



PART C – Decision under Appeal

Under appeal is the Ministry of Social Development and Social Innovation's ("the ministry") March 17, 2016 reconsideration decision that the appellant was not eligible for a moving supplement because the request did not meet any of the criteria set out in section 55(2) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

EAPWDR Employment and Assistance for Persons with Disabilities Regulation, section 55

PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- The appellant is receiving disability assistance as a sole recipient.
- The appellant inherited a home on a band reserve in another community in British Columbia, and requested a moving supplement to move there, a distance of about 500 kilometers.
- February 10, 2016 physician's note stating the appellant will require moving allowance for medical reasons.
- February 15, 2016 fax from the Indian Band stating the appellant owns a house on the reserve.
- Estimates from three movers, at \$4650, \$7140, and \$8547.
- March 10, 2016 Request for Reconsideration, with the appellant's submission that went to argument.

Upon appeal the appellant reported the house in which he lives was sold and the occupants must move. He said there is no where available in the city or surrounding areas that is affordable.

At the hearing the appellant agreed to the ministry's request for a ministry employee to attend as an observer.

The appellant's advocate explained the appellant's position that the house he inherited is on a band reserve, an unincorporated area, and that as his cost to live there would be greatly reduced, the appellant should qualify for his moving expenses under the legislation. The appellant currently lives with two roommates in a dilapidated rented house from which they must leave by the end of May because it is being sold. The rent is \$1000, but other rentals in or near the community start at \$1500-1600 and as the appellant smokes and there are pets, they have been unable to find other accommodation in the area. There is no other funding available to assist with moving costs. A move to his house on the reserve would mean the appellant's financial support would transfer from the province to the federal government.

The advocate presented an unsigned '*Agreement*' document prepared for the landlord that would waive the landlord's liability should the appellant and his roommates continue to live there, shown to be effective November 2, 2015, with signature sections for the appellant and the two roommates, but they had refused to sign it. Also presented was a *Notice to End Tenancy* document signed March 30, 2016 by the landlord, showing end of tenancy at May 31, 2016 for the reason the premises had been sold. The notice names the appellant's two roommates and shows the appellant's address. The advocate said the appellant's name was omitted because the document has only two spaces for tenants' names, but that it is intended to apply to the appellant as well.

The witness, a roommate, confirmed the circumstances of the appellant's current rental arrangements, and said the landlord would not do needed repairs, saying they could leave if they did not like it.

The ministry stood by its position at reconsideration.



Admissibility of new information

The panel determined the *Notice to End Tenancy* was not admissible as evidence under the terms of section 22 (4) of the Employment and Assistance Act, not being in support of the information and records that were before the minister when the reconsideration decision was made.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's March 17, 2016 reconsideration decision was a reasonable application of the legislation in the circumstances of the appellant or reasonably supported by the evidence. The ministry decided the appellant was not eligible for a moving supplement because the request did not meet any of the criteria set out in section 55(2) of the Employment and Assistance for Persons with Disabilities Regulation.

Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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.

[Redacted]

(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. [am. B.C. Reg. 275/2004, s. 2.]

Appellant's Position

The appellant argues that as moving to his house on the band reserve would significantly reduce his shelter costs and the reserve being an unincorporated area, he should qualify for a moving supplement under section 55 (2)(d). He states the move would mean his social assistance would go from being provincial to federal. He adds moving to the reserve will improve his living conditions and address his need of belonging to his people and the land.

Ministry's Position

The ministry argues that none of the specific locations and circumstances stipulated by EAPWDR section 55(2) to qualify for a moving supplement apply to the appellant. In particular the ministry says section 55(2)(d) does not apply as the community to which the appellant wishes to move is neither within nor adjacent to the community where he now lives.

Panel's Decision

The appellant inherited a house on a reserve in British Columbia, about 500 kilometers from where he now resides, and requested a moving expense supplement for the cost of moving to his house.

Moving supplements are covered under EAPWDR section 55, that lists five circumstances for which moving costs supplements are available:

- (a) moving anywhere in Canada for confirmed employment that would significantly promote financial independence.
- (b) moving to another province or country to improve living circumstances.
- (c) moving within a municipality or unincorporated area or to an adjacent municipality or unincorporated area because the rented residence is being sold or demolished and a notice to vacate has been given, or it has been condemned.
- (d) moving within a municipality or unincorporated area or to an adjacent municipality or unincorporated area if shelter costs would be significantly reduced.
- (e) moving elsewhere in British Columbia to avoid imminent threat to physical safety.

As the appellant was not proposing to move for employment reasons or to leave the province, and did not submit to the reconsideration officer evidence of notice to vacate for sale or demolishing of property or that the property was condemned, or of imminent threat to his physical safety, the panel finds the ministry reasonably determined the appellant did not qualify under subsections (2) (a),

(b),(c) or (e).

The appellant's position is that as he plans to move to the house he has inherited on a reserve, he should qualify for moving expenses under subsection (2)(d) on the basis he would be moving to an unincorporated area and his shelter costs would be significantly reduced.

In addressing EAPWDR section 55(2)(d) the panel considered section 8 of the Interpretation Act:

Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

and the direction of the Supreme Court of Canada in *Bell Express Vu*:

...an ambiguity must be real. The words of the provision must be reasonably capable of more than one meaning. By necessity, however, one must consider the entire context of a provision before one can determine if it is reasonably capable of multiple interpretations...

and concluded the wording is not ambiguous, that the words *within a* and *an adjacent* modify both *municipality* and *unincorporated area* and the wording does not lend itself to any other meaning.

Having determined in clause 2(d) both *municipality* and *unincorporated area* are modified by the words *within a* and *an adjacent*, and as the reserve to which the appellant wishes to move is not within or adjacent to the community in which he now lives, the panel finds the ministry reasonably determined the appellant did not qualify for moving costs under subsection (2)(d).

The panel recognizes that the appellant's request for a moving supplement to cover the costs of moving to a reserve may be unusual, but the legislation does not provide the ministry with the discretion to approve such a supplement even under unique or exceptional circumstances.

The panel finds the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.