

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the Ministry) reconsideration decision dated May 9, 2019, that denied the appellant's request for a supplement to cover the costs of moving. The Ministry determined that the appellant's request did not meet all of the legislative criteria set out in section 55 of the *Employment and Assistance for Persons With Disabilities Regulation* (EPWDR) and in particular found that she did not meet the requirements of section 57(2).

#### **PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons With Disabilities Act, Sections 5 and 6*

*Employment and Assistance for Persons With Disabilities Regulation, Sections 35 and 55*

*Employment and Assistance for Persons With Disabilities Regulation, Schedule A section 6*

## **PART E – SUMMARY OF FACTS**

### **A. Documents and Information Before the Ministry at Reconsideration**

The documents and information before the ministry at reconsideration included

#### **1. The Decision to be Reconsidered**

The decision to be reconsidered found that the Appellant may be eligible for the supplement only if two conditions apply:

- there are no resources available to cover the costs for which the supplement may be provided, and
- approval must be received from the ministry before the cost is incurred

Additionally, the ministry stated that the Appellant must be eligible under either section 57 of the *Employment and Assistance Regulation* or section 55 of the *Employment and Assistance for Persons with Disabilities Regulation*

The original decision stated that the Appellant requested, and through her mother, who was the Appellant's Attorney-in-Fact, a supplement for moving transportation and living costs in order to move items from a storage locker to a long term care centre and funds to stay in a specific city in British Columbia; about 9 months after the Appellant had begun residing in a particular facility, her mother said that she had to put the Appellant's belongings in storage and needed to move them to the Appellant's new residence 3 days after stating that the move was necessary. The Appellant's mother advised that the funds were requested in order to pay for gasoline and hotel expenses for 3 nights in order to drive from one city to another in British Columbia.

On April 9, 2019 the appellant's request was denied on the grounds that the Appellant was not eligible for disability assistance or hardship assistance because the Appellant had been approved for medical services only since at the time of application was residing in a hospital and was therefore not eligible for a moving supplement.

#### **2. The Appellant's Reasons for Requesting Reconsideration – Expressed by her Mother**

The Appellant's mother requested reconsideration saying that

- her application for the full cost of moving qualifies as both moves happened on the same day
- she went to the new city day before the moves, for 2 days in order to support her daughter which was the 2<sup>nd</sup> move in one year
- on the day of the move when she arrived with the moving company at the Appellant's residence, the Appellant was already there, about 2 o'clock in the afternoon and the individuals who had dropped the Appellant off work on, despite the mother's request that she be advised the exact times of discharge and admittance of her daughter
- that is the Appellant had been discharged from the facility, her medical services file would be closed and a long-term care social services file would be opened, and would require contribution of the Appellant's Canada Pension Plan benefits
- the Appellant was considered a resident of a particular facility because the mother paid the daily fee for a few days in April 2019 and that means that the Appellant was considered a long-term care individual, and because the cheque to the residential facility had been paid the Appellant was considered admitted to long-term care and therefore should granted assistance line that the mother requested assistance earlier but was told by the ministry office that family is not covered
- her application for the full cost of moving qualifies as both moves happened on the same day, and she went to the daughter's city before the moves in order to support the daughter, who was moving for the second time in one year

#### **3. Moving Estimate**

There was an estimate from a moving company dated April 9, 2019 moving the Appellant's possessions, for \$315, faxed to the ministry that same day advising that it was an estimate for moving services for the appellant, with the move to take place on April 11, 2019.

## **B. Appellant's Information at the Appeal**

The Appellant's mother appeared at the Appeal on behalf of the appellant, acting under a Power of Attorney as the Appellant's Attorney-in-Fact.

She disputed the ministry's contention that her daughter had \$8,345 in her savings account as well as an additional discretionary trust. She submitted that there was some money in her daughter's savings account, which had been derived partly from the daughter's Canada Pension Plan payments and partly was money transferred to that account, from the discretionary trust. The mother said that she actually controls her daughter's bank account which is maintained for the purpose of paying various bills for her daughter and that she and she alone controlled the discretionary trust and her daughter's bank account. She said that the funds in the discretionary trust had never been directly in the appellant's hands or controlled by the Appellant. The mother submitted that she paid the Appellant's bills from the Appellant's account and that is why she was transferring money from the discretionary trust into it.

The panel notes that the ministry did not provide any evidence as to the amount of money in the Appellant's savings account or how the amount of \$8,345 was arrived at.

The mother submitted that her daughter, now ■ years old, had received designation as a Person with Disabilities a number of years ago and had been living in an assisted living facility until she was moved into an acute care hospital in July 2018. At that time her personal possessions, consisting of various items of furniture, and other personal possessions that she was using in the assisted living facility were put into storage. The Appellant's mother agreed that the appellant was scheduled for discharge from the hospital on April 11, 2019, and that on April 4, 2019, she had applied for moving expenses to assist with moving her daughter from the hospital to a long term care facility. The mother agreed with the statement in the Reconsideration decision that her request for assistance was denied on April 9, 2019, and that her daughter was determined eligible for disability assistance on April 17, 2019 some 6 days after the move from the hospital to the new supportive living facility. The mother questioned why the daughter was not eligible for disability assistance in that 6 day period from the date of discharge from the hospital and admission to long term care on April 11, 2019 until the date she was declared eligible on April 17, 2019.

The Appellant's mother said that the Appellant had received Canada Pension Plan benefits of \$782.25 per month while in hospital.

The Appellant's mother disputed the ministry finding that the ministry "*cannot determine that you are requesting the least expensive appropriate mode of moving*". The Appellant's mother submitted that it was necessary for her to go from her home community to the Appellant's home community to move the daughter because the daughter was not capable of arranging for and moving her own belongings. She said that she had provided a moving company estimate of \$315, and in response to the reconsideration decision in which the ministry said that it was "*not clear that this is the least expensive, appropriate mode of moving*", said she had called many moving companies, had taken the quotation from the least expensive company, and submitted that to the ministry. She stated that she had obtained the cheapest motel she could, many moving companies did not want to take on such a small move, and was not charging for meals and gas to drive from home community to her daughter's community. The Appellant's mother submitted that when she travelled from her own community to her daughter's community she stayed in a motel from April 11-15, 2019 at a total cost of \$215.76, and also expended money on meals and gas. She said that she does not charge for meals and gas but does wish reimbursement for the motel stay in the sum of \$215.76. The Appellant's mother did not submit receipts to the ministry for that motel bill.

## **C. Ministry Information at Appeal**

The ministry did not attend the appeal, and after having confirmed that the ministry had been notified, the panel proceeded with hearing the appeal in the absence of the ministry, pursuant to section 86(b) of the *Employment and Assistance Regulation*.

## PART F – REASONS FOR PANEL DECISION

### Issue On Appeal

The issue on Appeal is whether the Ministry of Social Development and Poverty Reduction's (the Ministry) reconsideration decision dated May 9, 2019, that denied the appellant's request for a supplement to cover the costs of moving was reasonably supported by the evidence or was a reasonable application of the applicable enactment, specifically section 55 of the *Employment and Assistance for Persons With Disabilities Regulation* (EPWDR) and in particular found that she did not meet the requirements of section 57(2).

The ministry found that the Appellant, as a single person in receipt of disability assistance but who received Canada Pension Benefits in excess of the disability assistance rates, was not eligible for disability assistance between January 2019 and April 17, 2019, after the date of the Appellant's move for which assistance was requested.

### Relevant Legislation

#### *Employment and Assistance for Persons With Disabilities Act* (EAA) Section 5

##### 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.

#### *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), Section 55

##### 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.

**Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Schedule A section 6**

**People receiving room and board**

6 (1) For a family unit receiving room and board other than in a facility mentioned in section 8 or 9 of this Schedule or from a relative referred to in subsection (2), the amount referred to in section 24 (a) [amount of disability assistance] of this regulation is the smaller of

(a) the sum of

(i) the actual cost of the room and board, plus

(ii) \$60 for each calendar month for each applicant or recipient, plus

(iii) \$127 for each calendar month for each applicant or recipient who is a person with disabilities, plus

(iv) Repealed. [B.C. Reg. 193/2017, s. 11 (b).]

(v) \$40 for each calendar month for each dependent child in the family unit, and

(b) the amount calculated under sections 1 to 5 of this Schedule for a family unit matching the applicant's or recipient's family unit.

(2) If a family unit receives room and board from a parent or child of an applicant or a recipient in the family unit, only the following amounts may be provided:

(a) the support allowance that is applicable under sections 2 and 3 of this Schedule to a family unit matching the applicant's or recipient's family unit.

(b) Repealed. [B.C. Reg. 62/2010, s. (b).]

**Panel Findings**

**Panel Finding on Admissibility of Additional Evidence – Mover's Cost**

The panel finds that the Appellant's mother's submission that she had called many moving companies and had provided a quotation from the least expensive to the ministry, that being the \$315 quotation, is new evidence submitted in support of information and records that were before the Minister at the time of reconsideration, and admits that evidence pursuant to section 22 (4) of the *Employment and Assistance Act*.

**Panel Finding on Admissibility of Additional Evidence - Motel Cost**

The Reconsideration decision noted that the Appellant's mother had requested moving expenses for her in travelling from her own home community to her daughter's home community, for gas and hotel. The panel finds that the mother's evidence that the motel cost was \$215.76 is new evidence submitted in support of the information and records that were before the Minister at reconsideration. The panel notes that the Reconsideration decision references the Appellant's mother requesting the gas and hotel expenses, and the panel admits the evidence of the cost of the motel pursuant to section 22 (4) of the *Employment and Assistance Act*.

**Overview of the Legislative Requirements**

The scheme of the legislation is that a person who has been designated as a Person with Disabilities may make application under section 5 EAA for a supplement for moving, transportation or living costs, which may then be provided pursuant to section 55 EAPWDR. In section 55 EAPWDR "living costs" are defined as the cost of accommodation and meals, "moving cost" is the cost of moving the applicant and personal effects from one place to another and "transportation cost" means the cost of travelling from one place to another. Further, the supplement must be incurred for one or other of the 7 specific purposes. In addition, in order to be eligible for a supplement there must be no resources available to the Appellant and approval for the supplement must be received from the minister before incurring the cost. The cost must be the least expensive appropriate mode of moving or transportation and in the case of living costs, the least expensive.

In the Reconsideration Decision, the Minister considered only whether or not the Appellant was entitled to disability assistance under section 5 EAA and section 55 EAPWDR. The Reconsideration officer did not address the issue of why the ministry believed that the Appellant, a person designated as a Person with Disabilities, was not entitled to disability assistance in the time period between discharge from the hospital and moving into her new home on April 11, 2019 and the date that she was determined eligible for assistance, 6 days later on April 17, 2019, nor did the reconsideration officer discuss the Appellant's entitlement to disability assistance while in hospital, calculated under EAPWDR Schedule A section 6.

**The Ministry's Conclusion that the Appellant was not Entitled to Disability Assistance**

As a person who was designated as a Person with Disabilities and in receipt of disability assistance until she was hospitalized in July 2018, the Appellant was not entitled to what the panel will refer to as "ordinary disability assistance" under section 24 *EAPWDR* while in hospital, but would, because she was receiving room and board in the hospital, be entitled to disability assistance calculated under *EAPWDR* Schedule A section 6. She did not however lose her designation as a Person with Disabilities. Upon her discharge from hospital on April 11, 2019 the Appellant was again entitled to receive ordinary disability assistance, calculated under section 24 *EAPWDR*.

The essential point is however that while in hospital, the Appellant was still entitled to disability assistance, but calculated under a different section of the *EAPWDR* than if she was not in the hospital.

The panel finds that the ministry's April 9, 2019 determination that the appellant was not a recipient of disability assistance was not reasonably supported by the evidence and was not a reasonable application of the *EAPWDR* in the circumstances of the Appellant, because the Appellant was in fact a recipient of disability assistance before, during, and after her hospitalization.

**Section 55 *EAPWDR***

The Reconsideration officer based on the conclusion that the Appellant did not qualify for a supplement under *EAPWDR* section 55 (2) because it found that the Appellant was not eligible for disability assistance at the time of the move, and did not address any of the 7 factors set out in sub-paragraphs (a) through (g).

**Section 55(2) *EAPWDR***

The panel finds that 6 of the 7 factors of Section 55(2) *EAPWDR*, specifically those expressed in sub-paragraphs (a) through (c) and (e) through (g) have no applicability to this appeal.

The 4<sup>th</sup> factor, set out in sub-paragraph (d), provides that a supplement may be provided if an applicant is moving within the municipality and the applicant's shelter costs would be significantly reduced as a result of the move. The evidence was that the Appellant was moving from an acute care hospital where she has resided since July 2018 to a long term care facility in the same community. There is little doubt that the shelter costs to which the Appellant is entitled under *EAPWDR* Schedule A section 4 prescribed by section 24 *EAPWDR* will be much less in the long term care facility to which she is moving than in the acute care hospital from which she is moving and where she has resided since July 2018.

The panel finds that the Appellant's shelter costs will be significantly reduced as a result of moving out of the acute care hospital. The panel finds that the Appellant is entitled to a supplement under section 55(2) provided she meets the requirements of sections 55 (3) and (4) *EAPWDR*.

**Section 55 (3)(a) *EAPWDR***

In order to qualify for a supplement, the appellant must have no resources available with which to cover the cost and must receive the Minister's approval before incurring those costs.

The panel notes that the Appellant's mother disputed the ministry statements as to the amount and source of funds in her daughter's savings account as set out in the Reconsideration decision. The panel notes that the Appellant's mother disputed the amount of Canada Pension Plan benefits as set out in the Reconsideration decision. The panel notes that the mother's evidence was that the money in the daughter's account, controlled solely by the mother, was sourced in part from Canada Pension Plan benefits and partly from funds in the discretionary trust. The panel notes that there were no bank statements or Canada Pension Plan benefit statements provided by the ministry at the time of the Appeal. In other words, the ministry provided insufficient evidence to support its conclusion in the Reconsideration Decision that the appellant had \$8,345 in her savings account. No one from the ministry attended at the Appeal, and because of the lack of documentary evidence and the lack of representation the panel notes that there is no way of knowing how the Reconsideration officer arrived at the conclusion that the Appellant had \$8,345 in her savings account, let alone how the conclusion that it was available to the Appellant was arrived at.

The panel therefore draws an inference adverse to the ministry, that had such evidence been available to support the Reconsideration decision as to the amount of money in the Appellant's account and the amount of her Canada Pension Plan benefits, it would have been provided. In such circumstances, the benefit of the doubt should be given to the Appellant. See authorities such as *McTavish v MacGillivray and others*, Supreme Court of British Columbia, Vancouver Registry Nos. B944248 & B951646, July 18, 1997 at para. 18.

The panel finds that the ministry conclusion that the Appellant was receiving Canada Pension Plan benefits in excess of disability assistance rates was not reasonably supported by the evidence and was not a reasonable application of the legislation in the circumstances of the Appellant.

The panel finds that the money in the Appellant's savings account was not available to the Appellant. The panel finds that the money in that account was partly Canada Pension Plan benefits in an unknown amount and partly money from the discretionary trust in an unknown amount. The panel further finds that the whole of the savings account was controlled by the Appellant's mother, as well as the discretionary trust, and that the Appellant's mother used to those funds to provide for the Appellant.

The panel finds that the ministry conclusion that the Appellant had \$8,345 in her savings account to cover the cost of the move must be based on the assumption that the money in the savings account and was the Appellant's own money and controlled by and available to the Appellant. The panel finds that assumption was not supported by the evidence.

The panel finds that the ministry's determination that there were sufficient funds in the appellant's account to cover the cost of the move was not reasonably supported by the evidence and was not a reasonable application of section 55 EAPWDR in the circumstances of the Appellant

#### **Section 55(3)(b) EAPWDR**

In order to qualify for a supplement, the Minister's approval must be received before incurring the cost.

In the reconsideration decision, it is noted that the Appellant's mother sought ministry approval prior to the move, and that the requirement of this sub-paragraph was met. Therefore there is no issue as to whether or not the Minister's approval was or was not received prior to incurring the cost.

#### **Section 55 (4) (a) EAPWDR**

In order to qualify for a supplement, the cost of the supplement must be the least expensive appropriate mode of moving or transportation.

The Appellant's mother's evidence was clear that she had sought of quotations for the cost of the move, had chosen the least expensive and had provided that quotation to the ministry.

The conclusion in the Reconsideration decision that "*the ministry cannot determine that you are requesting the least expensive appropriate mode of moving*" is not the test; the test is whether or not the least expensive appropriate mode has been provided, and there is no requirement that an applicant provide proof. This subsection places no specific burden upon an applicant. Further, the evidence was that the Appellant's mother had sought a number of movers' quotations and had chosen the least expensive at \$315, and that she had chosen the cheapest motel at a cost of \$215.76. The evidence was clear and uncontroverted that the Appellant's mother had to travel from her own home community to that of the Appellant in order to the move of the Appellant's possessions from storage to the new supportive living facility.

The panel finds that the total cost of moving the possessions and of the mother travelling to the Appellant's community the Appellant's move was a total of \$530.76, and that was the least expensive mode and was the most appropriate mode.

The panel finds that the conclusion in the Reconsideration decision that the ministry could not determine whether or not the Appellant's mother had chosen the least expensive mode of moving was not reasonably

supported by the evidence and was not a reasonable application of section 55(4) *EAPWDR* in the circumstances of the appellant.

**Section 55 (4) (b) *EAPWDR***

This sub-section applies only to two of the factors of section 55 (2), and has no application to this appeal.

**Conclusion**

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision dated May 9, 2019, was not reasonably supported by the evidence and was not a reasonable application of the applicable enactment in the appellant's circumstances.

The Appellant is 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

Donald (Dan) McLeod

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/JUN/05

PRINT NAME

Donald Storch

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/JUN/05

PRINT NAME

Carman Thompson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/JUN/05