

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated January 20, 2014 which denied the appellant's request for a supplement for moving costs under Section 57 of the *Employment and Assistance Regulation* (EAR) as the ministry found that:

- the moving costs are not to assist with one or more of the listed reasons for the move;
- there was insufficient information to establish that there are no resources available to the family unit to cover the moving costs; and,
- the ministry's approval was not received before incurring the moving costs.

The ministry also denied the appellant's request for hardship assistance as the appellant has not been found ineligible for income assistance, which is a requirement under Section 5 of the *Employment and Assistance Act* (EAA).

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 57

Employment and Assistance Act (EAA), Section 5

PART E – Summary of Facts

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry on Reconsideration included the following documents:

- 1) Letter dated January 3, 2014 from the appellant to the ministry, marked as being 9 pages in length with pages 7 and 8 not included; and,
- 2) Request for Reconsideration- Reasons dated January 3, 2014.

Prior to the hearing, the appellant provided additional documents, namely a Notice of Appeal and attached letter dated January 23, 2014.

The panel considered the appellant's letter dated January 23, 2014 as argument on her behalf and containing no new evidence.

In the letter attached to her Request for Reconsideration, the appellant wrote that:

- She moved on December 6, 2013 from a premise at which the ministry knew she was residing.
- This was not a routine move as she did not move by choice and did not have an opportunity to negotiate since she was ordered to leave the premises by the bailiff's representative.
- At the time, she was heavily medicated with muscle relaxant and pain relief due to her hand surgery the day before and a back problem for which she was already being treated.
- She had to find some place for her things which were being placed on the curb.
- She had to walk to the bank to get money to pay for the storage and to pay for moving anything beyond the side of the road.
- As it turned out, she did not have sufficient cash to pay for the storage as the movers ended up charging more to complete the job. The storage was paid by someone else, and she has to pay them back.
- This was not a planned relocation or the threat of safety yet this was still an extraordinary event, brought about largely as a result of unfair surprise.
- She was temporarily in a state of transience with no fixed address.
- In the absence of a definition for "hardship" under the EAA, this event is similar to a flood or insufficient heating and can be considered a hardship.
- She had asked the landlord for an extension since she had surgery scheduled for December 5, 2013, and she had also made an application for a judicial review of the Residential Tenancy Branch decision of November 14, 2013 as well as an interim injunction against the Order of Possession. She had not heard further from the Supreme Court of British Columbia or the Residential Tenancy Branch.
- Her eviction was carried out with the authority of a Writ of Possession since she had not stopped residing at the address.
- The eviction was carried out even though the outstanding rent for both September and October had been paid in full on October 9, 2013 when she picked up the cheque from the ministry for the outstanding support for September and October.
- Without any response from the landlord to her request for an extension, the bailiff's representative arrived with the Writ of Possession, his camera and a moving crew.
- Since she no longer resided at the premises, she would not have been eligible for the shelter portion of assistance for December.
- The definition of "shelter" includes the sheltering of both her and her possessions even if this



sheltering happens in a storage room or upon wheels or in a garage or, ideally, an apartment.

- This situation is very different than a scenario where prior permission might be sought and moving was a function of basic need.
- She did not have sufficient cash to pay for the storage as the movers ended up charging more to complete the job. The storage charges were paid by another person and she has to pay this amount back. She incurred storage charges for December as well as \$250.00 to move her chattels to the new address effective January 1, 2014.
- While the amount of rent she was paying and had been paying was not a factor in the transition, she was paying \$608.00 for rent not including hydro and she has since moved into accommodation where she is paying \$450 which includes utilities.

In the letter attached to her Notice of Appeal, the appellant wrote that:

- The circumstances of her move were beyond her control.
- She was in a temporary state of transience and it is unclear what kinds of management strategies she might have accessed.

The Ministry relies on the reconsideration decision, which includes evidence that on December 9, 2013 the appellant advised the ministry that she had been evicted on December 6, 2013. The appellant stated that all of her belongings were moved outside by a sheriff and she ended up using her December rent funds to pay for her belongings to be moved into storage. The appellant stated that she was "couch surfing" and looking for a place to live. On December 10, 2013, the appellant requested assistance from the ministry to reimburse her for the moving costs she paid from her income assistance. Since the time of the appellant's request, she has continued to receive the full \$610 monthly amount of income assistance for which she is eligible (\$235 support allowance plus \$375 shelter allowance).

PART F – Reasons for Panel Decision

The issue on this appeal is whether the decision by the ministry, which denied the appellant's request for a supplement for moving costs under Section 57 of the *Employment and Assistance Regulation* (EAR) and denied her request for hardship assistance under Section 5 of the *Employment and Assistance Act*, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislative criteria to be considered eligible for the supplement for moving costs are set out in Section 57 of the EAR as follows:

Supplements for moving, transportation and living costs

57 (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 income assistance, other than as a transient under section 10 of Schedule A, 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 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 20 [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.

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- (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 (1) (f) or (g), the least expensive appropriate living costs.

Section 5 of the EAA provides as follows:

Hardship assistance

- 5 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that
- (a) is eligible for it, and
 - (b) is not eligible for income assistance.
- (2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

Moving Costs- Section 57 of the EAR

The appellant's position is that her shelter costs were significantly reduced as a result of the move as she was paying \$608.00 for rent not including hydro in her previous premises and she has since moved into accommodation where she is paying \$450 which includes utilities. The appellant argued that this was not a routine move as she did not move by choice and she did not have an opportunity to negotiate the cost of the move since she was ordered to leave the premises by the bailiff's representative. The appellant argued that this situation is very different from a scenario where prior permission might be sought since moving was a function of basic need. The appellant's position is that she did not have sufficient cash to pay for the storage as the movers ended up charging more to complete the job, that the storage charges were paid by another person and she has to pay this amount back. The appellant argued that she incurred storage charges for December as well as \$250.00 to move her chattels to the new address effective January 1, 2014.

The ministry's position is that the moving costs are not to assist with one or more of the listed reasons for the move since the appellant did not move because of confirmed employment, has not moved to another province or country, did not move to avoid imminent danger, nor because her previous residence is being sold, demolished or condemned, and that her shelter costs have not been significantly reduced. The ministry argued that while the appellant's rent was \$608 and she is now paying \$450, the appellant also acknowledged that the amount of rent she pays was not a factor in her move. The ministry argued that the appellant had resources to cover the cost since she already paid for the move with her December rent funds, and the ministry's approval was not received by the appellant before she incurred these moving costs.

Panel decision

The panel finds that the appellant was evicted on December 6, 2013 for non-payment of rent at her previous residence, for which she was paying rent of \$608.00 not including hydro, and that she moved into other premises as of January 1, 2014 at a rental rate of \$450.00, which includes utilities. Section 57(2) of the EAR provides for a moving supplement to assist with one or more listed reasons for a move which, for local moves, includes moving costs required "if the family unit's shelter costs would be significantly reduced as a result of the move." The panel finds that the appellant moved from premises with a monthly rent of \$608.00 to premises with a rental of \$450.00, which is a decrease in rent of \$158 per month, and also saves the appellant the cost of utilities. The panel finds that although there was no information provided regarding the cost of utilities each month, the reduction in rent alone is close to 30% which is a significant reduction. While the ministry pointed out that the appellant acknowledged that the amount of rent she pays was not a factor in her move, the

panel finds that since the appellant was evicted from her previous premises for non-payment of rent, the need for the appellant to find accommodation at a lower cost can be inferred, and Section 57(2)(d) requires a certain result of the move without specifying a particular intent be held by the appellant. Therefore, the panel finds that the ministry's determination that the appellant's moving costs are not to assist with one or more of the reasons for the move as set out in Section 57(2) of the EAR was not reasonable.

Section 57(3)(b) of the EAR states that a family unit is eligible for a supplement only if there are no resources available to the family unit to cover the costs for which the supplement may be provided and a recipient in the family unit receives the ministry's approval before incurring those costs. The appellant acknowledged that she paid \$250.00 to move her chattels to the new address but argued that she did not have sufficient cash to pay for storage, that someone else paid on her behalf and she needs to pay this back. The ministry stated that since the time of the appellant's request, she has continued to receive the full \$610 monthly amount of income assistance for which she is eligible, which includes \$235 support allowance plus \$375 shelter allowance. The panel finds that the ministry reasonably determined that there is insufficient information to show that the appellant had no resources available to cover the costs since she received \$375 for shelter allowance for December and did not have a requirement to pay for rent for December since she had been evicted and was "couch surfing."

The panel finds that the appellant did not receive the ministry's approval before incurring the costs, and the appellant argued that her situation is very different from a scenario where prior permission might be sought from the ministry. The appellant pointed out that the bailiff's representative unexpectedly arrived at her premises with the Writ of Possession, his camera and a moving crew to move her belongings out of the premises and onto the curb. The appellant argued that she was taken by surprised because she had requested an extension from the landlord and she had also filed an application for judicial review of the November 14, 2013 decision by the Residential Tenancy Branch and an injunction against the Order of Possession, and she thought she would have further notice prior to being required to move.

The panel finds that while the appellant was hopeful that her efforts might change the Residential Tenancy Branch decision that she must leave her premises, she also acknowledged that she had not heard further from the landlord regarding her request for an extension or from the court or the Residential Tenancy Branch regarding her court application. The appellant was aware as early as November 14, 2013 that she would have to move from her current premises, unless she could obtain an agreement from the landlord or a court order to the contrary, and the panel finds that there was an opportunity over the course of approximately 3 weeks for the appellant to seek the ministry's approval prior to having to incur the moving costs, even while maintaining her hope that the move would not be necessary. Therefore, the panel finds that the ministry's reasonable determination that the ministry's approval had not been received by the appellant prior to the appellant incurring the moving costs.

Hardship assistance- Section 5 of the EAA

The appellant's position is that she was not eligible for income assistance for December and she is, therefore, eligible for hardship assistance. The appellant argued that since she no longer resided at the premises in December, she would not have been eligible for the shelter portion of assistance for December and she was temporarily in a state of transience with no fixed address. The appellant argued that, in the absence of a definition for "hardship" under the EAA, her eviction is similar to a flood or insufficient heating in that the circumstance was beyond her control and the moving cost was

an 'emergency expense' and can be considered a hardship.

The ministry's position is that since the time of the appellant's request, the appellant has continued to receive the full \$610 monthly amount of income assistance for which she is eligible (\$235 support allowance plus \$375 shelter allowance) and, since she is eligible for income assistance, she is not eligible for hardship assistance.

Panel decision

Section 5 of the EAA stipulates that the ministry may provide hardship assistance to or for a family unit that is eligible for it and is not eligible for income assistance. While the appellant argued that she was a transient for most of the month of December and, therefore, not eligible for income assistance, the panel finds that the appellant was considered by the ministry to be eligible for income assistance for December and the appellant does not dispute that she has continued to receive the full amount for support and shelter allowance. The panel notes that income assistance is also provided to those who meet the definition of "transient" in the EAR, albeit at a different rate, pursuant to the provisions of Section 10 of Schedule A, as referred to in Section 57(1) of the EAR. The appellant argued further that her eviction was beyond her control, is similar to a flood or insufficient heating, and can be considered a "hardship", which is not a defined term. The appellant described her eviction from her previous residence as an "extraordinary event", "brought about largely as a result of unfair surprise", which may fit more within the unexpected nature of a "crisis," as set out in Section 59 of the EAR. Given the panel finds that the ministry was reasonable in concluding that the appellant was not ineligible for income assistance, the panel also finds that the ministry was reasonable in not proceeding to consider whether the appellant's situation met all the other eligibility requirements for hardship assistance under Section 39 of the EAR.

Conclusion

Overall, the Panel finds that the ministry's decision which denied the appellant's request for a supplement for moving costs under Section 57 of the EAR and for hardship assistance under Section 5 of the EAR was reasonably supported by the evidence and the panel confirms the ministry's decision.