APPEAL #

PART C – Decision under Appeal

The reconsideration decision dated 7 November 2012 determined that the appellant was not eligible to receive a moving supplement because the appellant's family unit was not actually moving and thus the appellant was not eligible to a moving supplement under section 57(1) of the Employment and Assistance Regulation and, further, because the appellant did not demonstrate that the cost of moving the family unit's personal effects to another area in BC is required to avoid an imminent threat to the safety of any person in the family unit as required under section 57(2)(e) of the Employment and Assistance Regulation or any of the other criteria under subsection (2).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), section 57.

PART E – Summary of Facts

The evidence before the Ministry at reconsideration consisted of:

- In September 2011, the appellant moved from another area in BC to avoid an imminent threat to her physical safety, first to temporary accommodations and on 1 November 2011 to a permanent residence.
- On 11 October 2011, the appellant provided documents to the ministry showing temporary accommodation rental from that date until 10 November 2011.
- On 20 October 2011, the appellant was found eligible for income assistance.
- On 1 November 2011, the appellant provided documents to the ministry showing the rental of a permanent residence as of the same date.
- A letter dated 20 October 2011 from a housing corporation showing a Tenant Rent Report for the period 1 November 2011 to 31 August 2012 for the appellant's rent subsidy.
- A Tenant Sign Up Info sheet with a receipt for security deposit and first month's rent dated 21 October 2011.
- On 16 October 2012, the appellant requested a moving supplement to retrieve her family unit's belongings from its former residence in another location in BC. The application included:
  - A letter of support from an organization stating that the appellant "needs funding because she does not have the financial means to pay for this move" and that she located a mover that provided a quote that was very reasonable.
  - A court order dated 25 September 2012 allowing the appellant to access her former residence at a time agreed to between the parties for the purpose of retrieving a number of personal items that are listed in the order, including clothing and toys.
  - A one-page handwritten document containing 4 moving quotes ranging from $1650.00 + HST to $800.00 + HST.
  - A one-page email dated 15 October 2012 showing a moving quote of $650.00 + HST.
- The appellant was not able to move her personal belongings until she obtained a court order on 25 September 2012 and a safety plan was in place to access her former residence.
- The appellant had been at her new residence for one year and did not indicate any intention to move or that the physical safety of anyone in her family unit was then at risk. There is furniture (beds etc.) at the appellant's actual residence.

In her request for reconsideration dated 30 October 2012, the appellant indicates that she had not been allowed to return to her former residence until the court order of 25 September 2012 and that she has no resources to cover those costs. Further she states that a safety plan has to be in place before going there to retrieve her items and that the mover with the lowest quote has experience in dealing with this type of situation.

In the appellant's Notice of Appeal dated 29 November 2012, she states that she had to leave a life-threatening relationship quickly without being able to gather her belongings. Further, it helps her son's medical condition to deal with the trauma of that situation and with his behaviour if he has familiar belongings and that all those items should be retrieved as soon as possible.

At the hearing, in a written statement part of her submission, the appellant testified that she left her former home that belonged to her spouse's parents in the middle of the night, only able to bring with her personal belongings that fit in a backpack. She then testified she was still afraid of her ex-spouse

and that the court process was lengthy because initially her ex-spouse did not retain counsel and because of inherent court delays in this province. She did not and does not receive any financial support from her ex-spouse, has no money and is unemployed and thus, she could use old clothes as she could hardly afford new ones. Initially, when she moved, she did not receive any moving cost supplement.

The panel determined the additional oral and written evidence was admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was in support of the records before the Minister at reconsideration and particularly that it was confirming such evidence, providing more details.

PART F – Reasons for Panel Decision

The issue under appeal in this case is whether the Ministry's decision that the appellant was not eligible to receive a moving supplement because the appellant's family unit was not actually moving and thus the appellant was not eligible to a moving supplement under section 57(1) of the EAR and, further, because the appellant did not demonstrate that the cost of moving the family unit's personal effects to another area in BC are required to avoid an imminent threat to the safety of any person in the family unit as required under section 57(2)(e) of the EAR was either a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation can be found at section 57 of the EAR
57 (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 income assistance, other than as a transient under section 10 of Schedule A, or hardship assistance to assist with one or more of the following:...
(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;...
(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 (1) (f) or (g), the least expensive appropriate living costs.

The Ministry acknowledges that the appellant moved from one area to another area in BC to avoid an imminent threat to the appellant's physical safety and that there were no resources available to her to cover those costs. The Ministry indicated at the hearing that if she had applied for the moving supplement at the time she actually went to live at the other area in BC, they believe she would have been eligible and they would have agreed to pay for it. Further the Ministry indicated that there was no time limit in the legislation, regulations, policies or guidelines that would specify under what kind of delay a move must be completed. The Ministry argues that, in fact, this move of personal belongings should be considered as a new move, a separate issue, and thus, at this point in time, the appellant is not moving anywhere in any event and her safety is not at risk either. The Ministry also took the position that to be eligible for the moving supplement, the appellant had to demonstrate that the items she wanted to move were required to avoid an imminent threat to her safety and that the appellant had not demonstrated that not having those personal items would pose such a threat, particularly that she had been living in her actual residence and had the furniture she needed.

The appellant argues that moving her personal effects is part of "moving costs" under s. 57(1) of the EAR and that there is no statutory authority for the Ministry to determine that because the appellant did not immediately move their possessions when they fled the abusive relationship, this was no

longer a "moving cost". Since the appellant was under a no-contact order by the courts, it prevented her from entering the home where her possessions were and she had no choice but to wait for leave of the court, on 25 September 2012, to begin the process of moving them. Thus, the appellant argues that the move was never completed and that this application was dealing with this initial move that could now be completed as a result of the court order; in other words, those costs are not for an additional move but for the completion of the initial one. The appellant argues there is no specific point in time when a move has to take place, particularly when the person is fleeing an abusive relationship where there is an immediate risk of physical harm – the legislation does only require that the move be made to avoid the threat to physical safety.

The panel agrees with both parties that at the time of her actual move to the other area in BC, the appellant was fleeing an abusive spouse and that her move was indeed required to avoid an imminent threat to her safety. The panel finds that at that time, the requirements for obtaining the moving costs supplement were complied with and agree with the Ministry that she would have been determined to be eligible for it. However, the panel finds the ministry's determination that considered this application for moving costs supplement as a new move and not the continuation of a move that had started when the appellant fled her home was not a reasonable application of s. 57 of the EAR in the circumstances of the appellant as the panel found that if she had applied for the supplement when she fled her home, she would have been in violation of a no-contact order if she had attempted to retrieve her personal belongings and the Ministry would have been correct in denying the application since the appellant was not in any actual position to complete the transaction. The appellant followed the law and waited until a judge gave her leave to retrieve her belongings and applied to the Ministry accordingly when the move was actually possible and while a quote was also valid and actual. The evidence shows the appellant was not responsible for the delays in obtaining the court order and thus, the panel finds it is unreasonable to use the court delays against the appellant for failing to have acted earlier in completing her move.

Further, the panel agrees with the Ministry's position that those items are not required to avoid an imminent threat to the appellant's safety but, nonetheless, finds this is irrelevant as s. 57(2)(e) of the EAR is clear that it is the move that is required because of threats to the person's safety, not the possession or not of those personal items.

The panel finds the ministry's decision was not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the decision. Therefore, the ministry's decision is overturned in favour of the appellant.