

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 September 19, 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**

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

EAPWDR, Section 55 and Schedule A Sections 4 and 5

**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 September 9, 2019, in which the Appellant wrote:
  - The most inexpensive way for the Appellant to move their belongings from their previous community (the Previous Community) to a new community (the New Community) would be to rent a truck and to pay for two men to load it and unload it;
  - The cost of the move, including a two day truck rental fee, gas, other transportation charges and compensation for the movers would be \$359.00;
  - The Appellant suffers from arthritis, scoliosis in their back and chronic pain and is not able to do any heavy lifting;
  - The Appellant is moving to another community in British Columbia but not the New Community identified in the RFR; and,
  - Everything the Appellant owns is in storage, including furniture, family photos and a big screen TV and the Appellant is “*too old to start over with nothing*”; and,
- One page quote from a moving company, prepared on behalf of the Appellant and dated August 19, 2019, quoting a price of \$2,100.00 including GST to move household belongings from the Appellant’s previous community to the New Community.

***Additional Information Submitted after Reconsideration***

In the Appellant’s Notice of Appeal (NOA) dated September 23, 2019, the Appellant wrote that they are desperate and have no other resources. The Appellant also stated that they would lose everything if not provided with a moving supplement.

At the hearing, the Appellant stated that the total cost of rent for their residential accommodation, which was a 2 bedroom, 2 bathroom trailer the Appellant shared with a roommate until the roommate passed away on January 22, 2019, was \$800 per month. The Appellant stated that, in addition to their share of the rent (which was \$400) they were required to pay utility costs, which included hydro at \$130.00 per month in total and a \$50.00 per month gas bill. The Appellant also said that, while the roommate had routinely paid their share of the rent, which was also \$400, the Appellant had had problems getting the roommate to pay their share of the hydro bill, and eventually had arranged for BC Hydro to bill them separately for each share (\$65.00). The Appellant stated that prior to that time the Appellant would routinely have to pay the entire hydro bill without a contribution from the roommate, which the Appellant was only able to manage for a short while because they had about \$1,400.00 in savings. The Appellant said that on one occasion the hydro was cut off due to non-payment of the bill.

The Appellant stated that after the roommate passed away the Appellant had to try to find another roommate to share the costs for rent and utilities, but that the effort was unsuccessful, as several prospective roommates would either steal the Appellant's things or not pay their share of costs. The Appellant said that they were only able to continue to live at the previous location because the Appellant's parent would lend them money to cover living expenses, and that when the Ministry sent the May 2019 rent payment directly to the landlord in the Previous Community in late April 2019, the Appellant had to borrow money from their parent to pay the rent in the New Community until the Appellant received the rent payment back from the previous landlord, at which time they repaid the parent. The Appellant also stated that the rent in the New Community, totalling \$500 per month, includes all utilities. They also confirmed that they were not asking for reimbursement of the storage costs totalling \$80 per month, but desperately needed to move their furniture and personal belongings and had found a very inexpensive way of doing that by renting a moving truck and having a friend do the heavy lifting, but couldn't afford to move their belongings without a moving supplement.

At the hearing the Ministry relied on its Reconsideration Decision as summarized at the hearing. In response to a question from the Panel, the Ministry stated that the shelter information forms referenced in the Ministry's Reconsideration Decision and provided by the Appellant to the Ministry on November 27, 2014 and on May 7, 2019 and which provided information about the location of the Appellant's residence and share of the monthly rent (totalling \$400), did not have to be updated by the client should the amount of the client's monthly rent or utility costs change. The Ministry also confirmed that, while the shelter information forms in question were not accessible to the Ministry at the hearing to ensure that they had been properly completed, the form does have a space for the client to identify whether utility costs are included in the rent amount, and, if not, as the Ministry form indicates, copies of utility bills are routinely required by the Ministry to confirm those costs.

### ***Admissibility of Additional Information***

Section 22(4) of the 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 only 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. Once the panel has determined which additional evidence is admissible under EAPWDA Section 22(4), 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.

The Panel considered the written information in the NOA to be argument. The Panel considered the new verbal information provided by the Appellant at the hearing relating to the Appellant's shelter costs and living arrangements in the Previous Community and their shelter costs in the New Community to be admissible as it was oral testimony in support of information and records that were before the Ministry when the Reconsideration Decision was made.

**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 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:****Supplements for moving, transportation and living costs**

55 (1) In this section: ...

"moving cost" means the cost of

- (a) moving a family unit and the family unit's personal effects from one place to another, and
- (b) storing the family unit's personal effects while the family unit is moving if the minister is satisfied that storing the personal effects is necessary to preserve the personal effects ...

(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 anywhere in British Columbia because the family unit is being compelled to vacate the family unit's rented residential accommodation for any reason, including the following:
  - (i) the accommodation is being sold;
  - (ii) the accommodation is being demolished;
  - (iii) the accommodation has been condemned;
- (d) moving costs required to move anywhere in British Columbia if the family unit's shelter costs would be significantly reduced as a result of the move;
- (e) moving costs required to move anywhere 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) subject to subsection (3.1), a recipient in the family unit receives the minister's approval before incurring those costs.

(3.1) A supplement may be provided even if the family unit did not receive the minister's approval before incurring the costs if the minister is satisfied that exceptional circumstances exist.

(4) A supplement may be provided under this section only to assist with

(a) in the case of a supplement under subsection (2) (a) to (e), the least expensive appropriate moving costs ...

### 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 <b>Family Unit Size</b>	Column 2 <b>Maximum Monthly Shelter</b>
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; ...

(e) utility costs ...

(3) If utility costs fluctuate, they may be averaged over the periods

(a) beginning on October 1 and ending on March 31, and

(b) beginning on April 1 and ending on September 30.

(4) If 2 or more family units share the same place of residence, the actual shelter costs of any one of them are the smaller of

(a) the amount calculated by

- (i) dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence, and
  - (ii) multiplying the result by the number of persons in that one family unit, and
- (b) the amount declared by the family unit as the shelter costs for that family unit.

\* \* \* \*

### ***Panel Decision***

Section 5 of the EAPWDA says that the Ministry may provide a prescribed supplement to or for a family unit that is eligible for it; EAPWDR Section 55 sets out the eligibility requirements for a moving supplement.

#### Sections 55(3)(a) and 55(2)(4)(a) of the EAPWDR - No Resources and Least Expensive Mode

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, and Section 55(4)(a) requires that the family unit be compensated for the least expensive appropriate moving costs. In its Reconsideration Decision, the Ministry stated that it was satisfied that these criteria had been met in the Appellant's case.

#### Sections 55(1) and 55(2) of the EAPWDR – Definition of "Moving Cost" and Reasons for Move

Section 55(1) of the EAPWDR sets out a definition of the costs that are provided for in that section, including "moving cost" as the cost of moving a family unit and its personal effects from one place to another, and the cost of storing the family unit's personal effects while the family unit is moving, if the Ministry is satisfied that storing the personal effects is necessary. Section 55(2) identifies the circumstances which must exist in order for the Ministry to consider providing a moving supplement.

Among the circumstances which must exist in order for the Ministry to consider providing a moving supplement is a situation where the family unit's shelter costs will be significantly reduced as a result of the move. "Shelter costs" for a family unit that rents residential accommodation are defined in EAPWDR Schedule A Section 5 to comprise of rent and utilities. Section 5 also states that the cost of utilities includes fuel for heating, fuel for cooking meals, water, hydro, garbage disposal provided by a company on a regular basis, and rental of one basic residential single-line telephone. In addition, if 2 or more family units share the same place of residence, the actual shelter costs of any one of them are the smaller of the amount calculated by dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence, and multiplying the result by the number of persons in that one family unit, and the amount declared by the family unit as the shelter costs for that family unit.

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 they were moving:

- To begin confirmed employment, as required under EAPWDR Section 55(2)(a);
- Out of Province to improve a family unit's recipient's living circumstances [EAPWDR Section 55(2)(b)];
- Because the family unit was being compelled to vacate its rented residential accommodation for any reason [EAPWDR 55(2)(c)];
- Because the family unit's shelter costs will be significantly reduced as a result of the move [EAPWDR Section 55(2)(d)]; or
- To avoid imminent threat to the physical safety of anyone in the family unit [EAPWDR 55(2)(e)].

The Panel notes that no evidence has been provided to indicate that the Appellant was moving to begin confirmed employment or to avoid imminent threat to their physical safety, nor was the Appellant moving out of Province. With respect to whether the Appellant "was being compelled to vacate (their) rented residential accommodation *for any reason*" (emphasis added) the Panel notes that the Reconsideration Decision states that "*On August 27, 2019 (the Appellant) reported to the Ministry that (they) moved to (the New Community) in June (2019) to assist with the care of (a parent) who was in hospital and is now home. You noted (the parent) is not recovering well and is having cognitive issues*". No evidence has been presented to suggest that this testimony is not true. The Panel finds that the Ministry did not reasonably determine that the Appellant was not being compelled to vacate their rented residential accommodation for any reason as the Panel finds that vacating one's rental accommodation to look after an ailing parent who lives in another community within the Province must be reasonably considered a compelling reason to vacate one's rented residential accommodation in a different community.

With respect to whether the Appellant's shelter costs will be significantly reduced as a result of the move, the Panel notes that the Ministry compared the rent at each location without taking into account what utility costs were in each location, or whether they were included in the rent. The Panel finds that the Ministry did not reasonably determine that shelter costs would not be significantly reduced as a result of the move.

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

#### Section 55(3)(b) and 55(3.1) of the EAPWDR - Prior Approval

Section 55(3)(b) and 55(3.1) 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, unless the Ministry is satisfied that exceptional circumstances exist.

The Ministry's position is that the Appellant had not received the Ministry's prior approval, and that even if the Appellant had sought prior approval it would not have been granted because the Appellant does not meet the criteria for a moving supplement as set out in EAPWDR Section 55(2).

The Panel notes that the Appellant has stated that they moved to the New Community in June 2019 to assist with the care of a parent. In addition, the Appellant was facing challenges in being able to afford to pay for the shelter costs at the Previous Community, having to borrow money from a parent to pay the rent, and having to recover the May 2019 rent from the landlord at the Previous Community because the Ministry had sent it there even though the Appellant had decided to move to assist their ailing parent. "Exceptional circumstances" is not a defined term in the EAPWDR. The Collins English Dictionary defines "exceptional" in this context to mean "*situations and incidents (which) are unusual and only likely to happen very infrequently*". The Panel finds that the circumstances facing the Appellant in May and June of 2019 were unusual and are likely to occur only infrequently, therefore the Panel finds that the Ministry did not reasonably determine that exceptional circumstances did not exist in this instance.

### *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 not a reasonable application of the applicable enactment in the circumstances of the Appellant and was not reasonably supported by the evidence. Therefore the Panel rescinds the Ministry's decision and the Appellant's appeal is successful.



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)

2019/10/17

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/17

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/17