

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of October 4, 2019 in which the ministry determined that the appellant was not eligible for a moving supplement because the appellant was in receipt of Medical Services Only (MSO), pursuant to section 55 of the Employment and Assistance for Persons with Disabilities Regulation.

**PART D – RELEVANT LEGISLATION**

EAA        *Employment and Assistance for Persons with Disabilities Act, section 5*  
EAPWDR   *Employment and Assistance for Persons with Disabilities Regulation, section 55*

**PART E – SUMMARY OF FACTS**

The information before the ministry at the time of reconsideration included the following:

- 1) The appellant is designated a person with disabilities (PWD) with a dependant spouse.
- 2) The appellant is eligible for \$52.00 transportation supplement and is deemed eligible for Medical Services Only (MSO) due to their current household income exceeding the rate of disability assistance for 2019 - \$14,400.00.
- 3) **September 10, 2019** - The ministry indicates that the appellant requested assistance to pay for moving costs to move from [REDACTED] to Vancouver. The Ministry advised that the appellant was not eligible for a moving supplement while in receipt of MSO.
- 4) **September 23, 2019** – The appellant submitted a Request for Reconsideration. The appellant indicated that with being eligible for MSO there are various medical supplements available – and that it is medically necessary to move from the current location over to Vancouver. The reason for the move is due to acceptance into a Complex Chronic Disease Program. Further, the appellant noted that the move would afford less travel in the long run which would otherwise result in undue health implications.

**Additional Information**

The Ministry representative did not attend the hearing. After waiting for five minutes and ensuring the Ministry had received a Notice of Hearing on October 18, 2019, the panel proceeded with the hearing in the absence of the Ministry representative, pursuant to Section 87 of the *Employment and Assistance Regulation*.

The appellant provided a 1 page submission and one 18 page additional submission for the panel to consider the admissibility of the information.

The 1 page submission consisted of a moving quote (#1) from a moving company for \$2047.50.

The 18 page submission consisted of:

October 2019 pay documentation

November 21, 2018 - letter from the Complex Chronic Disease Program indicating acceptance

Moving quote # 2 for \$2611.18

Moving quote # 3 for \$2126.25

Spouse pay information for September and October 2019

An undated letter written by the appellant; outlining the reason for the move, and a comparison of moving costs with the alternate travel costs associated with attending medical appointments in Vancouver.

The panel considered that the information provided in both submissions was admissible as it was relevant to what was before the reconsideration officer at the time the decision was made, pursuant to section 22(4) of the *Employment and Assistance Act*.

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction’s (the “ministry”) Reconsideration Decision of October 4, 2019 in which the ministry determined that the appellant was not eligible for a moving supplement because the appellant was in receipt of Medical Services Only (MSO), pursuant to section 55 of the Employment and Assistance for Persons with Disabilities Regulation.

The relevant section of the legislation is as follows:

**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.

**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

- (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;

"**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 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;
- (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) 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, and
  - (b) in the case of a supplement under subsection (2) (f) or (g), the least expensive appropriate transportation costs and the least expensive appropriate living costs.
 [am. B.C. Regs. 275/2004, s. 2; 122/2019, App. 2, s. 3.]

## Panel Decision

The ministry's position, as set out in the Reconsideration Decision, is that the appellant is not eligible for a moving supplement because the appellant is in receipt of Medical Service Only (MSO) benefits. In other words, while the appellant is designated as a persons with disabilities, they cannot receive disability assistance due to their household unit income exhausting the \$14,400 earnings exemption limit for 2019 – therefore the appellant receives MSO benefits which does not afford the appellant an entitlement to a moving supplement.

The ministry also relied upon section 55 of the Employment and Assistance for Persons with Disabilities Regulation which sets out the criteria that a person (who would be eligible for disability assistance) would need to meet in order to receive the moving supplement.

Specifically, section 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:** (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.

The ministry notes in the Reconsideration Decision that the appellant did not meet any one of the criteria set out in section 55(2) of the EAPWDR.

The Appellant's position is that the move from the residence [REDACTED] to Vancouver is medically necessary for the attendance of the Chronic Complex Diseases Program, and the current living arrangement is stressful due to noise. Ultimately, the appellant argued that the move [REDACTED] would decrease the need for regular travel back and forth for medical appointments – which is physically exhausting, and it would save transportation costs in the long-run.

The panel finds that the evidence establishes that the appellant is currently in receipt of MSO - due to the family unit's 2019 income exhausting the earning exemption limit of \$14,400. In turn, the panel finds that the ministry unreasonably relied upon section 55(2) of the EAPWDR. The ministry argued that the appellant would not be eligible for a moving supplement if in receipt of MSO, which was not denied by the appellant. Accordingly, the panel finds that the assessment of section 55(2) criteria not having been met by the appellant was unnecessary. The panel finds that the evidence establishes the appellant responded to the said criteria not having been met with further documentation to support the moving supplement application. The panel finds that given the disqualifying nature of the exhausted income test for 2019, where the appellant was in receipt of MSO, and therefore not eligible for a moving supplement, that the ministry did not require further criteria to deny the application for a moving supplement.

Accordingly, the panel finds that the decision of the ministry to deny the appellant a moving supplement based on the appellant not being eligible for a moving supplement while in receipt of medical services only, is reasonably supported by the evidence in this case. Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the *Employment and Assistance Act*. The appellant therefore is not successful in her appeal.

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**PART F – REASONS FOR PANEL DECISION**

**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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/10/30

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/30

PRINT NAME

Jeremy Sibley

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/10/30