

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 14, 2013, which held that the appellant is not eligible for a moving supplement pursuant to Section 5 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) and Section 55 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). The ministry found that the appellant can be considered for a moving supplement pursuant to Section 5 of the EAPWDA as he was in receipt of a top-up of disability assistance at the time of the request and that he meets the requirements of Section 55 (3) (a) as he did not have the resources to cover the costs of the move. However, the ministry determined that the appellant was not eligible for a moving supplement because he failed to meet the criteria listed in section 55 (2), (3)(b) and (4)(a) of the EAPWDR, namely:

- the appellant did not receive prior approval before incurring the costs of moving (3) (b);
- the mode of transportation was not the most affordable available to him (4) (a);
- the move was not required for confirmed employment (2) (a);
- the move was not required due to the rented accommodation being sold, demolished or condemned and the notice to vacate was received as a result (2) (c);
- the shelter costs were not significantly reduced as a result of the move (2) (d); and
- a move to another area of BC was not required to avoid an imminent threat to his physical safety (2) (e).

PART D – Relevant Legislation

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

Employment and Assistance for Persons with Disabilities Act (EAPWDA)- Section 5

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consists of:

- 1) Request for Reconsideration signed and dated October 31, 2013 with a 2-page letter dated October 31, 2013 and signed by the appellant, which states that:
 - his previous landlord served him with an eviction notice requiring him to move by August 31, 2013;
 - since he has a disability, no money to pay for a move and that he was required to move in a short period, his landlord [who was also his friend] verbally agreed to pay the cost of moving;
 - based on the agreement with his landlord, the appellant contacted several moving companies and settled with a company that agreed to move him for \$700;
 - at the end of the move, the moving company charged him \$3768.99 and the landlord refused to pay;
 - the moving company is now threatening to take legal action unless the bill is paid;
 - the stress of the situation is causing the appellant to become physically ill.
- 2) an order of possession letter from a legal firm dated May 8, 2013 which advises the appellant to vacate his premise by August 31, 2013;
- 3) a letter from the appellant's physician, signed and dated April 10, 2013, which states that:
 - the appellant suffers from chronic pain due to severe osteoarthritis, a total hip replacement on the right side with post-operative neuralgia of the right thigh, that his left hip also need replacement, pain in both knees and lower back that result from a fractured vertebra in 2011;
 - the appellant's pain precludes him or slows him down from performing many activities of daily living and that to manage his pain he requires potent medications which require him to visit the physician's office every two weeks;
 - the appellant is having issues with his landlord which is causing anxiety and depression that require additional medication to manage;
 - the eviction has made the appellant's anxiety and depression worse;
 - considering his health problems, it is impossible for the appellant to perform activities as a normal person and his new home must not have any stairs, it will take the appellant significantly longer to find a new residence and move out;
- 4) a letter from a moving company quoting the appellant's proposed moving cost at \$2200.00;
- 5) a bill from a second moving company charging the appellant \$3768.99 for his moving costs.

With the Notice of Appeal, signed and dated November 27, 2013, the appellant provided a 2-page letter signed and dated November 27, 2013 which states that:

- appellant's landlord had agreed to pay for the moving cost and the appellant's advocate did not inform him that he could apply for moving costs with the ministry prior to the move;
- the appellant's advocate did not inform him that his request for a moving supplement could be considered under section 55 (2) (e) "imminent threat to the physical safety" otherwise he would have referred to this section in his request for reconsideration;
- the physician's letter details all of the appellant's physical disabilities, specifies that the appellant's "... new home must not have any stairs" and that he "... requires potent medication";
- the appellant's previous residence required him to climb 14 steps to access the residence. There was no elevator in the building, the steps were exposed to all weather conditions, when

wet, snowy or icy the stairs were slippery and the landlord did not remove snow or ice off of the stairs;

- with 'potent medication' in his system plus all of his disabilities, it was dangerous for the appellant to navigate all of those stairs. Added to this is that the appellant uses a cane;
- the appellant found it increasingly difficult to carry groceries or anything else up the stairs, or to help his arthritic dog up and down the stairs.
- the appellant is of the opinion that 14 steps at the previous residence were a clear imminent threat to his physical safety.

At the hearing the appellant reiterated the points he made in his November 27, 2013 letter that accompanied his Notice of Appeal. In addition, he provided the following new information:

- there were two individuals who were business partners and served as the appellant's landlords as they jointly own the building that the appellant resided in and were equally entitled to the rent he paid;
- one of the landlords was the appellant's friend for over 20 years [referred to as landlord A] while the second served only as a landlord [referred to as landlord B];
- landlord B took issue with the appellant using other areas of the building to store his belongs;
- the appellant wanted to move prior to receiving the eviction notice but had to wait until he turned 65 years old when he would receive an adjusted income and could afford to move;
- in the past, landlord B had made threatening remarks and gestures but never physically harmed the appellant but did not specify what the remarks and gestures were;
- he did not call the ministry for assistance with the move because he had no need as the landlord agreed to pay for the costs;
- he was given two reasons for his eviction; one that his use of electricity caused interruptions in the electrical service to other parts of the building, and two, for 6 months of non-payment of rent. The appellant stated that neither of these reasons was true because when he attended a residential tenancy hearing with both landlords in attendance, no one asked for a back payment of rent. The appellant stated that he paid his rent in cash and he never received any receipts for the payments. The appellant cites that the true reason for the eviction is that landlord B had developed a personal dislike for him.

Admissibility of New Information

The panel found that the preceding new information the appellant presented was in support of the information before the ministry at the time of reconsideration. Accordingly, the panel did admit this new information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

At the hearing the appellant also stated that his application should be considered under section 55 (2) (b) and (e) of the EAPWDR. He stated that having to deal with landlord B, the staff of the building and the neighbours became increasingly stressful and by moving to a place that does not require him to use stairs (as recommended by his physician in the letter dated April, 10, 2013) he has improved his living condition as required by subsection 2 (b). He also stated that since landlord B made threatening remarks and gestures, and the 14 outdoor steps posed a danger to his physical safety, as navigating them with his disabilities was difficult, he meets the requirements of subsection 2 (e). He stated that he would have argued that he qualifies under subsection 2 (e) previously but did not know that this was a criteria in the legislation until he received his denial decision.

At the hearing the ministry relied on the reconsideration decision but noted that:

- the key issue here is that prior approval was not obtained and that it is required by legislation;
- the ministry can only work within the legislation;
- had prior approval been obtained the situation may have been different;
- there were other areas of the legislation that were also not met (but at this point the ministry did not specify the other areas of the legislation where the requirements were not met);
- whenever the ministry's decision is a denial, by law every recipient of income assistance has the right to appeal, but the right to appeal is not an admission that the ministry made an error in its decision;
- imminent threat to physical safety, as discussed in section 55 (2) (e) of the EAPWDR, refers to the need of an individual to flee due to a serious physical threat to personal safety by another person or persons, such as a spouse, boyfriend or landlord, or if their residence is condemned and it poses a threat to the safety of the person. In either case the threat is immediate.

At the hearing there was a 3 minutes recess at 9:45am to allow time for the third panel member, who was late, to join the hearing.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant a moving supplement was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant failed to meet the criteria listed in section 55 (2), (3)(b) and (4)(a) of the EAPWDR?

The relevant legislation is as follows:

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.

Section 5 of EAPWDA provides as follows:

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

The Appellant's Position

The appellant's position is that he had no need to ask the ministry for a moving supplement prior to the move because his landlord verbally agreed to pay and that he was not aware that a moving supplement existed. He also argues that due to his disabilities, overall physical health and that it was difficult for him to navigate the 14 outdoor steps to his home, he should qualify for the moving supplement under section 55 (2) (b) and (2) (e) of the EAPWDR. He argues that these facts are addressed and confirmed by his physician in the April, 10, 2013.

The Ministry's Position

The ministry's position is that the appellant has only met two legislative requirements, section 55 (3) (a) of the EAPWDR and section 5 EAPWDA. The appellant is also required to meet the requirements of section 55 (3) (b) and (4) (a) of the EAPWDR and one of the requirements of section 55 (2) of the EAPWDR. The appellant has not met any of the later requirements and therefore is not eligible for a moving supplement.

The Panel's Decision

The appellant argued that he should qualify for a move supplement under section 55 (2) (b) and (e) of the EAPWDR. Section 55 (2) (b) states that "moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances". The panel

acknowledges that by moving the appellant has improved his living conditions because he does not deal with the stress of interacting with his landlords and he is not required to navigate stairs that were physically challenging to him due to his medical conditions. However, the legislation states that the move is to another "province or country". In the case of the appellant, he moved within the same city. As a result, the panel finds that the ministry reasonably determined that the appellant does not qualify for a move supplement under section 55 (2) (b).

The appellant also argued that he should qualify for a moving supplement under section 55 (2) (e) of the EAPWDR. Section 55 (2) (e) states that "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 panel acknowledges that navigating 14 steps could be challenging for someone who has medical conditions similar to those of the appellant and that his landlord made threatening remarks and gestures. However, the panel finds that "imminent threat to the physical safety of any person in the family unit" refers to a physical threat posed by one individual to a second individual, and that the second individual must flee for his or her safety or that the home is condemned and it poses an immediate threat to the safety of the person, and that an imminent threat to physical safety does not include the inability or challenges to access a home due to health related concerns. If the legislation intended to include such stipulations as those related to health concerns when referring to 'imminent threat to physical safety', it would not require an individual to move to "another area of British Columbia" as is stated. Also, the appellant failed to demonstrate that the reason he moved was a direct result of the threats made by the landlord or that he feared for his personal safety because of the threats made by the landlord. In the case of the appellant, he did not demonstrate that there was any imminent threat to his personal safety. The panel also finds that moving from one part of the city to another part of the city that is 15 kilometer away does not constitute a move to "another area of British Columbia". As a result, the panel finds that the ministry reasonably determined that the appellant does not qualify for a moving supplement under section 55 (2) (e).

The ministry argued that the appellant does not qualify for a moving supplement because the requirement of section 55 (3) (b) of the EAPWDR was not met. The panel acknowledges that the appellant did not have a need to ask the ministry for a moving supplement because he had a verbal agreement with his landlord and that his moving costs would be paid. However, the legislation states that to qualify for a moving supplement, approval for the cost must occur prior to the cost being incurred. In the case of the appellant, he admits that he did not seek prior approval for the moving costs because he had no need. As a result, the panel finds that the ministry reasonably determined that the appellant does not qualify for a move supplement under section 55 (3) (b).

The ministry argued that the appellant does not qualify for a moving supplement because the requirement of section 55 (4) (a) of the EAPWDR was not met. The appellant has documentation that shows he received one moving quote at \$2200. He has also stated that he received a second quote for \$700 but that in end the moving company charged \$3768.99. However, the appellant did not provide a documented quote of \$700 from the moving company and has incurred costs well in excess of the documented quote of \$2200, thus he has not demonstrated that the cost was the least expensive appropriate mode of moving. As a result, the panel finds that the ministry reasonably determined that the appellant does not qualify for a moving supplement under section 55 (4) (a) of the EAPWDR.

Conclusion

The panel finds that the ministry reasonably concluded that the evidence establishes that all of the required criteria set out in Section 55 of the EAPWDR have not been met. The panel therefore finds that the ministry's decision to deny the appellant's request for a moving supplement was a reasonable application of the legislation and was supported by the evidence. Thus, the panel confirms the ministry's reconsideration decision.