

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) Reconsideration Decision of October 15, 2019 in which the ministry found that the appellant was ineligible for a moving supplement under Section 55 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) because the criteria for a moving supplement were not met. Specifically the ministry determined that the appellant did not receive the ministry’s approval prior to incurring moving costs as required by subsection 55 (3) (b) and the ministry was not satisfied that exceptional circumstances existed in the appellant’s circumstances.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 55 (2), (3) and (3.1)

PART E – SUMMARY OF FACTS

Preliminary Matters

At the hearing the appellant was accompanied by an advocate (“C”). The appellant and C stated that the appellant had signed a Release of Information to enable C to attend the hearing and to speak on the appellant’s behalf. A Release of Information did not appear in the appeal record. However, following oral confirmation by the appellant that they wished C to have access to the appeal records and to speak on the appellant’s behalf, the panel chair allowed C to participate in the appeal hearing as the appellant’s advocate.

Information at Reconsideration

The information before the ministry at reconsideration included:

- Appellant’s request for reconsideration submitted to the ministry on October 13, 2019. Reasons for requesting reconsideration are summarized as follows:
 - the move from the appellant’s previous accommodation (“City 1”) to another city in British Columbia (“City 2”) was urgently required for the following reasons:
 - mold in the shower
 - shower not ventilated
 - melted electrical wires are a safety concern
 - no smoke or CO₂ detector
 - no lock on main door, access to appellant’s suite available to all tenants
 - 1 garbage bin and 1 recycling bin for all tenants, which attracted rats
 - thin walls led to disruptive noise from neighbours and nearby traffic
 - no kitchen in unit, just a hotplate
 - water use shared by 3 units
 - rent is to be increased immediately to \$800 per month.
- September 4, 2019 letter from the appellant to the ministry listing moving expenses of \$1,046.98 (fuel = \$682.59, food = \$128.17, rubbish removal = \$130, hotel = \$106.22)

Information Received after Reconsideration

In the Notice of Appeal dated October 23, 2019 the appellant noted that failure to seek prior approval from the ministry before relocating was a direct result of factors related to the appellant’s PWD designation.

Oral Evidence at Hearing

C is a registered nurse who assisted the appellant with completing the Request for Reconsideration. At the hearing C delivered a lengthy oral submission on behalf of the appellant. Much of the submission consisted of argument, which will be addressed in Part F of the appeal decision. New information is summarized as follows:

- The appellant is a Person with Disabilities (“PWD”) recipient who suffers from anxiety, depression and Post Traumatic Stress Disorder (“PTSD”). These disorders severely limit the appellant’s ability to function and to deal with sudden disruptive events. The appellant has been treated by a psychiatrist in the past and has resumed psychiatric care in City 2.
- On August 25, 2019 when suddenly faced with an imminent and unaffordable increase in rent the appellant’s anxiety increased to the point where the appellant treated the situation as an emergency. This in turn led to a “fight or flight” response which left the appellant unable to function or engage with ministry staff.
- The appellant did not contact the ministry to ask if additional shelter funds were available.
- Family members assisted the appellant and the relocation was accomplished in less than a day.
- On September 3, 2019, approximately 8 days after relocation to City 2 the appellant submitted a request for a moving supplement. Prior to the move the appellant was not aware of the availability of a moving supplement.

Admissibility of New Evidence

The ministry representative objected to admission of the appellant’s oral evidence on the grounds that it raised new information that was not considered by the reconsideration officer at the time of reconsideration.

The Employment and Assistance Act (EAA) Section 22 (4) states that a panel may admit as evidence only the information that was before the minister when the reconsideration decision was made and oral or written testimony *in support of* the information referred to that was before the ministry when the reconsideration decision was made. The oral information submitted by C at the hearing identified several mental health conditions that severely impaired the appellant's ability to contact the ministry to seek assistance with the sudden rental increase or to request a moving supplement.

Unfortunately the appellant did not refer to any of the above-described mental health conditions when completing Section C of the request for reconsideration. As well, mental health-related information was not provided when the appellant requested a moving supplement on September 3, 2019. This mental health-related information constitutes new information that was not before the ministry at reconsideration. It cannot be characterized as information in support of the information available to the minister at reconsideration and is therefore inadmissible under EAA Section 22 (4).

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the ministry decision which found that the appellant was ineligible for a moving supplement under Section 55 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) because the criteria for a moving supplement were not met. Specifically the ministry determined that the appellant did not receive the ministry's approval prior to incurring moving costs as required by subsection 55 (3) (b) and the ministry was not satisfied that exceptional circumstances existed.

Relevant legislation:

Supplements for moving, transportation and living costs

55 (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:

(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

;

(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.

(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) 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 argues that exceptional circumstances existed which necessitated an immediate move from the appellant's accommodation in City 1 to new accommodation in City 2 without obtaining prior approval from the ministry.

The ministry's position is that the eligibility criteria for a moving supplement were not met and the information provided did not demonstrate that exceptional circumstances existed.

Panel Decision

EAPWDR Section 55 (2) sets out seven criteria under which moving costs may be provided. At the time of reconsideration only one of these criteria was considered by the ministry to be relevant to the appellant's circumstances, namely Section 55 (2) (d), which allows the ministry to provide a moving supplement to anywhere in British Columbia if the family unit's shelter costs would be significantly reduced as a result of the move. The ministry accepted that the appellant's move to City A resulted in significantly reduced shelter costs.

In addition to meeting one of the criteria set out in Section 55 (2) an applicant for a moving supplement must also meet the following criteria set out in subsection (3):

- a) the applicant has no has no resources available to cover the moving costs; and
- b) receives the ministry's approval prior to incurring the moving costs.

The ministry found that subsection (a), "no available resources" was met. Both parties agree that the final criterion, found in subsection (b) "obtaining prior approval from the ministry", was not met.

On July 1, 2019 the legislation was amended to allow the ministry to provide a moving supplement even if the applicant did not receive prior approval, if the ministry is satisfied that exceptional circumstances exist. In the request for reconsideration the appellant provided many reasons for having to move from the previous accommodation in City 1, including: shower mold, melted electrical wires, no smoke or CO₂ detector, no lock on main door, insufficient trash bins attracting rats, noise, inadequate kitchen facilities and shared water supply. While these factors indicate unsatisfactory living conditions, the panel finds that the ministry reasonably determined that they do not constitute exceptional circumstances. As well, no additional information related to exceptional circumstances was included in the appellant's request for a moving supplement on September 5, 2019.

During the hearing the appellant provided new information related to mental health issues that may well have met the threshold for the exceptional circumstances exemption, but the new information could not be considered in this appeal because it was unknown to the ministry at the time of reconsideration and was not in support of any of the information before the ministry at reconsideration. Neither the appellant nor C explained why this new information was not submitted with the request for reconsideration even though Section 2 of the request for reconsideration stated: "*There are no exceptional circumstances identified as to why [the appellant] did not seek prior approval.*"

The panel therefore finds that the ministry reasonably determined that the appellant was not eligible for a moving supplement because the appellant failed to obtain ministry approval before incurring the moving costs and the information provided failed to establish that exceptional circumstances existed.

Conclusion

In conclusion, the panel finds that the reconsideration decision which determined that the appellant was ineligible for a moving supplement under Section 55 of the EAPWDR because ministry approval prior to moving was not obtained, and that exceptional circumstances did not exist is reasonably supported by the evidence, and confirms the decision. The appellant is not successful in the appeal.

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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 Joan Bubbs	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/Nov/13

PRINT NAME Kevin Ash	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/Nov/13

PRINT NAME Sarah Bijl	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/Nov/13