

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of October 1, 2012, which denied the appellant's request for a supplement for moving fees under Section 5 of the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)* and Section 55 of the *Employment and Assistance for Persons With Disabilities Regulation (EAPWDR)*. The ministry concluded that the appellant met the criteria of Section 55(2) (a) of EAPWDR as he moved within Canada for confirmed employment. However, the ministry determined that the appellant did not meet the criteria sets out in Section 55(3) as he had resources available to cover the cost of moving and did not receive the minister's approval before incurring these costs.

### 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

## PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- Two estimates from moving companies dated July 4, 2012;
- A copy of a fax from a moving company to the ministry dated July 4, 2012 including information about the cost of the move and a request for confirmation by the ministry;
- A copy of the Shelter Information for start date of July 1, 2012;
- A copy of the invoice for \$236.08 for a truck rental indicating the check-out date as August 4, 2012 for a due date of August 5, 2012 and a note by the appellant stating \$100 labour and \$60 gas costs.
- A copy of a letter dated April 13, 2012 indicating that a company has a seasonal full time position for the appellant;
- Request for Reconsideration form signed by the appellant on September 18, 2012;

Information subsequently put before the appeal panel included the following:

- The Notice of Appeal dated October 4, 2012.

In the written submission included with his Request for Reconsideration, the appellant stated the following;

- On July 5, 2012 he sent the requested moving costs to the ministry and that "I had met all 3 criteria" including:
  - 1- The appellant had confirmed employment (letter); was moving to begin employment and that his current rent of \$580 per month was increasing to \$600 per month as of January 1, 2013;
  - 2- The appellant has no other resources;
  - 3- The appellant made the request on July 5, 2012 which was denied on July 10, 2012 verbally with no explanation and that the decision was incorrect because his moving costs incurred on August 4, 2012 which was after the date he made his request.

The appellant further stated that his belongings were in storage since May 2012. On July 1<sup>st</sup> he was asked to remove his belongings from the storage which resulted for him to pay \$1400 rent and damage deposit. The appellant stated that a friend faxed the intent to rent to the ministry on the last week of June 2012. The appellant submitted that the ministry was aware of all the circumstances and still refused supporting him. The ministry "only inventing stories to justify their refusal".

In his Notice of Appeal, the appellant stated that on July 5, 2012 he met the criteria under section 55(1) and (2)(3) a of the legislation and "due to mistake of a ministry staff section 55(3) b is non-applicable". The appellant requested to have a fair and open discussion of facts, without prejudice or discrimination.

The panel notes that the ministry cited section 57(1) of the *Employment and Assistance Regulation (EAR)* by an error. The applicable legislation is section 55(1) of the *EAPWDR* as the appellant is has been designated as a PWD since 2000.

At the hearing, the appellant stated that he disagrees with the ministry that he did not request for

assistance prior to his move. The appellant submitted that on July 5, 2012 he met all the criterias of section 55 of the EAPWDR. The appellant stated that in April 2012 he received a job offer from his brother, a copy of which was faxed to the ministry on April 24, 2012. He moved his belongings to his friend's storage and left his community in April 2012 in order to start his employment. He informed the ministry of the move and also told the ministry that his lease was going up to \$600 + hydro and he was going to move to a cheaper place. He resided in a shelter for 4/5 weeks and later lived in another shelter. The appellant said that he informed the ministry that he secured a rental apartment as of July 1, 2012 and forwarded three moving estimates to the ministry with a copy of shelter information on July 5, 2012. The appellant said that he did not have any furniture in the new place and was unable to move into the apartment until mid-July when he received some furniture the outreach worker obtained at a thrift store and the appellant began living in the new apartment. The appellant submitted that on July 10, 2012, he contacted the ministry to find out the result of his request for moving expenses and was told, by the supervisor, that he was not eligible to receive moving expenses. The appellant said that he did not receive any written decision nor was advised of his right to request for reconsideration. The appellant said this was not the first time he had problems dealing with this office of the ministry and that he had made a few complaints to the Office of the Ombudsman.

The appellant, in response to the ministry's question said that he moved his furniture to his new resident early August by renting a truck and asking someone to help him. The appellant stated that he paid \$396.08 for the move "from my own pocket". .

The ministry relies on the reconsideration decision and submitted that the appellant moved on July 1, 2012 as per of his Shelter Information. The ministry submitted that the appellant approached the ministry on July 5, 2012 requesting a moving supplement. The ministry said that the ministry received the request after the appellant moved to his new place. The ministry agreed that the appellant's request meets the criteria under Section 55(2) of EAPWDR as he had a confirmed employment but he did not receive prior approval from the ministry before incurring these costs. The ministry said that the appellant had the resources available to him to complete the move without a financial requirement.

## PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant's request for a supplement for moving fees pursuant to Section 55 of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant had resources available to him to cover the cost of moving and that he did not obtain approval of the ministry prior to incurring the cost.

### **EAPWDA:**

#### **Disability assistance and supplements**

**5** Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

### **EAPWDR:**

#### **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 fulfil

in 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 ministry's position, as stated in its reconsideration decision is that the appellant met one of the eligibility criteria for a moving supplement as he moved within Canada for confirmed employment pursuant to Section 55(2)(a) of the EAPWDR. However, the ministry submitted that the appellant is not eligible for moving expenses as he failed to receive approval before incurring the costs of moving and that he had resources available to him to cover the cost of moving pursuant to section 55(3) of the EAPWDR.

The ministry further agreed that there is an error by the ministry in citing a wrong section of the legislation and that the ministry made an error not to inform the appellant of his right to the request for reconsideration. However, the ministry said that the decision is reasonable as the move occurred prior to obtaining approval from the ministry and that the appellant had resources to pay for the expenses.

The appellant's position is that he contacted the ministry prior to moving. He provided 3 estimates and that he never received any document stating why he was not eligible until the end of August. The appellant further argued that while residing at the shelter, he had a very difficult time and had to pay a loan and support his roommate. However, the appellant said that "I paid the moving expense from my own pocket".

Section 55(1) includes a definition of the costs that are provided for in the section, namely "living cost", which is the cost of accommodation and meals, "moving cost" being the cost of moving a family unit and its personal effects from one place to another and "transportation cost" means the cost of travelling from one place to another.

Section 55 (2) (a) states that the minister may provide a supplement to or for a family unit that is eligible for disability assistance to assist with moving costs required to move anywhere in Canada, if a recipient in the family is not working but has arranged confirmed employment. The panel notes that there is no issue about the eligibility for the moving supplement under Section 55 (2) (a) of the EAPDWR as the appellant's relocation was as a result of his confirmed employment.

Section 55(3)(b) of the EAPWDR states that a family unit is eligible for a supplement only if a recipient in the family unit receives the ministry's approval before incurring those costs. The ministry submits that the appellant failed to apply for the expenses prior to incurring the costs. The panel finds that the appellant made every possible effort to inform the ministry of his move prior to moving his furniture. The letter confirming the appellant's employment in the new community was faxed to the ministry on April 24, 2012. The appellant requested moving expenses seeking approval of the ministry prior to incurring the costs and forwarded 3 estimates to the ministry on July 5 prior to moving. The appellant rented his new resident and paid rent on July 1, 2012. The ministry did not provide a written decision regarding the appellant's request until August 30, 2012. The appellant

waited for a month to incur the costs, from his initial request on July 5 and on August 5 move his belongings into his new residence. The panel notes that the appellant did not receive any written decision from the ministry denying his request until August 30, 2012 and the denial was based on the appellant not meeting the criteria in Section 55(2)(a) of the EAPWDR even though the letter confirming his employment had been faxed to the ministry 4 months before. The panel finds that the appellant's move was imminent, as confirmed by the shelter information provided to the ministry, which required that the ministry provide an expeditious response to the appellant's request and this was not done in this case. The panel finds that the ministry's determination that the appellant failed to obtain approval before incurring the costs of moving was unreasonable and was not supported by the evidence in the circumstances of the appellant.

Section 55 (3) (a) states that a family unit is eligible for a supplement under this section only if there are no resources available to the family unit to cover the costs for which the supplement is requested. The panel finds that the appellant moved to his new community to commence his employment in April 2012 and was able to pay \$396.08 moving expense "from {his} own pocket", therefore, the panel finds that the appellant had resources to meet the moving expenses.

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that denied the appellant's request for a supplement for moving costs because it did not meet all the criteria of Section 55 of the EAPWDR was a reasonable application of the legislation in the circumstances of the appellant since the appellant had the resources to cover the moving costs, and therefore, confirms the ministry's decision.