

### PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the “ministry”) dated June 2, 2014 which held that the appellant was not eligible for a moving supplement because the ministry determined that the appellant did not meet the eligibility requirements set out in section 55(3) of the Employment Assistance for Persons with Disabilities Regulations (EAPWDR). Specifically, the ministry held that the appellant had the resources necessary to cover the costs of moving and did not receive prior approval from the ministry.

### PART D – Relevant Legislation

Employment Assistance for Persons with Disabilities Act (EAPWDA) section 5

Employment Assistance for Persons with Disabilities Regulations (EAPWDR) section 55.

## PART E – Summary of Facts

The documentary evidence before the ministry at reconsideration included the following:

- the last page of a letter dated March 27, 2014 to the appellant from her landlord advising her that she is to be evicted due to the landlord experiencing an unforeseen financial crisis.
- a letter dated March 28, 2014 from the appellant's physician recommending that she move to another community for health reasons.
- an undated rental agreement between the appellant and U-Haul showing that the appellant rented a truck to be picked up on March 31, 2014 and agreed to drop it off at another location on April 2, 2014. The agreement confirms that the appellant made a cash payment to cover the costs of the rental vehicle.
- a hotel receipt showing that the appellant paid \$148.35 for a hotel room on March 31, 2014 at a location enroute to the community to which she was relocating.
- a restaurant receipt for \$41.28 on March 31, 2014 and another restaurant receipt for \$2.70 on April 1, 2014.
- a receipt for \$25 for gas dated March 31, 2014
- a ferry receipt for \$186.98 dated April 1, 2014 confirming that the appellant travelled to her new location on this date.
- the appellant's request for consideration dated May 5, 2014 requesting an extension to allow additional time to gather evidence in support of her reconsideration.
- a letter dated May 28, 2014 from the appellant's physician in her former community stating that her move had resulted in significant improvements in her health.
- A letter dated June 1, 2014 written by the appellant that outlines the dates and events related to her move. The appellant states that on March 26, 2014 she was advised by her landlord that she needed to move as all of her utilities would be disconnected before March 31, 2014. She indicates that she couldn't provide moving estimates as all the moving companies she contacted were unavailable to hire. She states that she had to go with the U-Haul truck because it was the only thing available. The appellant explains that she submitted all of her receipts to the local ministry office but they were misplaced. She has provided additional copies of the receipts which were available. She explains that her health was seriously threatened prior to her move and there has been significant improvement in her health since the move.

In her Notice of Appeal the appellant states that the reason for her appeal is that the ministry's reconsideration decision is “. . . patently unreasonable.” Following reconsideration and immediately prior to the hearing the appellant submitted the following evidence:

- a statement dated July 3, 2014 signed by Ms. P. who stated that she had been one of the appellant's care-givers for the past two years and that she has provided assistance to the appellant twice weekly over that period of time. Ms. P. stated that when she attended the appellant's home she almost always found her in her bedroom. This room was a sanctuary for the appellant who expressed many concerns about her safety since her significant other was very abusive and Ms. P. stated that there were many fights between the appellant and her partner during this time. Ms. P. was very concerned about the appellant's health and stated that she witnessed the appellant's health rapidly decline in the last six months. She reported that the appellant's home was nearly uninhabitable with mold under the sink and bath tub, the kitchen was infested with mice and the flooring was weak in places. Ms. P. believes that the appellant's health was in jeopardy prior to her move and she believes the recent move has dramatically improved her health.
- a *Crisis Supplement Request Form* dated April 4, 2014 submitted by the appellant which states that because the appellant fled an abusive relationship, and the disconnection of her various utilities

on March 31, she had moved to another community. She explains that as a result of paying for the costs of the move she does not have enough money remaining to pay the costs of the damage deposit and rent in her new accommodation. Attached to the Form was a *10 Day Notice to End Tenancy for Unpaid Rent or Utilities* form confirming that the appellant has not paid the rent that was due on April 1, 2014. The ministry confirmed that they had no objection to the admission of these two additional pieces of evidence. This information provides additional detail with respect to issues addressed in the reconsideration decision. 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 section 22(4) of the EAR.

At the hearing the appellant explained that she had determined on March 25, 2014 that she had to relocate because her health had deteriorated to a dangerous state. The following day she contacted the ministry to inquire about obtaining a moving supplement. She explained to the ministry worker that she planned to move to another community to live with her son as her current residence was an unhealthy environment and was being foreclosed. On March 27, the appellant provided the ministry with an eviction notice from her current residence.

On March 28 the appellant attended the ministry offices and presented a doctor's note dated that same day which recommended that the appellant relocate to another community due to her severe stress and weight loss. On that same date the appellant was advised by a ministry worker that they could not find the U-Haul quote which the appellant had submitted on March 26, 2014. The appellant went to U-Haul and got another written quote which she deposited in the ministry's dropbox as she had been directed to do by the ministry worker. On March 29, 2014 the appellant called the ministry's 1-866 phone number to ask whether the U-Haul quote had been received and was informed that there was nothing in the ministry's dropbox. That same day the appellant obtained a (third) quote from U-Haul and called the ministry's 1-866 number again in an attempt to provide the ministry worker on the line with her quote. The appellant was advised that she needed a second doctor's note as well as quotes from two other moving companies. The appellant tried to explain that no other moving companies were available but the worker refused to accept her statement. On March 31, 2014 the appellant packed her belongings and drove her rented U-Haul enroute to her new community. On April 4, 2014 the appellant attended the ministry office and provided receipts for all of her expenses. These included \$138.35 (sic) for a one night hotel stay, \$255 for gas receipts, \$258.73 for BC Ferry, \$566.13 for U-Haul and \$46.89 for meals.

In response to a question from the panel, the appellant stated that the ministry had not informed her that prior approval from the ministry was a requirement for receipt of a moving supplement. The appellant was asked whether she had reported her fears of domestic violence to the police and she confirmed that she had not done so. The appellant was also asked whether she had considered the possibility of staying with a transition house after her eviction but she confirmed that she had not explored this option.

The ministry explained that the ministry attempts to "triage" requests for moving supplements and that these requests can sometimes be handled quite quickly. But in the case of the appellant, the ministry was still waiting for missing information and noted that several different reasons for the move had been advanced by the appellant over the days preceding the move. The ministry allowed that the reconsideration decision had included "poor wording" in its reference to the expectation of a 3-5 day "standard" for completing a service request and the appellant's failure to allow this time to pass

before completing her move. The ministry explained that this is just a guideline based on the ministry's previous experience but that this is not a ministry requirement.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant's request for a moving supplement based upon section 55(3) of the EAPWDR because the appellant had the resources available to cover the cost of moving and did not receive prior approval from the ministry. Specifically, the issue is whether the ministry's decision is reasonably supported by the evidence, or is a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is the following:

From the EAPWDA:

### **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.

From the EAPWDR:

### **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].

- (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.

*The appellant's position:*

The appellant states that she left her previous residence on March 31, 2014 as she was evicted from her unsanitary home, fleeing an abusive relationship and facing an imminent threat to her personal safety. She argues that she tried repeatedly to satisfy the requirements of the ministry office regarding the documentation they required to process her request for a moving supplement. She states that the ministry office misplaced her documents and that she had to submit the U-Haul quote 3 times. The appellant does not dispute the ministry's claim that she did not receive prior approval from the ministry for her move but she claims that she did her best to accommodate the ministry's requests. She argues that under the circumstances it was unreasonable for the ministry to require a 3-5 business day period to process her request for a moving supplement. In support of this conclusion she notes that section 55(2)(e) of the EAPWDR specifies no time limit as a condition of eligibility, that the appellant was never advised by a ministry worker that she had to wait 3-5 business days for her request to be considered, and that the 3-5 day guideline is not published in any ministry policy materials that are customarily accessible to the public. Moreover, the appellant questioned whether the ministry's failure to consider in a timely manner the appellant's request for a moving supplement was an effective denial of this benefit and resulted in a fettered exercise of discretion. The appellant cited *Klais v. Canada (Minister of Citizenship and Immigration)* which stated that "guidelines are a 'rule of thumb' which cannot be applied automatically so as to fetter discretion." Accordingly, the appellant claimed that it would be unreasonable in her circumstances for the ministry to expect her to receive prior approval when it would take 3-5 business days to process the request.

The appellant also disputed the ministry's claim that she had the resources available to cover the costs of the move. She notes that the costs of the move so depleted her resources that she was unable to pay her rent or purchase food once relocated and had to apply for a crisis supplement to meet these costs. Moreover, she argues that since the ministry did provide a crisis grant this demonstrates that the ministry recognized that she did not have sufficient resources to pay for the moving costs as well as her normal shelter and food costs. The appellant cited *Hudson v. Employment and Assistance Appeal Tribunal* noting that it confirmed that the legislature had in mind a benevolent purpose when drafting the *Employment and Assistance for Persons with Disabilities Act* and the *Regulations*. The appellant argued that to achieve its benevolent purpose, section 55(2)(e) of the EAWPDR must be interpreted so as to provide the appellant with a moving supplement immediately to allow her to leave a living situation that posed an imminent harm to her physical health. Accordingly, the appellant claimed that it was unreasonable for the ministry to conclude that she had sufficient resources for her move.

*The ministry's position:*

In the reconsideration decision, the ministry agreed that the appellant had satisfied the requirements of section 55(2) of the EAPWDR. Nonetheless, the ministry determined that the appellant had the resources available to cover the cost of the move and did not obtain prior approval from the ministry for the move.

As noted previously, the ministry explained that the reference in the reconsideration decision to an expectation of 3-5 business days to process a service request is only a guideline and is not a requirement. The ministry explained that in some cases the request can be handled the same day it is received. But in the appellant's case the ministry did not have all of the needed documentation to make a determination. The ministry noted that the reasons given by the appellant for requiring the move kept changing. The appellant's initial request for a moving supplement was based upon her health challenges. Subsequently, the appellant advised the ministry of her eviction notice. Following that, the appellant explained that the reason for the move was an abusive relationship and a threat to her physical safety. The ministry explained that it was still awaiting needed documentation from the appellant associated with the move when the move took place. Accordingly, the ministry argued that the lack of prior approval was not a consequence of a requirement for 3-5 business days but rather the failure of the appellant to provide necessary documentation in support of her request.

The ministry noted that the appellant paid for the expenses associated with the move and there was no indication of an outstanding debt yet to be paid. At the time of reconsideration the ministry was aware that the appellant had applied for a crisis supplement but it understood that the costs associated with the move had been paid. Accordingly, the ministry determined that the appellant did have the resources needed to pay for the costs of the move and dealt with the request for a crisis supplement as a separate issue.

*The panel's decision:*

The panel notes that the appellant does not deny that she did not obtain prior approval for the move. The appellant states that she was not specifically advised by the ministry that prior approval was required for the move but the panel expects that a reasonable person would expect that such permission would be required before spending the money they hope to have reimbursed. The panel appreciates the appellant's understandable frustration that key documents appear to have been misplaced and the appellant did her best to provide the ministry with the documents they required. The panel also recognizes that the appellant felt under pressure to act quickly and was dealing with serious health challenges at the same time as she was trying to sort out arrangements for her move. Nonetheless, the appellant chose to initiate the move without further reference to the ministry rather than explore other options which would have allowed her to move out of her previous accommodation and into some temporary accommodation (such as a transition house) until a decision had been made by the ministry regarding her request for a moving supplement, but did not do so. In addition, the appellant provided the ministry with several different explanations of the reason(s) behind the appellant's decision to move and the ministry was obliged to collect and examine documentation in support of each of these explanations. The panel is satisfied that the ministry did not arbitrarily impose a 3-5 business day time frame to process the appellant's request for a moving supplement but rather was seeking to obtain from the appellant the documentation needed to process the request in a timely manner. Accordingly, the panel concluded that the ministry reasonably determined that the appellant had not received prior approval and therefore had not satisfied the requirements of EAWPDR section 55(3)(b).

The panel notes that the appellant made a decision to incur the costs of the move even though this would not leave her enough funds to cover her expected costs of shelter and food. Having made that decision it was necessary for her to apply for a crisis supplement in order to pay her shelter costs. In the panel's view this was a decision with consequences, but one that the appellant was free to choose. The fact that the appellant was able to cover the costs of the move without incurring debts

means that she did have the resources for the move. The resulting shortfall created a need for a crisis supplement which the ministry funded. Accordingly, the panel concluded that the ministry reasonably determined that the appellant did have the resources necessary to cover the costs of the move and therefore did not satisfy the requirements of EAPWDR section 55(3)(a).

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that the ministry's decision that the appellant was not eligible for a moving supplement was a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry decision.