

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated November 27, 2013, which held that the appellant is not eligible for storage costs pursuant to Section 5 of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), Section 55 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and Schedule A Sections 4, 5, and 8 of the EAPWDR. The ministry determined that the appellant was not eligible for a moving supplement to cover storage costs under Section 55(1) of the EAPWDR because he failed to establish that his storage costs were incurred during the process of moving from one place to another as defined by the legislation. Also, the ministry determined that the appellant was not eligible for a shelter allowance to cover storage costs because he failed to meet the criteria listed in section 5 of Schedule A of the EAPWDR; namely storage costs are not classified as:

- rent for the family unit's place of residence;
- mortgage payments on the family unit's place of residence, if owned by a person in the family unit;
- a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
- utility costs;
- the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

PART D – Relevant Legislation

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

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) - Section 55

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Schedule A Section 4, 5 and 8.

PART E – Summary of Facts

At the hearing the appellant stated that he did not receive the appeal package or the Notice of Appeal and that his advocate received the Notice of Appeal. The panel confirmed delivery of the package to the address on file. The appellant stated he moved December 12, 2013, and is ready to proceed with the hearing as his advocate obtained a copy of the appeal package. The appellant was advised to update his address with the Tribunal office.

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

- 1) a letter from the appellant dated September 27, 2013 which states that:
 - he is doing well at the residential treatment centre;
 - prior to going to treatment he placed his belongings into storage;
 - currently he is \$308 behind on his payments to the storage company and will need to pay \$985.50 for the money he currently owes and for storage to the end of December when he finishes his treatment;
 - he is clean and sober, and needs a fresh start;
 - having his belongings will make an incredible difference in his situation, and asks to allow a onetime crisis grant;
- 2) a resident admission and departure form dated August 6, 2013 which shows that the appellant was admitted into residential treatment;
- 3) Request for Reconsideration signed and dated November 6, 2013 which includes a 2-page undated letter from the appellant which quotes relevant legislation as "Supplement for alcohol or drug treatment section 77(1)" but does not state of which act or regulation, and states that:
 - "clients who are residents of alcohol and drug residential treatment facilities funded by the Ministry of Health (MoH) may be eligible for the standard user fee and a comforts allowance. To receive assistance while in an alcohol and drug residential treatment facility, clients must be eligible for *Income assistance or disability assistance*";
 - the appellant may be eligible for "actual shelter costs for the [appellant's] usual place of residence up to the maximum shelter amount for the [appellant's] family unit;
 - he may be eligible for "a monthly support allowance for the [appellant's] family unit, equal to the maximum support amount shown in Rate Table: Income Assistance or Rate Table: Disability Assistance minus the comforts allowance provided to the [appellant];
 - he is residing at a licensed residential treatment centre, he moved from his place of residence and placed his belongings in storage unaware that the ministry could provide up to 3 months assistance with shelter costs that would have allowed him to retain his place of residence;
 - the ministry erred in determining that the appellant's request falls under moving costs;
 - if he moved his belongings from storage to a residence he would then fit under legislative requirements, but that is not a reasonable practice;
 - a reasonable decision would be to look at the appellant's storage request under the shelter legislation instead of moving his belongings to a new residence while he is still in treatment;
 - the storage costs would be lower than his shelter allowance;
 - he is doing well in treatment and expects to move out within 2 months;
 - he asks that the ministry overturn its original decision and allow him to receive shelter costs for his storage unit so he can retain his belongings when he is out of treatment.

In the Notice of Appeal signed and dated December 4, 2013 the appellant stated that "MSD misapplied the legislation in denying" his request and he will be represented by an advocate.

At the hearing, the appellant reiterated his statements from the 2-page letter that accompanied his November 6, 2013 Request for Reconsideration. To this he added that:

- on November 26, 2013 the storage company advised him that it would sell his possessions to recover the costs of storage that the appellant has not paid;
- he has family heirlooms and baby pictures of his children that he cannot replace if his possessions are sold;
- he is studying to become a social services foundation worker at a local college;
- when he was in a per diem bed, the ministry was paying for the bed plus \$95 for a comfort allowance, but no shelter or support costs. Therefore, the ministry was saving money because he checked himself into a treatment centre to improve his life and circumstances, and should pay his storage costs that will also allow him a fresh start to a new life;
- Under certain circumstances the ministry will pay storage costs when an individual receives support allowance only;
- he paid for the first month of storage which was \$1, his mother paid for the second month and now he needs assistance for payment for October, November and December 2013;
- he moved his possessions into storage because he did not trust his roommates with his possessions and that they were going to move out too as the lease was in the appellant's name.

The appellant presented a letter from the treatment centre he resides at. The letter, dated December 22, 2013, states that the appellant has been at the facility since August 6, 2013 and was shifted from a per diem bed to a disability bed on December 12, 2013.

The letter the appellant provided at the hearing was the original, and was returned to the appellant after the panel reviewed it.

The ministry did not object to the admittance of this new evidence.

Admissibility of New Information

The panel found that the letter dated December 22, 2013 provided additional detail or disclosed information that was in support of the issues addressed in the reconsideration. Accordingly, the panel has admitted this new information as being in support of information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

The ministry relied on its reconsideration decision and added the following:

- the ministry will help maintain a residence for a maximum of 90 days with shelter cost and a comfort allowance of \$95, the storage unit where the possession are kept is not a residence and the appellant has no shelter costs;
- moving costs need to be pre-approved and the appellant must qualify for a moving supplement;
- storage costs can be paid under a shelter allowance or moving supplement only under extreme circumstance such as a house fire;

- the appellant is receiving assistance under section 8 of Schedule A of the EAPWDR.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant a moving supplement for storage costs or a shelter allowance for storage costs 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 does not meet the criteria set out in section 55 (1) of the EAPWDR or Schedule A, sections 4, 5 and 8 of the EAPWDR?

Section 5 of the 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.

Section 55(1) of the EAPWDR provides 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.

Section 4 of Schedule A of the EAPWDR provides as follows:

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

(2.1) The monthly shelter allowance for a family unit to which section 14.2 of the Act applies is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family unit composition:

(3) For a family unit of more than 10 persons, the maximum monthly shelter allowance is calculated by adding an extra \$35 for each person by which the family unit size exceeds 10.

(4) Repealed. [B.C. Reg. 62/2010, s. (b).]

- (5) Despite subsection (2) (a) or (2.1) (a), if the actual shelter costs of a recipient increase as a result of the recipient remortgaging his or her place of residence, the amount of the mortgage payments is deemed, for the term of the new mortgage, to equal the amount before the remortgaging unless
- (a) the remortgaging was necessary because of the expiry of the mortgage term, and
 - (b) the amount borrowed under the mortgage is not increased.
- (6) Despite subsection (2) or (2.1), the maximum monthly shelter allowance for a person who
- (a) is a sole recipient without dependants, and
 - (b) provides confirmation of pregnancy from a medical practitioner, nurse practitioner or a registrant of the College of Midwives of British Columbia
- is increased by up to \$195 per month for the duration of the pregnancy.

Section 5 of the EAPWDR Schedule A provides as follows:

How actual shelter costs are calculated

- 5 (1) For the purpose of this section, utility costs for a family unit's place of residence include only the following costs:
- (a) fuel for heating;
 - (b) fuel for cooking meals;
 - (c) water;
 - (d) hydro;
 - (e) garbage disposal provided by a company on a regular weekly or biweekly basis;
 - (f) rental of one basic residential single-line telephone.
- (2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:
- (a) rent for the family unit's place of residence;
 - (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;
 - (c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
 - (d) property taxes for the family unit's place of residence if owned by a person in the family unit;
 - (e) utility costs;
 - (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.
- (3) If utility costs fluctuate, they may be averaged over the periods
- (a) beginning on October 1 and ending on March 31, and
 - (b) beginning on April 1 and ending on September 30.

(4) If 2 or more family units share the same place of residence, the actual shelter costs of any one of them are the smaller of

- (a) the amount calculated by
 - (i) dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence, and
 - (ii) multiplying the result by the number of persons in that one family unit, and
- (b) the amount declared by the family unit as the shelter costs for that family unit.

Section 8 of Schedule A of the EAPWDA provides as follows:

People receiving special care

8 (1) For a person with disabilities who receives accommodation and care in a special care facility (other than a special care facility described in subsection (3)) or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

- (a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus
- (b) a comforts allowance of \$95 for each person for each calendar month.

(2) If the special care facility under subsection (1) is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the applicant or recipient is in the alcohol or drug treatment centre:

- (a) actual shelter costs for the applicant's or recipient's usual place of residence up to the amount under section 4 for a family unit matching the applicant's or recipient's family unit;
- (b) a monthly support allowance for the applicant's or recipient's family unit, equal to the amount calculated under sections 2 and 3 of this Schedule minus the portion of that allowance that would be provided on account of the applicant or recipient.

(3) For a person with disabilities who receives accommodation and care in a special care facility operated by a service provider as defined in section 1 of the *Community Living Authority Act*, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

- (a) the support allowance that is applicable under sections 2 and 3 of this Schedule for a family unit matching the applicant's or recipient's family unit, plus
- (b) the maximum shelter allowance that is applicable under section 4 of this Schedule for a family unit matching the applicant's or recipient's family unit.

The Appellant's Position:

The appellant's position is that if he had known that the ministry would have paid to maintain his residence for 90 days he would not have moved his belongings in storage. By placing his belongings in storage and giving up his residence, he has saved the ministry money. To move his belongings from storage to a 'proper' residence just to meet the legislative requirements to qualify for a shelter allowance does not seem practical or reasonable. Therefore, in lieu of paying for shelter costs, the ministry should pay the storage costs thus allowing him a fresh start at a new life.

The appellant also argued that section 8 of the Interpretation Act of B.C. should be considered in his case. Section 8 states that every enactment must be construed as being remedial, and must be given such fair, large, and liberal construction and interpretation as best ensures the attainment of its objects. The appellant argued that Section 8 supports the view that in this particular situation storage costs should be interpreted as the same thing as shelter costs and therefore he should be compensated. The appellant mentioned that there was caselaw supporting his view that a liberal interpretation be given to 'shelter costs', and he referred to one decision but he did not provide this decision to the panel or any legal citation.

The Ministry's Position:

The ministry's position is that the appellant does not qualify for moving costs because his storage costs were not incurred as a result of moving from one place to another. He also does not qualify for a shelter allowance because storage costs are not include in the list of items that are considered actual shelter costs by the legislation.

The Panel Decision:

In the reconsideration decision, the ministry has considered the request for storage costs under two legislative criteria; a moving supplement and a shelter allowance.

Moving Supplement:

The ministry argued that the appellant does not qualify for a moving supplement to cover storage costs because he did not move from one place to another as required by section 55(1) of the EAPWDR. The appellant does not disagree with the ministry conclusion regarding a moving supplement. The legislation states that moving costs is defined as "the cost of moving a family unit and its personal effects from one place to another". In the case of the appellant, he has moved from his residence to a treatment centre. However, he has not moved his personal effects with him and he has placed his personal effects in long term storage. As a result, the panel finds that the ministry reasonably determined that the appellant does not qualify for a moving supplement under section 55 (1).

Shelter Allowance:

The appellant argued that he was unaware the ministry would pay to maintain his residence while he was at a treatment centre under section 8 of Schedule A of the EAPWDR and that he would not have placed his personal effects in storage. The appellant also argued that for him to move his personal effects from storage to a residence just to qualify for a shelter allowance is unreasonable, and that the ministry should pay for his storage costs instead, which are much lower than a shelter allowance. The appellant argued that he needs his personal effects when he completes his program at the treatment centre and that having his personal effects will go a long way in setting up a fresh start for him. Lastly, the appellant argued that section 8 of the Interpretation Act of B.C. should be considered and the broadest interpretation of shelter should be applied in this case.

Section 5(2) of Schedule A of the EAPWDR defines the types of shelter costs the ministry can consider when calculating actual shelter costs, therefore, the panel finds that a broad interpretation accordance with section 8 of the Interpretation Act of B.C. does not allow for the inclusion of costs

beyond those listed. As a result, the panel finds that the ministry reasonably determined that the appellant does not qualify for a shelter allowance under section 5 of Schedule A of the EAPWDR.

Conclusion

The panel finds that the ministry reasonably concluded that the evidence establishes that the required criteria set out in Section 55 (1) the EAPWDR have not been met. The panel also finds that the ministry reasonably concluded that the evidence establishes that the required criteria set out in Section 5 of Schedule A 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 and a shelter allowance to pay for storage costs was a reasonable application of the legislation and was supported by the evidence. Thus, the panel confirms the ministry's reconsideration decision.