

**Part C - Decision Under Appeal**

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction ("Ministry") dated June 19, 2024, in which the Ministry determined that, as the Appellant had no actual shelter costs in June 2024, he was not eligible to receive a shelter allowance beyond the minimum \$75.

**Part D - Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation ("Regulation"),  
Schedule A, sections 4 and 5  
Employment and Assistance Act ("Act"), section 22(4)  
Employment and Assistance Regulation, section 86(b)

**Part E – Summary of Facts**

The hearing took place on July 16, 2024, with the Ministry attending by telephone. The Appellant did not attend the hearing. An interpreter attended, as the Appellant requested in his Notice of Appeal.

Request for Adjournment:

The Appellant sent an email to the Tribunal on Saturday, July 13, 2024, asking for an adjournment of the hearing. The Tribunal received the email on the next business day, Monday, July 15, 2024, which was the day before the hearing,

Under s. 20(2) of the Act, the Tribunal Chair may establish practices and procedures that are not inconsistent with the Act. Under the Tribunal Practices and Procedures, if a party requests an adjournment within one business day of the hearing, the party must make the request to the Panel at the hearing, either by telephone or in person. The Appellant did not attend the hearing by telephone or in person to make the request. Nevertheless, the Panel considered the Appellant's request.

The Appellant's email states:

Bonjour, hi,

I did not receive a confirmation that eaat received my adjournment request.

Le samedi 13 juillet 2024 à 16 h 19 min 59 s HAE, [Appellant's name and email address] a écrit :

Bonjour, hi,

See attached files.

I have to submit more details about my adjournment request but I am not able to add

more info on this form.

I dont undestand why I did not receive file 2024-0244.

I disputed at least 4 sr- decisions so there should be 4 files generated by eaat tribunal. I want all the files to be generated before the next hearing.

I have 2 others court cases the same week (week of july 15th).

I can provide details later about my other courts cases.

I will try to give a quick call to the tribunal using their total free number on monday if I

can find a public phone.

I dont have an active cell phone and I am only able to receive voicemail messages.

I wrote on the form:

I am not in [Municipality] on July 15-16th. I did not receive any notification about the court date before July 13th less than 2 business days before the hearing.

I did not receive a reconsideration decision yet in file [Reconsideration Service Number]. I want to receive a reconsideration decision before the hearing.

I did not have time to send all the documents and evidence I want to add in every appeal file.

The ministry did not generate a decision yet about my request to receive shelter benefits from Sept 2021 to Jan 2023 (see Gmail document) since my last interaction with bands.

At the hearing, the Ministry took no position on the Appellant's request for an adjournment.

#### Appellant's Communication with the Tribunal:

On the Notice of Appeal, the Appellant answered "No" to the question "Do you consent to communicating with the Tribunal by email?"

The Panel Chair contacted the Tribunal and was told by an Appeal Coordinator:

- The Appellant phoned the Tribunal on the Friday before the hearing and spoke to an Appeal Coordinator. He asked the Appeal Coordinator to email him the Appeal Records in this appeal and three others. The Appellant sends emails to the Tribunal, but this request is the only time the Appellant has consented to accept email communications from the Tribunal.
- The Appellant phoned the Tribunal and spoke to an Appeal Coordinator on the morning of the hearing, several hours before the hearing began, about his request for an adjournment of this hearing and another set for later the same day. The Appeal Coordinator said that they told the Appellant he would have to attend the hearing in person or by phone to ask for an adjournment. They tried to give the Appellant the teleconference numbers so that he could join the hearing by telephone, but the Appellant interrupted them repeatedly and would not let them give him the information.
- The Appeal Coordinator said that the Appellant was communicating with them clearly in English and appeared to understand what the Appeal Coordinator was saying to him.

The Panel addresses the Appellant's stated reasons for requesting an adjournment as follows:

Notice of Hearing Date, Time and Place:

Under s. 85(2) of the Employment and Assistance Regulation, the Tribunal Chair must notify the parties of the date, time and place of an appeal hearing at least two business days before the hearing. Under the Tribunal Practices and Procedures, Paragraph 2.3, every appellant must provide an address for delivery on the Notice of Appeal, and information delivered by the Tribunal to the appellant's address for delivery will be treated as having been delivered to the appellant. Under Paragraph 4.2, the Tribunal provides notice of the hearing to the appellant's address for delivery. The Appellant did not consent to receive communications from the Tribunal by email. Therefore, the Tribunal mailed the Notice of Hearing by Express Post to the mailing address provided by the Appellant in his Notice of Appeal (Address #1).

According to the Canada Post Delivery Notice, on July 9, 2024, Canada Post attempted delivery and, as the Express Post envelope apparently could not be left at Address #1, Canada Post left a notice saying where and when to pick up the item at a post office nearby. The Panel has considered whether attempted delivery and a pick up notice left at the address for delivery means the Notice of Hearing has been "delivered to the appellant". The Appellant gave Address #1 as his mailing address, which is his address for delivery of documents from the Tribunal. The Panel recognizes that a person who is unhoused might have challenges providing an effective address for delivery of mail. However, the Panel notes that, while the Appellant sends emails to the Tribunal, he has refused to receive email communications from the Tribunal. The only way the Tribunal can deliver the Notice of Hearing to the Appellant is by mail to the address the Appellant provided. There is no indication that the Appellant picked up the Express Post mail from the post office, but the Panel finds that it is the Appellant's responsibility to provide an address for delivery and then keep a reasonable watch for delivery of documents from the Tribunal. Alternatively, the Appellant could have consented to receive emails from the Tribunal and received the Notice of Hearing electronically.

The Panel finds that, by mailing the Notice of Hearing to the mailing address that the Appellant provided in his Notice of Appeal, with confirmation that Canada Post left a pick up notice at the address on July 9, 2024, the Tribunal Chair notified the Appellant of the date, time and place of the hearing, more than two business days before the hearing on July 16, 2024.

Additional Evidence:

The Appellant says that he did not have time to submit all the documents and evidence he wanted to submit in all his appeals.

Under Paragraph 5.2(h)(i) of the Tribunal Practices and Procedures, if a party wants to provide the Tribunal with additional documentation not included in the Appeal Record, they should provide it to the Tribunal at least three business days before the hearing, so the Tribunal can distribute it to the parties and the panel. If they cannot provide the additional documentation at least three days before the hearing, they may provide it at the hearing.

The Appellant did not provide additional information at least three days before the hearing, and he did not attend the hearing. He says he has at least four appeals ongoing, and the Panel cannot determine what additional information, if any, the Appellant wants to submit in this appeal, or if that information would be likely to be relevant and admissible, so as to warrant an adjournment. The Appellant has had almost a month since he filed the Appeal, and more than two months since the Ministry told him that they were not paying more than the minimum shelter allowance, to provide any information relevant to eligibility for shelter allowance for June 2024. He has not done so, and he has not given any explanation for not doing so.

The Panel also notes that the Appellant did send additional information to the Tribunal for this appeal, although less than three days before the hearing. The admissibility of that evidence is discussed below. As the Appellant has not provided any detail about what sort of additional evidence he wants to provide, or for which appeals, the Panel declines to adjourn the hearing to give the Appellant more time to possibly provide further unspecified evidence.

Other Appeals and Ministry Decisions:

The Appellant says that, when he asked the Tribunal to send him copies of appeal records on July 12, 2024, he did not receive one of the appeal records for another appeal. He says he wants “all the files to be generated before the next hearing.”

The Appellant also says that he is waiting for the Ministry to give a reconsideration decision in another matter, and he wants that decision “before the hearing”. The Panel has no information to indicate that other appeals, Ministry decisions or reconsideration

decisions are relevant to deciding this Appeal, about eligibility for a shelter allowance in June 2024. The Panel declines to adjourn the hearing to give the Appellant more time to receive an appeal record in another appeal or to wait for the Ministry to give a decision or reconsideration decision on another matter.

Ability to Attend the Hearing:

The Appellant said that on the day of the hearing he is not in the community where the hearing is held. The Appellant did not explain where he is or why he was not able to be in the community where he lives and where the hearing was being held. The Appellant also said that he does not have an “active” cell phone to do more than receive voice messages. However, the Panel notes that the Appellant was able to telephone the Tribunal on the day of the hearing. The Panel also notes that the Appellant would not let the Tribunal give him the information that would have let him try to join the hearing by telephone. It appears from his written request to adjourn that he wants to delay this and other appeals until the Ministry gives a reconsideration decision about shelter allowance between September 2021 and January 2023, which is not relevant to the issues in this appeal. The Panel has considered the Appellant’s assertion that he is absent from the community where the hearing is held and declines to give an adjournment on that ground.

Conclusion re Adjournment:

In summary, the Appellant sent a request for an adjournment within one business day of the hearing. The Panel finds that the Appellant was aware that he would have to make the request at the hearing, either in person or by telephone, but he did not do so.

Nevertheless, the Panel considered the reasons for the request that are set out in the Appellant’s email. Based on the information in the Appellant’s emailed request, and the additional information from the Tribunal about the Appellant’s communication with the Tribunal, the Panel declines to adjourn the hearing.

The Panel confirmed that the Appellant had been notified of the hearing date more than two business days before the hearing. The Panel heard the appeal in the absence of the Appellant, under s. 86(b) of the Employment and Assistance Regulation.

Evidence Before the Ministry at Reconsideration:

The Appellant is a sole recipient of disability assistance.

On April 17, 2024, an advocate attended a Tribunal hearing for the Appellant on another appeal, and stated that they had received a telephone message from the Appellant that he was unhoused and living in a tent. In May 2024, the Ministry reviewed the Appellant's file and determined that, as he was now unhoused, he was only eligible for the minimum shelter allowance of \$75, until he provided confirmation of a current residence. The Ministry discontinued the shelter allowance of \$500 that the Appellant had been receiving up to May 2024, based on residence at Address #2, the most recent address for the Appellant on file with the Ministry. Through the Appellant's Third Party Administrator, the Ministry told the Appellant on May 9 and 16, 2024, that if the Appellant had a new address, he could submit documents to the Ministry to show his shelter costs and receive a shelter allowance.

The Appellant filed a Request for Reconsideration of the decision to deny the shelter allowance for June 2024. In the Request for Reconsideration, the Appellant denied that he was living in a tent. He said that he last lived at Address #2 in December 2022. In the section on the form for "Requestor's Address" he wrote Address #1, which the Ministry later determined was the address of a society. The society told the Ministry that there is no housing or shelter at Address #1, no one was currently living there, and no one was paying shelter costs for that address.

Additional Evidence:

Appellant:

The Appellant sent an additional submission to the Tribunal on June 15, 2024. The document is a series of emails between the Appellant and a case manager at a disability service provider, about assistance under appeal, and a Ministry deduction from disability assistance relating to shelter allowance between September 1, 2021 and January 19, 2023. As the information was given to the Tribunal less than three business days before the hearing, and the Appellant did not attend the hearing to ask to submit the evidence, the submission was not shared with the Ministry, and was not considered by the Panel in making the decision.

In any event, even if the additional submission had been provided three days before the hearing, or at the hearing, the Panel would have found that the additional information was not admissible under s. 22(4) of the Act. The emails do not contain information that is relevant to eligibility for a shelter allowance in June 2024, and therefore the evidence is not reasonably necessary to determine the matters in issue on this appeal.

Ministry:

At the hearing, the Ministry representative stated that they reviewed the case notes on the Appellant's file, and confirmed that, up to the date of the hearing, the Ministry had not received any information from the Appellant to show another residential address or any shelter costs.

The additional oral evidence from the Ministry provides further information about whether the Appellant had actual shelter costs in June 2024. The Panel finds that the additional evidence is reasonably necessary to determine the issues in the appeal. The Panel finds that the additional evidence is admissible under s. 22(4) of the Act.



**Part F – Reasons for Panel Decision**

The issue on appeal is whether the Ministry's Reconsideration Decision, in which the Ministry determined that, as the Appellant had no actual shelter costs in June 2024, he was not eligible to receive a shelter allowance beyond the minimum \$75, was reasonably supported by the evidence, or was a reasonable application of the legislation in the Appellant's circumstances.

Appellant's Position:

In the Notice of Appeal, the Appellant states that he is entitled to receive the shelter allowance. He argues that it is unfair for the Ministry not to give him the shelter allowance if he uses a mailing address that is different from his current home address. He gives Address #1 as his mailing address in the Notice of Appeal. He does not give a different current home address.

Ministry's Position:

The Ministry says that the shelter allowance is based on actual shelter costs. As the Appellant has not given them any information to show that he had actual shelter costs for June 2024, he is not eligible to receive more than the minimum \$75 shelter allowance.

Panel Decision:

Under Schedule A, s. 4(2) of the Regulation, the monthly shelter allowance for a sole recipient of disability assistance is the greater of:

- The minimum amount of \$75; or
- The recipient's actual shelter costs or \$500, whichever is less.

If a recipient has no actual shelter costs, they are only eligible to receive the minimum shelter allowance of \$75.

The Appellant's advocate told the Ministry that the Appellant was unhoused. The Appellant says he moved out of Address #2 in December 2022, and the Ministry has determined that he does not live or pay shelter costs at Address #1, which is the only other address the Appellant has provided to the Ministry. While the Appellant denies he lives in a tent and refers to an unspecified "current home address" other than Address #1 in his Notice of Appeal, he has not provided another address, or any information to show that he has actual shelter costs that might make him eligible to receive more than the minimum shelter allowance of \$75.

As the Appellant has not given the Ministry any information about actual shelter costs for June 2024, the Panel finds that the Ministry's decision that the Appellant was only eligible to receive the minimum shelter allowance of \$75 was a reasonable application of the legislation in the Appellant's circumstances.

Conclusion

The Panel confirms the Ministry's Reconsideration Decision. The Appellant is not successful in the appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation  
Schedule A

**Monthly shelter allowance**

s. 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 <b>Family Unit Size</b>	Column 2 <b>Minimum</b>	Column 3 <b>Maximum</b>
1	1 person	\$75	\$500

### **How actual shelter costs are calculated**

s. 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.

### Employment and Assistance Act

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

### Employment and Assistance Regulation

#### **Time period for scheduling and conducting hearing**

s. 85 (1) A hearing must be held within 15 business days after the appeal form is delivered under section 84, unless the chair of the tribunal and the parties consent to a later date.

(2) The chair of the tribunal must notify the parties of the date, time and place of a hearing described in subsection (1) at least 2 business days before the hearing is to commence.

#### **Procedures**

s. 86 The practices and procedures of a panel include the following:

- (b) the panel may hear an appeal in the absence of a party if the party was notified of the hearing;

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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  
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)  
2024/07/19

Print Name  
Mimi Chang

Signature of Member

Date (Year/Month/Day)  
2024/07/19

Print Name  
David Handelman

Signature of Member

Date (Year/Month/Day)  
2024/07/19