

## PART C – Decision under Appeal

The decision under appeal is the Ministry's reconsideration decision dated December 24, 2012, which held that the Appellant was not eligible for a moving supplement because he did not meet one or more of the eligibility criteria outlined in Section 55 of the Employment and Assistance Persons with Disabilities Regulation (EAPWDR). Specifically, the Ministry held that:

- a. The Appellant did not move to confirmed employment that would significantly promote the financial independence of the family unit;
- b. The Appellant did not move to another province or country to improve the family unit's living circumstances;
- c. The Appellant did not move because the family unit's rented residential accommodation was being sold or demolished and a notice to vacate had been given, or [the premises] had been condemned;
- d. The Appellant did not move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area where the family unit's shelter costs would be significantly reduced as a result of the move; and
- e. The Appellant was not required to move to another area in BC to avoid an imminent threat to the physical safety of any person in the family unit.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) - Section 5  
Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) - Section 55  
Employment and Assistance for Persons with Disabilities Regulations (EAPWDR) – Schedule B,  
Section 2 and Section 3(3)(b)(i)

## PART E – Summary of Facts

The evidence before the Minister at reconsideration includes:

- The Appellant is designated as PWD and currently receives Disability Assistance.
- A Request for Reconsideration, from the Appellant, dated December 3, 2012.
- The Appellant's written submission, dated December 10, 2012, outlining the reasons why he is asking for a request for reconsideration.
- A physician's letter dated December 10, 2012, outlining how a change of residence might positively impact the Appellant's spouse's mental health.
- A letter dated November 29, 2012, from the Appellant's physician, with respect to how relocation to a drier climate might impact the Appellant's physical health and arthritic symptoms.
- A written move quote, dated September 29, 2012, outlining the estimate of costs to move the Appellant's household effects from place of residence (City A) to (City C).
- Five pages of on boarding/new hire documentation dated November 14, 2012, outlining the Appellant's new job description, job assignment, training and shift information.
- A second, written move quote, dated November 20, 2012, providing an estimate of costs for moving the Appellant's household effects from one city to another city.
- A Record of Employment (ROE) for the Appellant dated October 25, 2012.
- A Ministry Decision Report dated November 26, 2012.

Additional Evidence provided:

An additional written submission was provided to the panel, prior to the hearing, from the Appellant's advocate. The written submission included two items:

1. The required, signed, Release of Information authorizing the Appellant's Advocate to act on the Appellant's behalf; and,
2. A letter from the Appellant's physician, dated January 13, 2013, outlining the specifics of why the relocation of the Appellant to a drier climate is required.
3. At the hearing, the Ministry confirmed they had no objection to adding the physician's letter to the evidence before the panel. The panel accepted the letter as admissible under Section 22(4) of the Employment and Assistance Act (EAA) because the physician's letter is written testimony relating to why the Appellant's relocation to a drier climate is required and thus, supports the information and records before the Minister when the reconsideration decision was made.

At the hearing, the Appellant provided evidence that:

- He moved from City A to City B in August of 2012 where he began employment in City C. (City B is situated approximately 45 minutes from City C and the Appellant was required to commute each day to his job.) He states his intent was to improve his living circumstances, his physical health, his spouse's mental health, and reduce the family unit's shelter costs.
- He remained in the employ of that Employer from August ---, 2012 to October ---, 2012, at which time he quit that job.
- Shortly thereafter, the Appellant quickly secured new employment, at another job in City C;

whereupon, he was told and subsequently, confirmed with the employer, that he was required to work in City C and, was not permitted to perform the work from his original place of residence, City A.

- The Appellant, consistent with his initial intent, rented a new residence in City C which ended up costing the Appellant less than half the rental rate of his former residence in City A. He states he has succeeded in reducing his shelter costs significantly.
- In addition, the Appellant stated his spouse's Dr. supported their plans to relocate to the City C, where her available familial support could further assist her in her recovery from depression; this same physician stated the Appellant's spouse might further benefit from relocation because of the extra sunshine the climate provided in this area, which would serve to improve her moods.
- The Appellant says that he has experienced, what are, in his view, very significant and positive improvements to the state of his health since moving to the new location. For example, his arthritis has become less problematic because the dry climate here has lessened the level of pain that he experiences on a daily basis. As a result, he finds that he uses his wheelchair less for mobility and he has been able to independently drive a car again. This is a major change from formerly having to use his wheelchair a majority of the time and while relying, solely, on public transportation.
- The Appellant states that in his former location of City A, while he was dependent on public transportation, he was subject to various injuries, including falls and once a broken rib, as he tried to navigate the transit system in wet and slippery conditions. He states this is why his Dr. has recommended relocation to a dryer climate; it would lessen his risks for increased falls.

At the hearing, the Appellant's spouse provided evidence that:

- She has been under the care of a Psychiatrist for major depression since her aneurism and the resulting loss of her teaching job.
- She has experienced considerable relief from her depressive symptoms since moving here to be with the Appellant in December 2012; and is even considering tutoring part time now that she feels better.
- She says she has benefitted from having her extended family close by as she recovers from her depression.
- The extra monies they receive from the Appellant's income may not appear to be significant at face value; but, those monies provide a substantial, positive difference to their lifestyle compared to when they are solely reliant on Disability Assistance.
- She believes that even though the Appellant is only making minimum wage at this time, the Ministry is not considering that he will increase his earning capacity eventually. She says that the Appellant will, in time, potentially earn commissions, that will add to their income. That will gradually reduce their level of reliance on Disability Assistance and improve their living circumstance in addition to promote their financial independence. She adds that since she has been here, the Appellant has been less dependent on her for care giving than previously, and that has been a big relief to her in many ways.
- She concurs with the Appellant's Dr.'s most recent letter, dated January 11, 2013, stating that the Appellant will be less apt to experience physical injuries because his degree of mobility in the drier climate is greater and more independent in nature.

At the Hearing, the Appellant's Advocate provided evidence that:

- With respect to the legislated requirements for confirmed employment; the Appellant did, technically, move to this area for work, even though the job he currently has is not the original one he secured when he arrived in City B.
- With respect to the Appellant relying less on Disability Assistance as a result of his employment; the Advocate believes that with the Appellant's continuing to work, there is the potential for there to be a significant reduction in the Appellant's reliance on Disability IA over time. The Advocate states that his earnings will, very likely, increase over time; and, even if those earnings increase in small increments, they will serve to reduce his financial reliance on Disability Assistance.
- With respect to paying less rent, the Appellant is paying less than one half of what his shelter costs were in his City A.
- The recent (January 12, 2013) letter from the Appellant's Dr. (admitted by the Panel as supporting evidence, under Section 24(4) of the EAA), clearly supports the necessity for the Appellant's relocation here in order to lessen the severity and impact of his arthritis; but, more importantly, the relocation has served to minimize the risk to the Appellant's physical safety because in this climate he has a lessened probability of physically injuring himself through a fall.

At the Hearing, the Ministry mostly relied on its submission in its Reconsideration Decision dated December 24, 2012, with the addition of a definition for 'imminent':

- Confirmed Employment – criteria not met. The Appellant did not demonstrate that he had confirmed employment prior to moving to City B and that the employment would significantly promote the financial independence of his family unit. Progression toward financial independence is gauged by the reduction of reliance upon Disability Assistance. The income information that the Appellant has provided does not establish his employment will result in a *significant* reduction of his reliance on Disability Assistance. The Ministry stated that the Appellant moved to City C prior to obtaining the employment in question. He was, therefore, initially, not required to move in order to begin his employment.
- Improved Living Circumstances – criteria not met. The Appellant's request is for a supplement to move within BC, he has not demonstrated that he requires a moving supplement to move to another province or country to improve the living circumstances of his family;
- Accommodation Being Sold, Demolished or Condemned – criteria not met. The Appellant has not made any claims that his residential premises were being sold, demolished or condemned, therefore this criteria does not apply.
- Significant Reduction in Shelter Costs – criteria not met. The Regulations specify that this criterion applies to a move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area. Since the Appellant is requesting a supplement to move from City A to City C, this criterion is not met. The municipality of City C is not within City A and, it is also not adjacent to City A.

- Avoid an Imminent Threat to Physical Safety – criteria not met. Imminent is defined as "something which is threatening to happen at once, something close at hand, something to happen upon the instant, and on the point of happening." (Black's Law Dictionary)  
The Reconsideration Decision considered the statements that the Appellant's spouse has been in care for depression for six months and the move to ----- would have a positive effect on her mental health. However, the information provided does not establish that there is an imminent threat to the Appellant's physical safety. The Reconsideration Decision also considered the statements that the Appellant has severe Psoriatic Arthritis which benefits significantly from the drier ----- weather. However, arthritis is considered a chronic health condition and not an imminent physical safety risk.
- The Minister does not dispute the Appellant's eligibility based on Section 55(3) of the Regulation, since the Appellant has stated that he does not have the resources to cover the cost of the move, and since he has not yet incurred the moving costs. However, since the request did not meet any of the eligibility criteria set out in Section 55(2) of the Regulation, the Appellant's request for a supplement for moving costs was denied.
- The Ministry requests the Appeal Tribunal to confirm the Ministry's decision to deny the Appellant's request for a supplement for moving costs.

The Panel finds:

- The Appellant did relocate to City B, initially, and find employment in City C in August 2012; and later, in October 2012, after leaving his first job in City B, the Appellant relocated to City C where he began his current employment.
- The Appellant and his spouse, both, have received support from each of their physicians for them to relocate to the area surrounding City C, each physician has cited potential health benefits that might be gained for each party.
- The earned income exemption calculation applicable to the Appellant's current job has been calculated correctly and is consistent with the calculation used in the legislation at the time of the time Reconsideration Decision.
- The Appellant and his spouse currently reside in City C and have confirmed they have moved their household effects from City A to City C.
- The Appellant does pay significantly less shelter costs than he had previously in City A.
- The Appellant and his spouse have, both, stated they've each experienced several positive impacts that seem to be a result of their relocation from City A to City C.
- The Appellant moved their household effects from City A to City C in December of 2012, prior to receiving Ministry approval to do so.

## PART F – Reasons for Panel Decision

The issue to be decided in this appeal is the reasonableness of the Ministry's Reconsideration Decision to deny a moving supplement to the appellant because the Appellant did not meet the legislative criteria set forth in the EAPWDR Section 55 (2)(a) through (e) in that the appellant was not eligible for a moving supplement to assist with one or more of the following:

1. 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;
2. moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances;
3. 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 notice to vacate has been given, or has been condemned;
4. 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;
5. Moving costs required to move to another area of British Columbia to avoid an imminent threat to the physical safety of any person in the family unit.

The relevant sections of the EAPWDR are 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 fulfill

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.

### **Schedule B**

#### **Deductions from earned income**

**2** The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for
  - (i) income tax,
  - (ii) employment insurance,
  - (iii) medical insurance,
  - (iv) Canada Pension Plan,
  - (v) superannuation,
  - (vi) company pension plan, and
  - (vii) union dues;
- (b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;
- (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

#### **Exemption — earned income**

**3 (3)** The exempt amount for a family unit that qualifies under this section is to be calculated as follows:

- (b) in the case of a family unit that includes two recipients who are designated as persons with disabilities, the exempt amount is calculated as the lesser of
  - (i) \$1600, and



(ii) the family unit's total earned income in the calendar month of calculation.

(B.C. Reg. 265/2002) (B.C. Reg. 117/2003) (B.C. Reg. 43/2006) (B.C. Reg. 197/2012)

The Ministry argues that in order to be eligible for a moving supplement, the Appellant must have met at least one of the legislated criteria:

- Moving to confirmed employment, anywhere in Canada, that will significantly promote the financial independence of the family unit
- Moving to another province or country to improve the family unit's living circumstances
- Moving because the rented residence is being sold, demolished or condemned
- Moving within or adjacent to municipality or unincorporated area if the family unit's shelter costs would be significantly reduced as a result of the move
- Moving to another area of BC to avoid an imminent threat to the physical safety of any person in the family unit

The Appellant argues:

- He did move to another job to promote the financial independence of the family unit.
- He did move to improve the family unit's living circumstances.
- He did move to and secure shelter where costs are significantly reduced as a result of the move.
- He did need to move to avoid an imminent threat to the physical safety of himself and his spouse.
- In addition, the Appellant claims he has experienced a significant increase in his self esteem because he is finally able to contribute financially to his family's well being. He asserts that the Ministry, in their reconsideration decision, incorrectly calculated the impact his income would have on the PWD earnings exemption he was entitled to. The numbers in the legislation that the Ministry relied on to calculate his income exemption had increased in October 2012 which negatively affected the calculation to show that his wages would not significantly lessen his reliance on Disability Assistance.
- The Appellant's position, in general, is that his family unit's relocation from City A to the area around City C has been very positive in a number of ways: he has been able to secure employment much easier than he could have in City A, his physical health has improved with the resulting climate change, his spouse has benefitted from the relocation, just as her Dr. had anticipated and he should be eligible for a moving supplement to support their move in order to achieve and attain better circumstances for both of them.
- The Appellant asserts that his situation supports the eligibility criteria for a moving supplement as outlined in Section 55(2) (e) of the EAPWDR because the relocation will enable the Appellant to avoid an imminent threat to his physical safety.

The Panel finds:

55(2)(a) – moving costs required to move anywhere in Canada

With respect to the criteria outlined in Section 55(2)(a), a move to confirmed employment that would significantly promote the financial independence of the family, the Appellant has not demonstrated that the Appellant's net earnings would affect his receipt of Disability Assistance; because his earnings would not exceed the earnings exemption amount he is entitled to, he would remain on his current rate of Disability Assistance. Therefore, the Appellant's earnings would not significantly reduce the Appellant's reliance upon Disability Assistance. When calculating the Appellant's earned income exemption Under Schedule B, Section 2 of the EAPWDR, it states that payroll deductions such as Income Tax, CPP, and EI are not considered earned income. The net income is a lesser amount than the gross income; therefore, the Appellant will continue to rely on Disability Assistance contrary to what he had calculated. This consideration is inclusive of both the training and after training income the Appellant will receive.

At the time of the Reconsideration decision, the Ministry did not have evidence to support what, if any, future commissions, the Appellant may earn; and, therefore, did not have exact figures to demonstrate the Appellant would be significantly less reliant upon Disability Assistance. Therefore, the Panel finds this part of the decision to be a reasonable application of the legislation.

55(2)(b) – moving costs required to move to another province or country

With respect to the criteria outlined in Section 55(2)(b) and moving to improve the family unit's living circumstances, the full eligibility criteria of this section have not been met. The Panel acknowledges that the Appellant and his family feel they have improved their living circumstances; however, the Appellant has not demonstrated that he was required to move to another province or country to do so. Therefore, the Panel finds this part of the decision to be a reasonable application of the legislation.

55(2)(c) – Rental accommodation being sold, demolished or condemned and notice to vacate

With respect to the criteria outlined in Section 55(2) (c), The Panel finds that the Appellant was not required to move because the family unit's rented residential accommodations were being sold or demolished; nor, had the Appellant been given a notice to vacate the property because the property had been condemned. Therefore, this criterion does not apply to the Appellant's situation. The Panel finds this part of the decision to be a reasonable application of the legislation.

55(2)(d) - Move to significantly reduce shelter costs

With respect to the criteria outlined in Section 55(2) (d), the Panel finds this criterion only applies to a move within a municipality or unincorporated area or to an adjacent municipality or unincorporated area. Since the Appellant is requesting a supplement to move from City A to City C, this criterion has not been met as, the municipality of City C is not within City A and is also not adjacent to City A. The Panel finds this part of the decision to be a reasonable application of the legislation.

55(2)(e) – Move to avoid imminent threat to physical safety

With respect to the criteria outlined in Section 55(2) (e), the Panel finds the eligibility criteria has not been met. At the time of the reconsideration decision, neither the Appellant's or his spouse's conditions or situation at the time of the Reconsideration present an imminent threat to their physical safety. The Panel finds that an 'imminent threat to the physical safety' cannot be reasonably applied to the Appellant's or his spouse's circumstances.

With respect to the Appellant's spouse, the Panel acknowledges that she has been in treatment of Depression and the relocation to the new location would have and, has had, a positive effect on her mental health; however, the information and evidence provided at the time of the reconsideration decision does not establish there was an imminent threat to her physical safety at that time. The Panel finds this part of the decision to be a reasonable application of the legislation at the time the reconsideration decision was made.

With respect to the Appellant, the Panel acknowledges that his health condition would benefit from a drier climate; however, the Appellant has not established that there was an imminent threat to his physical safety at the time he chose to move, therefore the Panel finds this part of the decision to be a reasonable application of the legislation at the time the reconsideration decision was made.

The panel finds that the ministry's decision was a reasonable application of the legislation in the appellant's case and confirms the decision.