

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) Reconsideration Decision dated October 4, 2018 which held that the Appellant was not entitled to a shelter allowance or a moving costs supplement to cover storage fees because he did not meet the criteria set out in the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”).

Specifically, while the Ministry was satisfied that the Appellant did not have the resources available to pay the monthly storage fees, the Ministry found that storage fees are not considered an allowable shelter cost under Schedule A of the EAPWDR and that, based on the information available, the storage costs could not be considered a moving cost because the Ministry was unable to determine that the Appellant’s move was required to satisfy one of the criteria set out in Section 55(2) of the EAPWDR. In addition, the Ministry determined that the Appellant did not have the prior approval of the Ministry before incurring the storage costs, as required under Section 55(3)(b) of the EAPWDR.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 5

EAPWDR Sections 24 and 55 and EAPWDR Schedule A Sections 4, 5, and 8

PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of disability assistance with a Persons with Disabilities (PWD) designation.

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

- Request for Reconsideration, dated September 24, 2018, in which the Appellant stated that his reasons for his RFR were:
 - He entered treatment at a substance treatment centre (Treatment Centre #1) in his community on December 11, 2017;
 - He spoke to a Ministry staff member at the time and asked whether his storage costs would be covered by the Ministry while he was receiving treatment and was told “*yes eventually*”;
 - The Ministry paid his storage fees for the next seven months;
 - Treatment Centre #1 “*kicked (him) out giving no ... reason*”;
 - He went to a different substance treatment centre (Treatment Centre #2), where he still resides; and,
 - Treatment Centre #1 told him that they would pay his storage fees for two months but they only paid the storage fees for one month. As a result he is behind in his payments to the storage facility and will be losing his personal belongings as a result, through no fault of his own; and,
- A storage facility payment receipt in the name of the Appellant dated September 27, 2017 showing storage unit fees totalling \$590.29 for a 3 month period ending December 26, 2017, which includes both one time fees and a monthly rate of \$175 plus tax, paid in full by debit card on the receipt date.

Additional Information Submitted after Reconsideration

In his Notice of Appeal (NOA), dated October 9, 2018, the Appellant indicated that the reason for his appeal was that he was told by the Ministry that his storage costs would be covered when he entered a recovery program at Treatment Centre #1. At the time he was already a month behind in his payment of the storage fees and those fees were paid by the Ministry for 7 months until he was kicked out of the treatment facility.

At the hearing, the Appellant stated that on the day before the hearing he had received a text message from a friend stating that his friend, who was also in treatment in Treatment Centre #1, had also had storage fees paid by the Ministry in error, and as a result his friend was having \$100 deducted from his assistance benefits every month for repayment. The Appellant explained that he had called the Ministry twice to try to determine whether he would also be expected to repay the storage fees that the Ministry had paid on his behalf and had not received a response. The Appellant requested an adjournment at the hearing so that he could get more information from his friend on the circumstances of his friend's situation, try again to get an answer to his question from the Ministry, and have a lawyer attend the hearing with him as his legal counsel. The Panel notes that the purpose of the hearing was to determine whether the Ministry's decision that the Appellant was not entitled to a shelter allowance or moving costs to cover storage fees was a reasonable interpretation of the legislation. After considering the Appellant's request for an adjournment, the Panel determined that the circumstances of the Appellant's friend's situation, which involved the recovery of past paid storage fees, was not relevant to the issue before the Panel, neither was the lack of a response from the Ministry, and that the Appellant had ample time in the

preceding 3 weeks to arrange for a lawyer to accompany him to the hearing. Accordingly, the Panel denied the request for an adjournment.

Upon continuing with the hearing, the Appellant stated that after he had resided at Treatment Centre #1 for several months he was kicked out and offered a cash settlement for a dispute that he had had with Treatment Centre #1. He stated that he had suffered neglect and abuse at Treatment Centre #1 which he stated could be proven. At the time he was kicked out of Treatment Centre #1 he was one month behind on payment of his storage fees, and asked staff at Treatment Centre #1 for a payment of storage fees for 2 months in lieu of the cash settlement. The Appellant said that Treatment Centre #1 agreed, but only paid for one month of storage fees. He explained that the Ministry had previously paid his storage fees on his behalf for 7 months and then told him that the Ministry worker who approved the payment of his storage fees had made a mistake. The Appellant argued that the Ministry paying the fees for several months and then deciding that it shouldn't have been paying the fees made the situation worse for him.

Regarding the granting of his PWD designation, the Appellant explained that Treatment Centre #1 had assisted him with an application for the PWD in January of 2018, but that his application was "passed around", and the nurse practitioner at Treatment Centre #1 had told him that he would not qualify for the PWD designation, and these factors had prevented him from proceeding successfully with the application at that time. He explained that, with the help of the community health authority, he was eventually able to proceed with his PWD application, and it was approved by the Ministry on its first review. He stated that he was originally denied the payment of storage fees by the Ministry while his PWD designation was still pending, but his PWD designation was approved after the Ministry's original decision and shortly before the Reconsideration Decision was rendered. The Appellant stated that he couldn't understand why, if the storage fees were previously paid by the Ministry, it couldn't continue to pay them.

At the hearing, the Ministry relied on its Reconsideration Decision and explained that the Ministry sometimes made errors, and if an error was made that resulted in the overpayment of assistance or an allowance, the Ministry was obliged to recover the overpayment through a minimum deduction of \$20 per month from future benefits until the overpayment was recovered. The Ministry also explained that Treatment Centre #1 was a private facility and that the person who had assisted the Appellant with his PWD application at that facility was a Ministry employee assigned to that facility as an outreach worker.

Regarding living costs paid by the Ministry for a client with a PWD designation receiving special care, the Ministry explained that the Ministry pays whatever fee might be associated with that special care for a private facility, plus the cost of accommodation up to the prescribed limits on behalf of the client, and that "accommodation" is the cost associated with the shelter component (i.e. the equivalent of rent) and does not include storage fees, if applicable. However, the Ministry explained that under Ministry policy it is prepared to pay storage fees to a PWD client in treatment for a limited period of time, which it has determined is to be no more than 3 months.

Admissibility of Additional Information

Section 22(4) of the Employment and Assistance Act (EAA) provides that panels may admit as evidence the information and records that were before the Ministry when the decision being appealed was made and “*oral and written testimony in support of the information and records*” before the Ministry when the decision being appealed was made, i.e. information that substantiates or corroborates the information that was before the Ministry at reconsideration. These limitations reflect the jurisdiction of a panel established under section 24 of the EAA: to determine whether the Ministry’s reconsideration decision is reasonably supported by the evidence or a reasonable application of the enactment in the circumstances of an appellant.

The Panel considered the information in the NOA to be information that was before the Ministry when the decision being appealed was made. The Panel did not admit the oral evidence presented by the Appellant at the hearing. This evidence was the Appellant’s friend’s text message, received the previous day, advising the Appellant that the Ministry had required his friend to repay storage fees by monthly deduction from his assistance benefit. The Panel declined to admit this evidence because it did not relate to the Reconsideration Decision before the Panel at the hearing.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the Ministry's decision, which found that storage fees are not considered an allowable shelter cost under Schedule A of the EAPWDR and that, based on the information available, the storage costs could not be considered by the Ministry to be a moving cost because the Ministry was unable to determine that the Appellant's move was required to satisfy one of the criteria set out in Section 55(2) of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

The relevant legislation provides as follows:

EAPWDA

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

EAPWDR

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

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 ... 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 ...
- (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 ...

EAPWDR Schedule A

Monthly shelter allowance

- 4 ... (2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of
- (a) the family unit's actual shelter costs, and
 - (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

How actual shelter costs are calculated

- 5 (1) For the purpose of this section, utility costs for a family unit's place of residence include only the following costs:
- (a) fuel for heating;
 - (b) fuel for cooking meals;
 - (c) water;
 - (d) hydro;
 - (e) garbage disposal provided by a company on a regular weekly or biweekly basis;
 - (f) rental of one basic residential single-line telephone.
- (2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:
- (a) rent for the family unit's place of residence;
 - (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;

- (c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
- (d) property taxes for the family unit's place of residence if owned by a person in the family unit;
- (e) utility costs;
- (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

People receiving special care

- 8** (1) For a person with disabilities who receives accommodation and care in a special care facility ... the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of
- (a) the actual cost, if any, to the ... recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus
 - (b) a comforts allowance of \$222 for each person for each calendar month ...
- (2) If the special care facility under subsection (1) is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the ... recipient is in the alcohol or drug treatment centre:
- (a) actual shelter costs for the ... recipient's usual place of residence up to the amount under section 4 for a family unit matching the ... recipient's family unit ...

* * *

The Appellant's position is that the Ministry paid his storage fees for 7 months, so it should continue to pay them while he is receiving treatment. The Ministry's position is that storage fees are not considered an allowable shelter cost and that the storage costs could not be considered a moving cost because the Appellant did not satisfy one of the criteria set out in the EAPWDR. In addition, the Appellant did not have the prior approval of the Ministry before incurring the storage costs, as required under the EAPWDR.

The Panel Decision

Payment of Storage Fees as a Component of Moving Costs

Section 55(1) of the EAPWDR states that "moving costs" are the costs associated with moving a family unit and its personal effects from one place to another. As the temporary storage of personal effects (furniture, appliances, clothing, etc.) is a cost which might be associated with moving a family unit and its personal effects from one place to another should such temporary storage be reasonably required for a short period of time, the Panel finds that the Ministry has reasonably determined under Ministry policy that, if they are incurred, temporary storage costs, are potentially a component of moving costs.

Section 55(2) of the EAPWDR states that the Ministry may provide a supplement to or for a family unit that is eligible for disability assistance to cover moving costs only if a single recipient is moving:

- anywhere in Canada, and if he or she isn't working but has arranged confirmed employment that would significantly promote his or her financial independence and he or she is required to move to begin that employment,
- to another province or country and he or she is required to move to improve his or her living circumstances,
- within a municipality or unincorporated area or to an adjacent one because his or her rented residential accommodation is being sold or demolished and a notice to vacate has been given, or if the rental accommodation has been condemned,
- within a municipality or unincorporated area or to an adjacent one if his or her shelter costs would be significantly reduced as a result of the move, or
- to move to another area in British Columbia to avoid an imminent threat to his or her physical safety.

The Panel finds that the Ministry reasonably determined that there is insufficient evidence that the Appellant has had to move for any of the reasons set out above. Therefore, the Panel finds that the Ministry reasonably applied the provisions set out in the legislation in determining that the Appellant's storage fees are not eligible for a moving cost supplement.

Payment of Storage Fees as a Component of Shelter Costs

Section 5(2) of Schedule A of the EAPWDR states that only the following components of monthly shelter costs are included:

- rent or mortgage payments on the family unit's place of residence (where applicable),
- a house insurance premium for the family unit's place of residence if owned by a person in the family unit,
- property taxes for the family unit's place of residence if owned by a person in the family unit,
- utility costs, and
- the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

Section 5(1) of Schedule A of the EAPWDR defines "utility costs" to be fuel for heating and for cooking meals, water, hydro, garbage disposal provided by a company on a regular weekly or biweekly basis, and rental of one basic residential single-line telephone. In its Reconsideration Decision, the Ministry determined that storage fees are not considered an allowable shelter cost under Section 5(2) of the EAPWDR.

While the Panel acknowledges that storage fees are not considered an allowable shelter cost under Section 5(2), the Panel notes that Section 8 of Schedule A of the EAPWDR applies in this case as the Appellant is a PWD who is receiving accommodation and care in an alcohol or drug treatment centre. Section 8(1) and 8(2) of Schedule A of the EAPWDR state that the Ministry may pay the following costs for a single PWD who receives accommodation and care in an alcohol or drug treatment centre:

- the actual cost of accommodation and care at the facility at an approved rate for that type of facility,
- a comforts allowance of \$222 per month, and
- the actual shelter costs for the person's usual place of residence up to the amount under EAPWDR Section 4.

The Panel notes that, in addition to the actual cost of accommodation and care at the treatment facility and a comforts allowance, Section 8 of Schedule A of the EAPWDR provides for the payment of actual shelter costs for a client's normal place of residence while he or she is receiving treatment in an alcohol or drug treatment centre, up to the amount under EAPWDR Section 4, which in the Appellant's case is \$375 per month.

The Panel notes that the Appellant was a transient when he went into treatment and therefore did not incur shelter costs in the form of living accommodation (i.e. rent), and that he has been paying \$183.75 per month in storage fees. If such storage fees were not an allowable cost, a transient PWD who is a single recipient would be able to seek living accommodation, to use that living accommodation as a place to store his or her personal belongings, and would qualify for costs of up to \$375 per month under Section 8.

Accordingly, the Panel finds that a reasonable interpretation of the intent of the provisions of Section 8(2) of Schedule A of the EAPWDR is to allow for storage fees to be considered an allowable cost in the circumstances of the Appellant (i.e. where the client is a PWD who is a transient incurring costs to store his or her personal belongings at the time he or she is in special care). The Panel further notes that, at \$183.75 per month, the storage fees are lower than the maximum shelter allowance amount specified for a single recipient in EAPWDR Schedule A Section 4(2)(b). Therefore the Panel finds that the Ministry was not reasonable in determining that the Appellant's storage costs were not an eligible cost during the period of time that the Appellant was in an alcohol and drug treatment centre pursuant to Section 8 of Schedule A of the EAPWDR.

Prior Approval of the Ministry

Section 55(3)(b) of the EAPWDR states that a recipient in the family unit must receive the Ministry's approval before incurring allowable costs. The Panel notes that, in its Reconsideration Decision, the Ministry determined that the Appellant did not have the prior approval of the Ministry before incurring storage costs. However, the Panel notes that the Ministry paid those storage costs for 7 months prior to determining that the Appellant was ineligible for storage costs. Therefore the Panel finds that the Ministry had implicitly provided approval, and that the Ministry was not reasonable in subsequently determining that the Appellant did not have the prior approval of the Ministry before incurring the storage costs.

Conclusion

The Panel finds that the Ministry's Reconsideration Decision, which determined that the Appellant was not eligible for a supplement to cover the cost of storage fees, was not a reasonable application of the applicable enactment in the circumstances of the Appellant, and therefore rescinds the Ministry's decision. The Appellant is successful in his 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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/08/31

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/03/31

PRINT NAME

Rosalie Turcotte

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/08/31