

## PART C – Decision under Appeal

The issue under appeal is the reconsideration decision of November 26, 2012 of the Ministry of Social Development (the "Ministry") which denied the appellant's request for a moving supplement, as the Appellant did not meet the legislated criteria set out in section 55 of the EAPWDR.

## PART D – Relevant Legislation

*Employment and Assistance Act ("EAA") Section 24*

*Employment and Assistance for Persons with Disabilities Act ("EAPWDA") Sections 1 and 5*

*Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR") Section 55*

## PART E – Summary of Facts

This was a written hearing.

The Appellant attached written submissions in support to his Notice of Appeal dated December 6, 2012 (3 pages).

Information provided to the Panel indicated that there would be no submission provided by the Ministry, as it was relying solely on its Reconsideration Decision dated November 26, 2012. ("RD")

The evidence before the Ministry at reconsideration was:

- Appellant's Request for Reconsideration (4 pages) ("RR"), which sets out the initial denial by the Ministry for eligibility in section 2 dated October 16, 2012; and the Appellant's reasons for requesting reconsideration in section 3 dated November 2, 2012,
- Letter from Appellant's physician signed and dated October 15, 2012 (1 page) (the "Medical Letter"),
- Copy of invoice from moving & storage company dated September 26, 2012 (1 page) (the "Invoice"),
- Letter from Appellant to Ministry dated September 14, 2012 (1 page), (the "Initial Ltr")

The evidence of the Appellant in the Initial Ltr was that:

- His previous residence ("Residence A") was moldy, contained discoloration on the ceiling in two rooms which together affected his allergy and other related health issues
- A BC Housing Representative attended Residence A to view mold.
- Residence A was condemned for health reasons by BC Housing.

The evidence of the Appellant in Section 3 of the RR was that:

- He had to move from Residence A because the mold in his home caused respiratory health problems.

The evidence of the Ministry in Section 2 of the RR was that:

- The Appellant had requested a supplement for payment of moving expenses.
- The Appellant was forced to move from Residence A because it had been condemned.
- BC Housing confirmed on September 20, 2012 that Residence A was not condemned.
- The Appellant chose to move to a more expensive rental.
- The Appellant did not submit any medical documentation to support his move.
- There were no factures within the legislation that would allow eligibility for a moving supplement.
- The Ministry's decision was effective on October 16, 2012; and the Appellant was informed of the Ministry's decision on October 16, 2012.
- It was section 57(1) of the EAPWDR which applied to the Ministry's decision.

The evidence of the physician in the Medical Letter was that:

- The physician has been the Appellant's family doctor for several years.
- The Appellant was required to move from his previous residence ("Residence A") due to respiratory health problems caused by mold in the walls of the residence.

The evidence of the Appellant in his Notice of Appeal was that:

- He was on BC Housing waiting list for alternate accommodation.
- A BC Housing Representative attended at Residence A to view mold and leakage stain, following which BC Housing offered Appellant alternate accommodation ("Residence B").
- BC Housing did not professionally test Residence A for mold nor take any samples for laboratory investigation.
- The Appellant viewed Residence B and determined it to be unsuitable and more costly than Residence A.
- The Appellant later received short notice from BC Housing that a new residence was available right away ("Residence C").
- The Appellant moved from Residence A to Residence C; and was forced to seek financial resources from his sons to pay for moving expenses.
- The Appellant submitted Initial Ltr and three moving estimates [to move from Residence A to Residence C] prior to his move to Residence C.
- The Appellant did not receive a response to his Initial Ltr from Ministry prior to his move to Residence C.

- The Appellant proceeded with move to Residence C without prior approval of Ministry.

The evidence of the Ministry in its RD was that:

- The Appellant submitted three moving estimates to the Ministry on September 6<sup>th</sup> and 7<sup>th</sup> in advance of his move to Residence C.
- The Appellant advised the Ministry of his need for the moving supplement on or about September 13, 2012.
- The Appellant's request was denied on September 16, 2012.
- The Appellant moved to Residence C on September 26, 2012.
- The Ministry's denial was not communicated to the Appellant until October 16, 2012.

The Panel finds as fact that:

- At the time of his request for a moving expense supplement, the Appellant was an eligible family unit and thus eligible to receive health supplements.
- The Appellant submitted his Initial Ltr and related quotes for approval to the Ministry prior to his move to Residence C.
- There was black mold present in the Appellant's Residence A.
- Residence A was not condemned.
- The Appellant received monies to cover moving expenses from his sons.

## PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision to deny the Appellant his request for a moving supplement, because the moving costs were not an eligible item as required by section 55(3) of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

The relevant statutory provisions to be considered in this appeal, namely sections 1 and 5 of the EAPWDA and section 55 of the EAPWDR, provide as follows:

### Employment and Assistance for Persons with Disabilities Act – Sections 1 & 5

#### Interpretation

"disability assistance", means an amount for shelter and support provided under section 5 [disability assistance and supplements].

#### 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

### Employment and Assistance for Persons with Disabilities Regulation -- Section 55

#### 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.

[am. B.C. Reg. 275/2004, s. 2.]

The Appellant argues that he submitted his request for approval approximately 2 weeks in advance of his move to Residence C, fully expecting that it would be sufficient time for the Ministry to process his request. He further argues that due to the short time frame required by BC Housing to move from Residence A to Residence C, the Appellant was forced to seek financial resources from his sons to pay for the moving expenses; which monies he expected to pay back to his sons.

The Appellant argues that although the Residence A was not condemned, the BC Housing Representative chose instead to offer him alternate Residence B. The Appellant argues that due to the mold in Residence A, his health situation was

acute and he could not afford to pass up BC Housing's offer of Residence C.

The Ministry initially argued in the RR that there were no factures that fell within the legislation to allow eligibility for a moving supplement and thus the Appellant's request failed on three grounds. Firstly, that his Residence A had not been condemned, which the Panel found to be a fact. Secondly, that the Appellant had chosen to move to a more expensive rental. The Panel finds that there is no evidence to support that position. And thirdly, that there was no medical documentation to support his move. The Panel finds that the Appellant's Medical Letter was received by the Ministry on the same date the Appellant was informed of the Ministry's decision and was evidence before the Ministry when making its RD.

The Panel notes that in section 2 of the RR the Ministry states that it has relied on section 57(1) of the EAPWDR, which, at the date of the Ministry's decision, is in fact a section of the regulations which deals with crisis supplements and not moving cost supplements; the Panel further notes that notwithstanding this error the Ministry has attached to the RR an excerpt of the EAPWDR described as being section 57(1), which appears to the Panel to be a repealed version of the current section 55(1) of the EAPWDR. The Ministry later states in its RD that it relies on section 55(1) of the EAPWDR in arriving at its RD. The Panel finds the Ministry's reference to and stated reliance upon two different but similar sections to be confusing and somewhat difficult to follow.

The Ministry later notes in the RD that the Appellant's request for moving supplement was required for health reasons in accordance with section 55(2)(e) of the EAPWDR and was based on the most economical quote as required by section 55(4)(a) of the EAPWDR. The Ministry goes on to argue that the Appellant is ineligible for the supplement for reasons different than those set out in section 2 of the RR; firstly that he had the financial resources to meet his moving needs in contradiction with the terms of section 55(3)(a); and secondly, that he proceeded with the move without the ministry's prior approval as required by section 55(3)(b).

With respect to having the financial resources, the Ministry argues that because the Appellant paid cash to the movers he had the financial resources to meet his moving needs. The Panel notes that the Appellant in his evidence states that he did not have the funds necessary for the movers and that he received sufficient funds from his sons on the understanding that it would be paid back. There is no evidence that the monies were gifted to the family unit. Thus the Panel finds that the Ministry did not reasonably conclude that the Appellant did not meet the legislated criterion set out in section 55(3)(a) of the EAPWDR.

With respect to the prior approval, the evidence shows that the Appellant applied to the Ministry in advance of his move to Residence C; that the Ministry denied the Appellant's request on the 16<sup>th</sup> of September on three (3) grounds, 4 days before receiving confirmation from BC Housing of the existence of one of the said grounds. The Ministry states that it was unable to inform the Appellant of the denied request and chose to inform the Appellant at next contact; the Panel notes that there is no evidence that the attempt at contact took place, nor when the said attempt took place. The evidence shows that the Appellant was not notified of the Ministry's denial until the following month on October 16<sup>th</sup>.

Overall, the Panel finds that the Ministry's decision that the Appellant did not meet the legislated criterion set out in section 55 of the EAPWDR was not a reasonable application of the applicable enactment in the circumstances of the Appellant and rescinds the Ministry's decision.