

Part C – Decision Under Appeal

The Appellant, a sole recipient of disability assistance, is appealing a decision of the Ministry of Social Development and Poverty Reduction (the “ministry”) dated April 17, 2023 (the “Reconsideration Decision”) that the Appellant was not eligible for a shelter allowance of \$375. The ministry was not satisfied that the Appellant sold her property to her son because she did not provide any supporting evidence to support the sale.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities (the “EAPWD Regulation”):

Schedule A sections 1, 4 and 5

(See attached Appendix for copies of the above)

Part E – Summary of Facts

The Appellant had previously been denied a different application for assistance due to her ownership of real estate that exceeded the \$100,000 asset limit. The Appellant then sought to sell that real estate (the “Property”).

The Appellant says the Property did not have an occupancy permit and that the structures on the Property were in “bad shape”.

The key dates and information related to the matter are as follows:

On or about February 14, 2023:

- The Appellant advised the ministry of a sale of the Property to her son for \$150,000.
- The Appellant provided an unsigned property transfer document.
- The ministry requested the Appellant provide bank statements for the past three months and verification of the sale of the Property.

On February 17, 2023, the ministry found the Appellant to be eligible for a support allowance and advised her to provide a shelter form when she had secured a place. This was determined after the ministry noted the following:

- The Appellant’s advocate advised that no funds were received from the sale of the Property.
- The Appellant provided “some bank statements” showing no receipt of funds from the sale of the Property.
- The Appellant provided an unsigned property transfer tax form.

On March 13, 2023, the Appellant submitted a Shelter Information form (“Shelter Form”) indicating the following:

- The Appellant had secured accommodations at the Property effective December 15, 2022.
- There were two people residing there with \$250 being the Appellant’s portion of rent.
- The Appellant was required to pay security and pet damage deposits.
- The Shelter Form was signed by the Appellant’s son as property manager/landlord.

On March 16, 2023, the ministry advised the Appellant that the request for a shelter allowance was denied because a search showed her as the Property owner. The ministry advised the Appellant that until she provided documentation showing the land title transfer or documentation showing the property had been sold, she would only be provided the minimum shelter allowance.

On April 17, 2023, at the request of the Appellant, the ministry completed a reconsideration of that decision and decided the Appellant was “not eligible for a shelter allowance of \$375” stating as follows:

Legislation

As set out in Schedule A Section 4 of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation, the monthly shelter allowance for one person in a family unit is the minimum of \$75 and the lesser of the person's actual shelter costs to a maximum of \$375.

As set out in Schedule A Section 5 of the EAPWD Regulation, when calculating actual shelter costs of the family unit, the following may be included:

- Rent for the family unit's place of residence.
- Mortgage payments on the family unit's place of residence, if owned by a person in the family unit.
- Utility costs which include fuel for heating and cooking meals, water, hydro, garbage disposal, and rental of one basic single line telephone.

Decision

The ministry finds there has been a transfer of land title from you to your son ..., however the ministry is not satisfied you have sold your property to [him] because you have not provided any evidence to support you received \$150,000 for the sale of the ... [Property]. Further, you have not provided any evidence to support your mortgage has been paid out.

The ministry finds without further evidence to support where the funds from the sale of the property are or if you sold the property, and that your mortgage has been paid out, the ministry is not satisfied you are eligible for a shelter allowance for the rent at [the Property].

On April 26, 2023, the Appellant appealed that decision to this Tribunal by filing a Notice of Appeal.

Appellant Submissions

The Notice of Appeal states the following under the "Reasons for Appeal":

They don't know how to read a seller's agreement. They seem to think she was actually getting money. It says they're paying off her debt and gifting the equity. They need to bring someone in and prove they know how to interpret the document.

In oral submissions the Appellant described personal hardship and the lack of funds as well as past criminal victimization. She and her representative (her son) said the sale of the Property was unregistered due to problems with paperwork and being unable to get a discharge or transfer of the mortgage. The mortgagee (who was owed the debt) was described as retired and out of communication somewhere in Mexico, leaving them without an ability to complete the sale of the property and register the property to the Appellant's son.

They described having provided a copy of the Purchase and Sale Agreement to the ministry and then producing a new copy bearing the seller and buyer signatures because the first copy was signed in counterparts. They described that the Purchase and Sale Agreement contained the breakdown of how the nominal purchase price of \$150,000 was to be allocated against payment of debts on behalf of the seller, including debts owed to the purchaser, for lawyer fees and

property taxes, and to a lumber yard. The stated amounts varied in the descriptions as well as whether the mortgage was to be paid off or transferred, and whether a debt to BC Hydro would be paid or not. They both agreed that the net result was that the Appellant was to receive debt relief not funds.

Upon a query where those allocations might be found in the Purchase and Sale Agreement the Appellant and representative were unable to find them. They asserted that more than one version of the document existed, it being re-signed as mentioned above, but allegedly lost by the ministry several times. They were uncertain whether the document in the record was the most recent version although they speculated that they might have inadvertently re-signed the wrong counterpart version and submitted it in error, and that this version lacked the payment allocation provisions.

The Appellant asserted that the ministry was acting on incorrect information about the rent. She attributed this to the ministry thinking that she was in a former residence in a small mountain town and that her rent for the Property was more than \$250. When referred to the Shelter Form in the Appeal Record that described renting the Property for \$250 based upon splitting rent of \$500 with another person, the Appellant identified that the amounts were wrong, she was trying to list utility expenses, and was confused. She stated that the ministry had failed to help fill it out properly. When advised that the rent amounts of \$250 and \$500 were transposed when entered but that they were being read to correct for that transposition, the Appellant faulted the ministry for not calling to correct the error or if they had questions. The Appellant and her son agreed that the Shelter Form was signed by the Appellant's son, as landlord.

The Appellant and representative were unable to recount the dates and amounts of rent paid for the Property. They agreed that payment was inconsistent and that perhaps \$600 had been paid to date.

They reaffirmed that the Property remained without an occupancy permit. The Appellant described it as having an uninhabitable art studio on it which was rented to another person with whom she did not wish to reside. She stated that she resided in a shed on the property that was also not habitable but better than being homeless and living rough.

Ministry Submissions

At the hearing, the ministry stated that it relied upon the text of the reconsideration decision.

Admissibility of New Evidence

The Appellant, and her representative, made statements during the hearing about the amount and payment of rent on the Property, the terms of the sale of the Property, and the state of title, including reasons why transfer had not occurred yet. The panel admits those submissions 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 panel understands that the Appellant is stressed and distressed about housing and funding to live, as well as past injustices. The panel has compassion for the Appellant's need to feel safe given her past experiences. This decision is unable to directly address those things and the panel's authority is limited to determining whether the ministry's Reconsideration Decision was reasonably supported by the evidence, and a reasonable application of the applicable enactment in the Appellant's circumstances.

The granting of a shelter allowance is based upon calculation of certain factors. For a one-person family, as here, it goes from a \$75 minimum up to the lesser of the person's actual shelter costs to a maximum of \$375. The applicant must provide certain, and accurate, information for the ministry to calculate entitlements and amounts.

Here the Appellant applied for a shelter allowance to rent the Property that the Appellant claimed to have sold and then rented back. The ministry required evidence of these in order to make a decision.

The Appellant provided a Shelter Form that stated the rental amounts but advised during the hearing that the amounts stated were incorrect, and too low. This is different than the apparent entry of amounts into the wrong boxes – a transposition that the ministry did not hold against the Appellant. This new evidence discloses that it was unreasonable for the ministry to rely upon the amounts stated in the form whether transposed or not.

Concerning the sale of the Property, the evidence in the Appeal Record relates to the preparation of a sale and transfer but provided no evidence of the transfer or anything related to sale proceeds or the mortgage. As is evident from the submission of the Appellant, there were several versions of the Purchase and Sale Agreement. The one the Appellant provided to the ministry may not be the version that was intended but was possibly, as they state, an old version. They were uncertain on that point.

The documents submitted to the ministry disclose no transfer of title and the Appellant stated that the transfer of title has not occurred nor had the mortgage been discharged or transferred. The panel finds that the sale of the Property and transfer of title have not occurred. Accordingly, we find that to the extent that the ministry considered that the Property title had transferred, this was an error but not one that affects the panel's determination here because it does not benefit the Appellant's position. Even without considering that, the calculation could not be made given the lack of information about the mortgage and inaccuracy of the filed documents, the lack of transfer could make it no better or calculable.

In the circumstances it was reasonable for the ministry to not be satisfied that the Property was sold, and to not be able to calculate the shelter allowance. It lacked evidence of the sale, what proceeds were received, the state of the mortgage, and it lacked an accurate Shelter Form.

Conclusion

The panel finds that the ministry's Reconsideration Decision was:

1. reasonably supported by the evidence, and
2. a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel confirms the Reconsideration Decision in which the ministry determined that the Appellant was not eligible for a shelter allowance of \$375 commencing December 1, 2022.

Appendix – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation

Schedule A – Disability Assistance Rates (section 24 (a))

Maximum amount of disability assistance before deduction of net income

1. (1) Subject to this section and sections 3 and 6 to 8 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.

...

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.

Item	Column 1 Family Unit Size	Column 2 Minimum	Column 3 Maximum
1	1 person	\$75	\$375

...

(2.1) ...

(3) For the purposes of subsections (2) and (2.1), the minimum and maximum monthly shelter allowance amount for a family unit of more than 10 persons is to be calculated as follows:

- (a) the minimum is to be calculated by adding \$25 for each additional person;
- (b) the maximum is to be calculated by adding \$50 for each additional person.

(4) *Repealed.* [B.C. Reg. 62/2010]

(5) Despite subsection (2) (b) (i) or (2.1) (b) (i), if the actual shelter costs of a recipient increase as a result of the recipient remortgaging the recipient's place of residence, the amount of the mortgage payments is deemed, for the term of the new mortgage, to equal the amount before the remortgaging unless

- (a) the remortgaging was necessary because of the expiry of the mortgage term, and
- (b) the amount borrowed under the mortgage is not increased.

(6) *Repealed.* [B.C. Reg. 270/2019, App. 2]

APPEAL NUMBER 2023-0121

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

Kent Ashby

Signature of Chair

Date (Year/Month/Day)

2023/05/19

Print Name

Maryam Maiedi

Signature of Member

Date (Year/Month/Day)

2023/05/19

Print Name

Edward Wong

Signature of Member

Date (Year/Month/Day)

2023/05/19