

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 26, 2016 which determined that the appellant was not eligible for assistance, specifically the maximum shelter allowance, before the calendar month in which the assistance was requested, being January 2016, pursuant to Section 23(5) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 23 and Schedule A, Sections 1, 4 and 5

PART E – Summary of Facts

The ministry did not attend the hearing. After confirming that the ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

- 1) Power of Attorney sworn by the appellant on July 28, 2005;
- 2) Memorandum dated September 11, 2008 from the mental health association (landlord) to the tenants of the appellant's complex advising of an increase of income assistance rates in April 2007 to allow for an additional \$50 per month "...to the maximum shelter portion of the income assistance rates." In April 2008, the ministry action affected the rates charged and set by BC Housing for each tenant in the appellant's complex and this information only recently came to the attention of the landlord. The landlord is exempt from the standard requirements for rent increases under the *Residential Tenancy Act*. The landlord determined not to seek recovery of the shortfall but, effective October 1, 2008, the rent for a one bedroom unit is increased from \$325 per month to \$375 per month.
- 3) Appellant's calculations of the "Total Administrative Underpayment to be applied for from 2009 to 2016 (January and February)" for a total outstanding of \$1,164.36, along with a receipt dated January 23, 2009 to the appellant for the sum of \$375 for February rent;
- 4) Letter dated January 28, 2016 in which the property manager for the appellant's complex wrote that:
 - The appellant has been a tenant in good standing since January 2002.
 - The complex is a BC Housing subsidized apartment complex for homeless at risk and Persons With Disabilities (PWD) who can live independently.
 - Since October 2008, the tenant rent contribution for a 1-bedroom unit has been \$375 per month, which is the same amount for maximum shelter received by PWD clients;
- 5) Shelter Information form dated January 28, 2016 indicating the appellant has been a tenant in good standing since January 2002 and his total rent has been \$375 since October 2008; and,
- 6) Request for Reconsideration dated July 12, 2016 with attached letter dated July 11, 2016 in which the appellant's advocate wrote that:
 - The landlord does not advise tenants to contact the ministry when there is a rent increase.
 - The other tenants in the complex have their rent deducted directly from their ministry cheques and the rent is paid directly to the landlord.
 - They made a decision when the appellant entered the complex not to have the rent deducted directly from his PWD cheque as they felt he needed to learn that rent must be paid to live in the apartment and he was not living there for free.
 - The appellant writes a cheque each month to pay his rent and that may be the reason that his shelter portion was not adjusted when the rent increase was made

The ministry relied on the reconsideration decision, which included the following information:

- The appellant is a sole recipient with PWD designation.
- On February 2, 2007 a financial review was completed of the appellant's circumstances and, at that time, the appellant's actual shelter costs were calculated as \$325 for rent and \$36.46 for utilities for a total of \$361.46.

Additional information

In his Notice of Appeal dated July 29, 2016, the appellant expressed his disagreement with the

ministry's reconsideration decision and the advocate wrote that:

- The appellant has been living in the same apartment since he moved into the complex in 2002. It is a one-bedroom single person apartment, which is the same as all other tenants who are also on a PWD pension.
- When the adjustment in rent was made, no other tenant had any problem with the rent increase and their shelter portion.
- All the other tenants' rent was adjusted automatically and the appellant's was not.

Prior to the hearing, the appellant submitted the following additional documents:

- 1) Letter dated August 22, 2016 in which the property manager for the appellant's complex wrote that:
 - Since October 2008 the tenant rent contribution for a 1-bedroom unit has been \$375 per month, which is the same amount for maximum shelter received by PWD clients.
 - It is the tenant's responsibility that is in receipt of assistance or other benefits to take rent Shelter Information and other correspondence to their financial aid worker to have the income assistance payment adjusted to reflect the new rent contribution.
 - As per the Tenant Manual, the preferred method of payment for tenants in receipt of income assistance from the ministry is direct deposit.
 - In her understanding, in April 2007 all income assistance clients were deemed eligible to receive an increase to their shelter portion.
 - In 2008, the landlord had approximately 46 units that were affected by the same shelter amount adjustment and to date, she has no other reports of any other tenants receiving a shortfall; and,
- 2) Income Assistance Rate Table showing a shelter maximum of \$375 for a family unit of 1.

At the hearing, the appellant's advocates stated that:

- They were not aware of the situation until they were discussing it with other family members and they discovered that others had received an increase in the shelter amount but nobody received notice or advised the ministry of the increase in the rent.
- All the other tenants in the building had their shelter amount increase and they wonder how the ministry became aware that all the other tenants required an increase.
- A few of the other tenants also pay their rent by cheque, rather than direct deposit, and their shelter amount was increased by the ministry.
- She had requested more information about the financial review the ministry conducted in 2007 and the ministry told her that there was no further information available. The appellant has not had a financial review since then and the amount of his utility charges would likely have increased in the 9 years since then.
- When they became aware that the appellant did not receive the increase in the shelter amount, they were in contact with the ministry and were encouraged by the ministry to apply for an administrative underpayment.
- Given that all the other tenants benefited from the increased shelter amount without having to take any action, it appears that the appellant was "missed off the list for some reason." There is another tenant in the appellant's building with the same last name and this may have been confusing.
- The appellant writes a cheque each month for his rent, which he delivers to the property manager, and then he is given a receipt. The life skills worker makes sure that the appellant pays his rent every month.



- The appellant has a bank account and he receives monthly statements. The appellant is mentally challenged and would not understand the significance of differences in amounts on the statements.
- Of the 22 units in the appellant's building, about 90% are in receipt of PWD benefits.
- The appellant does not throw out any mail. He keeps it on a table in his apartment to be reviewed by his life skills worker or by them.
- The appellant is not able to use the toll free number to contact the ministry and the nearest ministry office is in a community many kilometers in distance from the appellant's community.

Admissibility of Additional Information

The panel admitted the letter dated August 22, 2016 and the rate tables, as well as the oral testimony on behalf of the appellant as reiterating and clarifying the circumstances of the appellant's rent increase and being in support of information that was before the ministry on reconsideration, pursuant to Section 22(4) of the *Employment and Assistance Act (EAA)*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which determined that the appellant was not eligible for assistance, specifically the maximum shelter allowance, before the calendar month in which the assistance was requested, being January 2016, pursuant to Section 23(5) of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Schedule A of the EAPWDR provides in part:

Maximum amount of disability assistance before deduction of net income

- 1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [amount of disability 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.
- (2) Despite subsection (1), disability 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.

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;

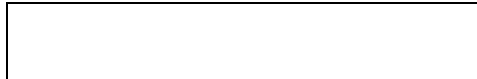
"warrant" has the meaning of warrant in section 14.2 [consequences in relation to outstanding arrest warrants] of the Act.

- (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	Column 2
	Family Unit Size	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

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.

Section 23 of the EAPWDR provides:

Effective date of eligibility

- 23 (1) Except as provided in subsections (1.1), (3.11) and (3.2), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance
- (a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and
 - (b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.
- (1.1) The family unit of an applicant who applies for disability assistance while the applicant is 17 years of age and who the minister has determined will be designated as a person with disabilities on his or her 18th birthday
- (a) is eligible for disability assistance on that 18th birthday, and
 - (b) on that date, is eligible under section 4 and 5 of Schedule A for that portion of the month's shelter costs that remains unpaid on that date.
- (1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for
- (a) a support allowance under sections 2 and 3 of Schedule A on the date of the applicant's submission of the application for disability assistance (part 2) form,
 - (b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the date of the applicant's submission of the application for disability assistance (part 2) form, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and
 - (c) for disability assistance under sections 6 to 9 of Schedule A on the date of the applicant's application for disability assistance (part 2) form.
- (2) Subject to subsections (3.01) and (3.1), a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.
- (3) Repealed. [B.C. Reg. 340/2008, s. 2.]

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- (3.01) If the minister decides, on a request made under section 16 (1) [reconsideration and appeal rights] of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of
 - (a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and
 - (b) the applicable of the dates referred to in section 72 of this regulation.
 - (3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).
 - (3.11) If the minister decides, on a request made under section 16 (1) of the Act, to designate a person as a person with disabilities, the person's family unit becomes eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of
 - (a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and
 - (b) the applicable of the dates referred to in section 72 of this regulation.
 - (3.2) If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person with disabilities, the person's family unit is eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of the dates referred to in subsection (3.11).
 - (4) If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:
 - (a) the date the family unit became eligible for disability assistance;
 - (b) 12 calendar months before the date of payment.
 - (5) A family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

Appellant's position

The appellant's position, as argued by the advocates in the Notice of Appeal and in submissions on the hearing, is that it is not reasonable that the shelter amounts for all the other tenants in the appellant's building were adjusted automatically in 2008 and the appellant's was not. The advocates argued that the appellant has been living in the same apartment since he moved into the complex in 2002, and it is a one-bedroom single person apartment, which is the same as all other tenants who are also on a PWD pension. The advocates argued that when the adjustment in rent was made, no other tenant had any problem with the rent increase and their shelter portion. The advocates argued that the appellant is mentally challenged and he would not understand the significance of differences in amounts on statements or how to contact the ministry, which must be done in his community through the toll free telephone number.

Ministry's position

The ministry's position is that, pursuant to Section 23(5) of the EAPWDR, the appellant is not eligible for assistance, specifically the maximum shelter allowance, before the calendar month in which the assistance was requested, being January 2016. The ministry argued that the ministry was not aware of the appellant's change in his shelter costs until he submitted the Shelter Information on January 29, 2016.

Panel decision

Section 23(5) of the EAPWDR stipulates that a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested. The advocates stated that the appellant is mentally challenged and 90% of the tenants in his building are in receipt of PWD benefits. The appellant keeps his mail for his life skills worker and the advocates to read and manage on his behalf. The advocates acknowledged having reviewed the Memorandum dated September 11, 2008 on the appellant's behalf, wherein the landlord provided notice to the tenants of an increase to the income assistance rates in April 2007 to allow for an additional \$50 per month "...to the maximum shelter portion of the income assistance rates" and that, therefore, BC Housing changed the rates charged for each tenant in the appellant's complex. The landlord explained in the Memorandum that the rent for a one bedroom unit in the appellant's building was increased from \$325 per month to \$375 per month, effective October 1, 2008; however, the advocates stated that the appellant did not receive any further notice from the landlord about having to take further action to request an increase in the shelter amount from the ministry. The panel notes that the landlord provided less than one month notice of the increase in rent, which is significantly less than the notice period required under the *Residential Tenancy Act*, and while the landlord pointed out that it is exempt from the standard notice requirements, this provided little time for the tenants, most of whom are designated as PWD, to respond.

Given that the landlord provided notice to the tenants of the increase in the maximum shelter amount payable by the ministry to \$375 and the evidence on behalf of the appellant, which was not disputed by the ministry, that none of the tenants in the building personally made a request for an increase in the shelter allowance but all of the tenants, except the appellant, received an increase in the shelter amount to the maximum of \$375, it is reasonable to infer that in this situation the landlord took the additional step of requesting that the ministry increase the shelter amount to the maximum for all tenants in the appellant's building that were in receipt of assistance. In the letter dated August 22, 2016, the property manager for the appellant's complex wrote that in 2008, the landlord had approximately 46 units that were affected by the same shelter amount adjustment and, to date, she has no other reports of any other tenants receiving a shortfall. While the property manager also wrote that it is the tenant's responsibility that is in receipt of assistance or other benefits to take rent Shelter Information and other correspondence to their financial aid worker to have the income assistance payment adjusted to reflect the new rent contribution, the advocates stated that none of the other tenants individually requested an adjustment in 2008 by taking the rent Shelter Information to a "financial aid worker," that the appellant does not have a "financial aid worker," and the appellant is not able, due to his mental challenges, to make this request on his own behalf.

As the ministry did not attend the hearing, the panel did not have the benefit of clarifying information about the interactions between the ministry and the landlord for the appellant's building. Therefore, the panel finds that, on a balance of probabilities, the landlord made a request of the ministry on behalf of the tenants in the appellant's building for an increase in the shelter allowance to the maximum amount, to cover the increase in the actual rent amount to \$375 as of October 1, 2008. The panel finds that the ministry unreasonably concluded that the appellant was not eligible for assistance, specifically the maximum shelter allowance of \$375, until January 2016.

Conclusion

The panel finds that the ministry decision was not reasonably supported by the evidence and the panel rescinds the ministry's decision pursuant to Section 24(1)(b) and 24(2)(b) of the *EAA*. The appellant's appeal, therefore, is successful.