

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry's) reconsideration decision dated May 21, 2014 which denied the appellant's request for an additional moving supplement to pay van rental costs incurred in February and March 2014. The Ministry denied the additional supplement on the basis that the appellant's request did not meet the statutory requirements of section 55 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically, while the Ministry determined that the appellant's request satisfied one of the reasons for moving as set out in subsection 55(2), it found that the appellant was not eligible for the supplement under subsection 55(3)(b) because the appellant did not receive the minister's pre-approval prior to incurring the rental van costs.

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 signed on April 30, 2014 with attached submission dated May 7, 2014 in which he states that his recent move was due to an unexpected eviction from his previous residence a short time after the death of a close family member. The physical, emotional and financial stress of the move caused the appellant severe chest pains which his doctor confirmed were from stress. The appellant's advocate assisted him in preparing for the move but the tasks of moving on his own took a heavy toll. The appellant explained that the Ministry had already approved his request for storage pods for a 5-day period prior to his new place being ready to move into. Due to the appellant's disabilities, bad weather, and a sloped driveway at his new place, the appellant was unable to move his belongings out of the storage pod which had been deposited outside his new residence. He therefore booked a rental van to assist him to move items out of the pods and also out of storage at other locations. The appellant explained that he had never asked the Ministry for moving assistance in the past and after the Ministry approved his moving supplement for the storage pods there was a \$105 credit which the Ministry "re-assigned" to the appellant's rental van balance. However, the appellant still owed a balance of \$386.53 for the rental van and this is the amount he requested from the Ministry. The Ministry denied the request.

2) A letter from the appellant's advocate to the Ministry, dated May 7, 2014. The advocate stated that the appellant had to apply for additional moving funds (for the rental van) due to unforeseen circumstances and costs that arose during his move. His circumstances included mental and physical distress and it was imperative that he move for health reasons as verified by his doctor. He accrued the additional moving costs because due to his deteriorating health, he was unable to complete his move as planned within the confines of the pre-approved Ministry funds and he was not able to complete the move at all without the additional expenditure.

3) A note from the appellant's doctor (Dr. C.) dated February 21, 2014 in which the doctor stated that the stress of the appellant's previous living situation was causing imminent danger to his health and safety and he should move out of the situation as soon as possible to reduce the risk of harm.

4) Two invoices for the rental van dated March 6, 2014 and April 6, 2014. The March invoice showed a balance of \$372.83 payable by March 31, 2014 and the April invoice had a balance of \$568.44 payable by April 30th. On both invoices, the appellant check marked the amounts that were due to his move, and the total of these amounts (\$386.53) is what he requested from the Ministry. The appellant explained at the hearing that the charges not check marked on the invoices were administrative and other-use fees. He was not asking the Ministry to pay those charges.

In its reconsideration decision, the Ministry noted that the appellant's rent increased due to the move, from \$450 per month to \$500 per month. It approved a moving supplement on February 21 2014 in the amount of \$472.50 on the basis that the appellant was moving to avoid an imminent threat to his physical safety as confirmed by his doctor. The Ministry noted that the appellant's advocate requested an additional moving supplement on April 8, 2014 to cover a rental van invoice for trips made during February and March. The Ministry further noted that the appellant has a Person with Disabilities designation and his file was re-opened in 2007.

Additional evidence

At the hearing, the appellant submitted 3 new documents which the Ministry had no objections to:

1) A photograph showing a sloped driveway leading to a parking garage security gate at a residence. The appellant noted that his new address is pictured in the photograph and explained that the picture shows the incline he had to transport his belongings down in order to move them from the storage pod, which had been deposited on the street, into a storage locker inside the parking garage.

2) A letter from a doctor (Dr. R.) dated June 2, 2014 addressed "To Whom it May Concern". The doctor explained that in February 2014, the appellant experienced "extreme mental stress and chest pain related to an impending move that was not of his choosing." The doctor also reported that the appellant has mental health and medical conditions that "impact his clear thinking and energy" and exacerbate his executive function when he is stressed. The doctor stated that the appellant's move in March required "logistical planning" that he was unable to manage in an organized and efficient way. His move was therefore prolonged and he continues to experience ongoing anxiety and stress from not being settled in his new residence. The doctor reported that the appellant is being "worked up" for heart disease and a recent test result was abnormal.

3) A rental agreement and invoice for a storage pod company showing charges of \$472.50 from February 25 – March 24, 2014 for 3 pods with the notation "3rd unit free storage for pre-paid term".

In addition, the appellant stated at the hearing that he had possessions stored in 3 different places prior to his move and he did not have a lot of time to pare down his belongings because he was occupied with packing, cleaning the carpet in his old place, and moving heavy belongings out of the pods and into temporary storage in the parking garage of his new place as his suite would not be ready until March 5th. He stated that he could not move everything with hand held dollies and carts due to his physical disability, and a spell of snowy, rainy weather.

He stated that he was re-surfacing from a mental breakdown in 2002, had had a "cycle of collapse over and over for the past 14-15 years", and was worried about his heart symptoms because he didn't want to die like his close relative had. He was accepted in social housing but his rent went up to \$500 and utilities were no longer included; his financial situation is difficult due to his limited disability income and the cost of natural remedies and healthy food for his medical conditions. He explained that the pods could not be moved down the ramp at his new residence because a larger van would not fit through the security gate. He booked a small rental van because he already had a membership with the rental company.

In response to a question from the Ministry, the advocate explained that she called the ministry to ask it to pay \$386.53 of the rental van invoice and the Ministry agreed in the telephone conversation to pay \$105 but declined to pay the full balance, advising the appellant to apply for a reconsideration in order to explain his extenuating reasons for accruing the extra charge. The Ministry in its oral testimony confirmed that it had a telephone log regarding this conversation and it had issued a cheque for \$105 to the rental van company.

In response to another question from the Ministry, the advocate stated that no quotes had been provided to the Ministry for the rental van; the quotes were for the storage pods only as that was the original plan, and 3 quotes were forwarded as required under the EAPWDR. At that point the appellant did not know about the weather issue or that the pods could not be brought close to his suite once it was ready for him to move into. It was after the change in logistics that they approached the Ministry to ask for payment of the rental van invoice.

In response to questions from the panel, the advocate clarified that the appellant was requesting \$386.53 for the rental van instead of the full invoice amount because he had deducted administrative costs which he agreed to cover out of pocket, and had also deducted \$105 which the Ministry had already paid toward the rental van. When the Ministry had approved \$472.50 for the storage pods and the pods ended up costing \$105 less, the Ministry paid \$367.50 for the pods and agreed to re-direct the remaining \$105 toward the cost of the rental van. The appellant explained that he had the \$105 credit because the storage company moved only one of the pods to his new residence. The appellant asked the storage company not to move the other 2 pods once he saw that the pods could not be located close to the entrance of the parking garage where he would store his belongings temporarily until his suite was ready to move into. The storage company, in turn, charged him for moving only one of the pods.

The appellant added that the rental van company has frozen his account because they are waiting for payment of the outstanding balance. He did not get a slip showing the charges each time he used the van; he instead got an invoice at the end of each month. The appellant also stated that he used the rental van late at night when the fee is lower.

In its oral testimony, the Ministry stated that moving supplements require prior approval and it agreed to pay \$105 to the rental van company because the \$105 was part of the \$472.50 that the Ministry had pre-approved for the appellant's storage pods. The Ministry stated that it does not normally transfer an amount from one company to another but did so in the appellant's case since he had a change in circumstances and had not used the total amount that was pre-approved for the storage pods.

The panel finds that the 3 new documents and all of the oral testimony relate to the appellant's health limitations in relation to his move; the circumstances of his move; the cost of the pre-approved storage pods; and the charges for the rental van. The panel therefore admits the new evidence under section 22(4)(b) of the *Employment and Assistance Act* as testimony in support of information and records that were before the Ministry at the time the decision being appealed was made.

The panel makes the following findings of fact:

1. The appellant is designated as a Person with Disabilities and experienced physical and mental health symptoms due to the stress of his move which took place on March 1, 2014.
2. The appellant arranged to store his belongings in a locker in the parking garage at his new residence between March 1st- and 5th because his new suite was not ready to move into until the 5th.
3. Prior to his move, the appellant requested and the Ministry pre-approved temporary storage pods in the amount of \$472.50.
4. The appellant had a credit of \$105 for the storage pods because he asked the storage company

not to move all of the pods to his new residence once he realized the pods could not be dropped off near the garage entrance and would only fit on the street outside. The storage company moved one of the pods to the appellant's new residence.

5. The appellant booked a rental van to move his belongings from the other 2 pods, his other storage locations, and from the van into the temporary storage locker at his new residence.

6. After he received an invoice for the rental van, his advocate called the Ministry and requested payment of \$386.53 toward the invoice. The Ministry issued a cheque for \$105 to the rental van company but declined to pay the requested amount, \$386.53.

PART F – Reasons for Panel Decision

The issue being appealed is whether the Ministry's decision to deny the appellant's request for a moving supplement for a rental van because his request was not pre-approved in accordance with subsection 55(3)(b) of the EAPWDR was reasonably supported by the evidence or 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;

(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]. (B.C. Reg. 275/2004)

(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 (1) (f) or (g), the least expensive appropriate living costs. (B.C. Reg. 275/2004)

Appellant's position

In his Notice of Appeal dated June 9, 2014 the appellant argued that the Ministry was "inconsistent in approval for reimbursement for moving as in relation to unforeseen extenuating circumstances incurred during and after the move." The appellant reported that "the move was akin to a bomb going off in my life" and that when he realized that the logistics of getting his stuff from the storage pods to his new place just weren't working, he could not see clearly and logically due to his health issues and stress so he "switched plans and went for the van." He argued that he didn't know how to ask the Ministry for the rental van because he was "drowning in the move" and the rental van expense was unforeseen and unexpected. He explained that the storage company would not unload the pods for him, but only drop them off at the new location.

The appellant argued that he was in "survival mode, my logical capacity was just not there" and though his timing in telling the Ministry about the rental van "was not what the Ministry would prefer", he told them as soon as he got the invoice, at the beginning of March. The appellant argued that when the Ministry agreed to re-direct \$105 to the rental van company, they knew that the appellant had had to change course due to external circumstances; they admitted that the rental van cost was necessary and "not out of the blue"; and they told him they would look into the full amount he was requesting when he applied for reconsideration, but they then denied his request in the reconsideration.

The appellant argued that the reason the Ministry's decision was inconsistent is because the rental van was not for a new move; it was part of his original move that the Ministry had pre-approved, and the actual cost of the rental van was an unknown expenditure at the time he initially applied for the moving supplement for storage only, expecting that he would only need to use the pods. The appellant stated that he "was not trying to circumvent the Ministry or create ridiculous amounts." He used the van late at night to save costs; he subtracted the administrative fees to be fair; he appreciates the Ministry's assistance and goes out of his way to save the system money by refusing thousands of dollars of pharmaceuticals for his health conditions, and by not booking actual movers which would have cost as much as \$1,500. He submitted that the small amount he requested for the van was not unreasonable, and he was doing the best that he could in light of severe chest pains that really scared him. The Ministry did not guide him so he went to the advocate for assistance as he had no family or friends to turn to. He is asking the Ministry to grant a "compassionate request" in his circumstances.

Ministry's position

In its reconsideration decision, the Ministry was satisfied that the appellant was moving for one of the reasons listed in subsection 55(2) of the EAPWDR; however the appellant did not have the minister's pre-approval for the rental van. The Ministry noted that the appellant requested an additional moving supplement for the van on April 8, 2014 yet he incurred the cost in February and March 2014. The Ministry's position is that the appellant was therefore not eligible for the additional moving supplement under subsection 55(3) of the EAPWDR.

At the hearing, the Ministry stated that it appreciates that "the appellant is going through a lot and acknowledges that his move was not a regular situation." However, the EAPWDR requires pre-approval prior to incurring moving costs and "when using public money the Ministry has to be

responsible and follow the legislation.” The Ministry was able to pay \$105 towards the rental van as that amount was the unused portion of the pre-approved moving supplement that the appellant had received. The Ministry argued that it suggested that the appellant apply for reconsideration because it cannot approve an additional moving supplement on the spot over the phone. The circumstances needed to be explained to determine whether the requested amount was legitimate under the legislation.

Panel’s decision

At issue in this appeal is subsection 55(3)(b) of the EAPWDR which states that a family unit is eligible for a moving supplement only if “(b) a recipient in the family unit receives the minister’s approval before incurring those costs.” The panel notes that the pre-approval required under this section is for “costs” and not for the logistics of the move itself. The panel further notes that “costs” implies a fixed and approved amount and that such interpretation is supported by subsection 55(4) of the EAPWDR which states that a moving supplement may be provided to assist with “(a) the cost of the least expensive appropriate mode of transportation”. Again, the word “cost” in this section implies a known and approved amount.

The panel is of the view that without knowing the cost of the mode of transportation (in this case, the rental van) in advance of the move, the minister would not be able to grant approval under paragraph 3(b) even though such pre-approval must occur “before incurring those costs.” The appellant does not dispute that he did not advise the Ministry of the cost of the rental van until he received the invoice, but he argued that he could not tell the Ministry sooner because he was overwhelmed with the stress of the move which was worsening his health and his capacity for clear thinking, and he did not know what the cost would be until he received the invoice which only came at the end of the month. With regard to not knowing the cost until the invoice arrived, the panel notes that the appellant would logically know that he was incurring a charge every time he used the rental van, either on the basis of an hourly rate or the kilometers driven.

Although he also argued that the cost of the van was part of the same move for which he had applied for the moving supplement for the storage pods, and that his need for the van came about as a result of unforeseen circumstances, the Ministry’s evidence was that the initial moving supplement was for the cost of the storage pods only, in a set amount of \$472.50. The \$105 that the Ministry applied to the rental van was the unused portion of this pre-approved amount.

The advocate explained that they provided 3 quotes for the storage pods and the Ministry approved the moving supplement for the pods on the basis of these quotes. However, the evidence is that the advocate did not submit any quotes for the rental van and the quote provided with the appellant’s new evidence was for the storage pods, not the rental van. Rather, the appellant booked that particular rental van because he already had a membership with the rental van company which had a van that was small enough to fit through the security gate at his parking garage. The panel notes that without any quotes, the Ministry would be unable to determine whether the van met the criterion of the least expensive mode of transportation pursuant to subsection 55(4)(a) of the EAPWDR.

With regard to the appellant’s health issues and stressful circumstances (which were confirmed by his advocate’s letter and the information from Dr. C. and Dr. R.), both the Ministry and the panel are sympathetic. However, the Ministry argued that it still has to follow the legislation in approving a

moving supplement and the panel cannot find any provisions in the moving supplement sections of the EAPWDR that deal with aggravating circumstances for not getting moving costs pre-approved. Specifically, there is no mention of health conditions, or unforeseeable or mitigating circumstances such as the appellant changing course and booking the van when the storage pods did not work out. There is also no section that would allow the Ministry to grant a "compassionate request."

The panel finds that the Ministry's decision to deny the appellant's request for an additional moving supplement for the rental van was reasonably supported by the evidence and was a reasonable application of section 55 of the EAPWDR in the circumstances of the appellant. The panel confirms the Ministry's reconsideration decision.