

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the “ministry”) Reconsideration Decision of October 30th, 2017 in which the ministry deemed the appellant not eligible for a moving supplement because the appellant did not provide sufficient evidence that the legislative criteria had been met; pursuant to Section 55(2) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – RELEVANT LEGISLATION

EAPDR - *Employment and Assistance for Persons with Disabilities Regulation, Section 55*

PART E – SUMMARY OF FACTS

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

- 1) The appellant is a sole recipient of disability assistance.
- 2) **August 31st, 2017** – The ministry notes that on this day, the appellant received a One Month Notice to End Tenancy for Cause – due to the appellant making late rent payments.
- 3) **September 8, 2017** - The ministry notes that on this day, the appellant submitted three quotes for moving costs, which all include transportation and packing. Quote 1: \$3249.75, Quote 2: \$3171.00, and Quote 3: \$3165.75.
- 4) **September 11th, 2017** – The ministry notes that they received a copy of a hand-written letter by the appellant, a copy of the One Month Notice to End Tenancy for Cause, and a letter written by the appellant’s physician.

*The appellant indicates in her letter that the water situation at home is adversely affecting her health - and that she is currently bathing at the local recreational centre. Further, the appellant notes that the driveway is too steep and long for her and her mother to navigate in the winter months.

*The letter written by the physician indicates that the appellant could benefit from moving to a new location by being closer to medical care. The physician notes that the appellant is having difficulty with sulphur, magnesium, rust and iron in her water.

- 5) **September 18th, 2017** – The ministry notes that on this day, the application for the moving supplement was reviewed, and was determined to have not met the legislative criteria – the moving supplement was denied and the explanation for the denial was provided to the appellant.
- 6) **October 10th, 2017** – The appellant submitted a Request for Reconsideration with the assistance of a community legal advocate. The appellant reported that she had taken her landlord to arbitration due to the unsafe drinking water, and that the residence was also infested with rats, mice and insects. The appellant noted that with the assistance of the legal advocate, she took her landlord to arbitration, and as a result of this, the landlord retaliated with the eviction notice. The appellant submits that she had planned on moving before she received the eviction notice, and had been looking for a suitable place for herself and her mother.
- 7) **October 17th, 2017** – The ministry notes that the appellant submitted an updated shelter form, indicating that she intended on moving to a new residence on November 1st, 2017. The appellant’s new residence rental fees total \$1350.00 and does not include utilities. The appellant’s past residence rent totalled \$985.00 plus \$274.00 for utilities – paid directly to the hydro provider by the ministry.

Additional Information

At the hearing, the ministry relied on the reconsideration decision and did not introduce any additional evidence.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of October 30th, 2017 in which the ministry deemed the appellant not eligible for a moving supplement because the appellant did not provide evidence that one or more of the legislative criteria had been sufficiently met; pursuant to Section 55(2) Employment and Assistance for Persons with Disabilities Regulation.

The relevant sections of the legislation are as follows:

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.

(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.]

Panel Decision

The ministry's position, as set out in the reconsideration decision, is that the appellant is not eligible for a moving supplement as per Section 55 of the Employment and Assistance for Persons with Disabilities Regulation (EAPDR) - as she did not meet any of the legislated criteria, and in particular, nor had she provided sufficient evidence to support her claim that her residence presented an imminent threat to her physical safety. In her Notice of Appeal, dated November 7th, 2017, the appellant stated that she disagrees with the decision to deny the supplement on the basis that she and her mother were exposed to unsafe drinking water, as well as a rat infestation and therefore, she had to move to avoid an imminent threat to her physical safety. Further, the ministry provides that the appellant moved to a new residence where the rent was higher than the rent at her past residence. The appellant provides that she had no other choice regarding the rent, as the rental rate for the residence that she found suitable for her and her mother was as low as she could find in the area.

As per the Employment and Assistance for Persons with Disabilities Regulation, Section 55(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; the ministry contends that the appellant did not move for this reason. The ministry submits that the reason the appellant was requesting to move was to leave the rural area she was living, and to be closer to the city core – and therefore, the eligibility criteria had not been met. The panel finds that the evidence establishes that the appellant did not apply for a moving supplement for this reason, as stated – the appellant's motivation for moving was to be closer to the city centre, and to avoid the unsafe water conditions at her current residence, and therefore confirms that the ministry was reasonable to determine that the eligibility criteria had not been met.

(b) moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances; The ministry submits that the appellant did not move to another province, and therefore the legislative criteria had not been met. The panel finds that the evidence establishes that the appellant did not move to another province, and therefore confirms the reasonableness of the ministry to determine that the appellant did not meet the legislative criteria.

(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; the appellant provides that the residence she moved from should have been condemned, and would have if she had it inspected. The ministry provides that regardless of whether the appellant believes the property should have been condemned or not, the property had not in fact, been condemned, and therefore the legislative criteria had not been met. The panel finds that the ministry was reasonable to determine that the appellant did not meet the legislative criteria - due to the appellant not providing any information to support that the residence had in fact, been condemned. The panel notes that at the hearing, the appellant indicated that the residence *should* be condemned, and further, the appellant did not dispute the ministry's position that the residence had not been in fact, condemned to-date. The panel finds that the evidence establishes that the ministry was reasonable to deny the appellant the moving supplement based on the legislative criteria.

(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; the ministry provides that the appellant had at her previous residence, rental fees that totaled \$985.00 plus \$274.00 paid directly to the hydro company on her behalf. The ministry provides that the previous residence was cheaper living accommodations and her current/new residence requires \$1350.00 for rental costs and does not include utilities. The ministry submits that the legislative criteria in this instance has not been met, because the appellant's rental fees are increased as a result of the move. The panel finds that the ministry was reasonable to deny the appellant the moving supplement based on the legislative criteria, as the evidence establishes that the appellant's rental costs have increased, rather than reduced.

(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; the ministry argues that the appellant had not provided any

evidence to support her claim of the unsafe water conditions, nor had she provided any evidence to support her claim that she had gone through arbitration with the landlord for this reason. The appellant did provide a physician letter indicating that she would benefit from moving to a new location which is closer to medical care, and the letter further notes that the appellant is having difficulty with rust, magnesium, and sulphur in her water. The ministry provides that the language used by the physician that indicated the appellant would benefit from moving closer, was not sufficient to establish that the appellant was at risk of an imminent threat to her physical safety due to the unsafe water, and therefore, without the benefit of information to support the appellant's claim, the ministry submits that she did not meet this eligibility criteria. The panel notes that at the hearing, the ministry did not dispute the fact that the arbitration between the landlord and appellant had occurred. The panel considers that while the arbitration record had not been supplied to the ministry or panel for review, the legal advocacy letter submitted by the appellant highlights the participation of the advocate in the arbitration process, as well as indicates the reason of the arbitration being due to unsafe water at the residence. The panel finds that the ministry was unreasonable when it determined that no evidence of the arbitration had been submitted by the appellant, as stated – the advocate prepared letter is taken by the panel as evidence that the arbitration had occurred, and for the reasons of unsafe water conditions. The panel also considers that the physician letter indicates two reasons for the appellant's need to move. One, is due to the appellant's need to be closer to medical services, as well, the second is due to the appellant having challenges with iron, rust, sulphur and magnesium in her water. The panel finds that collectively, the unsafe water issue the appellant moved in order to avoid the imminent threat to her physical safety was supported collectively by the two letters submitted; the one written by the physician, and the other prepared by the legal advocate. Therefore, the panel finds that the ministry was unreasonable to deny the appellant the moving supplement based on section 55(2)(e) of the EAPDR.

(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 – the ministry did not argue on this basis.

(b) a recipient in the family unit receives the minister's approval before incurring those costs. The ministry did not argue on this basis, as the appellant did seek approval before incurring the moving costs.

The panel finds that the ministry was unreasonable in its determination to deny a moving supplement on the basis that the appellant did not meet one or more of the legislated eligibility criteria, pursuant to Section 55(2) of the *Employment and Assistance for Persons with Disabilities Regulation*.

Accordingly, the panel finds that the decision of the ministry to deem the appellant not eligible for a moving supplement due to not meeting one or more of the eligibility requirements of Section 55(2) of the *Employment and Assistance for Persons with Disabilities Regulation*, an unreasonable application of the applicable enactment in the circumstances of the appellant. Therefore, the panel rescinds the ministry's decision pursuant to section 24(1)(b) and section 24(2)(b) of the *Employment and Assistance Act*. The appellant therefore is successful in her appeal.