

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated August 9, 2023 (the Decision), which approved the Appellant's request for backdated shelter allowance for the period from September 2022 to May 2023 inclusive, except for the month of November 2022.

The Appellant requested the total amount of \$2,390.96 and was granted \$2,090.96 in the Decision.

The Ministry determined that the Appellant was not entitled to an additional \$300.00 shelter allowance for the month November 2022 because the Appellant had already received the maximum shelter allowance for that month.

The Appellant has appealed the part of the Decision that denied him an additional \$300.00 as part of his November 2022 shelter allowance entitlement.

Part D – Relevant Legislation

Employment and Assistance Act (the *Act*) sections 1, 4, 17(1), 17(3), 19(1), 22(3), 24(1), 24(2), 24(6), and 24(7)

Employment and Assistance Regulation (the Regulation) sections 56.6(1), 56.6(2), 56.6(3), 56.6(4), and 81(1)(b), and Schedule A sections 4(2), 5(1), 5(2) and 5(3)

The legislation is in the Appendix at the end of this decision.

Part E – Summary of Facts

The Appellant is a sole recipient of income assistance.

According to the Decision, the Appellant initially received the following shelter allowances for each month between September 2022 and May 2023. After further review, the Ministry determined that the Appellant was entitled to the maximum shelter benefit of \$375.00 per month, and the initial monthly amounts were topped up based on a recalculation, as set out in the Decision and summarized below:

Calendar Month	Amount Initially Received	Total Amount of the Adjustment
September 2022	\$75.00	\$300.00
October 2022	\$75.00	\$300.00
November 2022	\$375.00	\$0.00
December 2022	\$359.04	\$15.60
January 2023	\$100.00	\$275.00
February 2023	\$75.00	\$300.00
March 2023	\$75.00	\$300.00
April 2023	\$75.00	\$300.00
May 2023	\$75.00	\$300.00
Total	\$1,209.04	\$2,090.96

The Appellant provided the Ministry with a large amount of information prior to the Decision.

The relevant evidence the Ministry had when it made the Decision included:

- A two-page letter from the Appellant to the Ministry, dated August 10, 2023 (the August 10 Letter), in which, referring to the \$2,390.96 amount, the Appellant says he is making a request "for a Reconsideration Supplement equal to the reduced shelter amount ... of \$300 less disbursements", and that he "was never advised of (the existence of) a Reconsideration Supplement until self-discovery of it on August 9, 2023". The August 10 Letter also says, "A signed form HR2737 Promise to Repay is attached", and that he wants "this matter adjourned generally while the (Appellant's) employment status is in pendency before the Federal Court of Appeal ...";

- Three-pages of a screen print from the BC Employment and Assistance Policy and Procedure Manual relating to the Ministry policy on issuing a reconsideration supplement; and,
- A one-page Ministry form titled "Promise To Repay Benefit While Awaiting Reconsideration/Appeal Decision", bearing form number HR2737 (the HR2737 Form). The HR2737 Form has been completed, indicating the Appellant "*acknowledge(s) receipt of the sum of \$2,390.96 provided to (the Appellant) by the Ministry*", and signed in agreement by the Appellant on August 10, 2023.

Additional Evidence After Reconsideration

In the Appellant's notice of appeal:

- The Appellant wrote "*By the authorities referenced in the attached covering letter, this concludes my submissions to the Ministry or the Tribunal or other venue in this matter pending a final determination of my employment status in Federal Court of Appeal ...*";
- The Appellant said he disagreed with the Decision because his vehicle qualified as shelter "*under (the BC Employment and Assistance Policy and Procedure Manual)*" for the period from September 2022 to May 2023 inclusive "*when the shelter portion was reduced from \$375 to \$75/m*"; and,
- The Appellant made reference to an attached letter in which an "*extension of time and stay (is) sought*."

On August 15, 2023, the Appellant provided the Employment and Assistance Appeal Tribunal (the Tribunal) with additional information (the First Submission). The First Submission includes the following new information relevant to his appeal:

- An email message from the Appellant to the Tribunal, dated August 15, 2023 (the August 15 Email), in which the Appellant says:
 - On August 11, 2023 the Ministry provided him with a "*supplement*" totalling \$2,090.96 "*of the initial agreed upon \$2,390.96, ... reduced shelter amount*." The Appellant also refers to a Ministry form "*HR0100*";
 - He is "*injunctionally ordering payment of the remaining \$300 back owed shelter amount prior to commencing representations in this matter – to protect Charter rights to a fair hearing*"; and
 - He wants "*a stay of proceedings until (his) full ability to make representations in full Charter protected conditions is reinstated by injunctive relief*". The Appellant also makes reference to other matters of dispute with the Ministry.

Regarding the "*supplement*" provided by the Ministry on August 11, 2023 and referred to in the Appellant's First Submission (the Reconsideration Supplement), Section 56 of the Regulation

says that the Ministry may provide a Reconsideration Supplement in the Appellant's circumstances. Section 81(1)(b) of the Regulation says that a Reconsideration Supplement is not appealable.

The First Submission also refers to the Appellant's "*relief sought on (a) motion before the Supreme Court of Canada, reinstating (his) ... full salary, (including) medical and dental (benefits)*".

On August 24, 2023, the Appellant provided the Tribunal additional information (the Second Submission). The Second Submission refers to another matter of dispute between the Appellant and the Ministry. The other matter is described by the Appellant as a request for payment of "*an estimate in the amount of \$3,267.42 for repairs to his shelter (van)*".

New Evidence Presented at the Hearing

Both the Appellant and the Ministry attended the hearing.

At the hearing, the Appellant asked for a "*stay of proceedings*". The Panel explained that the Tribunal did not have the ability to grant a stay of proceedings, but that the Appellant could ask for an adjournment. The Panel explained to the Appellant that it would need to hear his reasons for requiring an adjournment, and then could determine whether an adjournment would be required based on Tribunal policy. The Tribunal's policy for granting adjournments requested at a hearing says an adjournment can be granted by the Panel to permit an adequate hearing to be held. The Appellant declined to seek an adjournment, and said that he was not prepared to say why he thought the Decision was unreasonable, adding "*I respectfully exercise my right not to make further submissions.*"

Referring to the Appellant's request for a recovery of the cost of repairs to his shelter, as set out in the Second Submission, the Panel asked the Ministry if that request was part of the Ministry's Decision, which was the subject of the appeal. The Ministry said that it was a separate request by the Appellant for a crisis supplement, that a Ministry decision on the request for repairs was in process but a final decision had not yet been made, and mentioned what aspects of that request were still under review.

As the Appellant was not prepared to say why he thought the Ministry's decision was unreasonable, the Panel concluded the oral part of the hearing and excused the Appellant and the Ministry. The Panel relied on the written evidence contained in the Appeal documents, including the two Appellant submissions, to make its decision. The Panel's decision is set out below.

Admissibility of Additional Evidence

Section 22(4) of the *Act* says that a panel can consider evidence that is not part of the record when the Ministry made its decision. But first the panel must consider if the new information is

relevant to the decision. If a panel determines that any new evidence can be admitted, it must decide if the decision was reasonable considering the new information.

No new information is included in the Appellant's notice of appeal.

New information in the First Submission concerns a court action relating to the Appellant's salary and benefits.

New information included in the Second Submission and presented at the hearing related to the Appellant's request for a supplement to cover the cost of repairs to his vehicle, which is considered by the Ministry to be his dwelling for the purpose of determining his shelter allowance amount.

New information presented at the hearing was the Ministry's description of the status of its review of the Appellant's request to be reimbursed for the costs associated with the repair of his dwelling.

Section 1 of the *Act* says that income assistance includes a shelter allowance.

Section 17(1) of the *Act* says a client seeking an increase in the amount of income assistance they received can ask the Ministry to reconsider its initial decision when the requested amount is reduced to an amount which is less than the maximum amount permitted. If, after reconsideration, the client is dissatisfied with the outcome, the client may appeal the decision to the Tribunal. Section 22(3) of the *Act* says that a Tribunal panel must conduct a hearing into the decision being appealed.

Section 24(1) of the *Act* says that after holding a hearing the panel must determine whether *the decision being appealed* is reasonably supported by the evidence, or a reasonable application of the *Act* in the appellant's circumstances.

The Panel does not admit the new evidence in the First Submission, the Second Submission, or the information presented by the Ministry at the hearing because none of it relates to the decision being appealed. As set out in the Decision and as summarized above, the decision being appealed is the Ministry's decision that the Appellant was not entitled to an additional \$300.00 in shelter allowance for the month November 2022.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision that the Appellant was not entitled to an additional \$300.00 shelter allowance for the month November 2022 was reasonably supported by the evidence or a reasonable interpretation of the relevant legislation in the Appellant's circumstances.

Appellant's Position

The Appellant's position is that he requires a stay of proceedings in relation to his appeal of the Decision. The Appellant considers the \$2,090.96 he received from the Ministry on August 11, 2023 to be \$300.00 less than "*the initial agreed upon ... shelter amount*". In addition, he will not ask for a hearing adjournment or explain why he thinks the Decision is unreasonable, as he "*is not prepared to make any further submissions*".

Ministry's Position

The Ministry's position is that the Appellant is entitled to the maximum monthly shelter amount for the period covered by the Decision (September 2022 through May 2023), but the total amount over that time period is \$300.00 less than the \$2,390.96 the Ministry provided to the Appellant as a reconsideration supplement. The Ministry's position is that the \$2,390.96 includes an additional \$300.00 for November 2022, and the Ministry had already provided the Appellant with the maximum shelter allowance for that month.

Panel Decision

According to the Decision, upon a detailed review of his file, the Ministry determined that the Appellant's vehicle would qualify as shelter as defined in the legislation. As a result of recognizing the Appellant's vehicle as a dwelling, the Ministry determined that the Appellant's actual monthly eligible shelter costs are \$75.00 for phone and \$300.00 for fuel to heat his vehicle, for a total of \$375.00 per month between September 2022 and May 2023.

To determine the amount of backdated shelter allowance to which the Appellant was entitled, the Ministry deducted the amount of shelter allowance previously provided to the Appellant in each month between September 2022 and May 2023.

Upon reconsideration, and as reflected in the Decision, the Ministry approved the Appellant's request for a back-dated shelter allowance adjustment for the period of September 2022 to May 2023 of \$2,090.96, which did not include any back-dated amount for November 2022. November 2022 was not included in the backdated allowance calculation because the Ministry determined the Appellant had previously received \$375.00 for that month, which is the maximum amount available to him.

The Panel reviewed the Ministry's calculation of the Appellant's eligible monthly maximum shelter amount. Upon review, the Panel finds that the Ministry reasonably determined that the

maximum shelter allowance amount to which the Appellant is eligible is \$375.00 per month, which is the maximum monthly amount for a family unit comprising one person, as set out in section 4(2) of the Regulation.

The Panel further notes that the Appellant has not provided any evidence to show that he did not receive the maximum shelter allowance for the month of November 2022, and has not disputed the Ministry's calculations or amounts provided for any of the other months noted in the Decision. Based on the assumption that all the amounts in the Decision are correctly stated, the Panel finds that the Ministry's calculations are accurate. On that basis, the Panel finds that the total amount of backdated shelter allowance owing to the Appellant is \$2,090.96, as calculated by the Ministry, and the Appellant's request for an additional \$300 is not reasonably supported by the evidence.

Regarding the Appellant's August 17, 2023 request for a crisis supplement to cover the cost of repairs to his dwelling, the Panel notes that the Appellant would be able to ask the Ministry to reconsider any decision to deny any portion of his request. Following a reconsideration decision, the Appellant may also have the option of appealing the reconsideration decision to the Tribunal.

Conclusion

The Panel finds that the Ministry's Decision, which determined that the Appellant was not entitled to an additional \$300 shelter allowance for the month November 2022, was reasonably supported by the evidence and was a reasonable interpretation of the legislation in the Appellant's circumstances.

The Decision is confirmed and the Appellant's appeal is not successful.

APPENDIX

EMPLOYMENT AND ASSISTANCE ACT

Interpretation

1(1) In this Act:

... "**income assistance**" means an amount for shelter ... provided under section 4 [*income assistance and supplements*] ...

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.

Reconsideration and appeal rights

17(1) ... a person may request the minister to reconsider ... :

(c) a decision that results in a reduction of income assistance ... provided to or for someone in the person's family unit ... ;

(3) a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

Employment and Assistance Appeal Tribunal

19(1) The Employment and Assistance Appeal Tribunal is established to determine appeals of decisions that are appealable under

(a) section 17 (3) [*reconsideration and appeal rights*] of this Act ...

Panels of the tribunal to conduct appeals

22(3) A panel must conduct a hearing into the decision being appealed within the prescribed period ...

Decision of panel

24(1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

(a) reasonably supported by the evidence, or

(b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

(a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and

(b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister ...

(6) The tribunal has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal under section 19 and to make any order permitted to be made.

(7) A decision or order of the tribunal under this Act on a matter in respect of which the tribunal has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

EMPLOYMENT AND ASSISTANCE REGULATION

Reconsideration or appeal supplement

56.6(1) For the purposes of this section, a reconsideration or appeal is determined when

(a) a decision of the minister or a decision of the tribunal has been made in the reconsideration or appeal, if the decision can be implemented without a further decision as to amount ...

(2) The minister may provide a supplement to or for a family unit that is eligible for income assistance ... if a recipient in the family unit delivers a request for a reconsideration ... in respect of a decision that,

(a) in the case of a family unit that is eligible for income assistance, resulted in a discontinuation or reduction of income assistance or a supplement ...

but only if the recipient agrees in writing to repay the amount of the supplement provided under this section.

(3) A supplement under this section may be provided for the shorter of

(a) the period between the date that a request for reconsideration or an appeal form is delivered or submitted and the date that the reconsideration or appeal is determined, and

(b) the period between the date that the income assistance or supplement was reduced or discontinued and the date that the reconsideration or appeal is determined.

(4) A supplement under this section is limited to the following amounts, as applicable:

... (b) if the request for a reconsideration or the appeal form is in respect of a decision that resulted in a reduction of income assistance or a supplement, the amount by which the income assistance or supplement was reduced ...

Decisions that may not be appealed

81(1) The following categories of supplements are not appealable to the tribunal:

... (b) reconsideration ... supplements under section 56.6;

Schedule A

Income Assistance Rates

Monthly shelter allowance

4(2) The monthly shelter allowance for a family unit other than a family unit described in section 15.2 (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

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 ...
- (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 ...

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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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2023/09/06

Print Name

Kulwant Bal

Signature of Member

Date (Year/Month/Day)

2023/09/06

Print Name

David Handelman

Date (Year/Month/Day)

2023/09/06