

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“ministry”) reconsideration decision dated January 7, 2016 in which the ministry determined the appellant is required to repay income assistance (“IA”) that she was not eligible to receive, as required under section 27 of the *Employment and Assistance Act* (“EAA”). The ministry determined that the appellant has an overpayment of shelter allowance for August to October 2015 because she received a rent subsidy.

PART D – Relevant Legislation

Employment and Assistance Act - EAA -section 27
Employment and Assistance Regulation - EAR – Schedule A, section 4(2)

PART E – Summary of Facts

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

1. A Request for Reconsideration signed by the appellant on January 4, 2016.
2. An Application for Income Assistance signed by the appellant on May 12, 2015 (Part 1) and May 21, 2015 (Part 2). The appellant indicated she has been homeless in the past 12 months and is living in a shelter.
3. Three copies of a ministry Overpayment Chart showing overpayments of \$290 for August, September, and October 2015 and indicating that for these months, the appellant received total IA of \$2,431.74, was eligible for \$1,561.74, and was overpaid \$870. Notations indicate that she received a \$450 rent subsidy for each of these months for participating in a Homeless Prevention Program administered by a community agency (together referred to as the “HPP program”) and that her participation began in August 2015. Under Comments, the Overpayment Chart printed on October 22, 2015 states, “Client has never disclosed subsidy to Ministry”, while the Chart printed on December 3, 2015 omits this comment.
4. A ministry Shelter Information form for the appellant dated March 26, 2015 indicating a rental start date of June 1, 2015. The total rent is \$700 per month including utilities.
5. Receipts for June, July, and September 2015 rent payments: \$700 per month paid by the appellant to her landlord.
6. A print-out of the appellant’s bank transactions from June 30 – September 26, 2015, showing \$450 credits on August 5 and September 10, 2015 with the notation, “Homeless Prevention Program”.
7. Cheque stubs for July 23 and August 24, 2015 showing a \$450 “HPP rent supp” for August and September 2015.
8. The appellant’s credit card statement dated September 22, 2015 with her \$28 phone bill highlighted for August and September 2015.
9. A 2-page submission from the appellant (“reconsideration submission”) dated January 4, 2016. The appellant stated that a worker from the HPP program told her she did not have to report her participation to the ministry, did not have to write it on her pay stub, and could use the subsidy for rent or for purchasing furniture. She stated that she disclosed her participation to the ministry investigator in October and again in December. She noted that the Overpayment Chart that was printed in October had the comment, “Client has never disclosed subsidy to the Ministry” and that this comment was removed from the Chart that was printed in December. The appellant indicated that due to the ministry’s investigation, she has not been able to take part in the HPP program since October. In January 2016, she informed the ministry that her housing situation is also changing as she is moving.
10. An HPP Rent Supplement Calculation Form signed by the appellant and HPP program staff on July 20, 2015. This form indicates that the appellant’s total monthly income is \$500, and \$150 should be geared toward her rent each month. The form also indicates that the appellant’s Shelter Allowance is zero and it provides a calculation that shows an HPP allowance of \$450 per month to be provided for 12 months until July 2016. Attached, is a Declaration of Income and Assets signed by the appellant on July 20, 2015 and indicating the following sources of income: IA \$445.58 per month, Child Support \$500 per month. Total gross monthly income is \$945.58.
11. A Residential Tenancy Agreement for the appellant’s new address beginning January 20, 2016, with rent of \$750 per month, \$30 extra for laundry, and a receipt for the security deposit.
12. Copies of the appellant’s cable bill, recreation receipts, and credit card bill (date range for these documents is September - December 2015).

[Redacted]

13. A letter from an HPP worker to the ministry dated October 15, 2013 [*sic*] confirming that the appellant has been receiving a rental supplement of \$450 per month since August 2015. The letter states that the expected end date for the rent subsidy is July 2016.

14. Information from the Ministry record indicating the following:

- The appellant has been in receipt of IA as a single parent since May 2015.
- The appellant's monthly shelter cost as of June 2015 was \$730 per month: \$700 for rent and \$30 for phone. As of August 2015, she received a rental subsidy of \$450 per month from the HPP program.
- On September 23, 2015, the ministry mailed the appellant a letter indicating that her file had been selected for a compliance review. The ministry reviewed documents that were on her file, and documents she submitted, to determine if an overpayment had occurred.
- On October 13, 2015, an HPP worker confirmed that the appellant was still receiving the subsidy.
- The ministry was providing a shelter allowance of \$570 per month and the appellant received the full shelter benefits from August to October 2015. The ministry noted that the appellant was only eligible for a top up of \$280 per month for shelter to complete her monthly rental obligation as she was receiving the \$450 subsidy.
- In December 2015, the ministry received confirmation that the rental subsidy had been discontinued. The appellant advised at the reconsideration that she is attempting to have the subsidy reinstated.

Additional submissions

The appellant attended the hearing with her advocate and an interpreter. In her Notice of Appeal of January 18, 2016 and testimony at the hearing, the Appellant provided her argument for disagreeing with the ministry decision. The ministry elaborated on the ministry position as set out in the reconsideration decision. The panel accepts the arguments as corroborating the positions of the parties at the reconsideration and addresses both parties' arguments in the next section – Part F Reasons.

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PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reconsideration decision of January 7, 2016 in which the ministry determined the appellant is required to repay IA that she was not eligible to receive, as required under section 27 of the EAA, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the appellant. The ministry determined the appellant has an overpayment of shelter allowance for August to October 2015 because she received a rent subsidy.

The following sections of the legislation apply to the issue under appeal:

EAA

Overpayments

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

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:

	Column 1	Column 2
Item	Family Unit Size	Maximum Monthly Shelter
2	2 persons	\$570

Positions of the parties

Appellant

In her reconsideration submission, the appellant's position is that she was informed by the HPP program from the beginning that she did not need to report her participation to the ministry or write it on her monthly pay stub. She argued that the ministry was not unaware of her participation in the program because she reported the rent subsidy to the ministry investigator in both October and December 2015 and the ministry accepted her reasons for not reporting the subsidy earlier and changed the Overpayment Chart to omit the comment that she had not disclosed the subsidy.

The appellant explained at the hearing that she fully cooperated with the ministry investigator and provided her bank statements that showed the \$450 per month subsidy. She explained that she did not check her bank statements prior to the investigator requesting them because she was in transition

from a shelter to rental housing. However, as soon as she realized she was receiving the full \$945.58 she reported it to the ministry and when she brought her bank statements to the ministry office, the worker told her that HPP was not deductible.

The appellant argued that it is not fair for the ministry to consider the amount of \$290 per month she received from the ministry as an overpayment because HPP program staff told her she could spend the subsidy on rent or for other items such as furniture. The appellant argued that she was following the worker's instructions and was not trying to conceal her participation from the ministry. She also called other agencies that provide housing information and was told that HPP is not deductible from IA and she knows of people who are receiving both HPP and IA without any deduction by the ministry.

Further, the repayment requirement is causing financial hardship and impacting her daily living. She has higher rent to pay as well as health care expenses; she does not receive child benefits other than child support and cannot afford to register her child in programs. She noted that the HPP program is supposed to prevent homelessness but she is now at risk for homelessness if she has to repay the ministry \$870. The appellant feels that she was receiving a lot of mixed messages about whether HPP is deductible.

Ministry

In the reconsideration decision the ministry submits that the appellant's actual shelter costs were \$280 per month (\$730 shelter costs – rent and phone – minus \$450 rental subsidy) and she is required to repay the difference between the shelter allowance that was issued (\$570) and her actual shelter costs (\$280) for August, September, and October 2015. The ministry noted that the maximum shelter allowance for a single parent with one child is the smaller of the actual shelter costs and \$570. The ministry submits that the reason the appellant was issued \$570 when she was eligible for only \$280 was because the ministry was not aware of the HPP subsidy until October 2015 when the ministry conducted a review of the appellant's file.

At the hearing, the ministry emphasized that the overpayment is not for the HPP subsidy but for excess shelter allowance and it is the excess shelter allowance that is being recovered. The ministry stated that the HPP subsidy is not deductible but it impacts how much shelter allowance the appellant is eligible for. The ministry noted that the appellant received a total shelter allowance of \$1,020 for August, September, and October 2015 even though her actual shelter costs, taking into account the HPP subsidy, were only \$730 for that period.

Regarding the appellant's position that she reported the HPP subsidy to the ministry and the investigator changed the Overpayment Chart to omit the notation that she had not reported it, the ministry argued that the fact remains that she did not report the subsidy at the beginning of her participation in the HPP program. The ministry noted that the appellant did not come to the ministry to declare the subsidy until October when the ministry investigator asked her to submit bank statements. Even with the notation omitted from the Overpayment Chart, the ministry submits that it does not make any difference because there is still an overpayment of \$870.

Regarding the appellant's argument that HPP staff told her she did not have to declare the rent subsidy on her monthly reports and could use the HPP money for other expenses, the ministry

submits that it is irrelevant, from the point of view of the ministry, what the HPP staff told her. The ministry noted that the HPP program and the ministry shelter allowance are separate programs and argued that when the appellant applied for HPP in July 2015, she should have contacted the ministry for information and clarification. If she had come to the ministry in July 2015, and explained that she was applying for the subsidy, the ministry would have reduced her shelter allowance so that she would not have an overpayment.

The ministry explained that it is the appellant's responsibility to check her bank statements and report all money and assets she receives each month to the ministry. The ministry highlighted the "My responsibilities" section of the IA application, signed by the appellant on May 12, 2015, noting that it clearly sets out the client's obligation to report all types of funds received. The ministry stated that it understands the appellant's financial hardship but does not have the recourse to bypass the legislation, and shelter funds received from any source will be deducted from the client's shelter allowance.

At the hearing, the ministry also addressed the appellant's confusion over deductions from her IA during the months at issue (August, September and October 2015). The ministry explained that up until the August 2015 IA payment (which was for the month of September) the appellant's child support of \$500 per month was being deducted from her IA. The ministry explained that as of September 1, 2015, the legislation was amended to exempt child maintenance and child support could no longer be deducted. Nevertheless, the ministry submits that even when the appellant's monthly IA was \$445.58 instead of \$945.58 (prior to her \$500 child support becoming exempt) she was still being overpaid the shelter allowance because the ministry was issuing \$570 per month instead of the \$280 she was eligible for.

Panel's decision

The panel finds that the Ministry reasonably determined that the appellant is required to repay IA pursuant to section 27 of the EAA because she received shelter funds that she was not eligible for. Section 27(1) of the EAA clearly sets out that if IA is provided to a family unit that is not eligible for it, the recipient is liable to repay to the government the amount or value of the overpayment provided. The panel notes that the ministry has no discretion under the legislation to waive the repayment obligation and as indicated by the ministry, the ministry is required to follow the legislation.

Under section 4(2) of EAR Schedule A, the monthly shelter allowance is the smaller of the family unit's actual shelter costs, and the maximum set out in the table for the applicable family size. As noted by the ministry, \$570 is the maximum shelter allowance the appellant is eligible for and where her actual shelter costs are lower than \$570 she is entitled to receive only the smaller amount. As the appellant was receiving a rent subsidy of \$450 per month, her actual shelter costs were \$280 per month for August, September, and October 2015 per the ministry's calculation. The panel notes that there is no discretion in the legislation to calculate the shelter allowance on any basis other than the client's actual costs.

Despite the appellant's argument that she made full disclosure of the HPP subsidy to the ministry, there is no evidence that she disclosed the subsidy in July 2015 when she applied for the HPP program. The HPP Rent Supplement Calculation form signed by the appellant on July 20, 2015 also suggests that she did not disclose her ministry Shelter Allowance to the program as the form states

that she was receiving zero shelter allowance when she was actually receiving \$570 per month from the ministry as confirmed in the Overpayment Charts. While the appellant submits that the HPP worker filled in the amounts on the form and that she could not check her bank statements as she was in transition from a shelter to rental housing, these arguments do not eliminate her obligation to keep track of payments from the ministry, communicate with the ministry whenever she begins to receive funds from any source, and report all money received on her monthly reports to the ministry. As noted by the ministry, the appellant's reporting obligations are set out in the IA application that she signed in May 2015.

Regarding the deductions from her IA, it appears that the appellant was not given clear information by either the HPP program or the ministry confirming that the rent subsidy is deductible. The appellant's evidence is that when she brought her bank statements to the ministry office, the ministry concurred that the rent subsidy is not deductible. At the hearing, the ministry confounded the matter, stating that the HPP subsidy is "technically not deductible" from IA but should be deducted from the shelter allowance and the overpayment the appellant received will be deducted from her IA.

The panel finds as fact that the HPP rent subsidy is deductible from IA. Section 4(2) of EAR Schedule A requires the ministry to calculate actual shelter costs and deduct actual costs from the maximum available shelter allowance. The evidence is that \$450 of the appellant's \$730 per month shelter costs was being covered by the HPP program, and the overpayment for the shelter allowance will be deducted from her IA. While the confusion over the deduction is unfortunate, it does not cancel out the appellant's monthly obligation to report all money she receives to the ministry, and it does not eliminate the repayment requirement under section 27 of the EAA.

Conclusion

The panel finds that the Ministry's determination that the Appellant is required to repay IA that she was not eligible to receive was a reasonable application of the applicable enactment in the circumstances of the appellant. The panel confirms the reconsideration decision in accordance with sections 24(1)(b) and 24(2)(a) of the *Employment and Assistance Act*.