APPEAL #

PART C – Decision under Appeal

The decision under appeal is the December 24, 2012 reconsideration decision of the Ministry of Social Development and Social Innovation (the "ministry"), in which the ministry determined that the appellant was not eligible for a supplement for moving costs as provided in s. 55 of the Employment and Assistance for Persons with Disabilities Regulation (the "EAPWDR"). In particular, the ministry found that:

- The appellant had not arranged confirmed employment that would significantly promote the independence of the family unit, as required by EAPWDR s. 55(2)(a);
- The moving costs were not required to move to another province or country to improve the living circumstances of the family unit, as required by EAPWDR s. 55(2)(b);
- There was no evidence that the family unit's rented residential accommodation was being sold or demolished or that a notice to vacate had been given, as required by EAPWDR s. 55(2)(c);
- The moving costs were not required to move within or adjacent to a municipality or unincorporated area, as required by EAPWDR s. 55(2)(d); and
- The moving costs were not required to avoid an imminent threat to the physical safety of any person in the family unit, as required by EAPWDR s. 55(2)(e).

PART D – Relevant Legislation

EAPWDR section 55;
EAPWDR Schedule B, sections 2 and 3

PART E – Summary of Facts

The appellant and his wife are designated as persons with disabilities, and both are recipients of disability assistance. The appellant applied for the supplement for moving costs on November 23, 2012. On November 26, 2012 the appellant was advised by the ministry that he was ineligible for the supplement, and he requested reconsideration of that decision.

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

- A Record of Employment (ROE) showing that the appellant was employed by a hotel in Community C from August 17 to October 12, 2012;
- Records from an employer showing that on October 31, 2012 the appellant was offered a position as a customer care professional, working from home by telephone and computer. His employment was to start with several training sessions commencing on December 10, 2012.
- Two quotations for moving the appellant's household from his residence in Community A to Community C. The first quotation, dated September 29, 2012 was for $2,885.00 and the second, dated November 20, 2012 was for $2,798.88.
- A letter from the appellant's physician dated November 29, 2012 confirming that the appellant has severe psoriatic arthritis affecting a number of big joints (particularly the knees), and recommending that he move to the vicinity of Community C because the beneficial climate would be "less problematic for his arthritis."
- A letter from the appellant's wife's psychiatrist, dated December 10, 2012, expressing the opinion that the move to Community C would have a positive impact on her mental health.
- A 2 page typewritten submission from the appellant, dated December 10, 2012.

The appellant's evidence at reconsideration was that:

- In the summer of 2012 he and his wife were living in Community A. He was largely confined to a wheelchair by his arthritis, and his wife was suffering from clinical depression. The appellant obtained employment with a hotel in Community C in August, 2012, and moved in temporarily with his brother-in-law whose residence was in Community B, about a 45 minute drive from the hotel in Community C.
- The employment with the hotel ended October 12, 2012. On October 31, 2012 the appellant was offered employment as an on-line customer care professional. When the appellant enquired of his new employer whether he could work from his home in Community A, he was told that he had to be based in the region where Communities B and C are located.
- As an on-line customer care professional the appellant's training wage would gross approximately $1,680 per month. After an 8 week training period his wage would increase to a monthly gross of approximately $1,812. The proposed income would more than double the income of the family unit.

- Rent in Community C would be less than half the rent in Community A.

- Being able to walk again, and to work to help to provide financially for his family, has encouraged the appellant to "take part in the financial responsibility of providing for his family" and to look forward to "achieving financial independence while working and living in [Community C]."

At the appeal hearing the appellant submitted the following documents:

- A Release of Information form dated August 28, 2013 authorizing an advocate to represent the appellant;

- A 4 page type-written submission;

- A copy of a previous decision of a tribunal panel dealing with the appellant's request for a moving supplement; and

- A letter from the appellant's physician, dated January 11, 2013, reconfirming the information that had been included in his previous letter of November 29, 2012. The letter went on to state that in the wetter environment of Community A, the appellant's arthritis was worse which required the appellant to use a wheelchair for mobility. Prolonged periods in the wheelchair put the appellant at risk of falling when he had to get up to use the bathroom etc. Because of his weight of 385 pounds his risk of fractures from falling "is markedly increased." The physician stated that "it is imperative from a medical perspective that [the appellant] live in a drier climate which will enhance his ability to be more mobile, reduce the pain and stiffness of his joints and improve the chance to reduce his weight which will also reduce stress through these joints."

The panel accepted the Release of Information as a procedural matter. The type-written submission and the previous tribunal decision were accepted by the panel as legal argument. The ministry advised the panel that it had no objection to admission of the physician's letter of January 11, 2013. The panel determined that the physician's letter provided more detail with respect to the effects of climate on the appellant's physical health that had been identified in the physician's previous letter of November 29, 2012. Accordingly, the panel accepted the more recent letter as written testimony in support, in accordance with section 22(4) of the *Employment and Assistance Act.*

The appellant's oral evidence on appeal included the following information:

- The appellant said that he had advised the ministry in July that he would be moving to Community B temporarily to see how employment at the hotel would work out for him. He stated that the ministry had unilaterally moved his file to the ministry office in Community C in October 2012, prior to the appellant moving his household there.

- The appellant stated that he did not move to Community C before he had confirmed employment. He was in Community C alone – his wife and household goods were still in Community A. He'd been advised by the ministry that he'd have an answer from the ministry by December 24th with respect to his request for the moving supplement. He'd accordingly

arranged for the move to take place on December 28th, 2012. The appellant advised that he'd been in the ministry's office in Community A at 4:00 pm on December 24th and had been told that no decision had been made yet. The appellant stated that he wasn't advised of the ministry's reconsideration decision denying the moving supplement until December 27th, 2012.

- He stated that after coming to the new community his arthritis improved to the point where he was spending much less time in his wheelchair. He said that he has, however, had 2 falls since moving there, with the second one being sufficiently serious that he is effectively confined to his wheelchair again at present.

The panel assessed the appellant's oral evidence as providing additional detail with respect to information that had previously been before the ministry. Accordingly, the panel accepted it as oral testimony in support of the information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act.*

The ministry relied on its reconsideration decision and provided no new information.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's December 24, 2012 reconsideration decision in which the ministry determined that the appellant was not eligible for a supplement for moving costs as provided in s. 55 of the EAPWDR.

The relevant legislation is as follows:

EAPWDR

Confirmed job supplement

54.1 The minister may provide a supplement of up to a maximum of $1 000 to or for a family unit that is eligible for disability assistance or hardship assistance if

(a) a recipient in the family unit obtains confirmed employment that, in the opinion of the minister, will enable the family unit to become independent of disability assistance or hardship assistance,

...

Supplements for moving, transportation and living costs

55 (1) In this section:

...

"moving cost" means the cost of moving a family unit and its personal effects 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;

...

(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.

EAPWDR 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;

...

Calendar month exemption — earned income

3 (1) Subject to subsections (2) and (2.1), the amount of earned income calculated under subsection (3) is exempt for a family unit...

(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) $1 600, and

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

* * *

The appellant's position:

The appellant argued that the ministry's reconsideration decision was unreasonable, as he had met the statutory criteria for EAPWDR sections 55(2)(a) and 55(2)(e). He advanced no argument regarding sections 55(2)(b), (c) or (d).

With respect to section 55(2)(a), the appellant said that at the time he applied for the moving supplement he had confirmed employment in Community C. The appellant argued that in accordance with the principles of statutory interpretation, the words "promote" and "financial independence" in the legislation indicate that the appellant's projected income from the confirmed employment had to be sufficient to *support* or *further* the appellant's financial independence broadly, not to immediately reduce or eliminate his reliance on disability assistance as had been found by the ministry in its reconsideration decision. Alternatively the appellant argued that even if the legislation is to be interpreted as narrowly as the ministry has done, the criterion is satisfied because the projected income from his employment would significantly increase the income of the family unit, likely leading to less financial reliance on the ministry for supplements in the future. He also argued that the ministry failed to consider that the appellant's income would likely increase from its initial level, thereby reducing his reliance on disability assistance. Finally, the appellant argued that based on the definition of "moving cost" in section 55(1), he did not move until December 28, 2012, after he had already provided the evidence to the ministry to demonstrate his eligibility for the moving supplement. He said that he was required to move for the confirmed employment and that he had no other resources to pay for the move.

With respect to section 55(2)(e), the appellant argued that the physician's letter of January 11, 2013 shows that the move to Community C was required to avoid an imminent threat to the appellant's physical health in the form of pain, reduced mobility, and falls/fractures. He said there was evidence at reconsideration indicating that the move would be beneficial for the health of both the appellant and his wife. Accordingly, he said, the ministry's decision on this provision was not reasonably supported by the evidence.

The ministry's position:

The ministry's position is that the appellant does not satisfy the legislative criteria for any of the EAPWDR sections 55(2)(a) through (e).

Regarding section 55(2)(a), the ministry said that progression toward financial independence can be gauged by the reduction of reliance upon disability assistance, but acknowledged that it had no written policy with respect to the interpretation of the term "significantly promote the financial independence of the family unit." The ministry said that after the deductions from earned income identified in section 2 of Schedule B of the EAPWDR, the appellant's proposed monthly net income would be less than the $1,600 earned income exemption provided by section 3 of Schedule B. Accordingly, the ministry argued, the move would not significantly promote the financial independence of the appellant's family unit. The ministry also stated that the appellant had moved to Community C prior to obtaining the employment, so that the appellant was not required to move in order to begin his employment.

Regarding section 55(2)(b), the ministry said that the appellant had not demonstrated that he required a moving supplement to move to another province or country to improve his living circumstances.

Regarding section 55(2)(c), the ministry said that the appellant had not demonstrated that he was moving within a municipality or unincorporated area or to an adjacent municipality or unincorporated

area because his rental accommodation was being sold, demolished or condemned and notice to vacate had been given.

Regarding section 55(2)(d), the ministry said that the appellant has not demonstrated that he was moving within a municipality or unincorporated area or to an adjacent municipality or unincorporated area because his shelter costs would be significantly reduced as a result of the move.

Finally, regarding section 55(2)(e), the ministry said that there was no evidence of an imminent threat to the physical safety of the appellant's spouse, and that since the appellant's arthritis is a chronic health condition it is not an "imminent physical safety risk."

The ministry did not dispute that the appellant could not afford to pay the moving costs, and acknowledged that the appellant had indicated he had not incurred the moving costs for which he requested the moving supplement at the time of the reconsideration decision.

The panel's decision:

Section 55(2)(a) – There are four elements to this provision. The first is that the proposed move must be to "*anywhere in Canada.*" There is no dispute that Community C is within Canada, so the panel finds that the first element is satisfied.

The second element is that "*a recipient in the family unit is not working but has arranged confirmed employment*". At the time the appellant requested the moving supplement and received the original denial, he had confirmed employment as an online customer care professional, evidenced by the offer of employment dated October 31, 2012. The evidence shows the appellant was not working at the time as his employment with the hotel had ended on October 12, 2012, and his new employment would not commence until December 10, 2012 Accordingly, the panel finds the second element is satisfied.

The third element is that the confirmed employment "*would significantly promote the financial independence of the family unit.*" In the panel's view, section 55(2)(a) must be read harmoniously with section 54.1, having regard to the object of the legislative scheme as a whole. Both sections deal with the situation where an applicant has confirmed employment. When section 55(2)(a) speaks of "financial independence", it is referring back to the "independence from disability assistance or hardship assistance" identified in section 54.1. The test in section 54.1 is higher than the test in section 55(2)(a), in that it requires the confirmed employment to enable complete independence from disability assistance as opposed to just significantly promoting financial independence as specified in section 55(2)(a). The evidence indicates that the appellant's net income as an online customer care professional would be less than the earned income exemption, and so would not diminish the family unit's reliance on disability assistance. Even if, as argued by the appellant, one assumes that the appellant's income would increase above his initial rate, there is no evidence before the panel to indicate that the increase would be of an amount that could reasonably be said to "significantly" promote the family unit's financial independence. In the panel's view, the speculation that the appellant's earned income may reduce the family unit's reliance on other supplements is not sufficient

to "significantly promote" financial independence. Accordingly, the panel finds that the third element of section 55(2)(a) was not satisfied.

Finally, the fourth element is that "*the recipient is required to move to begin*" the confirmed employment. The ministry had concluded that the appellant had already moved to Community C before commencing his employment as an online customer care professional, taking this to mean that the appellant was not required to move in order to commence the employment. The evidence, in context with the definition of "moving cost" in section EAPWDR section 55(1), indicates that the appellant did not move his household to Community C – as required by the employer - until after he had commenced employment in December, 2012. The panel finds that the fourth element of section 55(2)(a) was satisfied.

Based on the foregoing analysis, particularly with respect to the third element of section 55(2)(a), the panel finds the ministry was reasonable in concluding that the legislative criteria of EAPWDR section 55(2)(a) were not satisfied.

Sections 55(2)(b), (c) and (d) – The panel finds that the ministry reasonably concluded that the appellant did not demonstrate that he satisfied the criteria of section 55(2)(b), as he was requesting a supplement to move within BC rather than to "another province or country". With respect to sections 55(2)(c) and (d), the panel finds that the ministry reasonably determined that the appellant did not demonstrate that he satisfied the criteria for those provisions, since Community C – being approximately a 4 hour drive from Community A - is not "within" or "adjacent to" Community A.

Section 55(2)(e) – In the panel's view, the word "imminent" implies a degree of immediacy to the threat of physical safety that is not supported by the evidence in this case. The panel notes that the physician's letter of November 29, 2012 referred to the climate in Community C as merely being "less problematic" for the appellant's arthritis. The risk of falls and fractures was not raised until after the appellant had received the reconsideration decision. In the panel's view, if the risk of falls, fractures, and serious injuries had been of primary concern, the physician would more likely than not have expressly said so in the November 29, 2012 letter. Instead, the November 29, 2012 letter gives the impression that the physician's main concerns were increased arthritic pain and reduced mobility if the appellant stayed in Community A. The letter of January 11, 2013 also suggests a move to Community C's climate would "improve the chance to reduce [the appellant's] weight. In the panel's view arthritic pain, reduced mobility, and over-weight aren't sufficient to constitute an "imminent threat to the physical safety" as contemplated by the legislative language. Accordingly, the panel finds that reading the two letters together, they do not support the appellant's position that his physical safety would more likely than not be immediately endangered if he did not move to Community C.

Also, section 55(2)(e) requires that the move be to "avoid" an imminent threat. In the panel's view, the word "avoid" doesn't mean that there must be 100% certainty that the threat to physical safety will be circumvented – it is enough if the risk is significantly reduced. Despite the physician's statement in his January 11, 2013 letter that the risk of fractures and serious injuries would be markedly increased in Community A, there is no evidence before the panel that the appellant had suffered fractures or serious injuries in Community A, while according to the appellant's oral evidence on appeal he has had at least two falls in Community C, the latest of which was sufficiently serious to

have effectively confined him to his wheelchair. This evidence, in context with the panel's conclusion about the contents of the two letters from the physician, indirectly supports the ministry's conclusion that the appellant had not demonstrated that an imminent threat to physical safety would be avoided by the move to Community C.

There is no evidence before the panel to suggest that living in Community A posed an imminent threat to the physical safety of the appellant's spouse.

Based on the evidence, the panel finds that the ministry reasonably concluded that the criteria of section 55(2)(e) were not satisfied.

Conclusion

For the reasons detailed above, the panel finds that the ministry decision was a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the ministry decision is confirmed.