

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated July 10, 2012 which denied the Appellant's request for a supplement for moving costs. The Ministry held that the requirements of Section 55 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not met as the ministry found that the moving costs were not to assist with a move resulting from one of the reasons listed in the section.

**PART D – Relevant Legislation**

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 55

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Section 5

## PART E – Summary of Facts

The evidence before the ministry on Reconsideration included the following documents:

- 1) Shelter Information for the appellant dated October 13, 2011 indicating an address in northern B.C. with the appellant's portion of the monthly rental at \$500 plus utilities;
- 2) Letter dated April 16, 2012 from the appellant's physician 'To Whom It May Concern' stating that for medical reasons it is in the best interest of the appellant to move to a community in southern B.C.;
- 3) Handwritten note stamped received on April 4, 2012 regarding moving expenses and stating in part that the cost of \$300 is to move the appellant with his belongings to another community in southern B.C. on April 27, 2012;
- 4) Decision Report dated May 1, 2012 which is a print out of the activity over the month of April 2012;
- 5) Shelter Information for the appellant dated May 1, 2012 indicating an address in southern B.C. for room and board of \$350 per month, including utilities;
- 6) Consult Report dated June 9, 2012 regarding testing for the appellant at a hospital in southern B.C.;
- 7) Results Review Report s dated June 9, 2012 for an electrocardiogram (ECG), a CT of the appellant's abdomen-pelvis, and an X-Ray of his chest conducted at a hospital in southern B.C.;
- 8) Report dated June 11, 2012 for a CT of the appellant's thoracic spine conducted at a hospital in southern B.C.;
- 9) Report dated June 13, 2012 for an abdominal ultrasound conducted on the appellant at a hospital in southern B.C.;
- 10) Report dated June 14, 2012 for an endoscopic retrograde cholangiopancreatography (ERCP) conducted on the appellant at a hospital in southern B.C.;
- 11) Discharge Summary dated June 15, 2012 from a hospital in southern B.C. for the appellant setting out pre-admit diagnoses of neurofibromatosis of unknown type, chronic chest pain for the past 15 years that appears musculoskeletal in characteristic and scoliosis and post-admit diagnoses of gallstones with a recommendation for semi-urgent elective cholecystectomy and a secondary diagnosis of hyperlipidemia;
- 12) Operative Report dated June 14, 2012 for the ERCP procedure performed;
- 13) Instruction Sheet from a physician located in southern B.C. stamped received June 29, 2012 for a medical Procedure; and,
- 14) Request for Reconsideration.

Prior to the hearing, the appellant provided an undated letter from the appellant's physician with a fax confirmation from the advocate dated September 28, 2012. The letter states in part that the physician agrees that the appellant moved from the community in northern B.C. to a community in southern B.C. for a number of reasons including: to have access to advanced medical care, for a shorter commute to hospitals, for access to more specialists, to decrease the rate at which his health is deteriorating, and to prevent an imminent danger to his health by having access to immediate health care. The letter states that the appellant has severe medical conditions which required medical supervision, more than a family practitioner can provide. He requires access to multiple surgeons and specialists. While living in the community in northern B.C., the nearest hospital is in a community which is an approximate 4-hour drive. The ministry did not object to the admissibility of this document but pointed out that the ministry did not have this letter at the time that it made the reconsideration decision. The panel reviewed the letter and admitted it into evidence, under Section 22(4) of the Employment and Assistance Act, as relating to the reason for the appellant's move and being in support of the information that was before the ministry on reconsideration.

At the hearing, the appellant's advocate pointed out that the appellant requested an oral, in person, hearing and that having one panel member attend via telephone is more like a telephone hearing and not a proper 'in person' hearing. Nevertheless, the advocate indicated that the appellant wished to proceed with the hearing.

In his Notice of Appeal, the appellant stated that he moved for two reasons, for cheaper rent and to improve his overall well-being and quality of life. The appellant stated that his doctor had advised him to move to the community southern B.C., but the appellant had his own reasons.

At the hearing, the appellant's advocate stated that the appellant requires health support because of his medical condition that causes tumours to grow all over his body and which are currently visible on his face. The appellant stated that his family doctor, who he has known for over 10 years in the community in northern B.C. did not know what was wrong with the appellant, that he did not know about the disease. The appellant stated that he has been diagnosed with neurofibromatosis, that he has many tumours all over his body and that they are painful. The appellant stated that his family doctor does not have access to testing facilities, like an MRI, that could help with figuring out what is wrong. The appellant stated that it is about a 4-hour drive to the nearest hospital and that he cannot sit for that length of time in a seat in a car or on the bus. The appellant stated that he also got an internal tumour, that he had to have a tumour burned out of his stomach. The appellant stated that he was sent to a hospital in southern B.C. to have it looked after and they told him that he could have died if he did not have the procedure. The appellant stated that he had testing done in the community in southern B.C. and they discovered that his gall bladder was full of stones and he had to have his gall bladder removed and that was the reason this appeal was adjourned from the initial hearing date. The appellant stated that when he travelled to the community in southern B.C. he found out that the rent is also cheaper than in his original community. The appellant stated that he moved from northern B.C. to southern B.C. on April 28, 2012 and paid \$300 for his move, as was set out in the estimate he provided to the ministry. The appellant's advocate highlighted the Discharge Summary from the hospital dated June 15, 2012 which indicated that the appellant is to be followed by the neurology team at a local university for his neurofibromatosis.

The Ministry relies on the reconsideration decision which stated that the appellant is a single recipient of disability assistance. The appellant requested a moving supplement to move from his community in northern B.C. to a community in southern B.C. The ministry determined that the appellant's shelter costs are significantly reduced as a result of his move since his rent at the community in northern B.C. was \$500 and that of his new address in southern B.C. is \$350, but that he did not move to an adjacent municipality. The ministry received a letter from a doctor stating that it is in the appellant's best interest to move to the community in southern B.C. for medical reasons. The ministry pointed out that the letter does not indicate that there is a specific imminent threat to the appellant's physical safety that would require him to move to another area in B.C.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the decision by the ministry, which denied the appellant's request for a supplement for moving costs under Section 55 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) as the moving costs are not to assist with one or more of the listed reasons for the move, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislative criteria to be considered eligible for the supplement for moving costs are set out in Section 55 of the EAPWDR as follows:

### Supplements for moving, transportation and living costs

55 (1) In this section:

"**living cost**" means the cost of accommodation and meals;

"**moving cost**" means the cost of moving a family unit and its personal effects from one place to another;

"**transportation cost**" means the cost of travelling 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 fulfilin connection with the exercise of a maintenance right assigned to the minister under section 17 [categories that must assign maintenance rights].

- (3) A family unit is eligible for a supplement under this section only if
- (a) there are no resources available to the family unit to cover the costs for which the supplement may be provided, and
  - (b) a recipient in the family unit receives the minister's approval before incurring those costs.
- (4) A supplement may be provided under this section only to assist with
- (a) the cost of the least expensive appropriate mode of moving or transportation, and
  - (b) in the case of a supplement under subsection (2) (f) or (g), the least expensive appropriate living costs.

The appellant's position is that the legislation should be interpreted with a benevolent purpose in mind and that, with this approach, the ministry should be looking to find a sub-section that is applicable to the appellant's situation. The advocate argues that Section 55(2)(e) of the EAPWDR does not require documentary confirmation of a threat to the person's physical safety and that often there will be no documents available, for example when a person self-reports domestic violence. The advocate argues that the letter dated April 16, 2012 from the appellant's physician stated the medical opinion that it is in the appellant's best interest to move to the community in southern B.C. The advocate argues that the second letter from the appellant's physician states more specifically that the appellant moved to prevent imminent danger to his health by having access to immediate health care. The appellant argues that his doctor in the northern community did not have the knowledge or the testing facilities to diagnose or to treat his condition, that neurofibromatosis causes painful tumours that make it impossible for him to sit for a 4-hour trip to the nearest hospital from the community in northern B.C. The appellant argues that he has undergone testing and had a life-saving procedure to remove a tumour in his stomach, as well as his gall bladder removed, at a hospital in southern B.C.

The ministry's position is that the appellant did not move to his current residence for one of the reasons listed in Section 55 of the EAPWDR, namely: because of confirmed employment elsewhere in Canada [Section 55(2)(a)], he has not moved to another province or country to improve his living circumstance [Section 55(2)(b)], and he did not move within the municipality or to an adjacent municipality due to the demolishing or sale of his rented accommodation and he has not been provided with a notice to vacate [Section 55(2)(c)]. Also the ministry argues that even though the appellant's shelter costs are significantly reduced as a result of the move, the appellant did not move within a municipality or to an adjacent municipality or unincorporated area [Section 55(2)(d)]. The ministry points out that the letter dated April 16, 2012 from the appellant's physician states that it is in the appellant's best interest to move to the community in southern B.C. for medical reasons and this is not sufficient to establish that the appellant moved because of an imminent threat to his physical safety. The ministry argues that the medical consultation reports provided by the appellant also do not establish that the criterion in Section 55(2)(e) of the EAPWDR has been met. The ministry points out that there are often documents available to establish threats to a person's safety, such as reports from the police or other community agencies, and that the ministry looks for confirmation from other sources.

Section 55(2) of the EAPWDR provides for a moving supplement to assist with one or more listed reasons for a move in different moving scenarios. The panel finds that the appellant moved from a community in northern B.C. to a community in southern B.C., which is a distance of several hundred kilometers, and that he has not moved within a municipality or to an adjacent municipality and he has not moved to another province or country and, therefore, the ministry reasonably determined that Section 55(2)(b)(c) and (d) of the EAPWDR do not apply to the appellant's circumstances. Section 55(2)(a) applies to moves anywhere in Canada where the move is required to begin confirmed employment, and the panel finds that the ministry reasonably concluded this sub-section does not apply to the appellant's circumstances.

However, Section 55(2)(e) of the EAPWDR applies to moving costs required to move to another area in B.C. to avoid an imminent threat to the physical safety of any person in the family unit and the panel finds that the

ministry's conclusion that this sub-section does not apply to the appellant's circumstances was unreasonable. The panel finds that while physical safety may more typically be understood as freedom from risk of injury that results from an external threat to a person, the panel finds that the definition of 'safety' also includes freedom from danger or risk that can result from a particular situation involving a serious health condition. The appellant's long-time family physician provided a letter stating that the appellant has severe medical conditions which require medical supervision beyond that which a family practitioner can provide, that the appellant requires access to multiple surgeons and specialists that are not accessible to him in the community in northern B.C. and that the appellant moved to prevent imminent danger to his health by having access to immediate health care. As well, the appellant provided evidence that his condition causes painful tumours all over his body and that he cannot sit for the 4-hour trip from the community in northern B.C. to the nearest hospital. The appellant stated it was through testing available to him in the community in southern B.C. that a potentially life-threatening tumour in his stomach was discovered and that he was able to have it removed at the hospital in southern B.C., and that he has also had his gall bladder removed. The Discharge Summary from the hospital in southern B.C. makes a recommendation for follow up by the neurology team at a local university with respect to the appellant's neurofibromatosis. The evidence demonstrates that the appellant has a serious medical condition that requires specialized health care that is not reasonably accessible to him in the smaller community in northern B.C., that the physician confirmed that this situation posed an imminent danger to the appellant's health, and the panel finds that this situation also posed an imminent threat to the appellant's physical safety, as set out in Section 55(2)(e) of the EAPWDR. Therefore, the panel finds that the ministry's determination that the appellant's moving costs are not to assist with one or more of the reasons for the move as set out in Section 55(2) of the EAPWDR was not reasonable.

The panel finds that the ministry's decision, which denied the appellant's request for a supplement for moving costs under Section 55 of the EAPWDR, was not reasonably supported by the evidence and rescinds the ministry's decision. Therefore, the decision is overturned in favour of the appellant.