

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") reconsideration decision of October 12, 2017 which denied the appellant reimbursement for \$117 in hotel costs incurred on September 5, 2017. The decision denied the appellant reimbursement for \$117 in hotel costs incurred on September 5, 2017, on the grounds that the appellant had already received \$231.98 shelter costs for September, 2017, when the maximum allowable amount is \$375.00 per month. The decision relied on the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), section 24 and Schedule A.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 24
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule A

PART E – Summary of Facts

The appellant did not attend the hearing. The ministry worker confirmed that the Notice of Hearing, which was sent to the ministry to be provided to the appellant when he visits the office, as he does not have a phone number, email address, or fixed mailing address, was in fact given to the appellant. The panel being satisfied the appellant was notified of the time and date of the hearing, the hearing proceeded under section 86(b) *Employment and Assistance Regulation*.

Nature of the Appellant's Application

The appellant, a sole recipient designated as a Person with Disabilities, incurred a hotel expense of \$117 for one night while visiting in another city, and requested reimbursement, which was denied on the grounds that the appellant had already received shelter allowance of \$231.98 for the month in which he incurred the hotel expense. He appeals that decision.

Documents and Information Before the Minister at Reconsideration

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

A. The appellant's Request for Reconsideration, which included the Decision to be Reconsidered, which decision set out that:

- (i) Since the appellant became homeless on November 4, 2016, and sometimes stayed in a hotel, his file was updated each time to include shelter allowances as follows:
 - (a) \$375 for December 2016
 - (b) \$375 for each of January, February and March 2017
 - (c) \$114.84 for April 2017
 - (d) \$92.79 for each of May, June and July 2017, and
 - (e) \$80.86 for August and \$231.98 for September 2017
- (ii) The appellant submitted, "*as usual*", a hotel bill. In this instance the bill was \$117 for a motel stay on September 5, 2017; the bill was submitted to the ministry on September 12, 2017.
- (iii) As the appellant had been issued shelter allowance of \$231.98 for September 2017, the ministry could not reimburse him the one night hotel cost of \$117, a statement which contradicts (ii) above by stating "*there is no legislative authority to reimburse you for one night in a hotel*".
- (iv) The appellant's statement that the shelter money issued for September was for August and that that constitutes falsifying government documents on the part of the ministry, and asking where it is the Ministry expect him to find a residence for \$375 without spending any of his other support money
- (v) He requires time and rest off the street in a safe healthy and clean environment because being homeless is a 24/7 job and spending his shelter portion on hotels where it is clean and mentally safe away from drug dealers and pimps where he can close the door and relax - [the appellant's sentence ended but it appears he meant that he needs a hotel room for respite]

(vi) that he paid his own transportation to another city and requires his \$375 every month for shelter so he can have a break from being homeless, so he can bathe, and have personal time away from drug addicts

(vii) Under the charter of rights he has a right to clean, safe, shelter

B. Two copies of a receipt from a Vancouver hotel for \$117 dated September 5, 2017

PART F – Reasons for Panel Decision

Issue on Appeal

The issue is whether or not the Ministry of Social Development and Poverty Reduction's (the "ministry") reconsideration decision of October 12, 2017 was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. The decision denied the appellant reimbursement for \$117 in hotel costs incurred on September 5, 2017, on the grounds that the appellant had already received \$231.98 shelter costs for September, 2017, when the maximum allowable amount is \$375.00 per month. The decision relied on the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), section 24 and Schedule A.

Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 5

Disability assistance and supplements

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

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 24

Amount of disability assistance

24 Subject to section 24.1 (3), disability 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.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedules A & B

Schedule A

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;

(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
1	1 person	\$375

Schedule B

Schedule B is not reproduced because it was accepted by the ministry that the appellant had no net income to be calculated under Schedule B.

General Scheme of the Legislation

The legislation provides that disability assistance for shelter may be provided to a family unit that is eligible, to the maximum amount set out in Appendix B. There was no issue that the appellant is entitled to a shelter allowance as a family unit consisting of one person.

Parties' Positions at Appeal

Appellant's Position

In his Request for Reconsideration the appellant argued that his request for reimbursement of \$117 was for his hotel stay in September and the shelter payment he received was for August. The appellant argued that he requires the shelter allowance to get a hotel where it is clean, mentally safe, a bath is available and he is able to close the door and relax. He argued under the Charter of Rights he has a right to clean safe shelter.

Ministry's Position

Ministry's Additional Evidence

The ministry representative explained that the appellant submitted \$231.98 in June 2017 for shelter expenses, but through a ministry error that requested expense was not removed from the appellant's file. The ministry also said that if the money had been paid in June for that one time expense there would now be no issue. The representative explained that because of the ministry error, the ministry considered the appellant's shelter costs for September 2017 as \$231.98 and he was paid that amount. The ministry's position was that when he submitted his hotel bill for \$117.00 on September 12, 2017 as shelter costs for September, that resulted in a calculation of an overpayment of \$114.98 - when you subtract actual shelter costs for September from the amount he was being paid (\$231.98 less \$117) the appellant was overpaid by \$114.98.

The ministry also submitted that receipts for shelter allowance can be provided at any time during the month provided they are received by the Friday before the cheque issue date, and that exceptions, specifically submitting receipts in a later month, are sometimes made in the following months. The ministry representative also said that if hotel accommodation is requested in advance of the date needed, the ministry will sometimes pay for that hotel accommodation in advance if there is a reservation.

The ministry further said that shelter expenses for hotel accommodation were, in general, often paid and had been paid in the past for the appellant, contradicting the statement in the Decision to be Reconsidered that "*there is no legislative authority to reimburse you for one night in a hotel*" by saying that the ministry frequently did so.

Panel Decision on Ministry's Additional Evidence

The panel considers the ministry's additional evidence to be in support of information and records that were before the ministry at the time of reconsideration, specifically the nature and timing of the shelter allowances paid both in general and specifically to the appellant and how those payments were calculated.

The panel admits the additional evidence pursuant to section 22 (4) of the *Employment and Assistance Act*, as being oral testimony in support of the information and records that were before the Minister at reconsideration.

The ministry submitted that the shelter allowance was the amount of the actual expense incurred in any particular month, to a maximum as set out set out in EAPWDR Schedule A section 4(2), and that in the case of the appellant was a maximum of \$375 in any particular month.

The ministry submitted that the appellant's shelter allowance for June had been submitted, and reiterated the history of payments made in the Decision to be Reconsidered, as was set out in the Request for Reconsideration. The ministry submitted that because of the payments as related in the Decision to be Reconsidered, and because of the ministry error, the ministry considered that the appellant had received an overpayment for his September shelter costs and therefore he was not entitled to reimbursement for the hotel bill of \$117 for accommodation incurred on September 5, 2017 and submitted for reimbursement on September 12, 2017.

CONCLUSION

The appellant is a single recipient of disability assistance, and therefore eligible for shelter costs pursuant to EAPWDA section 5.

EAPWDR section 24 provides that the maximum assistance is the amount prescribed by EAPWDR Schedule A (Disability Assistance Rates) minus the appellant's net income calculated under Schedule B (Net Income Calculation).

The panel finds that there was no evidence of the appellant having any net income, so the Net Income Calculation prescribed by EAPWDR Schedule B has no application. Thus, there is nothing to deduct from the shelter allowance payable to the appellant under EAPWDR Schedule A section 4(2). Under Schedule A, section 4(2) the maximum amount of shelter allowance for a single person is \$375 a month.

Schedule A section 5(2) EAPWDR provides that when calculating the actual monthly shelter costs of the family unit, one of the items, the rent for the family unit's place of residence, is included.

The ministry said the appellant's September 2017 shelter costs were \$231.98. The appellant's actual shelter costs were only \$117. The appellant's shelter cost is covered by a hotel receipt dated September 5, 2017 and submitted September 12, 2017. The evidence is that in June 2017 the appellant had shelter costs of \$231.98, however the ministry did not remove these costs from the appellant's file until August 2017, and scheduled these shelter costs with his September disability assistance in error.

The panel finds the ministry's position that the appellant had received an overpayment for shelter costs for September 2017 is not supported by the evidence and was also not supported by the legislation. The legislation states that only the actual monthly shelter costs are included; the shelter costs of \$231.98 was for the appellant's shelter costs in June 2017 and not September 2017. The evidence is the appellant's actual monthly shelter costs for September 2017 were \$117 as a supported by his receipt submitted September 12, 2017.

The panel finds that the evidence supports the appellant's position that he had not been paid the maximum shelter allowance of \$375 under EAPWDR Schedule A section 4 (2) for his September 2017 shelter costs.

The panel finds that the ministry's determination that the appellant's actual shelter costs for September 2017 were \$231.98 is not supported by the evidence and that the ministry's determination that the appellant had received an overpayment was the result for the ministry not removing his June 2017 shelter costs from his file until August 23, 2017.

The panel finds that the ministry's reconsideration decision, which denied the appellant reimbursement for \$117 for hotel accommodation incurred on September 5, 2017 and for which a receipt was submitted on September 12, 2017 is not reasonable because this situation arose from ministry error, because the ministry does make exceptions on the payment of shelter costs by paying them at a later time, because the appellant submitted his shelter expense in time for September payment and because the appellant's shelter expenses for September did not exceed the legislated the authority of \$375 as provided in Schedule A, section 4(2) EAPWDR.

The panel finds the ministry decision that determined the appellant was not eligible for reimbursement for his shelter allowance of \$117 for his actual September shelter costs, in compliance with Schedule A section 4 (2) EAPWDR, was not a reasonable application of the legislation in the circumstances of the appellant and was not reasonably supported by the evidence, and rescinds the ministry's decision.

The appellant is successful in his appeal.