PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the "ministry") reconsideration decision of November 7, 2016, which found that the appellant did not meet the criteria listed in section 57 (2) and section 57 (3) of the Employment and Assistance Regulation (EAR) and was therefore not eligible for a moving supplement and in particular was not entitled to reimbursement of moving costs as claimed by the appellant.

PART D – Relevant Legislation

EAR, section 57 (2) and 57 (3)
Employment and Assistance Regulation ("EAR"), section 57 (2) and (3)

PART E – Summary of Facts

The information before the ministry at the time of the reconsideration included the following:

The appellant, on September 28, 2016, requested a moving supplement to reimburse her for the cost of travelling on a ferry.

The appellant stated that she had to return to Victoria to pick up some personal belongings, including her camera, so that she could try to resume employment. She advised a ministry worker that she had spoken to another worker who told her there may be some room left in her shelter funds to cover the reimbursement. The appellant submitted receipts for travel with BC Ferries to and from Victoria totaling $66.80 ($33.40 each way).

On September 29, 2016 a ministry worker reviewed the appellant's request. The worker left a message for the appellant requesting contact.

On September 30, 2016 the appellant advised a ministry worker that it had cost her over $200 for her original move from Victoria to Richmond in September 2016.

The appellant has provided a copy of a residential tenancy agreement signed by the appellant on September 7, 2016 and by the landlord September 8, 2016. The tenancy agreement indicates the tenancy starts September 7, 2016 at a rental rate of $375 per month. The premises which are subject of the tenancy agreement are in Richmond, British Columbia.

The appellant provided copies of receipts for travel to and from Victoria on September 27, 2016.

The appellant provided an undated letter to the ministry received October 31, 2016. In that letter she noted that because her family was in a situation of living at a campsite and were told the camping season would be over they would need to leave, that they were therefore in imminent threat of safety and health.

The appellant stated that as she was being reimbursed through shelter costs of the campsite it was her understanding that she was able to be reimbursed for new shelter costs.

The appellant stated she moved to Vancouver as there are more jobs, housing and opportunities as she had a challenge finding long-term housing previously.

The appellant noted that school was starting and she needed to move herself and her son to be settled at the appropriate time.

The appellant noted that because this was a crisis she had her belongings stored until they could be brought to her new home.

Finally, the appellant noted that she was in imminent threat and needed to make an immediate decision given the notice she was given to vacate the campsite due to the end of season. Weather was very cold in the evenings. She returned to Victoria to retrieve her belongings as quickly as possible.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant a moving supplement was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the appellant did not meet the criteria listed in section 57 (2) and section 57 (3) of the EAR?

The relevant legislation is as follows:

EAR

Supplements for moving, transportation and living costs

57 (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 income assistance, other than as a transient under section 10 of Schedule A, 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 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 20 *[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.

At the hearing of her appeal, the appellant emphasized her reliance upon section 57 (2) (d) of the EAR. She noted that she and her son had been living at a campground. She had applied for a crisis supplement in respect of her need for an air mattress. She noted that the ministry had not responded to her in respect of that application.

The appellant stated that her cost to stay at the campground was $622.50 but she had been given notice that the campground was closing. She noted that she wanted to get her son settled in a new living arrangement because school was starting. She could not find housing in her community and her job ended.

The appellant stated that her rent now is $375 per month and noted that her shelter costs were

therefore significantly lower than previous.

The appellant submitted that Victoria, where she had been residing, and Richmond, where she now resides, are adjacent municipalities. She noted that the legislation "does not say that they must be nearest municipalities".

The appellant also submitted that the supplement can be granted where there is "an imminent threat".

She noted that it was "getting freezing at night" and considered that to be a threat to her and her son physically and mentally.

The appellant noted that no one from the ministry was responding to her request for a crisis supplement in respect of the request for funds for an air mattress..

The appellant noted that she chose to move to Richmond because there are more resources in that community and more accommodation opportunities.

The appellant submitted that an imminent threat existed because of the fact of having to move and having no place to stay at all.

The ministry representative noted that section 57 (2) (d) of the EAR states that the ministry may provide a moving supplement if a family unit is 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 the move. The ministry noted that "adjacent" means "abutted or side-by-each`. The ministry submitted that Victoria and Richmond are not considered to be adjacent areas. The ministry has noted the separation by a large body of water and intervening municipalities or unincorporated areas.

The ministry also noted that to be eligible for the supplement the family unit needs to be eligible under section 57 (3) as well; that is, that the family unit is only eligible for a moving supplement if there are no resources available to cover the costs of the move and if the recipient in the family unit receives the minister's approval before incurring those costs.

The ministry argued that as the appellant had paid the cost for which she has applied, the implication is that the resources were available to her and, further, that the expense was incurred prior to the ministry's approval.

Are the municipalities adjacent?

Section 57 (2) (d) of the EAR provides that the minister may provide a supplement to a family unit that is eligible for income assistance to assist with 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.

The appellant's move from Victoria to Richmond was not within a municipality or unincorporated area so that part of the section does not apply.

Although the family unit's shelter costs appear to have been significantly reduced as a result of the move, it is still necessary for the move to be, absent the applicability of other sections, to an adjacent municipality or unincorporated area. The panel considers municipalities or unincorporated areas to be adjacent if they are next to or adjoining or, alternatively, as the ministry representative argued, abutting each other or side by each. The panel concludes that Victoria and Richmond are not adjacent municipalities or unincorporated areas. As Victoria and Richmond are separated by a large body of water and intervening municipalities or unincorporated areas, they are not adjacent municipalities or unincorporated areas.

Imminent threat to physical safety?

The panel understood the appellant's principal argument to be that the moving costs as claimed, which were to reimburse her for a return trip to Victoria to retrieve personal belongings left at the time of the move, were required to avoid an imminent threat to physical safety of any person in the family unit (section 57 (2) (e)). The appellant argued that her family unit would have been homeless when the tenancy at the campground ended when it closed and accordingly she was under imminent threat.

The panel does not accept the appellant's argument in that regard. The appellant's tenancy came to an end after notice was given. The natural consequence of the end of the tenancy is that the tenant will need to find alternate accommodation. The panel concludes that the risk of homelessness at the end of a tenancy is not in and of itself an imminent threat to physical safety of any person in the family unit. The imminent threat must be something more akin to immediate or likely to occur at any moment than simply the end of the tenancy after notice. Further, the physical requirement of the threat requires something more than a chance that the family unit will be challenged in finding alternate accommodation.

Other Issues

Further, the panel noted that none of the appellant's evidence or submissions directly responded to the issue of the appellant not having the resources available for the expense claimed and made no argument in response to the ministry`s position that the appellant is not eligible for the supplement having incurred the cost prior to receiving the minister's approval.

Subsections 57 (3) (a) and (b) provide 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 and a recipient in the family unit receives the minister's approval before incurring those costs.

The panel accepts the ministry's argument that the natural implication of the appellant having paid for the expense of returning to Victoria is that she had the resources available to her. There was no evidence to the contrary.

Finally, it is apparent on the evidence that the appellant did not receive the minister's approval prior to incurring the cost.

Conclusion

The panel acknowledges that the appellant succeeded in obtaining less expensive accommodation in making her move to Richmond. However, having 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 is reasonable based on the evidence and is a reasonable application of the legislation in the circumstances of the appellant.

The panel therefore confirms the ministry's reconsideration decision and the appellant is not successful in her appeal.