

PART C – Decision under Appeal

The decision being appealed is the Ministry's March 15, 2012 reconsideration decision denying the Appellant's request for a moving supplement because the Ministry determined that she was not eligible for moving costs under section 55 (2)(a), (b), (c), (d) and (e) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 5.

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 55(2).

PART E – Summary of Facts

The Ministry did not attend the hearing. The Panel confirmed that the Ministry was notified of the hearing and then proceeded with the hearing under section 86(d) of the Employment and Assistance Regulation.

For its reconsideration decision the Ministry had the following evidence:

1. Ministry records indicating that the Appellant:

- Receives disability assistance.
- Told the Ministry on February 20, 2012 that the rent for her residence on an island was too high and she could significantly lower her rent at her brother's home which was in a municipality off the island.
- Was advised to submit shelter documentation indicating lower rental costs to be assessed for eligibility and the Appellant said she would fax 3 moving quotes to a local Ministry office.
- Was advised that acceptance of the quotes did not constitute approval of the request.
- On February 27, 2012 submitted shelter documentation for a residence indicating rental costs of \$375 a month.
- On February 29, 2012 advised the Ministry that she would not be moving to her brother's residence because it was unsuitable and she would submit new shelter documentation for a place with a higher rental cost than her original residence.
- Submitted new shelter documentation for a residence in a third location with a rental cost of \$700 a month which the Ministry received on March 1, 2012.

2. Copy of the Appellant's completed shelter information form for the second residence with rent of \$375 a month.

3. Copy of a residential tenancy agreement for the Appellant for the residence at the third location indicating rent of \$720 a month and dated February 29, 2012. The agreement indicates the tenancy starts on March 1, 2012.

4. Appellant's request for reconsideration with her statement.

In her request for reconsideration the Appellant wrote that she was going to move to a cheaper place because she did not have custody of her daughter at the time she requested a moving allowance. She got custody of her daughter on February 27, 2012 and that was why she had to rent a larger home for herself and her daughter. The Appellant stated that she provided all the requested information before February 26, 2012, except for the information about her daughter. When she got full custody she provided information to the Ministry in a fax on February 27, 2012. The Appellant also wrote that due to her disability (lupus) she needs 24 hour access to health care and all of her regular specialists are in the vicinity of the second and third residences, but not possible to access from her original residence. Because her daughter was being harassed at her father's home she had to get her daughter out of that situation a.s.a.p. She also wrote that the cheapest movers of the 3 quotes she submitted agreed to move her into the only available/affordable home for her daughter and herself with only 2 days notice. She had to leave much of her belongings with the movers who are keeping them until they receive payment from her or the Ministry. She needs to pay the movers and get all her belongings back for herself and her daughter. The Appellant also stated that she was not informed by the Ministry worker that she needed to be pre-approved for the rental home. She was homeless at the time and needed to provide a roof for her daughter.

At the hearing the Appellant stated that she was diagnosed with lupus in about 2007 and has been on disability since 2008. When she first moved to the island residence she thought she was in remission. She lived there for about 9-10 months. Her daughter came to visit on February 19, 2012 and during the visit told her about being bullied at school. The Appellant had lined up the second residence for \$375 a month, but when her daughter asked to stay the Appellant needed the father's permission and had to advise another provincial ministry about the change in custody. The Appellant said she then had to find a different place to live for herself and this daughter as well as a second daughter who comes on weekends and holidays. She said she found the third residence with three bedrooms where she could move in quickly and so she signed the lease.

The Appellant also said she had to leave the island residence because with lupus she needs to be near medical care facilities. When she lived on the island she had to take a ferry to some of the doctors. The Appellant said she had surgery in November and needed help with moving after that. Another reason for leaving the island residence was poor water quality at that house which she felt was affecting her health. She tried to purify the water, had it tested, was advised to boil water for everything and to drink bottled water. The landlord did not acknowledge or fix the problem. The Appellant said she shared the island residence with one roommate and the rent was \$600 each. She stated that in early February 2012 her roommate told her he was leaving and that meant she would have to pay \$1,200 a month if she stayed by herself. That was why she arranged to move to the second residence which would have cost her only \$375 a month in rent.

The Appellant's daughter testified about being bullied at school and being cyber-bullied so she felt that she could not even go outside. The bullying started about the end of January. The daughter said that when she visited her mother she asked to stay and also at first she refused to go back to school but she will be starting back shortly. The daughter also described the poor water quality problems she experienced when she visited the island home last summer, including getting a parasite. The daughter submitted a handwritten note dated April 11, 2012. In it she stated that she chose to move in with her mother if her mother moved from the first island residence and closer to another city to be closer to her family. Her mother moved on February 29, 2012. She wrote that another reason she wanted to move from where she lived with her father and sister was because she was being harassed and bullied by other students at the secondary school. She looked forward to having a fresh start and making new friends at the new school in the area where she now lived.

The Panel finds that the oral testimony from the Appellant and her daughter, including the daughter's note, relate to information about the changes in residence that the Ministry had at the time of reconsideration. Therefore the Panel admits that testimony as being in support of the evidence that was before the Ministry pursuant to section 22(4) of the Employment and Assistance Act.

The advocate submitted oral argument on behalf of the Appellant. She argued that the Ministry's decision was not reasonable because the Appellant is eligible for a moving supplement under section 55(2)(d) and (e) of the EAPWDR. Both she and the Appellant acknowledged that the Appellant did not meet the criteria in section 55(2)(a), (b) or (c). The advocate argued that the Appellant was moving to a less expensive place, from \$1,200 a month to \$720 a month and therefore was eligible under section 55(2)(d) because this was a significant reduction in rent. The advocate also argued that the Appellant was eligible for moving costs under section 55(2)(e) because the Appellant felt there was an imminent threat to her daughter's safety caused by the bullying and harassment her

daughter was experiencing while living with her father. The advocate submitted that there was also an imminent threat to the Appellant's health. The Appellant's lupus is an extreme health problem and there is the potential for heart attack and kidney failure so she needs to be near medical help. The advocate also stated that the poor water quality at the first residence was a threat to the Appellant's health.

The advocate further argued that the dates in this case are very important. Everything happened very quickly. The Appellant had planned to move to the second residence between February 20, 2012 and March 1, 2012 and she made every effort to get the Ministry's pre-approval. She had to move from the first residence. The change to the total rental amount from \$375 to \$720 a month was because she rented the third residence because more people would be living with her.

The Appellant submitted copies of the following documents at the hearing:

1. Memo dated February 27, 2012 from the Ministry of Children and Family Development to an income assistance worker confirming that the Appellant has custody of her daughter effective immediately.
2. Lease for the first island residence indicating the tenancy started on June 2011, that there were two tenants (the Appellant and another person) and the monthly rent was \$1,200.
3. Three quotes for moving costs.
4. Letter from a former tenant of a suite in the island residence stating that she moved because of the water quality, that she became ill from it and had to go on medication to clear up an infection.
5. Medical Report for federal disability assistance indicating a diagnosis of lupus and other conditions with onset in 2006.
6. Copy of the Appellant's hydro bill for the first residence.
7. Copies of doctor's letters, notes and reports regarding treatments the Appellant had in October-November 2011.

The Panel finds that the information in documents 1, 2, 3 and 4 relate to information about the Appellant's move and residences that the Ministry had for its reconsideration decision and therefore admits them pursuant to section 22(4) of the Employment and Assistance Act. As for the other documents the Panel finds that issues and information about the Appellant's federal disability application, about her hydro bill and about the medical treatment she needed in 2011 were not issues or information before the Ministry at reconsideration. Therefore the Panel does not admit these documents.

Because the Ministry did not appear at the hearing the Panel will consider its reconsideration decision to be its position for the purposes of this appeal.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably denied the Appellant's request for a moving supplement because it determined that she was not eligible for moving costs under section 55 (2)(a), (b), (c), (d) and (e) of the EAPWDR.

Section 5 of the EAPWDA states that "subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it."

The sections of the EAPWDR applicable to this appeal are:

Section 55 – Supplements for moving, transportation and living costs

(1) In this section: "moving cost" means the cost of moving a family unit and its personal effects from one place to another.

(2) Subject to subsections (3) and (4), the minister may provide a supplement to or for a family unit that is eligible for disability assistance or hardship assistance to assist with one or more of the following:

(a) moving costs required to move anywhere in Canada, if a recipient in the family unit is not working but has arranged confirmed employment that would significantly promote the financial independence of the family unit and the recipient is required to move to begin that employment;

(b) moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances;

(c) moving costs required to move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area because the family unit's rented residential accommodation is being sold or demolished and a notice to vacate has been given, or has been condemned;

(d) moving costs required to move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area if the family unit's shelter costs would be significantly reduced as a result of the move;

(e) moving costs required to move to another area in British Columbia to avoid an imminent threat to the physical safety of any person in the family unit;

(f) transportation costs and living costs required to attend a hearing relating to a child protection proceeding under the *Child, Family and Community Service Act*, if a recipient is given notice of the hearing and is a party to the proceeding;

(g) transportation costs, living costs, child care costs and fees resulting from

(i) the required attendance of a recipient in the family unit at a hearing, or

(ii) other requirements a recipient in the family unit must fulfill

in connection with the exercise of a maintenance right assigned to the minister under section 17 [categories that must assign maintenance rights].

In its reconsideration decision the Ministry reviewed the information it had and then considered whether the Appellant was eligible for moving costs under section 55(2)(a), (b), (c), (d) and (e). The Ministry determined that the Appellant was not eligible under section 2(a), (b) and (c) and during the hearing both the Appellant and her advocate acknowledged that she did not meet the requirements in those sections. Therefore the Panel will only consider whether the Ministry's decision was reasonable with respect to the Appellant's eligibility under sections 55(2)(d) and (e) of the EAPWDR.

With respect to subsection 2(d) the Ministry referred to information it had about the Appellant's move from the first island residence where she paid rent of \$600 to the third residence where she has to

pay \$720 rent. Based on the information it had the Ministry determined that the Appellant did not move within a municipality or to an adjacent municipality and her shelter costs were not reduced significantly. The Ministry considered the Appellant's submission that when she asked for the moving supplement she did not have custody of her daughter, got custody on February 27, 2012 and this is why she had to rent a larger home. The Ministry acknowledged the difficulties the Appellant experienced; however, it determined that based on the information it had the Appellant did not establish that she met the criterion in this section.

The Appellant's position is that she originally planned to move to another community where her rent would be \$375. When her daughter decided to live with her she needed a larger place and found the third residence for \$720 a month. The Appellant submitted that in fact the \$720 rent is significantly less than the \$1,200 rent she would have been paying for the island residence if she had stayed there.

The Panel finds that the evidence establishes that initial reason the Appellant submitted a moving supplement request was because she decided to move when her roommate decided to leave. She arranged for a place with her brother for \$375 a month in another municipality away from the island. The Appellant's evidence and the tenancy agreement for the island residence show that her portion of the rent there was \$600 a month. Then the Appellant's family situation changed at the end of February 2012 and so she rented a place for \$720 a month in another area away from the island. The Panel finds that if the Appellant had moved to the place for \$375 her rental costs would have been less; however, the rent she ended up paying was \$720 a month which is more than the \$600 a month rent she paid on the island. Therefore the Panel finds that the Ministry reasonably determined that the Appellant did not meet the criteria in section 55(2)(d) of the EAPWDR.

Regarding the Appellant's eligibility under subsection 2(e) the Appellant argued that she moved because of an imminent threat to her daughter's safety and to her own health.

The Ministry reviewed the information the Appellant provided about her daughter being harassed and then moving in with her mother. The Ministry also found, however, that at the time the Appellant applied for moving costs the daughter was not living with her and Appellant had intended to move before she had custody of her daughter. Therefore the Ministry could not establish that the Appellant moved to her new address to avoid an imminent threat to the daughter's physical safety and so did not meet the requirements of this subsection of the EAPWDR.

The Appellant submitted that in late February 2012 her daughter wanted to stay with her because she did not want to return to where her father lived where she was being bullied and harassed. The change in custody occurred on February 27, 2012. The Appellant was already planning to move to the place with the rental for \$375. However, after the change in custody she needed a larger place and therefore moved to the place renting for \$720 a month. The Appellant argued that the move to that third place was necessitated by threats to her daughter's safety.

The Panel recognizes that harassment and bullying disrupted the daughter's life and she felt threatened, but the evidence does not establish that there was an "imminent" threat to her physical safety. Also the Appellant admitted that she intended to move and applied for a moving supplement before she had custody of her daughter. Therefore the Panel finds that her move off the island was

not precipitated by threats to her daughter's physical safety. Also, when the Appellant applied for the moving costs the daughter did not live with her so Panel finds that the Ministry reasonably determined that it could not consider imminent threats to someone not in the Appellant's family unit at the time.

The Appellant did not specifically state in her request for reconsideration that she faced an imminent threat to her physical safety and the Ministry did not address the issue of threats to the Appellant's health in its reconsideration decision. In her reconsideration request the Appellant wrote that due to her disability (lupus) she needs to have 24 hour access to health care and her regular specialists are in a location away from the island where she lived. Based on this statement the Panel finds that for the reconsideration decision the Appellant did raise the issue of threats to her health as a reason for moving. The Appellant also testified about the same medical access needs at the hearing. She also said that some doctors she uses are located in the municipality which is one ferry ride from the island where she used to live and she had lived on that island for 9-10 months.

The Panel recognizes that the Appellant has a very serious health condition. However, the Appellant did not provide any evidence, such as a doctor's report, that she faced an imminent threat to her physical safety because she lived on the island and was one ferry ride away from some of her doctors. The evidence also does not demonstrate that there was an imminent threat to her physical safety from the water at her island residence. The Panel finds that the evidence does establish that the Appellant first decided to move off the island because her roommate was leaving and she decided to find a less expensive place to live. Finding a less expensive place was the reason she gave to the Ministry when she first submitted her request for a moving supplement and later that her daughter was moving in with her. Therefore the Panel finds that based on all of the evidence, the Ministry reasonably determined that the Appellant did not establish that moving costs were required for her to move to another area in the province to avoid an imminent threat to the physical safety of any person in her family unit.

The Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. The Panel therefore confirms that decision.