

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development (the ministry) dated 17 January 2013 which held that the appellant was not eligible for a requested moving supplement under section 55 of the Employment and Assistance for Persons with Disabilities Regulation. The ministry held that the move was within the same municipality and was not to a prescribed location for a prescribed reason as set out in subsection 55(2). The ministry further held that the appellant had resources available to cover the cost of moving and that he did not receive prior approval from the ministry before incurring the costs, and therefore his request did not meet the criteria set out in subsection 55(3).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 55.

PART E – Summary of Facts

The evidence before the ministry at reconsideration comprised the following:

From the ministry's files:

- The appellant is a person with disabilities (PWD) designation in receipt of disability assistance.
- A receipt from a moving company dated 31 December 2012, showing payment in cash for moving costs of \$264.60
- A ministry Shelter Information form dated 02 January 2013 for a suite at the same address as the "To" location in the above moving cost receipt, with a monthly rental rate of \$650, and with a rent receipt dated 31 December 2012 for half the rent for January 2013 – dated stamped received by the ministry 03 January 2013.
- Page 2 of 2 pages of a Residential Tenancy form dated 27 November 2011 with a notice of rent increase to \$730 at an address shown as the "From" location on the moving cost receipt.

In the appellant's Request for Reconsideration dated 08 January 2013, the ministry notes that the submission of the Shelter Information form on 03 January 2013 was the appellant's first contact with the ministry to advise that there was a change in his current circumstances. The appellant gives as Reasons for his request for reconsideration simply "Moving costs."

In his Notice of Appeal dated 24 January 2013 the appellant states:

"Advocates tried to find a place since mid- Dec. Found a place 4 pm Dec 30. Phoned moving company 5 pm to move me on Dec. 31, 9 am. Holidays gave me no opportunity to give information [or estimates.]"

After reconsideration but before the hearing, the appellant presented a submission that consisted of a Residential Tenancy Branch decision dated 08 November 2012. The decision dismissed the appellant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated 01 October 2012 and to come into effect 31 December 2012. Under dispute was the landlord's plan to convert the suite occupied by the appellant for the use of a resident caretaker. In dismissing the appellant's application, the dispute resolution officer provided the landlord with an Order of Possession to take effect at 1 pm 31 December 2012. In the decision, the dispute resolution officer noted that the appellant is allowed to remain in the rental unit for the last month of the tenancy without paying rent as a result of the landlords issuance of the 2 Month Notice.

At the hearing, the appellant stated that he understood that the ministry required 2 quotes from moving companies. However, he did not receive the Residential Tenancy Branch decision until 18 November 2012 and then it took him some time to find an advocacy organization to help him do computer searches for vacancies. He stated that it is well known that the housing market in his area was "horrendous," with little in the way of affordable housing. Moreover, December is the worst possible month to have to move, with a few vacancies and with the advocacy organizations that would be able to help him closed from 18 December for a month for the holidays. He stated that he was finally able to find a suitable location at the last possible day, on 31 December 2012. Because he had little left over because of the need to pay the moving company, he was fortunate that his new landlord accepted only half the rent due for January. He is still repaying that amount due. Because of the rush to do all the paperwork associated with moving into a new apartment, finding a moving

company and organizing the move, all in one day, he did not have time to contact the ministry. Nor did he have the means to do so as his telephone by that time had been disconnected.

The ministry stood by its position at reconsideration.

The panel sought the views of the parties regarding the admissibility of the appellant's testimony, both oral and written, provided after reconsideration, specifically asking whether this testimony was "in support of" the information before the ministry at reconsideration. Both parties expressed the opinion that this testimony should be admitted. Despite the views of the parties, the panel is bound by section 22(4) of the *Employment and Assistance Act (EAA)*, which states:

".....a panel may admit as evidence only

- (a) the information and records that were before the minister when the decision being appealed was made, and
- (b) oral or written testimony in support of the information and records referred to in paragraph (a)."

The panel notes that the only information before the ministry relating to the appellant's move when it made its reconsideration decision was that he moved on 31 December 2012 to a new address in the same municipality, the cost of the move and that he paid in cash, his new monthly rent (with half paid in advance) and his rent before the move, and that the appellant's first contact with the ministry to advise that there was a change in his circumstances was on 03 January 2013. The panel finds that the account of the appellant surrounding the circumstances of his move, as set out in his notice of appeal, the Residential Tenancy Branch decision and his testimony at the hearing, cannot be considered to be in support of the information before the ministry at reconsideration: it is fresh information describing the situation of the appellant that was not available to the ministry when it made its reconsideration decision. Accordingly, pursuant to section 22(4) of the *EAA*, the panel does not admit this testimony as evidence in this appeal.

The panel finds as fact that:

- The appellant moved within his municipality on 31 December 2012.
- The cost of the move was \$264.60, paid in cash.
- The new rent is \$650/month compared with \$730/month at the previous address, for a reduction in shelter costs of \$80/month.
- The appellant neither sought nor obtained the prior approval of the ministry for covering his moving costs.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that the appellant was not eligible for a requested moving supplement under section 55 of the EAPWDR. Specifically the issue is whether the ministry's determination that the move was not to a prescribed location for a prescribed reason as set out in subsection (2), that the appellant had resources available to cover the cost of moving, and that he did not receive prior approval from the ministry before incurring the costs and therefore his request did not meet the criteria set out in subsection 55(3), was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant .

The relevant legislation is from the 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 panel will consider each party's position regarding the reasonableness of the ministry's decision under the applicable moving supplement criteria at issue in this appeal.

Subsection (2) Move locations and move reasons

The position of the ministry is that there are no indications that the appellant's move met any of the location/reason criteria in subsection (2). At the hearing, the ministry stated that the reduced shelter cost criterion was not considered because the appellant had not sought prior approval for the move.

The position of the appellant is that his move meets two of the criteria: his shelter costs are significantly reduced and his move was required as a result of the circumstance that meets the situation described in paragraph (c), except that instead of his apartment being sold or demolished, it was being converted to another use.

The panel finds that the change of monthly rental costs from \$730 to \$650 represents a significant reduction in the appellant's shelter costs and, as the move was within the same municipality, the panel therefore finds that the ministry's determination that the criterion set out in paragraph (d) had not been met was unreasonable.

No resources available

The position of the ministry is that, as the appellant paid the moving company \$264.60 in cash, he had the resources available to cover the cost of moving.

The position of the appellant is that he was only able to pay the moving company because he was able to arrange with his new landlord to pay one half month's rent in advance.

The panel finds that, based on the admissible evidence, the appellant was able to pay the moving costs in cash. The panel does not consider the new landlord's willingness to accept one half month's rent as substantiating that the appellant had no resources available to cover the costs of the move. Therefore the panel finds that, without any evidence that would demonstrate otherwise, the ministry was reasonable in determining that the criterion in subsection 3(a) had not been met.

Prior approval

The position of the ministry is that the ministry's prior approval before incurring the moving costs had not been sought or obtained.

The position of the appellant is that the rushed circumstances surrounding his move precluded his ability to contact the ministry and secure approval. He submits that, since his moving costs were reasonable, the ministry should take into account his situation on the day he moved and waive the prior approval requirement.

The panel notes that the family unit is eligible for the supplement only if the criterion in subsection 3(b) is met. The panel considers this criterion to be a clear reflection of policy that the ministry cannot be expected to expend public funds to cover moving costs the purpose and amount of which it has not had the opportunity to apply, before the costs are incurred, its own due diligence. The legislation does not provide any discretion for unusual or unique circumstances. The panel therefore finds that the ministry reasonably determined that this criterion had not been met.

Conclusion

Based on the foregoing, the panel finds that the ministry's determination that the appellant was not eligible for a moving supplement was reasonably supported by the evidence. Accordingly, the panel confirms the ministry's decision.