

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated March 29, 2011 which denied the appellant's request for a shelter allowance to cover the monthly cost of a post office box, a storage locker, motor home insurance, gas and parking. The ministry found that the actual monthly shelter costs listed in Section 5 of Schedule A of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) do not include the items requested by the appellant.

The ministry also found that the appellant was not eligible for a crisis supplement to cover the monthly cost of a post office box, a storage locker, motor home insurance, gas and parking as the request did not meet all the criteria of Section 57 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 57 and Schedule A, Sections 4 and 5

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of:

- 1) Letter from the appellant's advocate to the ministry dated October 20, 2010 with submissions on the Reconsideration;
- 2) Reconsideration decision dated November 17, 2010 declining to adjudicate regarding some items included in the request for actual shelter costs, namely a post office box, storage fees, vehicle insurance and gas, based on there being no right of reconsideration, and denying the request for parking based on a lack of relevant information;
- 3) Letter from the ministry to the appellant dated November 17, 2010 advising of the results of the Reconsideration decision;
- 4) Notice of Appeal and Release of Information forms dated December 2, 2010;
- 5) Letter from the appellant's advocate to the tribunal dated January 4, 2011 with submissions that the tribunal has jurisdiction to hear the appeal;
- 6) Letter from the ministry to the tribunal dated January 21, 2011 with a submission that the tribunal conduct a substantive appeal;
- 7) Letter from the tribunal to the appellant dated February 3, 2011 confirming in part that her Notice of Appeal was received and that a hearing will take place;
- 8) Letter from the tribunal to the appellant dated March 1, 2011 enclosing a copy of the Tribunal decision dated February 18, 2011;
- 9) Letter from the appellant's advocate to the ministry dated March 7, 2011 referring to the findings of the Tribunal made February 18, 2011; and,
- 10) Letter from the appellant's advocate to the ministry dated March 7, 2011 submitting that shelter benefits should be backdated by the ministry to August 2010, the month that the appellant requested reassessment of her shelter costs.

Prior to the hearing, the appellant provided a letter to the tribunal dated April 12, 2011 which submits in part that Section 17 of the EAPWDA does not apply to bar the appeal. The panel accepted this letter as argument only and not evidence.

At the hearing, the appellant introduced a letter from the appellant's psychiatrist dated August 5, 2010 which states in part that it is her professional opinion that the appellant's mental status is severely adversely affected by the ministry's decisions to deny her funding for shelter costs associated with her motor home. The appellant's advocate submitted that this letter was before the ministry on its reconsideration and should have been included on the appeal, and the ministry did not object to its admissibility. The panel reviewed the document and admitted it into evidence, under Section 22(4) of the Employment and Assistance Act, as being part of the information and records that were before the ministry on the reconsideration. The appellant's advocate also provided a print out of the ministry's policy regarding its duty to accommodate and the panel accepted it as argument only and not evidence.

The appellant stated that she has lived in her 21-foot motor home, which she owns, since when she first began receiving assistance in 2009. She explained that she considered her options for living arrangements and her motor home was seen to be less expensive than other alternatives. The appellant stated that she could not manage the other options which included having room-mates dealing with substance abuse, bed bugs, and other issues. The appellant stated that she parks her motor home primarily in residential areas which requires that she moves frequently to avoid complaints by residents and the risk of getting a ticket. However, the appellant stated that she limits her other driving of the motor home to travelling to access her post office box and storage unit as well as the showers and sani-dump at an RV park, and that at times she has not been able to afford to pay for gas to make many trips for these purposes. The appellant stated that she has a washroom in her motor home but that she uses it as infrequently as possible to avoid trips to the sani-dump station which results in gas costs and, in some cases, service fees. In response to a question, the appellant stated that she did not know how many kilometers she travels in her motor home in an average month but that it is as little as possible, mostly for accessing necessities. The appellant's advocate added that the appellant also has a

bicycle which she uses to get around, and that she will also walk. The appellant stated that there is not much storage capacity on her motor home and that she uses a storage unit to store supplies, tools, and some clothes since if she tries to load too much on the motor home it will exceed the load limit, which is hard on the vehicle. The appellant stated that during the winter months either she will use much more propane and these costs will go up or she will need to plug in somewhere to access electricity in order to keep the motor home warm. The appellant stated that one RV park of which she is aware charges \$750.00 per month in order to park on a long-term basis. The appellant stated that if she parked her motor home in an RV park, she would still want to have insurance to cover damage to the motor home ("if a tree were to fall on it") or for theft. The appellant stated that the post office box that she uses is paid annually in the amount of \$147.00, or \$12.25 per month. The storage locker that she has obtained is paid monthly in the amount of \$100.45 and the motor home insurance is also paid monthly, in the amount of \$76.37. The appellant stated that the ministry initially paid the insurance amount of \$76.37 per month and then discontinued these payments. The appellant's monthly gas and parking costs have been estimated by the appellant at \$125.00, and the appellant stated that this is a conservative estimated particularly in light of the rising cost of fuel. The appellant stated that she is currently receiving the sum of \$30.00 per month for propane charges, and \$25.00 per month for telephone, as well as \$118.85 for maintenance and repairs, plus the additional amount of \$7.28 per month for maintenance and repairs which has also been approved, for a total sum approved for shelter allowance of \$181.13 per month. With the additional monthly amounts requested for post office box and storage locker fees and motor home insurance and gas and parking, the total monthly amount requested by the appellant is in excess of \$375.00.

The ministry stated that the appellant has been receiving assistance since May 2009. The appellant was approved for the persons with disabilities designation in June 2010. The appellant's place of residence is her motor home and the appellant drives her motor home to access certain amenities that do not come with a motor home as well as for other transportation needs. The ministry stated that the appellant does not have a fixed home address as she moves the motor home around and, therefore, cannot have mail delivered directly to her. The ministry stated that receiving mail is usually present in a typical form of shelter, but that it is not always present. The ministry stated that having a place to store one's personal effects is a necessary incident of shelter but not all individuals who live in typical homes are able to store all of their personal effects in their place of residence and may also be required to obtain a separate storage locker. The ministry stated that the information from the appellant's insurance broker is that the insurance for the motor home can only be provided through ICBC Autoplan and that this insurance will cover the motor home when it is driven and also when it is parked. The information from the insurance broker is also that even if the motor home is parked and not driven, the insurance would need to be purchased through ICBC Autoplan. The ministry stated that the appellant has estimated her gas and parking amounts at \$125.00 per month and there was no separation of the parking and gas expenses and no parking receipts were provided to support the request. The ministry stated that there was also no itemization of the gas used to access propane, water, sani-dump stations, showers and laundry as distinct from the gas used to move the motor home location or for other transportation needs.

The ministry has approved shelter allowance for propane (\$30.00), telephone (\$25.00) and motor home maintenance repairs amounting to \$126.13, for a total monthly shelter allowance of \$181.13. The ministry has denied the costs for a post office box (\$12.25), storage locker (\$100.45), motor home/vehicle insurance (\$76.37) and gas and parking (\$125.00) as part of actual shelter costs.

PART F – Reasons for Panel Decision

At issue on the appeal is whether the ministry's decision which denied the appellant's request for a shelter allowance to cover the monthly cost of a post office box, a storage locker, motor home insurance, and gas and parking was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant. Also at issue is whether the ministry's decision which found that the appellant was not eligible for a crisis supplement to cover the monthly cost of a post office box, a storage locker, motor home insurance, gas and parking was a reasonable application of the applicable enactment in the circumstance of the appellant or reasonably supported by the evidence.

Schedule C, Section 4(2) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) provides as follows:

Monthly shelter allowance

4 (2) The monthly shelter allowance for a family unit to which section 14.2 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
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820
8	8 persons	\$855
9	9 persons	\$890
10	10 persons	\$925

Schedule C, Section 5(1) and (2) provides as follows:

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;
- (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.

Section 57 of the EAPWDR provides as follows:

- 57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
 - (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.
- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or
 - (b) any other health care goods or services.
- (4) A crisis supplement provided for food, shelter or clothing is subject to the following limitations:
- (a) if for food, the maximum amount that may be provided in a calendar month is \$20 for each person in the family unit;
 - (b) if for shelter, the maximum amount that may be provided in a calendar month is the smaller of
 - (i) the family unit's actual shelter cost, and
 - (ii) the maximum set out in section 4 of Schedule A or Table 2 of Schedule D, as applicable, for a family unit that matches the family unit;
 - (c) if for clothing, the amount that may be provided must not exceed the smaller of
 - (i) \$100 for each person in the family unit in the 12 calendar month period preceding the date of application for the crisis supplement, and
 - (ii) \$400 for the family unit in the 12 calendar month period preceding the date of application for the crisis supplement.
- (5) The cumulative amount of crisis supplements that may be provided to or for a family unit in a year must not exceed the amount calculated under subsection (6).
- (6) In the calendar month in which the application or request for the supplement is made, the amount under subsection (5) is calculated by multiplying by 2 the maximum amount of disability assistance or hardship assistance that may be provided for the month under Schedule A or Schedule D to a family unit that matches the family unit.

(7) Despite subsection (4) (b) or (5) or both, a crisis supplement may be provided to or for a family unit for the following:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro.

The appellant argues that the ministry has not properly applied the directions in the Tribunal decision of February 18, 2011 to use its discretion and has not applied the ministry's duty to accommodate the appellant's disability when it denied her request. The appellant points out that the Tribunal found that the ministry has a positive duty to use its discretion to determine whether some or all of the disputed items are analogous to the items listed in Schedule A, Section 5 of the EAPWDR. With respect to the post office fees, the appellant argues that the ministry's determination that it is not similar to any of the items listed in Section 5(1) or (2) is not reasonable as the ministry has also stated that receiving mail is "usually present" in a typical form of shelter and therefore, it is properly considered as "rent" pursuant to Section 5(2)(a). Regarding the storage locker fees, the appellant argues that the ministry's conclusion that it is not similar to any of the items listed in Section 5(1) or (2) is not reasonable as the ministry has stated that having a place to store one's personal effects is a "necessary incident" of shelter and that it is properly considered as "rent" under Section 5(2)(a).

The appellant argues that the ministry did not reasonably conclude that the cost of motor home insurance is not included in Section 5(2)(c) of Schedule A on the basis that it was not able to determine the portion of the insurance cost that relates solely to the motor home's use for the purpose of habitation as this finding is inconsistent with the ministry's previous approval of maintenance and repair costs for the motor home that are directly related to the operation of the motor vehicle. The appellant also argues that the phrase "house insurance premium" must be interpreted expansively as describing insurance for a person's place of residence. The appellant argues that the cost of her motor home insurance either falls within the "rent" provision of Section 5(2)(a), or the "house insurance premium" of Section 5(2)(c). Further, the appellant argues that the ministry's determination that the cost of parking may be similar to one of the items listed in Section 5(2) if it can be determined that the parking is related to the purpose of using the motor home as a residence is unreasonable as the appellant has stated that the parking costs are primarily those incurred to use the storage locker, post office box, sani-dump stations, showers and laundry, those features which the ministry has agreed may be "invariably present" in a typical home. The appellant argues that the ministry's conclusion that the cost of gas is not similar to one of the items listed in Section 5(2) as the purpose for the travel may also be to meet the appellant's daily transportation needs was not reasonable as the appellant has stated that she drives as infrequently as possible and mostly to access the required services.

The appellant further argues that the ministry has not properly applied its duty to accommodate the appellant's disability when it denied her request. The appellant, through her advocate, argues that the psychiatrist's letter confirms that the use of the motor home as a residence accommodates the appellant's needs with respect to her disability, being mental health dysfunction. The appellant points out that the policy requires the ministry to be open-minded and inclusive when the person's need is related to one of the grounds of prohibited discrimination in the Human Rights Code, namely physical or mental disability. The appellant argues that the Tribunal has the jurisdiction to find that the appellant's average monthly shelter costs are in excess of the maximum applicable shelter allowance of \$375.00 and that she should receive the maximum allowable shelter allowance without having to prove her shelter costs anew each month in terms of actual shelter costs.

The ministry's position is that it has reviewed each item requested by the appellant as part of the actual shelter costs set out in Section 5 of Schedule A and that the ministry has gone into the details of the reasons for its denial. With respect to the post office fees, the ministry points out that post office fees are not one of the actual shelter costs listed in sub-section (1) or (2) and that it is not similar to any of the items listed. The ministry argues that although receiving mail is usually present at no extra cost in a typical form of shelter, it is

not always present. The ministry pointed out that the payment of rent for use of a suite in someone's house, for example, may or may not include a form of reliable personal mail delivery. Regarding the storage locker fees, the ministry points out that this is not an item that is expressly listed under Section 5 (1) or (2) and that it is also not similar to any of the items listed. The ministry argues that not all individuals who live in more typical homes are able to store all of their personal effects in their place of residence. The ministry points out that Section 5(2)(c) includes as an actual monthly shelter cost "...a house insurance premium for the family unit's place of residence" and the ministry is unable to determine whether the cost of motor home insurance is included as there was not sufficient information for the ministry to determine the portion of the insurance cost that relates solely to the motor home's use for the purpose of habitation. The ministry argues that the cost of parking may be similar to one of the items listed in Section 5(2), namely "...rent for the family unit's place of residence", if it can be determined that the parking is related to the purpose of using the motor home as a residence and that it would then be similar to pad rentals by those who reside in trailers and mobile home parks. The ministry argues that the cost of gas is not an actual shelter cost that is expressly listed under Section 5(1) or (2) and that it is not similar to one of the items listed as the purpose for the travel may also be to meet the appellant's daily transportation needs and not all the services that the appellant accesses are a sufficient incident of shelter, such as laundry facilities.

The ministry also argues that the appellant was not eligible for a crisis supplement to cover the monthly cost of a post office box, a storage locker, motor home insurance, gas and parking as all of the criteria set out in Section 57 of the EAPWDR have not been met. The ministry argues that it has not been established that the appellant requires the supplement to meet an unexpected expense or to obtain an item unexpectedly needed. A post office box, storage locker, motor home insurance, gas and parking costs are all ongoing costs and cannot be considered as unexpected expenses. The ministry points out that all of the costs associated with these items are expected monthly expenses related to the appellant's living situation. The ministry also argues that the information provided does not establish that failure to provide the crisis supplement will result in imminent danger to the physical health of any person in the family unit or the removal of a child under the Child, Family and Community Service Act.

The panel notes that the Reconsideration decision dated March 29, 2011 is the result of the Tribunal decision of February 18, 2011 which rescinded the ministry's decision that the items requested by the appellant were either the subject of a previous reconsideration decision and not open to review or not capable of being characterized due to lack of information. The Tribunal's jurisdiction is defined in Section 24 of the Employment and Assistance Act and is limited to confirming or rescinding the ministry's decision. The panel also finds that the wording used in the EAPWDR, Schedule A, Section 5, provides a defined list of eligible expenses, specifically: "utility costs" include "only" the listed costs [Section 5(1)] and "actual monthly shelter costs" include "only" the listed items [Section 5(2)]. The panel finds that the ministry is bound to apply the legislation as it is worded, with a limited discretion to include items which are closely similar in nature to the item listed, but this discretion must still be exercised in a way which is consistent with the wording of the EAPWDR. The ministry is not required to expand the EAPWDR definitions beyond their intended meaning. The appellant must demonstrate through the evidence that costs that are not specifically listed in the section are similar to the items which have been intentionally set out in the EAPWDR. Further, the panel finds that it does not have the jurisdiction, as a result of Section 19.1 of the EAA and Section 46.3 of the Administrative Tribunal Act, to apply the Human Rights Code. However, with respect to the ministry's "duty to accommodate" policy, the panel finds that it relates specifically to the ministry's provision of services to clients.

The panel notes that the provisions of Schedule A, Section 4 of the EAPWDR require that the ministry calculate the amount of the family unit's actual shelter costs in order to determine whether it is smaller than the maximum monthly shelter amount set out in the table for the applicable family unit which, for the appellant, is \$375.00. Section 5 of Schedule A sets out a description of how actual shelter costs are calculated. The panel finds that with respect to monthly post office fees, the ministry has canvassed the lists set out in Schedule A, Section 5 (1) and (2) and has reasonably determined that these fees are not listed in 5(1) as "utility costs", namely: (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, and (f) rental of one basic residential single-line telephone, or as "actual monthly shelter costs" in 5(2), set out as: (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 and (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. The panel finds that the ministry has reasonably considered whether monthly post office fees are similar in nature to any of the items listed in Section 5 and determined that although receiving mail is usually present at no extra cost in a typical form of shelter for which one pays rent, it is not always present to the extent that it can be found to be similar to, or of the same character as, "...rent for the family unit's place of residence" pursuant to Section 5(2), as argued by the appellant. Regarding the storage locker fees, the panel finds that the ministry has reasonably determined that this is not an item that is expressly listed under Section 5 (1) or (2). The panel finds that the ministry has considered whether storage locker fees are similar in nature to any of the items listed in Section 5 and reasonably determined that it is not similar to, for example, "...rent for the family unit's place of residence" pursuant to Section 5(2), as not all individuals who live in more typical homes, and pay rent, are necessarily able to store all of their personal effects in their place of residence as the storage capacity may be insufficient. In this case, other arrangements may need to be made, including obtaining a storage locker and paying for it separately, with one's support allowance. The panel finds that the appellant has stated that she is able to keep some personal effects in her motor home, but that she finds the existing storage capacity to be insufficient.

For the motor home insurance cost, the panel finds that the ministry reasonably considered whether this is included in Section 5(2)(c) which permits as an actual monthly shelter cost "...a house insurance premium for the family unit's place of residence". The panel finds that insurance for the motor home is only available to the appellant through ICBC Autoplan and that it provides coverage when the motor home is driven or parked. The panel finds that the appellant must provide information to allow the ministry to determine how a motor vehicle insurance premium can be said to be sufficiently similar to a "house insurance premium" in order that it can be included in a defined expense, which information may have included some of the features and associated costs of the policies that can be said to be comparable. The appellant stated that if she parked her motor home in an RV park, she would still want to have insurance to cover damage to the motor home ("if a tree were to fall on it") or for theft, but no information was provided by the appellant as to the cost for such a policy that may be similar to a house insurance policy. The ICBC Autoplan insurance may provide coverage that is in some respects similar to house insurance policies, but the fact that the EAPWDR specifically refers to "house insurance" rather than just "insurance" must be taken to mean that there is some significance to the differentiation between the types of insurance, and the panel finds that it was not unreasonable for the ministry to conclude, based on the available evidence, that the ICBC Autoplan insurance was not sufficiently similar to "house insurance". With respect to the appellant's argument that the maintenance and repair costs that have been approved by the ministry relate directly to the operation of the motor vehicle and, therefore, its position with respect to motor home insurance is inconsistent, the panel finds that the request for maintenance and repair expenses related to a specific subsection of Section 5 which refers only to the family unit's "place of residence" and not to "house" maintenance and repairs whereas Section 5(2)(c) refers specifically to a "house insurance" premium. The panel finds that the ministry reasonably determined that there was insufficient information for the ministry to allocate the portion of the insurance cost that relates solely to the motor home's use for the purpose of habitation, which is the primary purpose of a house insurance policy. Further, the panel finds that the appellant's position that Section 5(2)(c) applies to her motor home insurance is inconsistent with the additional position that it is included in Section 5(2)(a) in that it is part of the "rent for the family unit's place of residence" and, therefore, it was reasonable for the ministry not to have considered motor home insurance costs under the other sub-sections.

The panel finds that the ministry reasonably concluded that the cost of parking may be similar to one of the items listed in Section 5(2), namely "...rent for the family unit's place of residence", if it can be determined that the parking is related to the purpose of using the motor home as a residence, like monthly pad rentals by those

who reside in trailers and mobile home parks. However, the panel finds that the ministry reasonably concluded that there was not sufficient information provided regarding the parking expenses, such as receipts accompanied by an explanation of the purpose for the parking, to determine the amounts expended when the motor home was parked for the purposes of habitation. The panel finds that the ministry has confirmed that the cost of gas is not an actual shelter cost that is expressly listed under Section 5(1) or (2) and that it is not similar to one of the items listed, including "...rent for the family unit's place of residence" as the gas may also be used for the purpose of travelling to services that the ministry has concluded are not a sufficient incident of, or sufficiently connected to, shelter (such as laundry facilities). The panel finds that the ministry has reasonably concluded that there was not sufficient information presented regarding the gas expenses, such as a log or receipts accompanied by an explanation of the purpose for the travel/gas, to determine the amounts expended when the motor home was driven to access services that the ministry accepts as an integral part of shelter.

The panel finds that the appellant did not dispute the ministry's finding that the appellant was not eligible for a crisis supplement to cover the monthly cost of a post office box, a storage locker, motor home insurance, gas and parking as all of the criteria set out in Section 57 of the EAPWDR have not been met. The panel finds that the ministry reasonably concluded that a post office box, a storage locker, motor home insurance, gas and parking costs are all ongoing costs and cannot be considered as "unexpected expenses". The panel also finds that the ministry reasonably concluded that the information provided does not establish that failure to provide the crisis supplement will result in imminent danger to the physical health of any person in the family unit or the removal of a child under the Child, Family and Community Service Act.

The panel finds that the ministry's decision, to deny the request for a shelter allowance to cover the monthly cost of a post office box, a storage locker, motor home insurance, and gas and parking was reasonably supported by the evidence. The panel finds that the ministry's decision which found that the appellant was not eligible for a crisis supplement to cover the monthly cost of a post office box, a storage locker, motor home insurance, gas and parking was reasonably supported by the evidence. Therefore, the panel confirms the ministry's decision.