

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision of July 22, 2019 (the “Reconsideration Decision”), which determined that the Appellant had received an overpayment of income assistance in the amount of \$5,303.33 (\$8,340.00 less amounts included in a separate overpayment), from November 2017 to February 2019, as the Appellant had not established what her actual shelter costs were in that period and that the Appellant was liable to reimburse the Ministry for the overpayment, pursuant to section 27 of the *Employment and Assistance Act* (“EAA”).

PART D – RELEVANT LEGISLATION

Sections 4, 11, and 27, EAA
Schedule A, *Employment and Assistance Regulation* (“EAR”)

PART E – SUMMARY OF FACTS

The Appellant is presently a sole recipient of income assistance but had lived with her son up to approximately November, 2018.

The information before the Ministry at the time of the Reconsideration included:

- a Shelter Information form, dated August 4, 2017 (the “Shelter Information”);
- a rental receipt, dated March 4, 2019, for the residence (the “First Residence”) referenced in the Shelter Information;
- a rental receipt, dated December 18, 2018 (the “December 2018 Receipt”), for the First Residence;
- rental receipts, dated October 1, 2018, September, 2018, and November 2, 2018 (the “Fall 2018 Receipts”), also for the First Residence;
- a letter from the Ministry, dated May 7, 2019, advising the Appellant that:
 - the Ministry had conducted a review of the Appellant’s eligibility for income assistance
 - the Ministry believes the Appellant may have overpaid income assistance to the Appellant;
 - the Ministry believed that the Appellant had submitted false documentation in respect of the First Residence; and
 - the overpayment amount was \$8,340.00;
- an overpayment chart, indicating overpayments of the Appellant’s shelter allowance in the amount of \$570.00 per month from November, 2017 to October, 2018 and \$375.00 per month from November, 2018 to February, 2019;
- the Appellant’s Request for Reconsideration, dated July 4, 2019 (the “RFR”), in which the Appellant stated that:
 - it was nearly impossible to find housing, particularly when having to advise a potential landlord that one was receiving income assistance;
 - because of how difficult it was, the Appellant was reluctant to ask prospective landlords to complete a shelter information form;
 - the Appellant had come up with the money for a damage deposit for the Second Residence on her own;
 - the Appellant was evicted from the Second Residence in November, 2018;
 - the Appellant had been evicted from the First Residence because the landlords had wanted their son to move into the suite occupied by the Appellant;
- a copy of a Notice of Dispute Resolution Proceeding (the “Dispute Notice”), setting a Residential Tenancy Branch hearing on November 16, 2018, which the Appellant had filed in respect of a second residence (the “Second Residence”) in respect of which the Appellant had received a 10-Day Notice to End Tenancy for non-payment of rent or utilities;
- Also in the RFR, the Ministry confirmed that:
 - it had contacted the owner of the First Residence, who advised that:
 - telephone numbers provided by the Appellant for them did not belong to them;
 - they had no knowledge of the person who had signed the Fall 2018 Receipts and the December 2018 Receipt; and
 - the Appellant had moved out of the First Residence on October 31, 2017; and
 - several letters sent by the Ministry to the Appellant at the First Residence between November, 2017 and February, 2018 had been returned with a notation that the Appellant had moved.

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In her Notice of Appeal, the Appellant stated that she disagreed with the Reconsideration Decision because she could “provide amounts of rent throughout the time period specified” and because the Ministry’s answer was “very vague and left no room for debate.”

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the Ministry reasonably determined that the Appellant had received an overpayment of income assistance in the amount of \$5,303.33, from November 2017 to February 2019, as the Appellant had not established what her actual shelter costs were in that period and that the Appellant was liable to reimburse the Ministry for the overpayment, pursuant to section 27 of the EAA.

Statutory Framework

Section 4 of the EAA provides for basic eligibility to income assistance:

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.

Section 27 of the EAA sets out that a family unit that receives income assistance for which it was not eligible is liable to repay the overpayment amount:

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*].

Section 11 of the EAA requires a family unit to report changes that may affect its eligibility for income assistance:

11 (1) For a family unit to be eligible for income assistance, a recipient, in the manner and within the time specified by regulation, must

(a) submit to the minister a report that

(i) is in the form prescribed by the minister, and

(ii) contains the prescribed information, and

(b) notify the minister of any change in circumstances or information that

(i) may affect the eligibility of the family unit, and

(ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

Schedule A to the EAR sets out the rates of income assistance:

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.

In particular, section 4 of Schedule A sets out the monthly shelter amounts for which a family unit may be eligible:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375
2	2 persons	\$570

Panel Decision

The Appellant resided with her son until approximately November, 2018. As such from November, 2017 to October, 2018, the Appellant would have been eligible for a shelter allowance of \$570.00 per month or, if less than \$570.00 per month, her actual shelter costs. Thereafter, the Appellant would have been eligible for a shelter allowance in the amount of \$375.00 per month or, if less than \$375.00 per month, her actual shelter costs.

The Appellant appears to have commenced residing in the First Residence in or about August, 2017. It is not entirely clear from the information before the panel, other than the reference in the RFR to the owner having advised the Ministry that the Appellant moved out on October 31, 2017. The Dispute Notice also confirms that the Appellant had to have been residing at the Second Residence by no later than October, 2018. In the result, the Fall 2018 Receipts and the December 2018 Receipts, all of which reference rent paid at the First Residence, appear to have been fabricated.

While the Appellant did address the lack of documentation concerning the Second Residence, stating in her RFR that she did not obtain a shelter information form from the owner or landlord at the Second Residence because she was reluctant to advise that she was receiving income assistance, she did not address any of the Ministry's findings that, for example, the owner of the First Residence had not provided the Fall 2018 Receipts or the December 2018 Receipt to the Appellant and that the Appellant had moved out of the First Residence on October 31, 2017.

Likewise, the Appellant provided no information about her residency at the Second Residence, other than the Dispute Notice which contains no information about when her tenancy at the Second Residence began, when her tenancy ended, or what her rent was. In fact, the only reference in the Dispute Notice to rent was an indication that the Appellant's tenancy was ostensibly terminated on the basis of non-payment of either rent or her utilities.

In the result of the foregoing, the panel finds that the Ministry was not unreasonable in its finding that it could not determine the Appellant's actual shelter costs from November, 2017, the first month after the Appellant moved out of the First Residence, according to its owner, and February, 2019. In addition to the fact that the Appellant had not reported the change in her residency, as required by section 11 of the EAA, the Appellant appears to have provided fabricated receipts, indicating that she was residing at the First Residence during a period of time in which she clearly was not, given that she had already filed the Dispute Notice in respect of the Second Residence for the period covered by the Fall 2018 Receipts and December 2018 Receipt.

In view of the fact that section 4 of Schedule A to the EAR sets out that a family unit's shelter allowance is the *lesser* of its actual shelter costs and the table amounts, the panel finds that the Ministry was not unreasonable in basing the Appellant's entitlement to a shelter allowance on the information that it had about her actual shelter costs between November, 2017 and February, 2019 and finding that the shelter allowance paid to the Appellant in that period of \$8,340.00 (less \$3,036.67, which the Ministry determined in the Reconsideration Decision had already been included in a separate overpayment) represented an overpayment for which the Appellant is liable to reimburse the Ministry, pursuant to section 27 of the EAA.

The Appellant is not successful in this appeal.

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME Adam Shee	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/September/3

PRINT NAME Kulwant Bal	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/September/2

PRINT NAME Sandra Chan	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/September/2