellant was not eligible for shelter allowance of \$375.00 per month that he had received from October 2014 through October 2015. The EAW determined the appellant was liable to repay the government the overpayment of (\$375 x 12 months) \$4,875.00.

At the hearing the appellant stated that he does not disagree with the change in benefits but does disagree that he is required to pay back the shelter assistance he received over this past year. The appellant stated that he is educated and understands the legislation governing income assistance paid when a person is receiving room and board but doesn’t understand why it would take the ministry a year to discover they made a mistake and now want him to pay for that mistake. The appellant stated that when he initially went to the ministry he was told he would receive \$370 a month for shelter allowance and approximately \$235 a month for support allowance. He stated his parent’s home is two-levels and the lower level, where he lives, is a fully contained two bedroom suite with full kitchen and bath facilities. He stated that when he decided he needed to move home he spoke to his mother and he determined the amount of assistance he would receive and agreed to pay his mother that amount. He stated that he felt that would cover all his expenses for food, internet services, rent (shelter), electricity and other sundry items. The appellant stated that he has never been on income assistance before and so was naïve and not aware of the rules and the ministry didn’t tell him the ramifications if there is a mistake. Now they just want the money. He stated that he has since learned that he is only entitled to receive \$270 a month when receiving room and board in his parent’s home.

The ministry relied on the facts as stated in the Reconsideration Decision. In addition, the ministry stated that when the appellant was interviewed on October 6, 2014 on his application for income assistance he submitted a rental agreement that clearly stated that he was paying \$600 a month to his mother for room and board. The ministry argued the file shows that on October 23, 2014 the appellant’s application interview was completed and at that time he informed the EAW that he was

renting a room in his mother's residence for \$375.00 and the EAW updated the appellant's file and increased his shelter allowance. In October 2015 the EAW spoke to the appellant and the appellant's mother and confirmed that from October 2014 through October 2015 the appellant was living in his parent's home and paying his mother \$600 a month for room and board. The ministry position is that the EAR is quite clear in the amount of assistance a person is eligible to receive if they are receiving room and board in their parent's home.

Admissibility of Evidence

The panel finds that the testimony provided by the appellant and the ministry supports the information and record that was before the ministry at the time of the Reconsideration and therefore is admissible as evidence under Section 22(4) of the EAA.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of November 9, 2015 wherein the ministry determined the appellant received an overpayment of income assistance for shelter allowance which he was not eligible to receive and is now liable to repay that overpayment to the government as set out in section 27 EAA.

The legislation considered:

EAA

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*].

EAR

Schedule A - Income Assistance Rates - (section 28 (a))

Maximum amount of income assistance before deduction of net income

Section 1

- (1) Subject to this section and section 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 (B.C. Reg. 48/2010) (B.C. Reg. 197/2012)
 - (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.
- (2) Despite subsection (1) but subject to subsection (3), income assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.
- (3) If
 - (a) an application is made by a parenting dependent child under section 5 (4) [*application by parent who is dependent youth*] of this regulation,
 - (b) the family unit is found eligible for income assistance, and
 - (c) support is provided for the parenting dependent child or his or her dependent child, or for both, under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, the restriction in subsection (2) does not apply, but the amount of income assistance that may otherwise be provided to the family unit is to be reduced by the amount of that support.

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	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375

People receiving room and board

Section 6

(1) For a family unit receiving room and board other than in a facility mentioned in section 8 or 9 of this Schedule or from a relative referred to in subsection (2), the amount referred to in section 28 (a) [*amount of income assistance*] of this regulation is the smaller of the following amounts:

- (a) the sum of
 - (i) the actual cost of the room and board, plus
 - (ii) \$60 for each calendar month for each applicant or recipient, plus
 - (iii) \$40 for each calendar month for each dependent child in the family unit;
- (b) the amount calculated under sections 1 to 5 of this Schedule for a family unit matching the applicant's or recipient's family unit.

(2) If a family unit receives room and board from a parent or child of an applicant or a recipient in the family unit, only the following amounts may be provided:

- (a) the support allowance that is applicable under sections 2 and 3 of this Schedule to a family unit matching the applicant's or recipient's family unit;
- (b) Repealed (B.C. Reg. 62/2010)

Ministry position

The ministry position is that the legislation within the *Employment and Assistance Regulation* is quite clear in the amount of assistance a person is eligible to receive if they are receiving room and board in their parent's home. The ministry argued that the appellant was to receive the amount set out in Schedule A, section 6 EAR but when the appellant informed the EAW on October 23, 2014 that he was only renting a room the amount of his shelter allowance was adjusted (increased) accordingly. The ministry argued the ministry has no discretion but to apply section 27 of the *Employment and Assistance Act* which states that when a person receives income assistance (shelter allowance) which they are not eligible to receive the person must repay to the government the amount provided for that period.

Appellant's position

The appellant argued that he should not have to repay the shelter allowance because it was the ministry who made the mistake and if a bank makes a mistake they don't make the customer pay for the mistake. The appellant argued that the legislation is poorly written and unfair. The appellant argued that the ministry should have better informed him on the consequences of making a mistake, that he was naïve and ill-informed on the matter because he had never been on assistance in the past.

Panel Decision

The panel finds that Schedule A – Income Assistance Rates - section 1 EAR is quite clear in setting out the maximum amount of assistance that may be provided and Schedule A section 6(2)(a) EAR states that an applicant is eligible to receive only the support allowance that is applicable under the Schedule [section 2(1) EAR] matching the applicant's family unit if a person receives room and board from a parent.

In other circumstances an applicant for income assistance may be eligible to receive a shelter allowance under Schedule A section 4 EAR and a support allowance under Schedule A section 2(1) EAR. Schedule A section 6 EAR specifically addresses situations where a family unit (appellant) receives room and board and this section takes priority over Schedule A section 4.

The evidence is that appellant was receiving room and board in his mother's home from October

2014 through to October 2015 and this is not disputed by the appellant. Therefore, the panel finds that the ministry's decision to determine the appellant was not eligible to receive a shelter allowance from October 2014 through to October 2015 was reasonable.

Section 27(1) EAA states, in part, that if income assistance, in this case shelter allowance, is provided to a family unit (the appellant) that is not eligible to receive it, that person (the appellant) is liable to repay to the government the amount of income assistance that he received. The legislation provides no discretion in this respect.

Under section 27(2) of the EAA, the panel has no jurisdiction over the actual amount. Therefore the panel will not make a determination in that respect.

Therefore, the panel finds that the ministry's decision that the appellant was provided income assistance that he was not eligible to receive and must repay to the government that amount is reasonably supported by the evidence and confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the EAA.