

APPEAL NUMBER  
2020-00009

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the December 30, 2019 Reconsideration Decision (RD) made by the Ministry of Social Development and Poverty Reduction (the Ministry) which denied the Appellant's request for a moving costs supplement because the Ministry determined that the request did not meet the eligibility requirements for a moving supplement 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

**PART E – SUMMARY OF FACTS**

The Appellant is a single person receiving disability assistance.

The evidence that the Ministry had when it made the RD included a Request for Reconsideration (RFR) dated December 14, 2019, in which the Appellant wrote that they:

- Refused to move their belongings into a new residence (the New Residence) at the last minute because they noticed that there were cockroaches there and on seeing some dead ones they realized that they had a phobia of bugs;
- Were told by the landlords that sometimes the landlords arrange to bring in an exterminator to spray for cockroaches but the Appellant was scared, and the landlords thought the Appellant was very rude and the landlords got angry, making the Appellant even more uncomfortable;
- Decided that they were better off living at the previous residence (the Old Residence) after all and “*came to an agreement*” with the landlord at the Old Residence to move back there;
- Want to be able to pay the cost of moving their belongings, which included a bed, their clothing and some belongings of their recently deceased mother, back to the Old Residence before their belongings are vandalized, stolen or damaged; and
- Disagree with the Ministry’s reasons for rejecting the Appellant’s request for a moving supplement which was that the Appellant did not try to resolve the cockroach problem with the new landlords.

***Additional Information Submitted after Reconsideration***

In the Appellant’s Notice of Appeal (NOA), dated January 4, 2020, the Appellant wrote that they are appealing the RD because:

- The landlords were already living at the New Residence and were apparently already aware of the cockroaches there and didn’t tell the Appellant about them until after the Appellant had paid the rent and moved their belongings in;
- The landlords at the New Residence got angry at the Appellant, which scared the Appellant;
- Since the landlord was already living at the New Residence, the Appellant didn’t know who else they were supposed to tell this to; and
- The Appellant’s belongings include some of their deceased mother’s items which also have to be removed.

The Appellant did not attend the hearing. After confirming that the Appellant received written notice of the date, time and location of the hearing, the Panel proceeded with the hearing in accordance with Section 85(2) and 86(b) of the Employment and Assistance Regulation.

At the hearing the Ministry relied on its RD.

***Admissibility of Additional Information***

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once the panel has determined which additional evidence, if any, is admitted under EAA 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 some of the written information in the NOA to be information that the Ministry had at the time the RD was made and the rest to be argument.

## **PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is whether the Ministry's decision, which denied the Appellant's request for a moving costs supplement under Section 55 of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the legislation in the Appellant's circumstances.

The legislative criteria that have to be met before someone can be considered eligible for a moving costs supplement are:

### **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 ...

\* \* \* \*

### ***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 says that a family unit is eligible for a moving supplement only if there are no resources available to the family unit to cover those costs, and Section 55(4)(a) says that the family unit must be compensated for the least expensive appropriate moving costs.

In its RD, the Ministry said that it was satisfied that the Appellant did not have the funds to cover moving costs but that the Appellant had not provided any information about the amount of their moving costs. The Panel notes that no information was provided in the appeal documents about the amount of the moving costs. As a result, the Panel finds that the Ministry was reasonable in determining that it didn't know if the Appellant was asking for compensation for the least expensive appropriate moving costs.

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

Section 55(3)(b) and 55(3.1) of the EAPWDR says 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. In its RD, the Ministry's said that it is satisfied that the Appellant asked for the Ministry's prior approval before incurring any moving costs.

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

Section 55(1) of the EAPWDR defines "*moving cost*" as the cost of moving a family unit and its personal effects from one place to another. Section 55(2) identifies the situations where the Ministry can provide a moving supplement, as summarized below.

In its RD, the Ministry determined that the Appellant did not move for any of the reasons for a move as set out in the legislation. 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 move out of their 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 presented to indicate that the Appellant is moving to begin confirmed employment or to avoid imminent threat to the Appellant's physical safety. Therefore the Panel finds that the Ministry reasonably determined that neither of this criteria apply.

With respect to whether the Appellant's shelter costs will be significantly reduced as a result of the move, the Panel notes that the Appellant is moving back to the Old Residence from the New Residence. According to the information in the RD, which the Appellant did not dispute, the rent at the Old Residence was \$450 per month, while the rent at the New Residence was \$425. Therefore the Panel finds that the Ministry reasonably determined that the shelter costs will not be significantly reduced as a result of a move from the New Residence back to the Old Residence.

Regarding whether the Appellant was being compelled to vacate their rented residential accommodation, the word "*compelled*" is not defined in the legislation. The Oxford English Dictionary defines "*compel*" to mean "*to force someone to do something; to make something necessary*". The Panel notes that EAPWDR Section 55(2)(c) includes the following reasons which might compel a person to move: the accommodation is being sold, demolished or has been condemned, all of which would *force* someone to move. Other reasons aren't listed, but the examples in Section 55(2)(c) give an idea of what "*compelled*" means. The Panel finds that the Ministry reasonably determined that the presence of pests in the rental accommodation, including cockroaches, would not force a person to move, particularly in light of the fact that the Appellant took no action to try to arrange through the landlords to have the pests exterminated, or through the Residential Tenancy Branch to try to compel the landlords to have the pests exterminated.

Having considered all of the evidence, the Panel finds that the Ministry reasonably determined that the Appellant's request for a moving supplement does not meet any of the criteria in EAPWDR Section 55(2).

### *Conclusion*

Having considered all of the evidence, the Panel finds that the Ministry's RD, 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 a reasonable application of the legislation in Appellant's circumstances and was reasonably supported by the evidence. Therefore the Panel confirms the Ministry's decision and the Appellant's appeal is not 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

Simon Clews

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)