

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated April 30, 2015, which held that the Appellant is not eligible for a supplement for moving costs. The Ministry determined that the Appellant did not receive approval before incurring the moving costs as required by s.55(3), of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and there was insufficient information to determine that the cost is the least expensive appropriate mode of moving under s. 55(4).

PART D – Relevant Legislation

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

PART E – Summary of Facts

The Ministry was not in attendance at the hearing. After confirming that the Ministry was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

Information before the Ministry at reconsideration included:

- The Appellant's Request for Reconsideration, signed April 29, 2015 with attached written submission in which she stated that she met with a Ministry worker on January 12, 2015 and asked about moving costs. She was told that she needed to put in two estimates for moving expenses and that her moving costs would be covered "if the rental portion was less than she currently paid". She stated that she got six estimates ranging from \$75 to \$95 per hour for "2 men". She did not know where she was moving to as she did not find a place to move to until February 27, 2015 and she had to be out (of her old place) by February 28th. She decided she would move with the assistance of friends and acquaintances who were willing to work for \$150 each for two days. On moving day, February 28, 2015, two sets of friends came to help but then left when the property caretaker was giving them a hard time. The caretaker told her she would have to have everything out by that evening or she would be charged a late fee and the locks would be changed and they would "call the junk man to take (her) stuff away". The next day, March 1, 2015, a family member came to help but it was too much for them so the family member called five movers and found a team who would move her for \$65 per hour. This company moved her possessions that day and the next day, March 2, 2015. She still owes the movers \$200 and the total cost of her move was \$1,743.62 including \$1,275 for the moving company, \$168.62 for a truck rental and boxes, and \$300 for friends.
- A copy of the Appellant's Residential Tenancy Agreement commencing March 1, 2015.
- A copy of a payment receipt for boxes from a storage company dated March 1, 2015.
- A copy of a truck rental receipt dated March 1, 2015 in the amount of \$244.68.
- A copy of a letter from B.C. Housing to the Appellant, dated April 10, 2015, for the period August 1, 2015 to February 29, 2016, advising her of the amount of her rent subsidy, \$870.00.
- A copy of a letter from B.C. Housing to the Appellant, dated April 10, 2015, for the period April 1, 2015 to July 31, 2015, advising her of the amount of her rent subsidy, \$678.52.
- A copy of a letter from B.C. Housing to the Appellant, dated April 10, 2015, for the period March 1, 2015 to March 31, 2015, advising her of the amount of her rent subsidy, \$870.00.
- The Appellant's Request for Reconsideration, signed March 17, 2015.
- A copy of a letter from B.C. Housing to the Appellant, dated April 10, 2015, for the period March 1, 2015 to March 31, 2015, advising her of the amount of her rent subsidy, \$870.00.
- A copy of a receipt from a moving company dated March 1, 2015, in the amount of \$1,275.00.

At the hearing, the Appellant submitted:

1. Points for consideration by the Tribunal.
2. A "will-say" of the Appellant, summarizing her evidence.
3. A copy of the original ministry decision regarding her request for a crisis supplement attached to a copy of the Appellant's Request for Reconsideration for this appeal, dated April 29, 2015.
4. A copy of a moving estimate dated August 6, 2015.
5. A copy of Reasons for Judgment in BC Supreme Court decision *Atfield v. Employment and Assistance Appeal Tribunal, 2006 BCSC 1480*.
6. Copies of three Employment and Assistance Appeal Tribunal decisions in which the panel rescinded the Ministry's reconsideration decision on a moving supplement:
7. A copy of seven pages of income and expense calculation and undated handwritten notes of conversations with moving companies. The notes indicated that there was no answer at some companies, other companies would not provide a quote, and other charged an hourly rate between \$90 and \$130 per hour.

The Panel accepted the above listed documents for reference as part of the argument on the Appellant's behalf and not constituting evidence.

The "will-say" of the Appellant is written evidence related to the appellant's interactions with the ministry regarding her request for the moving supplement and this issue was before the ministry at reconsideration. The income and expense calculation and handwritten notes of conversations with moving companies relate to her alleged interactions with moving companies and the resources available to her to pay for the moving cost, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information and records that were before the ministry at the time of the reconsideration, in accordance with Section 22(4)(b) of the Employment and Assistance Act.

The Appellant gave oral evidence that she had no knowledge of the Ministry's policy about moving expenses prior to her move. The Appellant stated that she had lived with a family member, sharing the rent, until January 1, 2015, when the family member was no longer able to contribute due to a change in his financial circumstances. He moved and the Appellant was unable to pay the rent. She stated that she received an eviction notice for non-payment of rent, and then approached the Ministry for a crisis supplement for rent, which was eventually denied. The Appellant stated that during her conversation with the Ministry about the crisis supplement application she requested information about reimbursement for moving expenses and was told that she would have to move to a cheaper place and that she should obtain two estimates for the move to prove that her claim was for a reasonable amount. The Appellant added that the Ministry worker said she was approved, as clearly she was moving to a cheaper place, The Appellant stated that she was not given any printed material related to moving expenses, and she was not told that she would have to submit the estimates to the Ministry in advance or that the Ministry would hire the movers. She said there was no follow up from the Ministry and she was not told about the process and procedures for a moving supplement until she contacted the Ministry on March 16, 2015 to apply for a reconsideration of the moving expense denial.

The Appellant wrote in her "Will Say" that she looked very hard for a new apartment that she could afford and she also knew that she had to have BC Housing approve it. She viewed many apartments which were not suitable to her or BC Housing and this went on from mid-January until the end of February. She was very ill, in great pain with headaches, intense nausea, fatigue, dizziness, disorientation and depression during this period. The Appellant stated that she did not find an apartment until late on February 27, a Friday, and there was no time to obtain BC Housing approval but she signed the lease in the late afternoon because she knew it met the criteria for a rent subsidy. The Appellant stated that there was no opportunity to get Ministry help to locate a mover for the next day since after 4:30 in the afternoon there is no one to help as the Ministry phone lines shut down for the day. She had to arrange a move for the next day, the end of the month. She stated that she attempted to arrange assistance from friends, but due to a series of events, she had to find a professional mover to complete the move. She stated that she had attempted to obtain verbal quotes prior to the move, but was unsuccessful because she did not know where she would be moving. The Appellant stated that she knew she had to move to cheaper accommodation, she knew she had to move economically and she thought her moving expenses would be covered by the Ministry if she arranged to do it cheaply. The Panel admitted the Appellant's oral evidence under s.22(4)(b) of the Employment and Assistance Act as oral testimony in support of the information and records that were before the Ministry when the decision being appealed was made.

The Ministry, in the Reconsideration Decision, stated that the Appellant's shelter expenses have been reduced, which is a requirement for receiving a supplement for moving costs, but she did not obtain prior approval for the costs. The Ministry wrote that the Appellant's contact with them in January, 2015 was by telephone, not in person, and there is no record of any further discussions, requests or submissions concerning moving costs until after her move.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision which held that the Appellant is not eligible for a supplement for moving costs. The Ministry determined that the Appellant did not receive approval before incurring the moving costs as required by s.55(3), EAPWDR.

Legislation

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 [*assignment of 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.

Appellant's Position

The Appellant's position is that she advised the Ministry that she had to move to less expensive accommodation when she applied for a crisis supplement, and that she was told she would have to obtain two estimates, but she was never advised about when or where to submit the estimates or the Ministry's policy about prior approval. She had to move quickly because she didn't find an apartment until late on a Friday and therefore could not have submitted firm estimates before the move as she did not yet have a new address. The Appellant argued that the Ministry provided approval before the Appellant incurred the moving costs as the Ministry worker gave her verbal approval when the Appellant advised the Ministry of her need to obtain cheaper housing when she applied for a crisis supplement for rent. The Appellant stated that she was not advised of the Ministry's policy about moving costs until after she had moved and she was not advised that she must submit the estimates in a written form to the Ministry before moving. She noted that the Ministry provided no record that they advised her of the policy, and that the Ministry's record regarding the sequence of events is inaccurate. The Appellant argued that due to the fact that she did not find an apartment until late on a Friday at the end of the month and found it difficult to complete her move in the time available it was not possible to provide estimates in advance. As a result, the Appellant submitted that the Ministry's decision to deny her request was unreasonable. The advocate argued on behalf of the Appellant that as the facts surrounding the Appellant's request for a moving supplement are sufficiently similar to the facts in the court decision in *Atfield v. Employment and Assistance Appeal Tribunal*, 2006 BCSC 1480 ("Atfield"), the panel is bound by the findings in that decision.

Ministry's Position

The Ministry's position, as set out in the Reconsideration decision, is that the Appellant did not discuss a moving cost supplement with the Ministry, other than possibly during a telephone conversation in January 2015, and did not submit estimates before incurring those costs. Therefore the Ministry was not able to determine the least expensive appropriate costs and prior approval was not obtained. As a result the Appellant is not eligible for a moving supplement.

The Ministry wrote in the Reconsideration decision that they have no record of a request or denial to pay moving costs or any discussion with the Appellant concerning a moving supplement from January until March 6, 2015 when she submitted a copy of her new tenancy agreement.

Panel's Decision

The Panel notes that the issue in this appeal, whether the Appellant obtained prior approval for her moving expenses, is complicated by the differing reports of her conversation with the Ministry in January, 2015 and by the date when she found a new apartment, February 27, 2015. The Panel notes that the Ministry, in the Summary of Facts section of the Reconsideration Decision, stated that the Appellant indicated on January 21, 2015 that she would be looking for more affordable accommodation, however in the Decision section, the Ministry stated that there were no discussions, requests or submissions concerning a moving cost supplement after January 12, 2015. Given this inconsistency, without clarification by the Ministry (the Ministry did not

provide the notes made at the time of these discussions and did not attend the hearing), the Panel places more weight on the Appellant's testimony regarding the conversations with the Ministry, noting that her reconsideration submission, "will say" statement, and oral testimony consistently indicate that she understood the Ministry had approved her request for a moving supplement.

With respect to EAPWDR Section 55(3)(b), the Panel finds that the evidence indicates the Appellant did not submit written quotes for approval prior to her move and prior to incurring the costs for the move; however, she did speak to the Ministry about the need to move to less expensive accommodation, as reported by both parties. The Appellant may have believed that her moving costs would be "reimbursed" after she incurred the cost, although she apparently did not have a clear understanding of how this might be accomplished. There is no dispute about whether the Appellant met the other requirements of Section 55, including the requirement that her shelter costs were significantly reduced as a result of the move and there were no resources available to the family unit to cover the costs.

The Panel notes that under most circumstances it would be reasonable for the Ministry to require a minimum of two quotes for moving expenses prior to the move in order to determine the "least expensive appropriate mode of moving or transportation" in accordance with EAPWDR section 55(4)(a); however in the Appellant's circumstances, she did not find an apartment until late in the day on a Friday at the end of the month. The Panel accepts the Appellant's oral and written evidence that she was unable to obtain firm moving estimates, beyond hourly rates, without having an address to which she would be moving, and that she had difficulty finding a mover at short notice. The Panel accepts the Appellant's evidence that she looked very hard for a new apartment that she could afford and that met BC Housing's approval criteria, that she viewed many apartments which were not suitable from mid-January until the end of February and that she was very ill during this time. Likewise, in the Atfield case, the appellant needed to move with haste as he had to be out of his then-current place of residence, a satisfactory place of residence had come available, and there was very limited time available to arrange a move. In Atfield, the court found that it could not be intended that estimates would always be necessary prior to a move taking place and noted that there is protection for the Ministry in s. 55(4)(a) of the EAPWDR, which limits the amount of reimbursement to the least expensive appropriate mode of moving.

In the circumstances of the Appellant, where she reasonably believed that her moving expenses would be reimbursed and the exigent circumstances of her move at the end of the month, the Panel finds that the Ministry's reconsideration decision was not a reasonable application of EAPWDR Section 55 in the circumstances of the Appellant. The Panel rescinds the Ministry's decision and refers the decision back to the Ministry for a decision as to amount.