

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 06 December 2012 that determined that the appellant incurred an overpayment of monthly shelter allowance for the months of October and November 2012 and pursuant to section 27 of the Employment and Assistance Act she is liable to repay the amount of the overpayment.

PART D – Relevant Legislation

Employment and Assistance Act (EAA), section 27
Employment and Assistance Regulation (EAR), Schedule A, sections 4 and 5.

PART E – Summary of Facts

The evidence before the ministry at reconsideration consists of the appellant's request for reconsideration dated 05 November 2012. The section completed by the ministry sets out the following background: the appellant's file opened on 01 October 2012; she is the recipient of regular income assistance with one dependent child; her monthly rent is \$207, hydro \$47.80 and phone \$30. Because of an administrative error, an amount of \$285.20 was entered into the ICM system under "other utilities." As a result, the appellant was issued the full shelter allowance of \$570 for the months of October and November 2012. However the appellant's monthly eligible shelter allowance was \$284.80 (= \$207 rent + \$47.80 hydro + \$30 phone). The ministry calculates the resulting overpayment to be \$570.40. This amount has been added to her file for repayment, at a minimum of \$10 per month deducted from her income assistance cheques.

Under reason for her request for reconsideration, the appellant writes:

"Due to my financial situation: I am unable to pay back \$570.40 over paid to me by the ministry. I have been off work since May because of an MVA. I am under extreme stress and the thought of owing money to an administrative error is very upsetting. Please reconsider having me pay that back. I just can't afford to."

In her notice of appeal dated 14 December 2012 the appellant writes:

"I didn't want to turn to the ministry for help. I had no choice. My medical EI ran out and I had no source of income. I feel it is morally and ethically wrong to have me fix this mistake I trusted them to know what they were doing."

At the hearing, the appellant submitted a "To whom it may concern" letter and a photograph she took and the ministry office of a poster headed "Our Commitment to Service." The panel accepted both the letter and the photograph as argument (see Part F). The appellant did not dispute the ministry's calculations as to the amount of overpayment.

The ministry stood by its position at reconsideration.

The panel finds as fact that the monthly shelter allowance issued to the appellant for the months of October and November 2012 was greater than the amount for which she was eligible. The resulting overpayment amounts to \$540.40.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry decision that the appellant incurred an overpayment of monthly shelter allowance for the months of October and November 2012 and as a result she is liable to repay the amount of the overpayment is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

The panel has reviewed the applicable legislation set out in the EAR, Schedule A, sections 4 and 5, (not reproduced here) and the calculations made by the ministry (see Part G above) to arrive at the determination of the amount of overpayment. As the appellant does not dispute the amount calculated by the ministry, the panel finds that the ministry reasonably determined that the appellant incurred an overpayment of monthly shelter allowance for October and November 2012. What is in dispute in this appeal is whether the appellant is liable to repay the amount of the overpayment.

The applicable legislation is from the 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*].

The position of the ministry is that the appellant was issued an amount of monthly shelter allowance greater than that which she was eligible to receive. As she was not eligible to receive this amount, she is liable, under section 27 of the EAA, to repay the amount of the overpayment.

At the hearing, the ministry representative stated that this sort of overpayment is one of the worst kinds of things that can happen, that it should not have happened and that it was unfortunate. However, the ministry is bound by the legislation and there are no provisions to forgive the debt owed or to recover the amount involved from the worker responsible.

The position of the appellant is that the ministry admits to "a ministry error" and she has a hard time accepting the responsibility for correcting a mistake brought upon her by the negligence of someone else. She points to the ministry's "Our Commitment to Serve" poster, which states "We are committed to meeting your needs by providing you service that is ...Accurate and Complete." She came into the office desperate and vulnerable. She and most people are obviously unaware of the procedure or protocol the workers take while inputting or filing client information. All they can do is to be truthful and have faith and trust the workers to be accurate. Referring to the \$10 per month repayment plan offered her, she feels that this should be deducted from the paycheck of the intake worker who initially made the error; she is sure that worker will be on the payroll for the next four or five years while she will not be in the system long enough to execute the payment plan fully and will be left with a large amount to repay once she is off income assistance. She would understand the need to pay back any overpayment if she had done something wrong or dishonest, but she submits it is morally and ethically wrong to require her to repay the amount when she was not at fault. She is sure that there are "powers that be" that can make the problem go away.

The panel considers section 27 of the EAA to be a clear statement of legislated policy: a person who receives assistance under the legislation in excess of the amount eligible is liable to repay the overpayment to the government. The legislation does not distinguish between overpayments that result from administrative error from those that might arise due to the failure of the recipient to comply with the legislation. The panel has reviewed the applicable legislation and can find no provision that would give the minister the discretion or power to give the relief or debt forgiveness sought by the appellant. For these reasons, the panel finds that the ministry determination that the appellant is liable to repay the amount of overpayment of monthly shelter allowance for October and November 2012 is a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the panel confirms the ministry's decision.