

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated May 7, 2019, which denied the appellant's request for a moving supplement. The ministry found the appellant did not meet the criteria for moving costs listed in section 55 of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – RELEVANT LEGISLATION

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

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

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- A Shelter Information form in the appellant's name dated March 6, 2018, showing a monthly rental amount of \$660.00.
- A Shelter Information form in the appellant's name dated April 25, 2019, showing a monthly rental amount of \$800.00.
- The appellant's Request for Reconsideration, signed May 3, 2019, with a note from the appellant's spouse stating that they will be doing work at their new apartment building for \$300.00 per month, and that moving expenses are essential.

The appellant wrote in her Notice of Appeal to the Tribunal that they physically cannot move her belongings and that they will have employment at her new address at \$300.00 to start.

At the hearing, the appellant's spouse stated that they will have employment at the new apartment building starting at \$300 per month, which the ministry said is insignificant, but it is not insignificant to him. He stated that the caretaker at their present apartment building has been bullying them, but the ministry said verbal threats would be needed. He stated that the rent at the new apartment would be \$800 per month, but it would be reduced by \$300 in return for work. He stated that the building manager recorded the rent as \$800 for insurance purposes, and that he would not want to state a lower rent, but \$300 is to be rebated. The appellant stated that the abuse from the apartment building caretaker had become worse recently.

The appellant stated that the offer of employment was initially for \$300 per month to start and there is a possibility of more work. The panel admitted the appellant's oral evidence as oral testimony in support of information before the minister when the decision was made.

In response to questions from the ministry, the appellant stated that the rent is shown as \$800, and if they were to move out, it would be shown as \$800, but \$300 is to be a rebate for work in lieu of rent.

In response to questions from the panel, the appellant stated that the \$300 per month rent reduction would be consistent monthly, with more pay for additional work. He stated that \$300 would make a significant difference in his ability to pay for utility bills and food.

The ministry responded by referring to the reconsideration decision and the applicable legislation, section 55 of the EAPWDR, which lists the criteria for approval of a supplement for moving costs. The ministry stated that based on the information submitted, the ministry found the appellant did not meet the criteria for approval: the employment at the new apartment will not significantly promote financial independence, they are not moving to avoid imminent threat to their physical safety, their current residence is not being demolished, sold or condemned and they are not moving to significantly reduced rent, as they are currently paying \$660 per month and the new apartment costs \$800 per month. The ministry noted that when asked by a ministry worker, the appellant said the physical safety of anyone in the family unit was not at risk, and in the ministry's opinion as stated in the reconsideration decision, the offer of employment did not significantly improve the financial independence of the family unit.

In response to a question from the appellant, the ministry stated that the ministry received a letter stating there would be employment but questioned whether there is a written agreement. The ministry stated that the true rent of the new apartment is \$800.

In response to questions from the panel, the ministry stated that with respect to significant income, the decision was based on a review of the appellant's file, and there does not seem to be a measure specified. With respect to reduced shelter costs, the ministry stated that the shelter information form shows rent of \$800, not \$500, so the rent is not significantly reduced. If the true rent were shown, it would be. If there were subsidized rent, the amount considered would be the total after subsidy, but in this case, the amount shown is \$800. In response to questions about the offer of employment, the ministry stated that they do not know why the income was not considered to significantly improve financial independence, but the language in the legislation is vague, and the interpretation depends on individual ministry workers. The ministry stated that it appears to be significant based on what the

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appellant has said at the hearing. The ministry stated that a confirmed offer of employment would be more persuasive.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry decision which denied the appellant's request for a moving supplement. The ministry found the appellant did not meet the criteria for moving costs listed in section 55 of the Employment and Assistance for Persons with Disabilities Regulation.

Legislation

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

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.

The appellant's position is that they qualify for a supplement for moving costs because the employment at the new apartment building will significantly promote their financial independence.

The ministry position is that the appellant does not meet the criteria in section 55, EAPWDR because the move is not to significantly improve financial independence, to avoid imminent threat to physical safety, the current residence is not being demolished, sold or condemned and they are not moving to significantly reduced rent.

The panel notes that the appellant's evidence concerning a threat to physical safety is inconsistent. The appellant has alleged bullying and behaviour that has made them uncomfortable, but no police report has been filed and there has been no reported threat of physical harm. The panel finds the ministry reasonably determined that the provisions of section 55(2)(e), EAPWDR have not been met.

The panel notes that the rental amount shown on the Shelter Information form dated April 25, 2019 is higher than the amount currently being paid by the appellant. The panel finds the ministry reasonably determined that section 55(2)(d), which requires that shelter costs be significantly reduced as a result of the move, has not been met.

With respect to section 55(2)(a), EAPWDR, which provides for moving costs 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 the employment, the panel finds the ministry did not reasonably determine that the appellant did not meet this criterion. The ministry determined, as stated in the reconsideration decision, that the proposed \$300 per month payment to the appellant is earned income, not a rent reduction. The panel takes into account the appellant's current disability assistance rate, which is stated as \$1,834.56 per month, and that \$300 represents a net increase of 9% after taking the increased rent into consideration. The ministry stated that the significance of promotion of financial independence is a matter of interpretation, but did not provide a clear answer regarding the criteria or analysis employed by the Ministry when they determine what level of income would rise to the statutory requirement of "significantly improve financial independence". The Ministry, under questioning by the panel, agreed that the increase in income is significant to this appellant. In considering the appellant's total income and that \$160 per month represents an increase of 9% with potential to earn more; the panel finds the ministry's determination that this criterion was not met is not reasonable. As the proposed employment is dependent on the appellant's move and they have no current employment, the panel finds the provisions of this section have been met.

The panel finds that the ministry did not reasonably determine that the appellant does not meet the provisions of section 55, EAPWDR and rescinds the ministry decision.

The appeal is successful.

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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

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 June 5

PRINT NAME

David Roberts

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 June 5

PRINT NAME

Adam Rollins

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 June 5