

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

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated August 10, 2018 in which the ministry found the appellant was not eligible for a moving supplement under section 55 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"). Specifically, the ministry was not satisfied that:

- there were no resources available to the family unit to cover the costs of the move as required by section 55(3)(a) of the Regulation, and
- the appellant had received the minister's approval before incurring the costs as required by section 55(3)(b).

### **PART D – RELEVANT LEGISLATION**

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

## **PART E – SUMMARY OF FACTS**

The evidence and documentation before the minister at the reconsideration consisted of:

**1. Information from the ministry's record of decision which indicates:**

- On May 15, 2018, the appellant submitted a written request for a moving supplement to assist with moving to another province ("Province B") to improve his living circumstances. The appellant submitted a letter from his family physician in support of the move. The ministry requested further documentation including tenancy documents and an estimate of the cost of the move (which the appellant subsequently provided).
- On June 5, 2018, the ministry requested further information regarding the resources the appellant has accessed to assist with the cost of moving to Province B. The appellant advised he has "some savings" but will be using those funds for other expenses. The ministry asked him to submit an outline of his financial situation with supporting documentation.
- On June 27, 2018, the appellant submitted banking information and a letter outlining his financial situation.
- On July 3, 2018, the ministry contacted the appellant to discuss his request for the moving supplement. The ministry provides the following information from their discussion:
  - The appellant advised that the move was underway and he expected to arrive in Province B on July 6.
  - The ministry advised that prior approval for the move was required.
  - The appellant stated he is using his funds for the move and would be requesting reimbursement.
- On July 3, 2018, the ministry advised the appellant that he is not eligible for a moving supplement because he did not receive prior approval before incurring the cost.
- On July 31 2018, the appellant submitted a Request for Reconsideration ("RFR").
- On August 10, 2018, the ministry completed its review of the RFR and found the appellant did not receive the minister's approval before incurring the cost to move and that the appellant had resources to cover the cost on his own.

**2.** An RFR signed by the appellant on July 26, 2018. The appellant provides his argument and states that he asked the ministry "for all necessary requirements for the subsidy" and the worker provided all information "except that I needed to be present to receive it." The appellant states that the ministry's attempts to reach him were not successful because he requires assistance with navigation due to his disability and the ministry still reached him by phone "despite it saying I'm deaf."

**3.** A bank statement dated June 29, 2018, indicating the appellant has a chequing account balance of \$3,087.63 and is the sole owner of RSP/RDSP/RESP assets with a total value of \$30,528.82.

**4.** A letter from the appellant dated June 27, 2018, stating that no one in his household is receiving funds from family or friends, and he did receive income from his employer for job-related travel expenses.

**5.** A letter from the appellant dated May 15, 2018, indicating he is moving to Province B to improve his quality of life and receive supports from the Province B disability system.

**6.** A letter from a family physician (received by the ministry on August 23, 2018), confirming that the appellant has disability status, and stating that the appellant will save on rent expenses by moving to Province B to reside with relatives.

**7.** A letter from the appellant's new landlord, indicating the appellant and his family will be sharing the landlord's home as of July 1, 2018.

**8.** A letter from the appellant dated June 1, 2018, with attached estimates indicating the cost of his move to Province B by air is \$1,584.08, with additional baggage charges of either \$60 or \$15 depending on air or bus transport.

## ***Additional information and documents***

### *Appellant*

On August 23, 2018, the Tribunal received the Notice of Appeal which the panel accepts as argument. The appellant also submitted the following documents on appeal:

1. A 5-page typed submission ("appeal submission") in which the appellant provides his argument, as well as the following additional information:
  - The money in the appellant's bank account (\$3,087.63) was intended to be used for resettlement in Province B. The funds were exhausted and he was "forced to obtain a credit card...now owing over \$3,500."
  - The appellant's RDSP funds are intended for retirement and "this is not monies that I can touch or use either."
  - The appellant's partner worked and despite having disabilities, both of them "had only worked to get enough money to move out of province." They are currently unable to work (two months after the move) and are receiving disability benefits from Province B.
  - As a result of "what happened", the appellant has two credit cards that are "maxed out with zero possibility of paying it back on disability income."
  - The appellant has to pay off an existing student loan debt of \$3,800 so that he can obtain a new student loan to attend school. The appellant states that he must also pay off the outstanding student loan "due to a now discharged bankruptcy filing in 2014."
2. A *Report of Trustee on Bankrupt's Application for Discharge* dated October 22, 2013, indicating the appellant declared bankruptcy on January 17, 2013.
3. A letter dated July 31, 2018, indicating the appellant's application for disability support from Province B is approved.
4. A copy of a benefit slip for September 2018, indicating a disability payment from Province B.
5. A purchase receipt dated August 22, 2018, for a post-secondary application fee.
6. A copy of a student loan statement, indicating a balance of \$3,796.26 owing as of September 1, 2018.
7. A credit card statement dated August 10, 2018, indicating a balance of \$500.09 and available credit of \$0.
8. A credit card statement showing payments and purchases for the period July 11 to August 10, 2018.
9. A loan statement dated September 1, 2018, indicating a balance of \$3,341.72 and available credit of \$0.
10. A submission from a disability advocate, describing the appellant's disability (hearing impairment) and stating that the appellant is being denied the right to "supports" that would allow him to participate on an equal basis with other citizens.
11. A news article dated August 21, 2018, titled *Federal government announces ambitious plan to reduce poverty in Canada*.
12. A *Case Review for Gifted Identification* for the appellant's child.
13. A Canada Revenue Agency *Notice of Assessment* for tax year 2017 (printed September 1, 2018), indicating the appellant's total income in the amount of \$10,139.
14. A Canada Pension Plan ("CPP") statement dated August 29, 2018, indicating the appellant's net monthly payment is \$1,208.60.
15. A Canada Revenue Agency T4A slip for the year 2017, indicating disability benefits in the amount of \$8,504.28.
16. A Disability tax credit statement dated August 20, 2018, indicating the appellant is eligible to claim the disability tax credit from 2002 forward.

17. An *IR Relay Conversation transcript* (“transcript”) of the appellant’s call to the ministry on June 7, 2018:

- The appellant asks whether the information he provided for a moving expense was processed.
- The ministry states it is requesting further information “to check that you don’t have any other financial means for this move.” The ministry explains that it wants to verify if the appellant has “any other income that could pay for the move...no other options that you could use to pay for the trip.”
- The appellant replies that he has “a couple of thousand bucks saved up already, but that’s all we have.”
- The ministry asks the appellant to submit a bank statement and write a letter explaining his situation, including what he needs that money for and why it is not enough to cover his moving expenses.
- The appellant asks, “is it not a right to that expense?”(on the basis of his disability status) and the ministry reviews the eligibility criteria, including the requirement for no available resources to cover the cost of the move.
- The appellant asks, “does it say what the extent of those resources are?”
- The ministry explains that it is determined on a case by case basis.
- The appellant agrees to provide “whatever they want.”

18. A transcript of the appellant’s call to the ministry on May 30, 2018:

- The appellant advises the ministry of his reason for moving to Province B, as well as the estimated cost of the move.
- The ministry indicates it will pay for airfare and luggage expenses but at that point it is “only an estimate as we need to send it for approval.”
- The appellant confirms that he was asked to provide an estimate of the costs.
- At the end of the conversation, the ministry states “it is the manager who does the approval.”
- The appellant includes hand-written notes on the transcripts, stating that the agent “clearly fails to mention cheque must be picked up in person”; that his monthly income assistance payments are direct deposited; and that his disability status requires “100% disclosure with legal instructions.”

### ***Admissibility of appellant’s information***

#### *Appeal submission*

The appellant’s submission inter-mingles evidence with argument on appeal. The panel finds that the information about debts (credit cards, student loan and bankruptcy in 2014) is not admissible as evidence under section 22(4) of the *Employment and Assistance Act* (“EAA”) because it is not in support of the information and records that were before the minister when the decision being appealed was made. The appellant submitted bank statements and a letter about his financial situation (for the reconsideration) but he made no mention of any debts or his bankruptcy.

Regarding assets, the panel admits the information about the RDSP account as the RDSP was before the minister at the reconsideration. The panel does not admit the information about savings from employment. The appellant submitted a bank statement to the ministry and a letter indicating he received income from his employer for job-related travel expenses, but there is no information in the reconsideration record regarding the appellant’s partner’s contribution toward the move to Province B.

*Bankruptcy report, disability payment documents for Province B, student loan statement (and receipt for post-secondary application fee), credit card and loan statements, and Canada Revenue Agency documents*

The panel finds that these documents are not admissible as evidence under section 22(4) of the EAA because they pertain to debts and assets that were not before the minister when the decision being appealed was made.

#### *Submission from disability advocate*

The panel accepts this document as argument in support of the appellant’s submissions at the reconsideration indicating he needs supports for his disability (hearing impairment

*Case review for the appellant's child*

The panel does not admit this document as evidence or accept it as argument. Although the appellant raises the issue of his child's assessment in his appeal submission, the assessment was not before the minister at the time the decision being appealed was made.

*Transcripts (including appellant's hand-written notes), Canada Pension Plan document, and news article on poverty*

The panel admits the transcripts and notes under section 22(4) of the EAA as evidence in support of the information and records that were before the minister when the decision being appealed was made. The conversations transcribed in these documents occurred on May 30 and June 7, 2018 (earlier than the date of the reconsideration decision) and they provide additional details about the request for the moving supplement. The May 30, 2018 transcript indicates the appellant receives CPP income (including a child-rearing portion) and "poverty" is one of the reasons he gave the ministry when asked why he is moving to Province B. The panel admits the CPP document as evidence in support of the information and records that were before the minister at the reconsideration and accepts the article on poverty as argument.

*Ministry*

The ministry did not submit any new evidence. In an email to the Tribunal, the ministry indicates its submission on appeal will be the reconsideration summary.

*Procedural matter*

With the consent of both parties, the appeal proceeded as a written hearing pursuant to section 22(3)(b) of the EAA.

## PART F – REASONS FOR PANEL DECISION

The issue to be decided is whether the reconsideration decision of August 10, 2018 in which the ministry found the appellant was not eligible for a moving supplement under section 55 of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. Specifically, the ministry was not satisfied that:

- there were no resources available to the family unit to cover the costs of the move as required by section 55(3)(a) of the Regulation, and
- the appellant had received the minister's approval before incurring the costs as required by section 55(3)(b).

The ministry based its reconsideration decision on the following legislation:

### EAPWDR

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

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

"**moving cost**" means the cost of moving a family unit and its personal effects 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:

**(b)** moving costs required to move to another province or country, if the family unit is required to move to improve its living circumstances;

**(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.

#### ***Analysis and panel's decision***

The ministry accepts that the appellant is moving to Province B to improve his living circumstances. The criteria in section 55(2)(b) of the EAPWDR were therefore met. The ministry was not satisfied that the additional requirements set out in section 55(3) were met. Under the Regulation, the ministry is authorized to provide the moving supplement only if there are no resources available to the family unit to cover the costs of the move and the family unit receives the minister's approval before incurring the costs.

#### ***Section 55(3)(a) - no resources available***

The ministry determines whether there are resources available to the family unit on the basis of the information provided by the applicant. The ministry argues that the information the appellant submitted shows that he had resources to cover the cost of his move to Province B. The appellant's bank statement of June 29, 2018 shows a balance of \$3,087.63 in his chequing account at the time of the reconsideration. The ministry argues the appellant did not submit any evidence to show that the balance in the bank account exceeded the expenses he had to pay once he arrived in Province B. The ministry also states that it did not have information to indicate that the appellant accrued a debt by using a credit card or loan to pay the moving costs.

The ministry's record of decision indicates that on June 5, 2018, the appellant advised the ministry that he has "some savings" but will be using those funds for "other expenses." The ministry asked him to submit an outline of his financial situation with documentation to confirm his expenses, but neither the bank statement nor the letter he submitted detail what his expenses are. In the letter of June 27, 2018, the appellant states that he does not receive funds from family or friends and although he received money from his employer (amount not specified), those funds were for job-related travel expenses.

The appellant also provided a letter from his family physician but that letter indicates that some of the appellant's expenses ("living costs") will actually be lower in Province B. because the appellant will "save on rent expenses" by residing with his relatives. In addition, the estimates of travel costs that the appellant submitted for the reconsideration indicate that the cost of the move would be less than the balance in his chequing account (\$1,584.08 for the flight plus \$15 or \$50 for luggage, versus \$3,087.63 in his bank account). Based on the information and records that were before the minister at the reconsideration, the panel finds that the ministry reasonably determined there was insufficient evidence to establish whether the appellant's expenses exceeded his resources.

Subsequent to the reconsideration decision, the appellant submitted records of current debts (credit cards and a student loan) but the panel did not admit those records as evidence because they pertain to the appellant's current financial situation and are not in support of the information that was before the minister at the reconsideration. In any event, the transcripts that the panel admitted as evidence do not mention the debts the appellant documents for the appeal. Based on the evidence that was before the minister at the reconsideration as well as the information in the transcripts, the panel finds that the ministry reasonably concluded it did not have information to establish that the appellant used a credit card or loan to pay his moving costs.

In the transcripts, the appellant also states that he has "a couple of thousand bucks saved up already" and he receives some CPP income as well (though he notes that a portion of his CPP benefit is a child-rearing supplement). The transcribed conversations took place before the reconsideration decision was made and the panel finds that the information about savings and CPP income, taken in the context of the whole conversation, is further evidence in support of the ministry's determination that the appellant had resources to pay for his moving costs. The panel finds that the ministry reasonably determined that the requirement for no available resources under section 55(3)(a) of the EAPWDR was not met.

#### *Section 55(3)(b) - minister's approval is required*

The Regulation requires a recipient in the family unit to receive the minister's approval before incurring moving costs. The ministry argues that the appellant did not receive the minister's approval before incurring moving expenses because his move was already in progress when the ministry contacted him on July 3, 2018 to discuss his request for the moving supplement. The appellant advised the ministry that he was using his own funds and would be requesting reimbursement.

The appellant argues that the ministry did not inform him (in any of their conversations) that he needed to pick up the cheque for the moving supplement in person. The appellant understood that the cheque would be direct deposited in the same manner as the income assistance he receives from the ministry. The appellant argues that the ministry is aware of his disability which requires clear instructions and uncomplicated procedures in all communications. The panel notes that the ministry accommodated the appellant's disability (hearing impairment) by conversing with him through the *IP Relay Service* which produces a text of the conversation. The transcripts that the panel admitted as evidence indicate that the ministry answered the appellant's questions, asked him for specific financial information, and reviewed the eligibility requirements for the moving supplement.

The appellant provides extensive submissions on his dis-satisfaction with the ministry's processes and procedures. The appellant alleges that the ministry violated his human rights by denying him a moving supplement. Regarding human rights based arguments, the panel notes that under section 19.1 of the EAA, the Tribunal does not have the jurisdiction to apply human rights legislation.

Turning to the requirement for the minister's approval, the record indicates that a cheque for a moving supplement was never issued. The conversations between the ministry and the appellant indicate that the ministry was in the process of considering the appellant's request for the moving supplement, seeking additional information from him

until July 3, 2018 when the ministry denied the request. The transcripts provide clarification as to what took place. On May 30, 2018, the ministry confirms that the appellant put in a request for a moving supplement. The ministry explains that an estimate of moving costs is required “as we need to send it for approval.” The appellant agreed to provide estimates of costs and the ministry explained that the manager does the approval. No approval had taken place as the ministry still had to consider the appellant’s cost estimates.

On June 7, 2018, the appellant asked the ministry whether the information he provided had been processed. The ministry advised the appellant to submit financial information as the ministry still needed to check that the appellant does not have “any other financial means for the move.” The transcript ends with the appellant agreeing to provide financial information. The transcript indicates the request was still in the information-gathering stage, with the ministry explaining the eligibility requirements for a moving supplement. The ministry did not say that the request would be approved once financial information was received. As well, there was no discussion about whether the appellant could receive a cheque in person or by direct deposit if his request for the supplement got approved.

It appears that the appellant understood that he could be reimbursed for the costs of the move after the fact, but the ministry stated that the manager would need to approve the request for a moving supplement. In any event, there is no provision in the legislation for reimbursement of moving costs that were already incurred. The panel finds that the ministry reasonably applied the legislation in the circumstances of the appellant and reasonably found that the requirement for approval by the minister under section 55(3)(b) of the EAPWDR was not met.

### ***Conclusion***

For the reasons set out above, the panel finds that the ministry reasonably determined that the appellant was not eligible for a moving supplement under section 55 of the EAPWDR because the requirements in section 55(3) were not met. The ministry is not authorized to provide a moving supplement unless all of the legislative requirements are met. The panel finds that the reconsideration decision is a reasonable application of the legislation and confirms the decision. 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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018-09-28

PRINT NAME

Reece Wrightman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-09-28

PRINT NAME

Edward Wong

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-09-28