

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision dated April 24, 2019 which denied the Appellant's request for a supplement for moving costs as the Ministry found that the request did not meet the eligibility requirements for a moving supplement set out under Section 55 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

EAPWDR, Section 55

PART E – SUMMARY OF FACTS

The Appellant is a single person in receipt of disability assistance. The evidence before the Ministry at reconsideration included the following documents:

- Request for Reconsideration (RFR) dated April 10, 2019, in which the Appellant wrote:
 - She had submitted moving quotes to the Ministry and was told to choose the moving company (Moving Company) offering to provide the services for a fee of \$350 (Moving Estimate #1). This was the same company that had undertaken her previous move in August 2018, and the Ministry paid the moving costs at that time;
 - When the movers arrived on March 30 they said that they would require \$400 and when told that the agreed price was \$350, they threatened to leave if they were not paid \$400;
 - She tried several times to call the individual at the moving company who had offered to complete the move for \$350, but was unsuccessful;
 - Deciding she had no other option, she agreed to pay them \$400 for the move, but they would not give her a receipt, and;
 - She was attaching copies of text message conversations between the Appellant and the Moving Company "*to arrange the time and place and (the Moving Company's) agreement to do it*".
- Partial and full copies of seven text messages, largely in a language other than English, five of which are dated July 29, August 3, March 11, March 27, and March 30 (the Text Messages);
- Two Month Notice to End Tenancy for Landlord's Use of Property ("the Eviction Notice") signed by the Landlord on January 29, 2019, indicating that the Appellant was required to move out of the rental unit by April 1, 2019. The reason identified by the Landlord for the Eviction Notice was: "*The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent of child of that individual's spouse)*";
- Fax copy dated March 29, 2019 of a typed moving estimate provided by a moving company (Moving Estimate #2) addressed to the attention of the "*ministry worker for ... (the Appellant)*" quoting an "*all inclusive flat rate*" of \$548.63; and
- Copy of an undated hand-written note bearing the name and phone number of an individual, the name of the Moving Company and the words "*Fee \$350*", the name, contact information and business card for the moving company that provided Moving Estimate #2, and the name and contact information for a third moving company.

Additional Information Submitted after Reconsideration

In her Notice of Appeal (NOA) dated May 1, 2019, the Appellant wrote that she couldn't afford to pay the moving costs of \$400 and that she had paid for the cost of the move on the understanding that the Ministry would reimburse her. She indicated that the Ministry had told her that the Ministry had contacted the Moving Company and the Moving Company had denied that they had organized a move

on the Appellant's behalf. The Appellant said that she then called the Moving Company to ask why they had denied having moved her and was told that the person who spoke to the Ministry had denied that the Moving Company had completed the move because "*(the Moving Company representative) didn't know that (the Ministry was) talking about (the Appellant) because (the Moving Company representative) forgot (the Appellant's) name*". The Appellant also stated that she needed to be reimbursed by the Ministry for the cost of the move because she doesn't have money for food or anyone else to help her.

The Appellant did not attend the hearing. After confirming that the Appellant was notified of the hearing within the prescribed timeframe, the Panel proceeded with the hearing pursuant to Section 86(b) of the Employment and Assistance Regulation, which states that "*the panel may hear an appeal in the absence of a party if the party was notified of the hearing*".

At the hearing, the Interpreter provided a translation of the text messages, confirming that the information in the four complete messages are addressed to an individual with the same name as the person identified as the contact for the Moving Company, reminding him of the services he had provided to the Appellant relating to her previous move and providing the address of the Appellant's then current rental accommodation, the address of the new rental accommodation to which she was moving, and the planned time and date of that move.

The Ministry relied on its Reconsideration Decision as summarized at the hearing.

Admissibility of Additional Information

Section 22(4) of the *Employment and Assistance Act* (EAA) provides that panels may admit as evidence (i.e. take into account in making its decision) 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. Because a panel can accept oral and written testimony in support of the information and records before the Ministry when the decision was made, there is limited discretion for a panel to admit new evidence. Accordingly, instead of asking whether the decision under appeal was reasonable at the time it was made, panels must determine whether the decision under appeal was reasonable based on all admissible evidence, including any new evidence admitted under EAPWDA Section 22(4).

The Panel considered the written information in the NOA to be argument.

PART F – REASONS FOR PANEL DECISION

The issue on this appeal is whether the decision by the Ministry, which denied the Appellant's request for a supplement for moving costs under Section 55 of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the Appellant.

The legislative criteria to be considered eligible for the supplement for moving costs are set out in Section 55 of the EAPWDR as follows:

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 ...

Panel DecisionSection 55(2) of the EAPWDR - Reasons for Move

Section 55(1) of the EAPWDR sets out a definition of the costs that are provided for in the section, including "moving cost" as being the cost of moving a family unit and its personal effects from one place to another.

In its Reconsideration Decision, the Ministry determined that the Appellant did not move for one of the required reasons for a move, as set out in Section 55(2) of the EAPWDR. Specifically, the Ministry determined that the Appellant had not indicated that she was moving:

- To begin confirmed employment, as required under EAPWDR Section 55(2)(a);
- Out of Province to improve her living circumstances [EAPWDR Section 55(2)(b)];
- Because her residential accommodation had been condemned, sold or was being demolished [EAPWDR 55(2)(c)];
- Because her shelter costs will be significantly reduced as a result of the move [EAPWDR Section 55(2)(d)]; or
- To avoid imminent threat to her physical safety [EAPWDR 55(2)(e)].

The Panel notes that EAPWDR Section 55(2)(c), which provides for most circumstances under which a tenant might be evicted, does not specify situations where a tenant is evicted for the reason specified in the Eviction Notice, i.e. the rental unit will be occupied by the landlord or a close family member of the landlord.

Regarding EAPWDR Section 55(2)(d), the Collins Online English Dictionary defines a *significant amount* to be an amount which "*is large enough to ... affect a situation to a noticeable degree*". The Panel also notes that the Ministry's Reconsideration Decision states that the Appellant's monthly rent was \$1,000 at the previous location, including heat and hot water, and is \$980 at the new location, exclusive of heat and hot water. The Panel has not been provided with any evidence as to how much the Appellant is required to pay for heat and hot water at the new location, but even if that amount is less than the difference in monthly rent of \$20 per month, the Panel finds that the Ministry reasonably determined that the Appellant's costs would not be *significantly* reduced as a result of the move.

The Panel further notes that there has been no evidence submitted to demonstrate that the Appellant moved to begin confirmed employment, to improve her living circumstances, or to avoid imminent threat to her personal safety, as required under EAPWDR Sections 55(2)(a), 55(2)(b) and 55(2)(e) respectively.

Accordingly, having considered all of the evidence, the Panel finds that the Ministry reasonably determined that the Appellant's request for a moving supplement does not meet the criteria set out in EAPWDR 55(2).

Section 55(3)(a) of the EAPWDR - No Resources

Section 55(3)(a) of the EAPWDR states that a family unit is eligible for a moving supplement only if there are no resources available to the family unit to cover the costs for which the supplement may be provided. In its Reconsideration Decision, the Ministry noted that the Appellant might be eligible to

receive the equivalent of one month's rent from her previous landlord but had not provided any evidence to indicate whether she had pursued this possibility.

The Panel notes that, in a section of the Eviction Notice entitled "*IMPORTANT INFORMATION ABOUT THIS NOTICE*", it states that, if the landlord is serving eviction notice because he intends to use the property, "*your landlord has to compensate you an amount equal to one month's rent payable under your tenancy agreement*". In addition, the Panel notes that the Eviction Notice states that the Appellant might be entitled to additional compensation: "*After you move out, if your landlord does not take steps toward the purpose for which (the Eviction Notice) was given in a reasonable period after the effective date of (the Eviction Notice), your landlord must compensate you an amount equal to 12 months payable under your current tenancy agreement*". While "*a reasonable period after the effective date*" is not defined, the Eviction Notice provides contact information for the Residential Tenancy Branch, and the Panel notes that, because she had paid her rent up until the end of March 2019 and was required under the Eviction Notice to vacate the rental unit by April 1, 2019, the Appellant is entitled to receive either \$1,000 (the amount equal to one month's rent payable under her tenancy agreement) or \$12,000 (the amount equal to 12 months payable under her current tenancy agreement) from the Landlord, depending on the circumstances.

Having considered all of the evidence, as the Appellant is entitled to receive an amount from the Landlord equal to at least two and a half times the cost of the move, the Panel finds that the Ministry reasonably concluded that the Appellant has not demonstrated that she does not have the resources to cover the cost of her move.

Section 55(3)(b) and 55(2)(4)(a) of the EAPWDR - Prior Approval and Least Expensive Mode

Section 55(3)(b) of the EAPWDR states that a family unit is eligible for a moving supplement only if it receives the Ministry's approval before incurring moving costs, and Section 55(4)(a) requires that the family unit use the lease expensive appropriate mode of moving. In its Reconsideration Decision, the Ministry stated that it was satisfied that these two criteria had been met in the circumstances of the Appellant.

Conclusion

Having considered all of the evidence, the Panel finds that the Ministry's Reconsideration Decision, which denied the Appellant's request for a supplement for moving costs as all of the requirements of Section 55 of the EAPWDR had not been met, was a reasonable application of the applicable enactment in the circumstances of the Appellant, and the Panel confirms the Ministry's decision. Therefore, the Appellant is not successful in her Appeal.

APPEAL NUMBER

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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/05/22

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Carlos Garcia

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/05/25