

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision, dated January 13, 2016, wherein the ministry determined that the appellant was not eligible for shelter allowance for the months of November 2015 to present pursuant to Schedule A section 4(2) of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”) because the appellant failed to provide the ministry with sufficient verification that she had actual shelter costs and that her place of residence was in a location other than the area of British Columbia known as the Lower Mainland (“LMD”).

PART D – Relevant Legislation

EAPWDR, Schedule A, sections 4 and 5

PART E – Summary of Facts

The appellant did not attend the hearing and the panel being satisfied that the appellant was notified of the date, time and location, the hearing proceeded under Section 86(b) *Employment and Assistance Regulation*.

Information at Reconsideration

The evidence before the Ministry at the time of reconsideration consisted of the following:

1. The Appellant's Request for Reconsideration ("RFR"), dated December 8, 2015, in which the Appellant stated that after the birth of her child, the Ministry of Children and Family Development ("MCFD") removed her newborn child from the hospital and that she and her partner are fighting the MCFD decision to put her newborn child up for adoption;
2. An undated handwritten note from Appellant, explaining that the Appellant is away from her ordinary place of residence until such time that the Appellant has the means to return to her ordinary place of Residence;
3. A Shelter Information form, dated January 27, 2015;
4. A handwritten note, dated February 5, 2015, purportedly signed by the Appellant's landlord's confirming the amount of rent paid at the Appellant's ordinary place of residence outside the Lower Mainland and that the Appellant's rent was paid up to January, 2015;
5. An undated handwritten note, purportedly signed by the Appellant's landlord, confirming that the Appellant's rent at the Appellant's ordinary place of residence outside the Lower Mainland was paid up to September, 2015 with a further handwritten note from the Appellant confirming that if rent was not paid the Appellant's belongings would be disposed of;
6. An undated handwritten note, purportedly signed by the Appellant's landlord, confirming that the Appellant's rent at the Appellant's ordinary place of residence outside the Lower Mainland was paid up to November, 2015.

Background

The Appellant resided outside of the Lower Mainland until approximately April of 2015 when she came to the Lower Mainland shortly before the birth of her child. The Appellant stated in the RFR that the MCFD removed her baby from the hospital in or about August, 2015.

The Appellant stated further in the RFR that she and her partner were fighting against being homeless and that she and her partner had stayed behind in the Lower Mainland to provide their story to the courts following the MCFD removal of the baby from the Appellant. The Appellant stated that she and her partner continued to pay rent on their residence outside of the Lower Mainland in order to avoid becoming homeless.

The Appellant did not leave the Lower Mainland following the birth of her child and did not return to her previous place of residence.

Additional information

The Ministry representative who attended at the hearing relied on the reconsideration decision.

In her Notice of Appeal (“NOA”), the appellant states that she and her partner need their home outside of the Lower Mainland because their “disabilities prevent us from finding down here.”

The panel finds that the statement of the Appellant in the NOA is admissible as written testimony in support of the information and records that were before the Ministry at reconsideration, pursuant to section 22(4)(b) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the appellant was not eligible for shelter allowance for the months of November 2015 to present, pursuant to Schedule A, section 4(2) of the EAPWDR because the appellant failed to provide the ministry with sufficient verification that she had actual shelter costs and that her place of residence was in a location other than the LMD.

The relevant sections of the legislation are as follows:

Employment and Assistance for Persons with Disabilities Regulation

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 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 Family Unit Size	Column 2 Maximum Monthly Shelter
2	2 persons	\$570

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.

The Appellant's position

As the appellant did not attend the hearing, the panel has drawn her position from the Appellant's statements in the RFR and the NOA. The appellant's position is that she needed to stay in the LMD area so that she could attend any proceedings, including a Court, to defend against the MCFD taking her child into care. The appellant added that she needed to maintain her residence outside the LMD as a place to keep all her personal items and to prevent her and her partner from becoming homeless.

The Ministry's position

The Ministry relied on its reconsideration decision, dated January 13, 2016. Namely, the Ministry's position was that the Appellant had not provided verification that:

1. she had actual shelter costs; and
2. her place of residence was outside of the LMD.

Although the Ministry explained that it can and does make provision for a family unit residing away from its ordinary place of residence on a temporary basis, the Ministry argued that the Appellant had not satisfied it that she was residing in the LMD on a temporary basis only.

The ministry's position is that the appellant did not provide sufficient information to satisfy the Ministry that she had actual shelter costs and that her place of residence was outside the LMD. The ministry argues that the appellant has been residing in Vancouver since May 2015 and continues to stay in Vancouver. The Ministry defines "reside" to mean to be located, be situated, establish oneself, inhabit, occupy, remain or settle. The Ministry accepts that the appellant was living in a medical facility between May 2015 and until being discharged in July after the birth of her child, but the Ministry has no information that the appellant returned to her residence outside LMD after that time (July 2015). The Ministry argued the notes provided by the appellant as rent receipts are not acceptable because the writing and the signatures on all the notes when compared to each other and when compared to the signatures and writing on the Shelter Application submitted in January 2015 do not match. The Ministry argued that contact with the appellant's landlord failed as the phone number provided on the Shelter application was out of service.

Panel's decision

Section 4(2) of schedule A of the EAR, provides that the monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply, as in the case of the Appellant, is the lesser of the family unit's actual shelter costs and the maximum table amount set out in section 4(2)(b) of the EAPWDR which, in the circumstances of the Appellant, is \$570.00 per month.

Section 5 of schedule A of the EAR provides that a number of items are taken into consideration when calculating actual shelter costs, including "rent for the family unit's place of residence."

The Appellant claims to be paying rent in respect of a residence outside the Lower Mainland. She has also submitted purported receipts of rent for a residence outside of the Lower Mainland. However, the Appellant has not provided a consistent explanation as to why she has not returned to that residence outside of the Lower Mainland and, to the extent that the residence outside of the Lower Mainland is not the Appellant's place of residence, such rental costs would not be included in a calculation of the Appellant's actual shelter costs. Likewise, the Appellant has not provided evidence of any shelter costs being incurred in the Lower Mainland where she has remained since the birth of her child in the summer of 2015 and which now appears to be her "place of residence."

While the Appellant stated in her RFR that she has remained in the Lower Mainland since the birth of her child for the purpose of dealing with court proceedings involving MCFD and the removal of her baby, the Appellant has not provided any evidence of her involvement in ongoing court proceedings involving MCFD or other compelling evidence that the Appellant's continued residency in the Lower Mainland is only temporary and that the Lower Mainland is not currently the Appellant's place of residence.

The panel finds that the Ministry's decision that the Appellant was ineligible for a shelter allowance on the basis that the Appellant's current place of residence is the Lower Mainland and not outside of the Lower Mainland, where the Appellant claims to be continuing to pay, was a reasonable application of section 4(2) of the EAR in the circumstances of the Appellant. It follows that the panel confirms the Ministry's reconsideration decision, dated January 13, 2016, pursuant to section 24(1)(b) and 24(2)(a) of the *Employment and Assistance Act*.