

APPEAL NUMBER
2020-00054

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PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”), dated February 5, 2020 (the “Reconsideration Decision”). In the Reconsideration Decision, the Ministry found that the Appellant had received a shelter allowance for which the Appellant was not eligible and was required to repay the amount that had been received, \$1,875.00, as a shelter allowance between June, 2017 and October, 2017.

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PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA)- section 18
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)- Schedule A- sections 1, 4, 5, and 7

PART E – SUMMARY OF FACTS

The Appellant was a recipient of disability assistance until reaching age 65 in January, 2017. The Appellant continued to receive some disability assistance until October, 2017. The Appellant has been eligible for medical services only since that time.

The Appellant also continued to receive a shelter allowance until October 2017, at which time the Appellant's combined income from the Canada Pension Plan ("CPP"), Old Age Security ("OAS"), and the Guaranteed Income Supplement ("GIS") exceeded the Appellant's disability assistance entitlement.

On a review of the Appellant's file in August, 2019, the Ministry determined that, due to its own error, the CPP received by the Appellant had not been deducted from the Appellant's disability assistance for April and May, 2017 and that the Appellant had continued to receive a shelter allowance from June to October despite not having had any confirmed shelter costs.

The information that the Ministry had at the time of the Reconsideration included:

- A letter, dated September 5, 2019 (the "September 5 Letter"), from the Appellant to the Ministry, in which the Appellant stated:
 - that previous correspondence from the Ministry had been sent to the Appellant's old address;
 - the Ministry had advised that the Appellant was eligible for the "Rent" portion;
 - that the Appellant was not responsible for the Ministry's error;
- an overpayment notification, dated October 31, 2019 with an overpayment chart showing the amounts received by the Appellant from the Ministry from April, 2017 to October, 2017;
- letter to the Appellant from the Ministry, dated August 6, 2019 (the "August 6 Letter"), advising the Appellant that the Ministry had reviewed the file and determined a potential overpayment of \$1966.94;
- The Appellant's Request for Reconsideration ("RFR"), dated January 9, 2020, to which was attached a letter from a lawyer with whom the Appellant had consulted and which set out that:
 - the Appellant had been told by the Ministry that the "Rent Portion of the 'Hardship Funds'" continued to be available, whether or not rent was paid by the Appellant;
 - the failure of the Ministry to deduct CPP in April and May, 2017 was an error of the Ministry's;
 - the Appellant should not be held responsible for the Ministry's error;

With the Notice of Appeal, filed February 19, 2020, the Appellant enclosed a typed letter in which set out that:

- the Appellant had been told by the Ministry on March 2, 2017 and July 5, 2017 that the Appellant continued to be eligible for the "Rent Portion" of any hardship funds;
- the Appellant was not required to confirm the Appellant's address to be eligible for that "Rent Portion";
- referenced a service request on or about July 5, 2017 in which the Ministry set out that the Appellant was eligible for support in the amount of \$606.42, shelter allowance of \$375.00, less CPP in the amount of \$45.97;
- the Ministry's review of the file amounts to the Ministry reneging on everything which it had previously advised the Appellant about qualifying for the shelter allowance; and
- the Appellant should not be held responsible for a Ministry error, especially when the error was discovered after the Appellant's file was closed.

The Ministry confirmed that it is relying on the information set out in the Reconsideration in the written appeal of this matter.

The panel admits the letter attached to the Appellant's Notice of Appeal as written argument as it contained no new information that was either not in the record before the Ministry at the time of the Reconsideration Decision or in the Reconsideration Decision itself.

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 shelter allowance in the amount of \$1,875.00, between June, 2017 and October, 2017, and was liable to repay that amount.

Legislation

Section 1 of Schedule A to the EAPWDR sets out disability rates for eligible recipients of disability assistance:

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*.

Section 4 of Schedule A to the EAPWDR sets out the amount of monthly shelter allowance that is available to eligible recipients of disability assistance:

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month;

"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 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

Section 5 of Schedule A to the EAPWDR sets out how shelter costs are calculated:

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.

Section 7 of Schedule A to the EAPWDR prescribes specific rules for persons who, like the Appellant was at the relevant time, are over 65 years of age:

People over 65 years of age

7 (1) For a family unit that includes at least one dependant and a person with disabilities who has reached 65 years of age and receives federal old age security payments, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the support allowance that is applicable under sections 2 and 3 of this Schedule for a family unit matching the applicant's or recipient's family unit, plus

(b) the maximum shelter allowance that is applicable under section 4 of this Schedule for a family unit matching the applicant's or recipient's family unit.

(2) Subsection (1) applies regardless of the family unit's actual shelter costs or whether the family unit is sharing residential accommodation or receiving room and board.

Section 18 of the EAA requires recipients who receive an overpayment of assistance to repay the Ministry the overpayment amount:

Overpayments

18 (1) If disability 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 16 (3) [*reconsideration and appeal rights*].

Panel Decision

In this case, the information that appears to have been provided to the Appellant in a July, 2017 service call was wrong. The Ministry concedes in its notes that it advised the Appellant that "Regardless of their actual shelter costs, family units that include a person who has reached 65 and receives federal old age security payments and includes a dependent are entitled to a maximum shelter rate for the family size in Rate Tables" and that, in the result, the Appellant was eligible for a shelter allowance of \$375.00 per month.

The above conclusion was wrong. The note only somewhat correctly reflects the wording of section 7(2) of Schedule A to the EAPWDR in that a recipient over the age of 65 is entitled to the table amount of shelter allowance, regardless of actual shelter costs, where that recipient is a person with disabilities *and* has a dependent. The Ministry worker nevertheless concluded that the Appellant was eligible for the table amount of shelter allowance under section 7(2), despite not having any dependants. It is unclear how the Ministry worker could have reached this conclusion, particularly after having referenced the table amount of shelter allowance for a family unit comprised of just one person.

Where section 7 of Schedule A to the EAPWDR does not apply to the Appellant, the Appellant's eligibility for a shelter allowance is determined under section 4 of Schedule A to the EAPWDR. Section 4 of Schedule A to the EAPWDR does require a recipient to demonstrate actual shelter costs to be eligible for a shelter allowance, which is the lesser of the table amount for the Appellant's family size (\$375.00, in the Appellant's case) and the Appellant's actual shelter costs. As the Appellant did not demonstrate any

actual shelter costs between June and October, the Appellant was not actually eligible for a shelter allowance in those five months, despite the Ministry worker's notes that indicated the opposite. For this reason, the panel agrees with the Appellant that it was a Ministry error that resulted in an overpayment of assistance to the Appellant in this case.

Section 18 of the EAA requires the repayment of disability assistance where a family unit receives such assistance when it was not eligible to receive it. Section 18 of the EAA does not limit a recipient's liability for repaying overpayments to any specific time periods. Section 18 of the EAA also does not require the Ministry to discover the overpayments within a specified time period in order for a recipient to be liable for repaying them. Finally, section 18 of the EAA does not limit a recipient's liability to repay overpayments circumstances where an overpayment was caused by the actions of the Appellant. In other words, the legislation makes the Appellant equally liable for an overpayment that arose because of a mistake made by the Ministry itself, which is what clearly appears to have occurred in this case.

Conclusion

Given that section 18 of the EAA applies to all overpayments, no matter the reason for them or when they are discovered, the panel finds that the Ministry was reasonable in its determination that the Appellant is liable to repay the \$1,875.00 shelter allowance received by the Appellant for the period from June, 2017 to October, 2017. The Appellant is not successful in this appeal.

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PART G – ORDER

THE PANEL DECISION IS: (Check one)

UNANIMOUS

BY MAJORITY

THE PANEL

CONFIRMS THE MINISTRY DECISION

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? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Adam Shee

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/04/08

PRINT NAME

Nancy Eidsvik

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/08

PRINT NAME

Julie Iuvancigh

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/08