

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry's) reconsideration decision dated April 25, 2013 which denied the appellant's request for a moving supplement on the basis that he did not meet all the statutory requirements of section 55(2)(a)-(e) of the Employment and Assistance for Persons with Disabilities (EAPWD) Regulation.

Specifically, the ministry determined that the appellant had not :

- moved anywhere in Canada due to having confirmed employment that would significantly promote the appellant's financial independence as required by section 55(2)(a);
- moved to another province or country to improve his living circumstances as required by section 55(2)(b);
- moved within or to an adjacent municipality because his accommodation was being sold, demolished or condemned as required by section 55(2)(c);
- moved within or to an adjacent municipality because his shelter costs would be significantly reduced as required by section 55(2)(d); or
- moved anywhere in British Columbia to avoid an imminent threat to physical safety as required by section 55(2)(e).

## 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 the time of the reconsideration decision consisted of:

- 1) The appellant's Request for Reconsideration dated April 19, 2013 (RFR) in which he states that there was mold in the fridge, windows and walls in the apartment that was deadly for his health, as he has an asthma respiratory condition;
- 2) Letter from the appellant's doctor dated April 18, 2013 stating that the appellant is under his care for asthma. The doctor also states that the appellant was forced to leave his previous accommodation due to extensive mould and mildew deposits which can have an exacerbating effect on the appellant's respiratory condition; and
- 3) Shelter Information form signed by the appellant's landlord dated April 3 2013 for the appellant's new accommodations, stating that the appellant's portion of rent is \$360 including utilities but not BC Hydro. (the "Shelter Information")

In his Notice of Appeal the appellant states that he and his roommate had to move because they have been sick from the mold in the unit. The Notice of Appeal also states that the appellant has allergies.

***Admissibility of New Information***

At the hearing the appellant submitted additional documentation as follows:

1. 32 pictures of the appellant's home dated April 6, 2013 (the "Pictures");
2. Landlord and Tenant Fact Sheet Dispute Resolution Process (6 pages);
3. Tenant's Application for Dispute Resolution dated April 23, 2013 (2 pages);
4. Notice of a Dispute Resolution Hearing with hearing dated May 13, 2013;
5. Order of a Residential Tenancy Arbitrator dated May 13, 2013 ordering the appellant's former landlord to pay the appellant and his roommate \$350 (the "Order");
6. Residential Tenancy Branch Review Consideration Decision dated May 13, 2013 (4 pages) allowing the appellant and his roommate's claim for the return of their security deposit of \$350, but dismissing the claim regarding damages for mold emergency repair costs (the "Review Consideration Decision");
7. BC Ambulance Service Patient Care Report dated July 22, 2011 noting that the appellant's chief complaint was a history of vomiting, diarrhea, and right sided chest pain; and
8. Hospital records of July 22, 2011 (9 pages) noting the appellant's reported symptoms of vomiting, diarrhea and right sided chest pain.

The appellant also provided oral evidence indicating that the Pictures were taken and printed on the same date. He also stated that his former landlord was ordered to investigate the mold issue but

failed to do so and that the landlord was not being honest about the reason the appellant was issued the notice to vacate the premises. The appellant stated that due to the mold he had to buy totes and bags for his personal belongings that he put into storage along with two bicycles but he had to leave everything else behind. He stated that he asked the ministry to help pay for his moving costs, storage costs and to have furniture items delivered.

The ministry did not object to the admission of the appellant's evidence but stated that there was no way to verify that the Pictures related to the appellant's residence at the time and that at the time of reconsideration the ministry had not been provided with any of the residential tenancy branch documents. The ministry also stated that the hospital records do not provide any diagnosis and nothing to indicate that the appellant's presenting symptoms were caused by mold issues.

The panel has admitted the appellant's oral and documentary information into evidence as it is in support of 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*. In particular, the panel finds that the new evidence relates to the appellant's health, mold issues and/or reason for his move.

The ministry relied on the reconsideration decision and submitted no new information. The ministry's evidence, as set out in the reconsideration decision, is that the appellant submitted the Shelter Information on April 9, 2013 showing that he had secured new accommodations beginning April 15, 2013 and that his portion of the rent was \$360. The ministry states that the appellant's previous shelter costs were \$350 per month. The ministry also states that the appellant requested assistance with the costs for the delivery fee for household items and furniture from a store as he had to leave his furniture at his previous address because of mold.

The reconsideration decision states that the ministry contacted the appellant's son and was advised that the appellant had been issued a 60 day notice to vacate because the landlord was renting the accommodation to their family member and that the issue had gone through arbitration and the landlord won. At the hearing the ministry representative confirmed that the reference to the son should have read the appellant's former landlord's son, not the appellant's son.

The ministry states that on April 18, 2013 the appellant explained that he was given notice to vacate his previous residence because the landlord needed to move a family member into the basement suite because they had had a stroke, but it was a way to remove the appellant from the suite because he had complained about the mold.

At the hearing, the ministry representative stated that although the appellant requested assistance with the costs to have furniture delivered from a store to his new home the definition of "moving cost" as per EAPWDR section 55(1) is limited to moving effects from one residence to another, not delivery of items from a store to a home.

## PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision to deny the appellant's request for a moving supplement on the basis that he did not meet the legislated criteria of section 55(2)(a)-(e) of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant.

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

The appellant's position is that he had to move because there was mold in the apartment that was seriously affecting his health and his roommate's health. The appellant's position is that the pictures he took were of his home and that along with the other documents demonstrate that there was mold in the apartment and that the landlord gave him a notice to vacate as a way of forcing him to move out and not having to deal with the mold.

The ministry's position is that the appellant does not satisfy any of the criteria of section 55(2)(a)-(e) of the EAPWDR and is not eligible for a moving supplement. In particular, the ministry notes that the appellant moved to accommodations with higher shelter costs.

The ministry's position is that the appellant did not leave his furniture because of mold but because he had no way of moving it to his new accommodations. The ministry also states that the appellant's furniture was still at his previous accommodation and could be retrieved.

The panel finds that as the appellant did not move anywhere in Canada for confirmed employment; therefore, the ministry reasonably determined that the appellant's move did not meet the criteria set out in section 55(2)(a).

The panel finds that as the appellant's former and new residences are both in British Columbia, the ministry's determination that the appellant did not incur moving costs to move to another province or country to improve his living circumstances, as required by section 55(2)(b), was reasonable.

Although the Residential Tenancy Branch Review Consideration Decision indicates that the appellant's claim was dismissed against his landlord with respect to the mold issue, the panel notes that the appellant's claim in that regard was dismissed, not necessarily because there was no mold but because, in part, it was not clear that the landlord had failed to investigate the mold issue and take steps recommended by a professional. The panel finds that the appellant was credible and the Pictures support the appellant's version of events, so the panel accepts his evidence that there was mold in his apartment that may have exacerbated his health issues. However, as there was no evidence to indicate that the accommodations were condemned because of the mold, the panel finds that the ministry's determination that the appellant did not move to an adjacent municipality because the rental accommodations were being sold, demolished or condemned as required by section 55(2)(c) was reasonable.

As the appellant's previous shelter costs were \$350 per month and his new shelter costs were \$360 per month, the panel finds that the ministry's conclusion was reasonable that the appellant's shelter costs would be reduced by moving to an adjacent municipality as required by section 55(2)(d) were not met.

The panel accepts the appellant's evidence that there was mold in his apartment that was detrimentally affecting his health. This is supported by the letter from the appellant's doctor which confirms that mold and mildew deposits can exacerbate the appellant's respiratory condition. However, the word "imminent" implies some degree of urgency and the evidence does not establish that there was an imminent threat to the appellant's physical safety due to the mold as is required by EAPWDR section 55(2)(e). The panel therefore finds that the ministry's determination was reasonable that the requirements of section 55(2)(e) were not met.

### Conclusion

In conclusion, the panel finds that the ministry's decision to deny the appellant's request for a moving supplement because he did not meet the legislated criteria of EAPWDR section 55(2)(a)-(e) was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. Accordingly, the panel confirms the ministry's reconsideration decision.