

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated March 8, 2016 which denied the appellant's request for \$375, as equivalent to the maximum shelter allowance for a one-person family unit, for storage costs and to stay at a hotel. The ministry found that:

- the appellant is not eligible for the moving supplement under Section 55 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) and her request does not fall within the ministry's policy for payment of storage fees as part of moving costs.
- the appellant is not eligible for a crisis supplement for shelter costs since the requirements of Section 57 of the EAPWDR were not met as, storage costs are not an unexpected expense, there were alternate resources available to the appellant to pay for the storage costs, and there was insufficient evidence to show that failure to meet the expense would result in imminent danger to the appellant's physical health; and,
- for the monthly shelter allowance, the smaller amount is the appellant's actual shelter cost of \$35 and is, therefore, the amount allowable according to Section 4 of Schedule A of the EAPWDR.

## PART D – Relevant Legislation

*Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), Sections 55, 57, and Schedule A, Sections 4 and 5

## PART E – Summary of Facts

Neither the appellant nor her advocate attended the hearing. After confirming that the appellant and her advocate were notified, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Addendum for Crime Free Multi-Housing Program agreed to by the appellant on July 8, 2003;
- 2) Breach letter dated June 19, 2014 for violation of addendum for crime free multi-housing program and regarding complaints from the appellant's neighbours for constant verbal abuse and threatened assaults. Providing notice that if further complaints are received, the landlord will take further action and proceed with the 30 day eviction proceeding;
- 3) One Month Notice to End Tenancy for Cause dated June 27, 2014;
- 4) Tenant's Application for Dispute Resolution dated July 2, 2014 stating she is a radiation patient on chemo meds and 13 other meds and she does not know why the landlord is seeking eviction. They put a deadbolt on her door that is keyed to the front door of the building. She has not threatened or harmed anyone.
- 5) Notice of Entry dated July 17, 2014 to complete preventative maintenance work regarding damage to the appellant's unit due to a pipe leaking, the landlord's efforts to contact the appellant and the fact that she had changed the locks to her unit without the landlord's written permission, contrary to the terms of the lease;
- 6) Notice of Entry dated July 22, 2014 to completed preventative maintenance work, to complete an apartment inspection and to carry out repairs;
- 7) One month Notice to End Tenancy for Cause dated July 31, 2015, for seriously jeopardizing the health or safety or lawful right of another occupant or the landlord, putting the landlord's property at significant risk, adversely affecting the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, jeopardizing a lawful right or interest of another occupant or the landlord, not doing required repairs of damage to the unit, and breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- 8) Letter dated October 22, 2015 in which the appellant's friend wrote that he has known the appellant for over 30 years and he visits with her on a monthly basis. He observed that the appellant and the building management do not get along and have had conflicts but he believes this is not grounds for eviction. The appellant pays her rent every month, adheres to the building code of ethics and keeps to her apartment. He believes eviction would cause physical and emotional stress and this would have a negative impact as the appellant is struggling with health issues;
- 9) Agreement dated November 10, 2015 between the appellant and the self storage company for rental of an unit for \$174.30 per month, along with tenant information sheet;
- 10) Terms and Conditions of self storage rental signed by the appellant on November 29, 2015;
- 11) Writ of Possession dated December 16, 2015 relating to a possession Order dated October 15, 2015;
- 12) Receipt dated January 6, 2016 from a self storage company indicating payment of \$80 towards rent;
- 13) PO Box Rental Information Report and receipt dated January 27, 2016 indicating a renewal date of June 1, 2016; and,
- 14) Request for Reconsideration dated March 3, 2016.

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In her Notice of Appeal dated March 10, 2016, the appellant expressed her disagreement with the ministry reconsideration decision and wrote that:

- She is forced to live in her car with spinal cord compression, shattered ankle, and no left hip.
- She is using her diet allowance for bills.
- She has been thrown out illegally and they are going to auction off her stuff.
- She has 30 diagnosed health conditions.

The ministry relied on the reconsideration decision as its submission on the appeal. The information included:

- The appellant is a sole recipient of disability assistance. Her current monthly assistance amount is \$797.82, consisting of \$531.42 for support, \$205 for nutrition, \$26.40 for medical transportation and \$35 for shelter (phone).
- On January 27, 2016 the appellant requested a crisis supplement for shelter as she had been evicted by a bailiff and was living in her vehicle.
- As of the Writ of Possession dated December 6, 2015, the appellant was ordered on October 15, 2015 to vacate her previous address.

## PART F – Reasons for Panel Decision

At issue on the appeal is whether the ministry's decision, which denied the appellant's request for \$375, as equivalent to the maximum shelter allowance for a one-person family unit, for storage costs and to stay at a hotel, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The legislative criteria to be considered eligible for the supplement for moving costs are set out in

Section 55 of the EAPWDR as follows:

### **Supplements for moving, transportation and living costs**

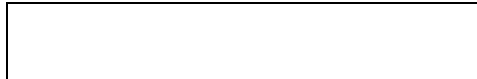
**55** (1) In this section:

"**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*].
- (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. . . .



Section 57(1) of the EAPWDR sets out the eligibility requirements which are at issue on this appeal for providing the crisis supplement, as follows:

**Crisis supplement**

- 57 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for disability assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
  - (b) the minister considers that failure to meet the expense or obtain the item will result in
    - (i) imminent danger to the physical health of any person in the family unit, or
    - (ii) removal of a child under the Child, Family and Community Service Act. . . .

Schedule A, Section 4(2) of the EAPWDR provides as follows:

**Monthly shelter allowance**

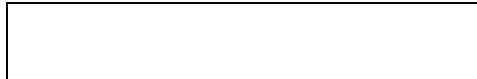
- 4 (2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of
- (a) the family unit's actual shelter costs, and
  - (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820
8	8 persons	\$855
9	9 persons	\$890
10	10 persons	\$925

Schedule A, Section 5(1) and (2) 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.

### ***Moving Supplement***

#### ***Ministry's Position***

The ministry's position is that the ministry policy provides the ministry discretion to consider that storage fees can be considered as "moving costs" and paid by the ministry when a person's possessions must be stored for a temporary period of time, but only if the person is eligible for the moving supplement. The ministry's position is that the appellant is not eligible for the moving supplement as the circumstances of her move do not fall within one of the listed scenarios requiring a move within or to an adjacent municipality or to another area of the province, as set out in Section 55(2) of the EAPWDR. The ministry wrote that the appellant has not secured a new residence and, therefore, the ministry cannot conclude that the storage costs are required to move the appellant and her personal effects from one place to another to significantly reduce shelter costs or to another area in the province to avoid imminent threat to her physical safety. The ministry wrote that the appellant had already incurred the storage expenses at the time of her request and, therefore, the ministry's approval was not received by the appellant before she incurred these costs, as required under Section 55(3) of the EAPWDR. The ministry also stated that the ministry is not satisfied that the appellant does not have the resources available to pay the \$160 storage costs from the assistance amount (\$797.82) that the appellant continues to receive each month.

#### ***Appellant's position***

The appellant's position, as set out in her Notice of Appeal dated March 10, 2016, is that she is forced to live in her car and she has a spinal cord compression, shattered ankle, no left hip, and a total of 30 diagnosed health conditions. The appellant wrote that she is using her diet allowance for bills. The appellant also wrote that she has been thrown out illegally and they are going to auction off her stuff.

#### ***Panel decision***

Section 55(1) sets out a definition of the costs that are provided for in the section, including "moving cost" as being the cost of moving a family unit and its personal effects from one place to another. While the cost for rental of a storage unit is not specifically included in this definition, the ministry clarified that where the cost can be said to be part of the cost for moving a family unit and its personal effects from one place to another in the specific scenarios set out in the section, and if the

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possessions must be stored for a temporary period of time to facilitate this move, the ministry is given discretion to consider storage fees as a part of the family unit's "moving cost."

The panel finds that the evidence establishes where the appellant has moved "from" since she was in rental accommodation for which she received a Writ of Possession dated December 16, 2015 relating to a possession Order dated October 15, 2015, and the appellant acknowledged that she had been evicted by the bailiff. However, the panel finds that there is insufficient evidence to establish where the appellant will move her personal effects "to" as the appellant wrote that she has been living in her car and provided no further information to show that she had secured alternative permanent rental accommodation.

According to the Notice to End Tenancy for Cause dated July 31, 2015, the cause for the appellant's eviction from her premises is stated to include seriously jeopardizing the health or safety or lawful right of another occupant or the landlord and other alleged actions by the appellant. Although the appellant's friend wrote in his letter dated October 22, 2015 that he observed that the appellant and the building management have had conflicts and do not get along and he argued that the appellant adhered to the building code of ethics and kept to her apartment, the Writ of Possession was ultimately issued and the appellant was evicted. The panel finds that the ministry reasonably concluded that the circumstances of the appellant's move do not fall within one of the listed scenarios requiring a move within or to an adjacent municipality or to another area of the province, namely because her previous residence was being sold, demolished or condemned, or because her shelter costs would be significantly reduced, or to avoid an imminent threat to the physical safety of any person in the family unit, as set out in Section 55(2) of the EAPWDR.

Section 55(3)(a) of the EAPWDR stipulates that a family unit is eligible for a supplement under the section only if there are no resources available to the family unit to cover the costs for which the supplement may be provided. The Agreement dated November 10, 2015 between the appellant and the self storage company specifies a rent of \$174.30 per month for the storage unit, there was no information regarding shelter costs other than the amount of \$35 for her phone, and the ministry wrote that the appellant's current monthly assistance amount is \$797.82. The appellant did not provide information about other possible resources available to her, other than to write that she is "forced" to live in her car and she is using her diet allowance for bills, and the panel finds that the ministry reasonably concluded that there was insufficient information to establish that there are no resources available to the appellant to cover the storage costs.

Section 55(3)(b) of the EAPWDR states that a family unit is eligible for a supplement only if a recipient in the family unit receives the ministry's approval before incurring the moving costs. The panel finds that the costs for rental of the storage unit were 'incurred' when the appellant entered into an agreement with a storage facility November 10, 2015, as this is when the appellant assumed the legal obligation to pay for the storage unit. As the appellant did not request a supplement from the ministry until January 2016, the panel finds that the ministry's approval was not obtained by the appellant prior to incurring the cost for storage. The panel finds that the ministry reasonably determined that the requirement in Section 55(3)(b) of the EAPWDR was not met in the appellant's circumstances and she is, therefore, not eligible for the moving supplement.

### ***Crisis Supplement***

#### ***Ministry's position***

The ministry's position is that the provisions of Section 57 of the EAPWDR allow for the ministry to

provide a crisis supplement when all of the legislative criteria are met, namely that the supplement is required to meet an unexpected expense and there are no alternate resources available to the family unit to meet the expense, and failure to meet the expense will result in imminent danger to the physical health of any person in the family unit. The ministry wrote in the reconsideration decision that the storage costs were not unexpected since the appellant was ordered to vacate the premises in October 2015 due to her own actions. Therefore, it was not unexpected that the appellant would need to find new accommodation or would need to continue to pay storage fees while the appellant resided in her car. The ministry wrote that the ministry is not satisfied that the appellant does not have the resources to meet the storage costs of approximately \$160 per month as she is a sole recipient and receives assistance of \$797.82 per month. The ministry wrote further that the ministry is not satisfied that failure to pay the storage costs will result in imminent danger to the appellant's health.

#### *Appellant's position*

The appellant's position, as set out in her Notice of Appeal dated March 10, 2016, is that she is forced to live in her car and she has a spinal cord compression, shattered ankle, no left hip, and a total of 30 diagnosed health conditions. The appellant wrote that she is using her diet allowance for bills. The appellant also wrote that she has been thrown out illegally and they are going to auction off her stuff.

#### *Panel decision*

The appellant was evicted for cause from her rental unit in December 2015, but there was a Notice to End Tenancy for Cause provided to the appellant in July 2015 and a possession Order was made in October 2015, providing the appellant with notice that a move to alternate accommodation was impending. While the appellant argued that she was "thrown out illegally," she was given notice that the landlord was pursuing eviction several months before she requested a crisis supplement, requiring some other place to store her personal possessions. The panel finds that the ministry reasonably determined that the requirement to pay ongoing, monthly rent for a storage unit for the appellant's personal possessions while she resided in her car is not an unexpected expense. The panel finds that the ministry's determination that the expense for storage costs was not an "unexpected expense," under Section 57(1)(a) of the EAPWDR, was reasonable.

The panel also finds that the appellant has not provided sufficient evidence to demonstrate that there are no resources available to the family unit to meet the expense. Given the evidence of the appellant's monthly assistance amount of \$797.82 and the cost for the storage unit of \$174.30 per month, with no other evidence of alternative shelter costs, the panel finds that the ministry reasonably concluded that there were resources available to the appellant's family unit to meet the expense, under Section 57(1)(a) of the EAPWDR.

While the appellant wrote that she is forced to live in her car and she has a spinal cord compression, shattered ankle, no left hip, and a total of 30 diagnosed health conditions, she did not provide evidence that failure to pay the storage costs will exacerbate any of these conditions and will result in imminent danger to her physical health. Although the appellant's friend wrote in his letter dated October 22, 2015 that he believes eviction would cause physical and emotional stress and this would have a negative impact as the appellant is struggling with health issues, the appellant's eviction has occurred and the corollary to her friend's argument is that finding alternative permanent rental accommodation at this point would be optimal for the appellant's health. The panel finds the ministry's determination that it was not satisfied that the failure to meet the storage costs will result in



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imminent danger to the physical health of any person in the family unit, as required by Section 57(1)(b) of the EAPWDR, to be reasonable.

### ***Shelter Allowance***

#### ***Ministry's position***

The ministry's position, as set out in the reconsideration decision, is that Section 4(2) of Schedule A of the EAPWDR sets out that the monthly shelter allowance for a family unit is the smaller amount of the actual shelter costs and the maximum set out in the table for a one-person family unit, which is \$375 and, in the appellant's case, the smaller amount is her actual shelter costs of \$35. The ministry wrote that Section 5(2) of Schedule A of the EAPWDR stipulates that only the listed items are included when calculating the actual monthly shelter costs of a family unit, specifically: rent, mortgage, property taxes, insurance payments and repairs and maintenance if the residence is owned by the recipient and utility costs. The ministry wrote that Section 5(1) of Schedule A of the EAPWDR limits utility costs to heating or cooking fuel, garbage disposal, hydro, water and phone. The ministry wrote that the appellant's allowable actual shelter costs are \$35 for the equivalent of the rental of one basic residential single-line telephone, which is smaller than the maximum amount for shelter of \$375. The ministry wrote that while the ministry can provide shelter allowance to cover a stay in a hotel up to the \$375 maximum, this is based on actual costs only and the appellant has not provided any receipts or confirmation of an actual hotel stay.

#### ***Appellant's position***

The appellant's position, as set out in her Notice of Appeal dated March 10, 2016, is that she is forced to live in her car and she has a spinal cord compression, shattered ankle, no left hip, and a total of 30 diagnosed health conditions. The appellant wrote that she is using her diet allowance for bills. The appellant also wrote that she has been thrown out illegally and they are going to auction off her stuff.

#### ***Panel decision***

The provisions of Schedule A, Section 4 of the EAR require that the ministry calculate the amount of the family unit's actual shelter costs in order to determine whether it is smaller than the maximum monthly shelter amount set out in the table for the applicable family unit which, for a one-person family unit, is \$375.00. Section 5 of Schedule A sets out a description of how actual shelter costs are calculated and provides a defined list of eligible expenses which include "only" the listed items [Section 5(2)] and "utility costs" include "only" the listed costs [Section 5(1)]. The ministry is bound to apply the legislation as it is worded, with a limited discretion to include items which are closely similar in nature to the item listed. The panel finds that the ministry has canvassed the lists set out in Schedule A, Section 5 (1) and (2) and, in the absence of receipts for the cost of an hotel stay, has reasonably determined that the appellant's actual shelter costs include "utility costs" of the equivalent of the rental of one basic residential single-line telephone at \$35 per month.

### ***Conclusion***

The panel finds that the ministry's decision, which denied the appellant's request for \$375, as equivalent to the maximum shelter allowance for a one-person family unit, for storage costs and to stay at a hotel, was reasonably supported by the evidence. Therefore, the panel confirms the ministry's reconsideration decision.