

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 9, 2022 which held that the appellant was not entitled to shelter allowance for the period of July 2021 to May 2022.

The ministry determined that the appellant advised the ministry that they were moving from their previous accommodation in May 2021 and the ministry requested the appellant provide it with updated shelter information to indicate where they would be residing in accordance with section 10 of the *Employment and Assistance for Persons With Disabilities Act*. The ministry determined that the appellant failed to provide updated shelter information to indicate where they would be residing until June 26, 2022 and consequently the appellant was not eligible for a shelter allowance for the period of July 2021 to May 2022.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons With Disabilities Act (EAPWDA)* sections 10(2) and 10(4)

*Employment and Assistance for Persons With Disabilities Regulation (EAPWDR)*, section 28(1); Schedule A section 4

**Part E – Summary of Facts**

The information before the ministry at reconsideration included that:

1. The appellant was a person with disabilities in receipt of disability assistance;
2. The appellant was diagnosed with Autism and had debilitating anxiety and it was a struggle for them to "navigate all these government systems";
3. The appellant was renting a premises in a building and had been receiving a shelter allowance since 2018;
4. The appellant provided a Request for Crisis Supplement – Shelter application to the ministry on May 12, 2021. That request was provided through the My Self Serve Portal. During that application the appellant indicated that they needed to move for fear of imminent safety and that an "arbitration dispute filed between landlord and squatters will not be heard until August";
5. On May 12, 2021 the appellant had already paid rent for that month and the landlord had post-dates cheques for subsequent months;
6. On May 14, 2021 the appellant wrote a letter to their landlord and the property manager stating that their right to quiet enjoyment of the rented premises was being violated and that the landlord had "a legal obligation to make reasonable efforts to correct the situation";
7. The appellant moved to a Hotel with an arrival date of May 16, 2021 and a departure date of May 22, 2021;
8. On May 19, 2021 the appellant told the ministry that they were staying at the Hotel;
9. On May 26, 2021 the ministry's file notes that a ministry representative advised the appellant they would need to "submit new shelter documents";
10. On May 27, 2021 the ministry provided the appellant with a crisis supplement in the amount of \$449.29 and a crisis supplement for food in the amount of \$40;
11. The appellant did not request any assistance from the ministry relating to moving furniture and effects or any other expenses connected to moving;
12. The appellant returned to the same premises after they "temporarily went to a hotel for a week while working on getting the situation resolved with [their] landlord";
13. In July 2021 the appellant's disability assistance was reduced by \$375 because of the elimination of the shelter allowance;
14. On September 24, 2021 the Residential Tenancy Branch made an order requiring the appellant's landlord to pay \$3,643.89 to the appellant;
15. In October 2021 the appellant entered into a new month to month tenancy for a different unit in the same building as their prior premises; and
16. On June 27, 2022 the appellant realized the ministry had eliminated their shelter allowance in July 2021 and requested the ministry provide that shelter allowance.

The hearing was conducted by telephone.

The appellant provided an additional written submission including copies of rent payments for August, September, October, and November 2021 indicating it was for the premises they were renting after they temporarily went to a hotel for a week. The panel determined it was appropriate to admit this information under section 22(4) of the *Employment and Assistance Act*

because the panel considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

During the hearing the appellant provided further information including that:

1. the appellant did not indicate to the ministry that they were permanently relocating to a hotel or another premises;
2. the appellant had no intention of permanently relocating in May 2021 because they believed that if they relocated the Residential Tenancy Branch would not hear their claim;
3. the appellant did not provide any change of address information to the ministry because they remained at the same premises;
4. the appellant never received a written request to provide the ministry with a new address;
5. the appellant “had no idea” that the ministry thought they did not reside at the premises; and
6. the appellant did not realize the ministry had eliminated their shelter allowance because Covid-19 benefits and other programs made it difficult for them to understand the benefits they were receiving.

The panel determined it was appropriate to admit this information under section 22(4) of the *Employment and Assistance Act* because the panel considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

During the hearing the ministry provided further information including:

1. the appellant did not need to provide a monthly report about shelter costs as a person with disabilities;
2. the ministry did not send the appellant a letter or otherwise indicate in writing that the ministry required information from the appellant about their shelter;
3. the ministry did not send the appellant a letter or otherwise notify the appellant that the ministry had eliminated their shelter allowance; and
4. the ministry does backdate payments of verified shelter amounts for periods that can be handled under monthly reporting requirements.

**Part F – Reasons for Panel Decision*****Introduction***

The issue at appeal is whether the reconsideration decision dated August 9, 2022 which denied the appellant shelter allowance from July 2021 to May 2022 was reasonably supported by the evidence or a reasonable application of the legislation in the appellant's circumstance.

***Summary of The Relevant Legislation***

The *Employment and Assistance for Persons With Disabilities Act* (EAPWDA), section 5 states that the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it. The EAPWDA defines disability assistance as "an amount for shelter and support".

Section 10(1) of the EAPWDA permits the minister to direct an applicant to supply the minister with information for determining or auditing eligibility for disability assistance. Section 10(2) of the EAPWDA permits the minister to direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

Section 10(4) of the EAPWDA states that if an applicant fails to comply with a direction to supply information the minister may declare the family unit ineligible for disability assistance for the prescribed period.

The *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), section 4 states the monthly shelter allowance for a family unit is the smaller of the family unit's actual shelter size or the maximum set out in a table. For a family unit of 1 person the maximum monthly shelter amount is \$375.00.

EAPWDR section 28 describes the "consequences of failing to provide information or verification when directed". Section 28(1) states that the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant complies with the direction.

***The Ministry's Position on Reconsideration***

At reconsideration the ministry relied on section 10(2) and 10(4) of the EAPWDA and summarized the legislation as "the ministry may direct a recipient to supply verification of information [they] supplied to the minister if it relates to the eligibility for disability assistance, and if the recipient fails to comply with this direction, the minister may declare the family unit ineligible for assistance or reduce the amount of assistance for a prescribed period. Section 28(1) of the EAPWD Regulation states the family unit is ineligible for assistance until the recipient complies with the direction to supply the information."

The core of the issue on appeal is whether the ministry directed the appellant to supply verification of information.

The ministry's position is that "on May 26, 2021 the ministry noted you were advised you would have to submit new shelter documents and [the appellant's] June shelter had already been issued to you."

At reconsideration the ministry provided broader context for the allegation that the appellant was "advised you would have to submit new shelter documents" and stated: "You [the appellant] advised the ministry you needed to move from your accommodation located at [redacted] because you felt unsafe due to activity in unit 2. At no time had you indicated you were going to return there. You further provided confirmation you were staying at [a hotel] from May 16 to May 19, 2021 and were issued a crisis supplement for shelter."

The ministry stated that on:

1. May 12, 2021 the appellant submitted a Request for Crisis Supplement – Shelter via the ministry's My Self Serve,
2. May 19, 2021 the appellant provided receipts for staying at a hotel and the ministry alleges they "advised [the appellant] could no longer live at [their] residence",
3. May 26, 2021 the ministry "advised" the appellant to "submit new shelter documents" and that the ministry removed the appellant's entitlement to a shelter allowance until verification of where the appellant was residing was submitted, and
4. May 27, 2021 the ministry provided the appellant with a crisis supplement for shelter in the amount of \$449.29 and a crisis supplement for food in the amount of \$40.

The ministry did not note any further interaction with the appellant until more than a year later on June 21, 2022 when the appellant submitted a tenancy agreement for a new address. On June 27, 2022 the appellant determined the ministry had them residing "at no fixed address" and the appellant "advised [the ministry they] had not vacated [their] previous residence after staying at the hotel in May 2021."

### ***The Appellant's Position on Reconsideration***

The appellant's position on reconsideration was that they never communicated to the Ministry that they were moving from their accommodation on a permanent basis in May 2021. The appellant said that for their safety they "temporarily went to a hotel for a week...while working on getting the situation resolved with my landlord. I returned back to my rental apartment [redacted] where I continued to reside until October 2021". The appellant also stated "there was obviously some mis-understanding of my situation and whomever I was communicating with at the Ministry mis-interpreted what I said which was incorrect."

### ***The Appellant's Position as the Hearing***

The appellant's position at the hearing is that on May 26, 2021 they participated in a phone call with the ministry about their request for a crisis supplement for shelter so that they could temporarily live at a hotel. The appellant noted that they requested a crisis supplement on May 12 and actually arrived at the hotel on May 16. The appellant stated that they stayed at the hotel for a week or slightly longer. The appellant said that they never intended to communicate to the ministry that they were moving to a hotel on a permanent basis.

### ***The Majority Panel Decision***

The jurisdiction of the panel is limited by the *Employment and Assistance Act* section 24.

Section 24(1) obligates the panel, after holding the hearing, to determine whether the decision being appealed is reasonably supported by the evidence.

The panel notes that there does not appear to be any dispute that the appellant continued to reside at their accommodation and paid rent between July 2021 and May 2022.

The dispute is whether the ministry directed the appellant to supply verification of information (their place of residence) related to the appellant's eligibility of the family unit for disability assistance.

In this situation, the panel must determine whether the evidence supports that the ministry directed the applicant to supply verification of information received by the minister related to the eligibility of the family unit for disability assistance.

The evidence that the ministry directed the appellant to supply verification of information is found only in the background provided in the reconsideration decision. In that section the ministry makes a reference to May 26, 2021 having "advised" the appellant that they would have "to submit new shelter documents." The ministry provided no letters or any other collateral evidence of the advising it alleges to have done on May 26, 2021.

The appellant refutes this claim by the ministry. The appellant says if the ministry had directed them to provide a document supporting their entitlement to a shelter allowance it would have provided that document. The panel notes that after this dispute began the appellant provided the ministry with an order from the Residential Tenancy Branch related to their accommodation dated September 24, 2021, an order from the landlord related to rent in November 2021, December 2021, January 2022, February 2022, March 2022 and April 2022, and (on their own initiative) provided the ministry with a Residential Tenancy Agreement after they moved.

The panel has determined that the evidence does not reasonably support the ministry decision that on May 26, 2021 it advised the appellant that they would have to submit new shelter documents. The panel has found, based on all the evidence after holding the hearing, that if the ministry had advised the appellant of the requirement to submit new shelter documents the appellant would have submitted those documents.

Although not strictly required under section 24(1)(a) of the *Employment and Assistance Act*, the panel also notes that section 10(2) of the EAPWDA permits the ministry to "direct an applicant" and not to "advise" them. The term "direct" is not defined in the legislation. The Oxford Languages defines direct as "give (someone) an official order or authoritative instruction" and Merriam-Webster defines it as "to request or enjoin with authority."

Although the ministry on reconsideration made reference to section 10(2) of the EAPWDA it did not state that it directed the appellant. The ministry used the term “advised” in its background summary on reconsideration and “requested” under the decision heading on reconsideration.

Consequently, the panel also has determined that the evidence after holding the hearing does not reasonably support that the ministry directed the appellant to supply verification of information related to the eligibility of the family unit for disability assistance based on the plain and ordinary meaning of directed. If the ministry did advise or request that the appellant provide information, this evidence is not sufficient to support the ministry’s decision on reconsideration that it directed the appellant.

To be clear: the panel rescinds the ministry decision because the panel has determined that the evidence after holding the hearing does not reasonably support the ministry’s determination that it advised or directed the appellant on May 26, 2021 that the appellant needed to submit new shelter documents.

### ***The Minority Panel Decision***

One panel member agreed with other members, but for different reasons.

Section 10 of the EAPWDA sets out that for the purposes of determining or auditing eligibility for disability assistance, which includes a shelter allowance portion, the ministry may direct a person to supply them with information within the time and in the manner specified by the ministry, or supply verification of any information he or she supplied to the minister. If a client fails to comply with a direction under this section, the minister may declare them ineligible for disability assistance for a prescribed period.

A phone conversation might reasonably be seen as a direction from the ministry. In this circumstance, the ministry informed the appellant in May 2021 that the shelter allowance portion of disability assistance recipient would be removed from July 2021 until the ministry received verification of their address and shelter costs. The ministry didn’t pay the shelter allowance until June 2022 when they received a new tenancy agreement. The Ministry argues that the appellant didn’t comply with the direction to verify information until June 2022 and isn’t eligible for shelter allowance for the period before that. The appellant argues they provided the information after they became aware they had to, and they’re entitled to backdated payment of shelter costs.

It’s reasonable for the ministry to withhold shelter allowance in the absence of verification of shelter costs. The issue, as this panel member sees it, is whether eligibility for the shelter portion of assistance may be backdated if a recipient provides verification for past months. This member notes the ministry indicated that they backdate payments of verified shelter amounts for time periods that can be handled under monthly reporting requirements. Interpreting the legislation in that way, such that eligibility may be backdated upon verification of information, is in keeping with remedial nature of the legislation. It’s also the interpretation that this member makes.

The appeal panel considers past evidence and new evidence admitted on appeal. Upon reconsideration and in this appeal, the appellant provided documented verification of their shelter situation for much of the period in question. First, the appellant provided a new rental agreement effective October 2021 for a different unit at their original building address. Second, the appellant provided copies of cheques for rent payments to the landlord for August and September 2021 (as well as October and November 2021) for the same building address (no units were indicated). There is no documented verification for a rental payment in July 2021, which the appellant has stated they paid.

The appellant provided an agreement between the appellant and their landlord that indicated rent was to be reduced from November 2021 to April 2022. This was in lieu of payment of a tenancy dispute settlement for the appellant's previous unit at the same building address. It's not in the panel's purview to determine how that settlement amount is handled by the ministry. However, the agreement, as well as payment of August and September 2021 rent at the same building, strongly support the appellant's claim that they did not leave their past rental suite until they moved into another unit at the same address in October.

This member finds that the appellant provided verification of shelter location and costs for most if not all the period in question. Eligibility may be backdated upon verification. So, declaring the appellant ineligible for the shelter portion of disability assistance because they didn't verify their shelter location or costs for the entire period of July 2021 to May 2022 is not reasonably supported by the evidence, and it's not a reasonable application of the legislation in the circumstances of the appellant. This member would rescind the reconsideration decision on that basis.

### **Extracts of the Relevant Legislation**

#### ***Employment and Assistance for Persons With Disabilities Act***

##### **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.

##### **Information and verification**

10 (1) For the purposes of

(a) determining whether a person wanting to apply for disability assistance or hardship assistance is eligible to apply for it,

(b) determining or auditing eligibility for disability assistance, hardship assistance or a supplement,



- (c) assessing employability and skills for the purposes of an employment plan, or
- (d) assessing compliance with the conditions of an employment plan,

the minister may do one or more of the following:

- (e) direct a person referred to in paragraph (a), an applicant or a recipient to supply the minister with information within the time and in the manner specified by the minister;
- (f) seek verification of any information supplied to the minister by a person referred to in paragraph (a), an applicant or a recipient;
- (g) direct a person referred to in paragraph (a), an applicant or a recipient to supply verification of any information he or she supplied to the minister.

(2) The minister may direct an applicant or a recipient to supply verification of information received by the minister if that information relates to the eligibility of the family unit for disability assistance, hardship assistance or a supplement.

(3) Subsection (1) (e) to (g) applies with respect to a dependent youth for a purpose referred to in subsection (1) (c) or (d).

(4) If an applicant or a recipient fails to comply with a direction under this section, the minister may

- (a) reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period, or
- (b) declare the family unit ineligible for disability assistance, hardship assistance or a supplement for the prescribed period.

(4.1) The Lieutenant Governor in Council may prescribe circumstances in which subsection (4) (a) or (b) does not apply.

(5) If a dependent youth fails to comply with a direction under this section, the minister may reduce the amount of disability assistance or hardship assistance provided to or for the family unit by the prescribed amount for the prescribed period.

## ***Employment and Assistance for Persons With Disabilities Regulation***

### **Consequences of failing to provide information or verification when directed**

**28** (0.1) For the purposes of section 10 (4) (a) [*information and verification*] of the Act,

(a)the amount by which the minister may reduce the disability assistance or hardship assistance of the recipient's family unit is \$25 for each calendar month, and

(b)the period for which the minister may reduce the disability assistance or hardship assistance of the recipient's family unit lasts until the recipient complies with the direction.

(1)For the purposes of section 10 (4) (b) [*information and verification*] of the Act, the period for which the minister may declare the family unit ineligible for assistance lasts until the applicant or recipient complies with the direction.

(1.1)Section 10 (4) (b) of the Act does not apply if the minister is satisfied that the family unit is homeless or at imminent risk of becoming homeless.

(2)For the purposes of section 10 (5) [*information and verification*] of the Act,

(a)the amount by which the minister may reduce the disability assistance or hardship assistance of the dependent youth's family unit is \$25 for each calendar month, and

(b)the period for which the minister may reduce the disability assistance or hardship assistance of the dependent youth's family unit lasts until the dependent youth complies with the direction.

## **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 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 other than a family unit described in section 14.2 (1) of the Act is the greater of

(a)the minimum set out in the following table for the family unit, and

(b)the lesser of

(i)the family unit's actual shelter costs, and

(ii)the maximum set out in the following table for the family unit.

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Item	Column 1 Family Unit Size	Column 2 Minimum	Column 3 Maximum
1	1 person	\$75	\$375
2	2 persons	\$150	\$570
3	3 persons	\$200	\$665
4	4 persons	\$225	\$715
5	5 persons	\$250	\$765
6	6 persons	\$275	\$815
7	7 persons	\$300	\$865
8	8 persons	\$325	\$915
9	9 persons	\$350	\$965
10	10 persons	\$375	\$1 015

**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  
Trevor Morley

Signature of Chair

Date (Year/Month/Day)  
2022/Nov/7

Print Name  
Kenneth Smith

Signature of Member

Date (Year/Month/Day)  
2022/Nov/8

Print Name  
Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)  
2022/Nov/23