

***Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) Reconsideration Decision (the decision) dated 31 March 2022 where the ministry denied a supplement to pay for storage fees. The ministry determined the request did not meet the legislated criteria set out in section 57 of the Employment Assistance Regulation (EAR) and found the appellant was not eligible for the requested supplement to pay for storage fees. Further, the ministry found that both Section 5(2)(a) of Schedule A, and Section 9 of Schedule A of the Employment and Assistance Regulation did not apply to the appellant's circumstance.

Part D – Relevant Legislation

Employment and Assistance Act (EAA), section 4
Employment and Assistance Regulation (EAR), section 57, Schedule A sections 2, 4, 5, 6 and 9.
Administrative Tribunals Act, sections 44 and 46.3.

Part E – Summary of Facts

The evidence before the minister at reconsideration included the information below:

- The appellant is a sole recipient of income assistance, whose file was opened August 26, 2021.
- At that time the appellant had been living on the streets and was staying at a shelter and therefore had no shelter costs.
- The appellant had not resided at a fixed address or provided any information to indicate rent was required since the file opened.
- On November 2, 2021, the ministry noted a request for assistance to pay storage fees. The appellant indicated being advised that the ministry could help with paying for storing belongings in a locker.
- With the request were payment receipts from a Moving & Storage company for storage rental for the period of July 2, 2021, to July 31, 2021, through to November 1, 2021, to November 30, 2021, in the amount of \$109 per month.
- On March 1, 2022, the appellant submitted a Request for Reconsideration and on March 29, 2022, the appellant submitted the following:
 - o *The Employment and Assistance Regulation sets out a monthly shelter allowance of \$375 at section 4 of Schedule A which provides for shelter costs for a place of residence. Section 5(2)(a) of Schedule A provides rent for the family unit's place of residence. "Place of residence" is not further defined.*
 - o *It is widely accepted that a place of residence includes not just a bed, toilet and stove, but a closet or otherwise enough floor space to accommodate household items including those infrequently used such as grooming implements, changes of clothing for different seasons, documents, books, tools, etc.*
 - o *I currently sleep on a mat on the floor of a dorm at a shelter. As evident from the shelter's policy statements or guidelines attached, a "Maximum of 2 bags per person allowed in shelter." At paragraph 13, "we suggest that you store your valuables in a secure area offsite." Section 9(a) of Schedule A of the Regulation provides that "the actual cost" of the shelter can be provided as assistance.*
 - o *Consequently, in the absence of adequate storage space for the essentials of living, I have the storage unit that I access on an almost daily basis as my closet for the essentials which do not fit into the two bags at the shelter.*
 - o *I request that the monthly expense of my storage unit be recognized as a component of the actual cost of my shelter needs at the present time under either s.5(2)(a) of Schedule A or s.9(a) of Schedule A.*
- A single page document bearing the heading of the shelter, stating in para 11 that lockers are provided for shelter guests although access is limited, that a maximum of two bags per person are allowed in the shelter and, at para 13, the suggestion that valuables be stored offsite or in the shelter locked area. It is not clear if this locked area is separate from the lockers mentioned above.

Additional information

The appellant submitted further information with the notice of appeal and the hearing was held as a written hearing.

Written submissions**Appellant**

The appellant submitted a letter that stated the Ministry arbitrarily and unfairly seeks to exclude the appellant from society and unconstitutionally distinguishes people in housing from those who do not have storage space for possessions without fear of theft, vandalism or inadvertent misplacement or damage if accessed by other dorm residents under the influence of drugs. The Ministry's decision disentitles people in shelters from the right to participate in society, or alternatively relies on the provincial EA Regulation which arbitrarily creates such a distinction contrary to the equality rights enshrined in section 15 of the Canadian Charter of Rights and Freedoms.

The appellant also states that participation in society, or the opportunity to participate, may in some cases be restricted by one's possessions, thus creating a need for people to shelter with their possessions, and where that is not possible, to shelter their possessions separately. The appellant provided a four links to newspaper articles. These sites discuss the storing of possessions by those who are/were without a home and may be staying in a shelter. The sites are:

<http://www.sharewheel.org/share-lockers>

<https://www.capitolhillseattle.com/2014/03/seattle-planning-homeless-lockers/>

<https://www.dailycal.org/2018/10/17/city-of-berkeley-launches-program-providing-storage-lockers-forhomeless-individuals/>

<https://www.kxan.com/news/local/austin/austin-homeless-now-have-a-new-place-to-store-theirpossessions/>

The appellant stated that the emergency shelter does not provide sufficient and sufficiently secure storage. It is widely recognized that there is an inadequate amount of low-cost housing in the lower mainland of British Columbia.

The appellant argued the Ministry states that actual shelter costs that may be considered under EA Regulation 5(2)(a) of Schedule A is rent for a family unit's place of residence.

The appellant states: *The Ministry defines residence as "a place where one lives, their home, house, or apartment, and a place of residence is their address, accommodation, or dwelling place". The appellant also states that in the Ministry's judgment, I "do not live at (address provided)", the place where I rent the storage unit that I call my closet.*

The appellant stated that shelter costs are paid for those in low-cost housing, which would be large enough to accommodate possessions. However, since the appellant does not have access to low-cost housing, which are in low supply, the Ministry has determined the appellant

is not entitled to any shelter costs to store possessions despite the fact that the cost would be less than low-cost housing.

The appellant requested that the closet be recognized as part of the accommodation, as a representative from the Ministry had suggested prior to submitting the invoices for renting the closet. The appellant does not expect the Ministry to cover storage fees prior to the application for assistance; the invoice preceding the application was submitted to show that the possessions are already being stored since being evicted.

Ministry

The ministry advised that its submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision.

Admissibility of new information

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record if the panel considers such evidence to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In this case the appellant has submitted a letter as testimony for a written hearing.

The ministry expressed no concerns with the submission of the additional material provided by the appellant.

The panel finds that this information is relevant because it relates directly to the appellant's original testimony discussed in the reconsideration decision and to the request for funding support.

The panel admits the new information under section 22(4) of the Employment and Assistance Act ("EAA") as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision that the request did not meet the legislated criteria set out in section 57 of the Employment Assistance Regulation (EAR) and its finding that the appellant was not eligible for the requested supplement to pay for storage fees. Further, was the ministry reasonable in its determination that both Section 5(2)(a) of Schedule A regarding rent as a shelter cost, and Section 9 of Schedule A of the EAR regarding receiving accommodation and care in an emergency shelter or transition house did not apply to the appellant's circumstance?

The relevant legislation is provided in Appendix A.

Appellant Position

The appellant argued that the Ministry arbitrarily and unfairly excludes people in shelters from receiving shelter costs when compared to those in housing. Further, the Ministry's exclusion is unconstitutional as it breaches the appellant's equality rights enshrined in section 15 of the Canadian Charter of Rights and Freedoms. Finally, the Ministry's decision disentitles people in shelters from a right to participate in society.

The appellant also argues that participation in society, or the opportunity to participate, may in some cases be restricted by one's possessions, thus creating a need for people to shelter with their possessions, and where that is not possible, to shelter their possessions separately. That people have a need to security of their possessions is widely recognized and the appellant submits references to internet sites showing jurisdictions in the United States that have originated programs to provide storage lockers to homeless persons.

The appellant argues that the closet must be recognized as part of the accommodation, as a representative from the Ministry had suggested prior to submitting the invoices for renting the closet. The appellant, both in submission at reconsideration and at appeal puts forward sections 5 and 9 of schedule A of the EAR as appropriate justification of this entitlement.

Ministry Position

The ministry states the appellant's personal effects are stored at an address where the appellant is required to pay rent for storage, and that the actual shelter costs that may be considered under section 5 of the EAR for rent is for a family unit's place of residence. The ministry then provides a statement that a residence is a place where one lives, their home, house, or apartment, and a place of residence is their address, accommodation, or dwelling place.

The ministry is satisfied the appellant does not live at the storage address; therefore, the ministry finds this section of the EAR does not apply to the appellant's circumstance.

Further, EAR Section 9 of Schedule A pertains to costs for accommodation approved by the ministry for certain emergency shelters or transition houses. These are approved by the ministry through special agreements with specific shelters and transition houses. The shelter where the appellant is staying is not one of the shelters in which the ministry has an approved agreement.

Therefore, EA Regulation Section 9 of Schedule A does not apply to the appellant's circumstance.

The ministry argues that to be eligible for a supplement to pay for storage fees the request must meet the criteria set out in Section 57 of the EA Regulation.

The ministry indicates that the reason the appellant is storing personal effects is because the appellant has been unable to secure accommodations. Therefore, the ministry reviewed the requirements of Section 57 of the EA Regulation and found that the appellant did not meet these requirements. Also, the appellant did not receive the ministry's prior approval before incurring the storage fee costs and the ministry is not satisfied there were exceptional circumstances that existed that prevented the appellant from receiving the ministry's prior approval. The receipt for storage fees the appellant provided indicates shelter costs were paid in July 2021 which was before the appellant applied for income assistance in August 2021.

Further, the ministry argues that the appellant receives \$560 support each month. The ministry notes meals are provided at the shelter. Therefore, the ministry is not satisfied the appellant does not have the resources to pay the storage fees of \$109 per month.

Panel Decision

The panel will address each of the appellant claims and ministry decisions.

Exclusion from Society

An argument is advanced by the appellant that the ministry's actions or interpretation of the EAR are contrary to the equality rights enshrined in section 15 of the Canadian Charter of Rights and Freedoms.

The panel notes the Charter of Rights and Freedoms is entrenched in the Canadian constitution and as such finds that, under the Administrative Tribunals Act section 44 (1), the tribunal does not have jurisdiction over constitutional questions, and under section 46.3 (1) the tribunal does not have jurisdiction to apply the Human Rights Code. The panel makes no comment on this argument.

Storage as part of Accommodation

EA Regulation, schedule A, section 4 provides that the monthly shelter allowance for the appellant is the smaller of the actual shelter costs, and the maximum set out in the table for the appellant at \$375.

Further, section 5 of schedule A sets out how actual shelter costs are calculated and includes a listed set of items:

- rent for the family unit's place of residence;
- mortgage payments on the family unit's place of residence;
- a house insurance premium for the family unit's place of residence;
- property taxes for the family unit's place of residence; and
- utility costs;

In the circumstances of the appellant, it is only the rent for a place of residence that is pertinent.

The appellant argued that a residence is not defined in legislation, and appellant seeks to have the shelter accepted as the place of residence, making a sound argument that since eviction the shelter has become such a place. However, the appellant is only afforded the needs of sleep, feeding, and grooming at the shelter and storage of personal possessions must be accommodated elsewhere

Although the ministry provided a definition of a place of residence, it did not establish where this definition came from in either legislation or policy, and the panel notes no definition provided in legislation. The panel notes the ministry did not argue that the shelter was not a place of residence but rather that the address of the storage locker was not the appellant's residence.

The panel accepts the definition provided by the ministry as a reasonable interpretation of the legislation of a place of residence, and finds that that includes the appellant's accommodation, or dwelling place.

The panel finds that in the circumstances of the appellant the shelter provides the needs of a place of residence, and the information provided by the shelter indicates continuance of availability.

The panel viewed the information provided by the internet links and although not submitted as definitive statements the panel considered the information as referentially incorporated into the written submission. The information contained several newspaper articles on lockers for homeless programs made as wooden boxes of approximately 9 cubic feet, or small lockers for rent, freestanding outside lockers or storage areas, and in other areas lockers of up to 22 cubic feet, perhaps being housed in commercial areas.

The panel notes the appellant has not provided a breakdown of stored items, nor size of rented storage but has provided a monthly cost for the storage unit of \$109, which is consistently referred to as a closet, entered on an almost daily basis and holding such items as clothes, books and grooming items. The panel also notes the numbered policies of the shelter that

clearly state that in addition to the sleeping area, meals and snacks, grooming and relaxation areas there are individual storage lockers and potentially a locked area for valuables available to the appellant. The panel finds all these services are available to the appellant at the shelter premises at zero cost.

The panel finds that when the criteria in sub-section 4 of EAR schedule A, section 5 is applied in the circumstances of the appellant the monthly shelter allowance available to the appellant would be zero.

Accommodation and Care in Emergency Shelter

Section 9 of schedule A of the EAR provides for a family unit receiving accommodation and care in an emergency shelter or transition house. Under this section the amount of income assistance defined under section 28 of the EAR is the actual cost, if any, to the appellant of the accommodation and care at the rate approved by the minister for the type of emergency shelter or transition house, plus the support allowance calculated under section 2 of schedule A.

The ministry states that the shelter where the appellant is staying is not one of the shelters in which the ministry has an approved agreement, though the ministry's pre-approved list is not binding on the panel as it is not included in the legislation.

The panel has found that the actual cost to the appellant of the accommodation services, including storage at the shelter premises to be zero. As such the panel finds the amount of income assistance available to the appellant is limited to the support allowance currently being received of \$560.

Supplements for moving, transportation and living costs

Legislation contained in section 57 of the EAR allows that the minister may provide a supplement to or for a family unit that is eligible for income assistance to assist with moving anywhere in BC because the appellant is being compelled to vacate for any reason. These moving costs may include storing the personal effects while the family unit is moving if the minister is satisfied that storing the personal effects is necessary to preserve the personal effects.

Section 57 (3) states that a family unit is eligible for a supplement under this section only if there are no resources available to the family unit to cover the costs, and that normally a recipient receives the minister's approval before incurring those costs. Sub-section (3.1) provides that a supplement may be provided even if the family unit did not receive the minister's approval before incurring the costs if the minister is satisfied that exceptional circumstances exist.

The appellant has testified to being evicted and waiting for assignment of low-cost housing. The ministry has not commented on this evidence. The ministry has however stated that it concludes the appellant is storing possessions as the appellant cannot obtain accommodations and in a muddled explanation seems to indicate the reason for storing is not for any of the reasons set out in legislation. Based on the evidence the panel finds the appellant was compelled to vacate

and is entitled to consideration under section 57(2)(c), and therefore the panel disagrees with the ministry finding that the storage of possession was not for legislated reasons.

The Ministry stated that the appellant did not receive the Minister's approval before securing a storage locker and that the applicant appeared to have resources to pay for the storage locker. The panel notes that the appellant did not offer evidence on these matters. The panel finds that the legislated requirements were not met in that the appellant did not demonstrate a lack of resources to pay for the storage and did not seek or obtain the approval of the ministry either before or after storing his possessions. Therefore, the panel finds the ministry was reasonable when it decided that the legislated criteria set out in section 57 of the EA Regulation have not been met, and that the appellant is not eligible for the requested supplement to pay for storage fees.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision where the ministry denied a supplement to pay for storage fees to be a reasonable application of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is confirmed, and the appellant is not successful on appeal.

Appendix A

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,

Supplements for moving, transportation and living costs

57 (1) In this section:

"living cost" means the cost of accommodation and meals;

"moving cost" means the cost of

- (a) moving a family unit and the family unit's personal effects from one place to another, and
- (b) storing the family unit's personal effects while the family unit is moving if the minister is satisfied that storing the personal effects is necessary to preserve the personal effects;

"transportation cost" means the cost of travelling from one place to another.

(2) Subject to subsections (3) and (4), the minister may provide a supplement to or for a family unit that is eligible for income assistance or hardship assistance to assist with one or more of the following:

- (a) moving costs required to move anywhere in Canada, if a recipient in the family unit is not working but has arranged confirmed employment that would significantly promote the financial independence of the family unit and the recipient is required to move to begin that employment;
- (b) moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances;
- (c) moving costs required to move anywhere in British Columbia because the family unit is being compelled to vacate the family unit's rented residential accommodation for any reason, including the following:
 - (i) the accommodation is being sold;
 - (ii) the accommodation is being demolished;
 - (iii) the accommodation has been condemned;
- (d) moving costs required to move anywhere in British Columbia if the family unit's shelter costs would be significantly reduced as a result of the move;
- (e) moving costs required to move anywhere in British Columbia to avoid an imminent threat to the physical safety of any person in the family unit;

(3) A family unit is eligible for a supplement under this section only if

- (a) there are no resources available to the family unit to cover the costs for which the supplement may be provided, and

(b)subject to subsection (3.1), a recipient in the family unit receives the minister's approval before incurring those costs.

(3.1)A supplement may be provided even if the family unit did not receive the minister's approval before incurring the costs if the minister is satisfied that exceptional circumstances exist.

(4)A supplement may be provided under this section only to assist with

(a)in the case of a supplement under subsection (2) (a) to (e), the least expensive appropriate moving costs, and

Schedule 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.

Monthly support allowance

2 (0.1)For the purposes of this section:

"deemed dependent children", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"warrant" has the meaning of a warrant in section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(1)A monthly support allowance for the purpose of section 1 (a) is the sum of

(a)the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
(b)the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

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Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of Support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$560.00

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 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

How actual shelter costs are calculated

5 (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;

People in emergency shelters and transition houses

9 For a family unit receiving accommodation and care in an emergency shelter or transition house, the amount referred to in section 28 (a) [*amount of income assistance*] of this regulation is

(a)the actual cost, if any, to the family unit of the accommodation and care at the rate approved by the minister for the type of emergency shelter or transition house, plus

(b)the support allowance calculated under sections 2 and 3 of this Schedule for a family unit matching the family unit of the applicant or recipient.

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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)

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

Part H – Signatures

Print Name
Don Stedeford

Signature of Chair

Date (Year/Month/Day)
2022/05/31

Print Name
Wesley Nelson

Signature of Member

Date (Year/Month/Day)
2022/05/31

Print Name
Jan Broocke

Signature of Member

Date (Year/Month/Day)
2022/05/31