



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the "ministry") reconsideration decision dated September 22, 2016, which denied the appellant's request to have her tenant insurance included as part of her shelter allowance. The denial was based on the fact that the appellant is not an owner of the residence and the amount is not considered rent for the residence but an amount required in addition to rent.

PART D – Relevant Legislation

Employment and Assistance Act section 4 (hereafter referred to as "*the Act*")
Employment and Assistance Regulation - Schedule A (hereafter referred to as "*the Regulations*")

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

1. A schedule of payments for property insurance for the period from August 1, 2016 to March 1, 2017 which shows a monthly premium rate of \$21.91 for August 1, 2016 and then \$21.92 for all subsequent months.
2. A letter from the appellant dated September 9, 2016 outlining a number of things including that:
 - Her tenancy agreement requires this insurance as a mandatory condition;
 - That this is unfair because this cost would be covered if she lived in a strata or co-op and that since this is a British Columbia Housing (BCH) funded tenancy it should be treated as a necessary and required part of her shelter cost; and
 - This cost was previously covered when she lived in a different suite in the same building.
3. A copy of the relevant tenancy agreement signed by the appellant on June 11, 2016 which specifies the rent will be \$320 per month and stipulates in clause 5:

Liability And Insurance: *The tenant agrees to carry sufficient insurance to cover his property against loss or damage from any cause and for third party liability and the tenant agrees that the landlord will not be responsible for any loss or damage to the tenant's possessions. The tenant will be responsible for all claims expenses or damage resulting from the tenant's failure to comply with the terms of this Agreement and this responsibility will survive the termination of this Agreement.*

The tenant will not do, or permit to be done, anything that may void the landlord's insurance covering the residential property and rental unit, or that may cause the landlord's insurance premiums to be increased. Unless the landlord is in breach of a lawful duty, the tenant releases the landlord from any liability in connection with the use by the tenant or tenant's guest of the rental unit or residential property.

4. A Request for Reconsideration dated August 19, 2016 specifying that the appellant was notified of the ministry's decision on August 17, 2016 and which was signed by the appellant on September 9, 2016.
5. The Appellant is a sole recipient of income assistance with no dependents and has been a recipient since August 2014.
6. The Appellant currently receives \$650/month on assistance based on support of \$235, shelter of \$355, and a \$40 diet allowance and pays \$20/month toward a debt which is deducted from her assistance. The shelter allowance she receives consists of \$320 for rent and \$35 for a phone.
7. The Appellant has been in the current residence since August 1, 2016 and pays \$320/month for rent and receives a rent subsidy of \$282 for a total monthly rent of \$602/month. The rent includes utilities including water, electricity, heat and basic cable.

At the hearing the appellant clarified the landlord implemented a mandatory requirement for residents to obtain insurance against loss or damage from any cause and for third party liability following a fire in another suite in the building. The cost of this insurance is \$21.92 a month. She also stated that she is not paying back \$20 a month for any debt as stated in the reconsideration decision and that

her shelter costs are less than the maximum allowed for her situation as a single recipient with no dependents. She also stated that when she enquired about why the ministry was no longer providing her the money to pay for the insurance, she was informed that it never should have been paid and that it was previously paid in error.

At the hearing the ministry relied on its reconsideration decision and confirmed the appellant is about \$20 shy of the maximum shelter cost she is eligible for.

Admissibility of New Information

The ministry did not object to the information given orally by the appellant.

The panel found the oral testimony only clarified information before the ministry at reconsideration and was therefore admissible under s. 22(4) of *the Act*.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant's request to have her tenant insurance obligation included as part of her shelter allowance was a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation is as follows:

Employment and Assistance Act

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance Regulation

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

[am. B.C. Regs. 286/2003, s. 1 (b); 521/2004, s. 1; 161/2005; 304/2005, s. 7; 57/2007, s. 4; 88/2008, s. 2; 316/2008, s. (a); 48/2010, Sch. 1, s. 1 (b) and (o); 62/2010, s. (a); 73/2010, ss. 5 and 6; 197/2012, Sch. 1, ss. 20 and 21.]

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.

(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

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	Column 2 Maximum Monthly Shelter
1	Two applicants/recipients, no dependent children and a warrant has been issued for one	\$375
2	Family with dependent children, family unit size = 2 persons	\$570
3	Family with dependent children, family unit size = 3 persons	\$660
4	Family with dependent children, family unit size = 4 persons	\$700
5	Family with dependent children, family unit size = 5 persons	\$750
6	Family with dependent children, family unit size = 6 persons	\$785
7	Family with dependent children, family unit size = 7 persons	\$820
8	Family with dependent children, family unit size = 8 persons	\$855
9	Family with dependent children, family unit size = 9 persons	\$890



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Family with dependent children, family unit size = 10 persons

\$925

- (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.

The Appellant's Position:

The appellant argues that she resides at a place which is funded by BC Housing and that her tenancy agreement requires her to carry liability insurance as a condition of being a tenant. The amount being requested was previously provided by the ministry when she occupied a different unit. She submits she is being discriminated against because the cost of this insurance would be paid by the ministry if she was living with a relative, or in a strata or a co-op situation, or if she was an owner. She submits that this is unfair because owners generally are better off financially and can more easily meet such financial obligations. The policy is therefore unfair and discriminatory.

The Ministry's Position:

As per Schedule A section 4 of the Regulations the shelter allowance is limited to the smaller of the family unit's actual shelter costs, and the maximum set out in the table for the family unit. As per section 5(2) when calculating the actual monthly shelter costs of a family unit, only the following items are included: rent for the family unit's place of residence; mortgage payments on the family unit's place of residence, if owned by a person in the family unit; property taxes for the family unit's place of residence if owned by a person in the family unit; utility costs; 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.

Tenant insurance is not one of the allowable shelter costs as the appellant is not an owner of the residence. Also, since the landlord does not include this amount as part of the rent, it cannot be considered rent, it is in addition to rent and does not qualify as a specific eligible expense under the legislation.

The Panel Decision:

Section 5(2) of *the Regulations* states only the following items can be included in calculating the shelter costs.

- (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

The panel considers the fact that the cost of maintaining liability insurance in this specific situation is a mandatory condition of tenancy and is distinguishable from other tenancy situations where carrying contents insurance is optional. This situation is therefore more analogous to section 5(2)(c) above where house insurance is mandatory to acquiring a mortgage on a property.

If the appellant chose not to acquire the liability insurance she would be in violation of her contract and subject to eviction. Therefore the amount is properly part of her requirement for rent and represents her actual shelter costs regardless of how it is characterized or apportioned.

Conclusion:

The panel finds that the ministry's reconsideration decision dated September 22, 2016 which denied the appellant's request to include the cost of this mandatory liability insurance as part of her shelter cost was not a reasonable application of the legislation in the circumstances of the appellant. The panel therefore rescinds the ministry decision of September 22, 2016. The appellant is successful in her appeal.