

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated June 27, 2018 in which the ministry denied the appellant a moving supplement because the request did not meet all the necessary criteria as specified under Section 55 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Specifically

- He did not meet criterion s.55(2)(a) as he was not moving for confirmed employment, and
- He did not meet criterion s.55(2)(b) as he was not moving to another province or country to improve his living conditions, and
- He did not meet criterion s.55(2)(c) as he was not moving to a municipality or to an adjacent municipality because he was given a notice to vacate from his current residence, and
- He did not meet criterion s.55(2)(d) as he was not moving within a municipality or to an adjacent municipality into reduced shelter costs, and
- He did not meet criterion s.55(2)(e) as he was not moving due to an imminent threat to his physical safety.

### **PART D – RELEVANT LEGISLATION**

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

## **PART E – SUMMARY OF FACTS**

### **Information before the ministry at reconsideration:**

- May 30, 2018 – the appellant contacted the ministry to request a moving supplement, to move to another community, submitting 3 moving quotes and a medical letter outlining the health benefits for the move. The letter supports the appellant's move to the new community which will allow the appellant to be closer to family support as well as medical supports offered in the new community. The letter states that appellant has already connected to the medical facility and the many supports that it offers.
- June 7, 2018 – the ministry determined that the appellant did not meet all of the legislative criteria set out in the EAPWDR:
- June 27, 2018 - the appellant submitted his Request for Reconsideration; including his letter stating that "he was advised by his medical practitioner that his health and safety is at risk in his current housing situation and these conditions would be eliminated after the move to his new residence." The submission also included a June 12, 2018 letter from the appellant's medical practitioner outlining the appellant's medical conditions, the difficulties he faces and the medical supports that would be available to the appellant in his new community, an April 5, 2018 letter from the appellant's Otolaryngologist and receipts for moving expenses.

**Notice of Appeal** dated July 11, 2018, the appellant provides the following additional information:

1. The appellant's letter stating, in part, "this move was essential and imperative for my quality of life with respect to my ongoing and permanent disability limitations. In my original request, I have provided evidence from medical practitioners and I am unconditionally eligible for HandyDart Services, I am attaching my CPP benefits questionnaire which provides further medical evidence. I have had little to no support from health services over the last three years. I wish to access all those facilities that assist me in my continual healing and benefits afforded to me and that meet the legislation set out under EAA, s.55(2)(e) and therefore I not only meet but do qualify for the reimbursement for all expenses for my moving costs."
2. A letter from BC Transit dated November 24, 2017 stating that the appellant is unconditionally eligible for HandyDart service until November 30, 2010.

### **The ministry's submission to the written hearing:**

July 30, 2018 - The ministry submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision.

### **The appellant's submission to the written hearing:**

July 20, 2018 - In addition to the documents already before the ministry at reconsideration, the appellant submitted a "Questionnaire for Disability Benefits – Canada Pension Plan" signed and dated November 13, 2015.

The panel admitted the appellant's written testimony contained in the Notice of Appeal, Appellant's Submission and the letter from BC Transit, which either substantiated or further explained information already before the ministry, as being in support of the information and records before the ministry at reconsideration in accordance with section 22(4) of the Employment and Assistance Act.

## PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the appellant a moving supplement, because the request did not meet all the necessary criteria as specified under Section 55 EAPWDR, was a reasonable application of the legislation in the circumstances of the appellant.

### Relevant Legislation:

#### **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:

Relevant to this case is section 55 of the EAPWDR that states there are specific conditions that must be met to qualify for a supplement for moving.

The evidence is that on May 30, 2018 the appellant contacted the ministry to request a moving supplement, to move to another community, submitting 3 moving quotes and a letter from a medical practitioner outlining the health benefits for the move. The letter is written by a medical practitioner providing an assessment of the appellant's circumstances. The letter supports the appellant's move to the new community which will allow the appellant to be closer to family support as well as medical supports offered in the new community. The letter states that the appellant has already connected to the medical facility and the many supports that it offers. The letter includes the following statement: "the appellants Ear, Nose and Throat specialist had suggested that the appellant avoid any hazardous activities such as being on ladders, at heights, avoiding cycling, and had even suggested that he try to remain primarily walking on flats rather than up and down hills, as he gets vertiginous and is at risk for falls." The letter also states, in part; "My understanding is that (the appellant) will be living in the flats in his new community, whereas he is presently living on a hillside in his present community. In being on the flats he will have less likelihood of having issues related to his medical condition. I think that this move will be of benefit medically for him because of the services that can be provided there." A letter from the appellant's "Ear, Nose and Throat Specialist" confirmed the same medical condition as noted above.

Pursuant to section 55(2) EAPWDR the minister may provide a supplement to or for a family unit that is eligible for disability 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 panel finds that the ministry was reasonable in its conclusion under section 55(2)(a) EAPWDR that the appellant did not move to begin 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.

The panel finds that the ministry was reasonable in its conclusion under section 55(2)(b) EAPWDR that the appellant did not move to another province or country.

- 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 panel finds that the ministry was reasonable in its conclusion under section 55(2)(c) EAPWDR that the appellant's previous residence was not being sold, demolished or condemned and the move was not to an adjacent municipality or unincorporated area.

- 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 panel finds that the ministry was reasonable in its conclusion under section 55(2)(d) EAPWDR that appellant's move was not to an adjacent municipality or unincorporated area while acknowledging that the appellant's shelter costs have been reduced because of his 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. Imminent means "about to

happen” and/or “likely to happen very soon.” The ministry agrees that the appellant is at risk of falling living on the hillside in his community however there is no evidence to support the appellants’ need to move to another area in BC instead of a flatter neighborhood in his community. The panel finds that the ministry was reasonable in its conclusion under section 55(2)(e) EAPWDR that it is not satisfied that the appellant was required to move to a new community to avoid an imminent threat to his physical safety.

Pursuant to section 55(3) EAPWDR a family unit is eligible for a supplement only if a) there are not 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. The panel notes that the evidence is that the appellant contacted the ministry on May 30, 2018 to request a moving supplement and the ministry advised the appellant on June 7, 2018 that he did not meet the legislated criteria for a moving supplement. The panel finds that the ministry was reasonable in its conclusion under section 55(3) EAPWDR that the appellant did not receive the ministry approval before incurring moving costs.

Pursuant to section 55(4) EAPWDR a supplement may be provided under this section only to assist with the cost of the least expensive appropriate mode of moving. The panel finds that the ministry was reasonable in its conclusion under section 55(4) EAPWDR that the appellant did provide estimates however the appellant’s request did not meet one the criteria of section 55(2)(e).

The panel finds that the ministry’s decision that the appellant was not eligible for a moving supplement under section 55 EAPWDR was supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant. The panel confirms the ministry’s decision in accordance with section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.

The appellant is not successful on appeal.

**PART G – ORDER**

THE PANEL DECISION IS: (Check one)

 UNANIMOUS BY MAJORITY

THE PANEL

 CONFIRMS THE MINISTRY DECISION RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?  Yes  No

**LEGISLATIVE AUTHORITY FOR THE DECISION:***Employment and Assistance Act*Section 24(1)(a)  or Section 24(1)(b) 

and

Section 24(2)(a)  or Section 24(2)(b) **PART H – SIGNATURES**

PRINT NAME

Ronald Terlesky

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

August 15, 2018

PRINT NAME

Marnee Pearce

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

August 15, 2018

PRINT NAME

Anne Richmond

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

August 15, 2018