

APPEAL NUMBER
2021-0145

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated July 7, 2021 which held that the appellant was not eligible for a supplement for moving costs, in particular storage fees incurred from February 1 to May 1, 2021 for two separate storage units.

The appellant had requested a supplement because the storage company had provided her with a Cut Lock Notice, a Past Due Notice and a Notice of Lien Proceedings for both storage units.

The ministry's decision was based on the ministry's determination that the appellant was not in receipt of income assistance at the time the storage fees were incurred, that the storage fees were not incurred as a result of any of the situations identified in section 57 of the Employment and Assistance Regulation, that the appellant did not have the minister's approval before incurring the costs, and that the appellant had the resources available to cover the storage costs.

PART D – RELEVANT LEGISLATION

Employment and Assistance Act (EA), s. 4
Employment and Assistance Regulation (EAR), s. 57 (Supplements for moving, transportation and living costs)

PART E – SUMMARY OF FACTS

The information before the ministry at reconsideration included:

1. The appellant received income assistance from August 2018 to October 2020;
2. On October 2, 2020, the appellant entered into a lease agreement with a storage company for the lease of a storage unit (Unit 1);
3. On October 6, 2020, the appellant entered into a lease agreement with a storage company for the lease of a storage unit (Unit 2);
4. On October 7, 2020, there was a branch to branch transfer into the appellant's bank account of \$135,484.90;
5. Throughout October 2020, there were branch to branch transfers out of the appellant's bank account of \$50,308.50;
6. Throughout November 2020, there were branch to branch transfers out of the appellant's bank account of \$20,000.00;
7. Throughout December 2020, there were branch to branch transfers out of the appellant's bank account of \$16,000.00;
8. Throughout January 2021, there were branch to branch transfers out of the appellant's bank account of \$26,008.50;
9. The balance in the appellant's bank account on February 1, 2021 was \$173.60;
10. On February 1, 2021, the appellant failed to pay the rent fee for Unit 1 of \$178.08 but prior to February 1, 2020 the appellant had paid all rental fees for Unit 1;
11. On February 1, 2021, the appellant failed to pay the rent fee for Unit 6 of \$166.88 but prior to February 1, 2020 the appellant had paid all rental fees for Unit 1;
12. On February 24, 2021, the appellant's bank account had a balance of \$0.00;
13. The appellant made no payments on the debt owing for Unit 1 until at least May 5, 2021 and as of May 5, 2021 the appellant owed a debt of \$932.32 for the lease on Unit 1;
14. The appellant made no payments on the debt owing for Unit 2 until at least May 5, 2021 and as of May 5, 2021 the appellant owed a debt of \$887.52 for the lease on Unit 2;
15. On May 10, 2021, the appellant received a Cut Lock Notice, a Past Due Notice and a Notice of Lien Proceedings from the storage company because of the debt owed on Unit 1;
16. On May 10, 2021, the appellant received a Cut Lock Notice, a Past Due Notice and a Notice of Lien Proceedings from the storage company because of the debt owed on Unit 2; and
17. On May 12, 2021, the appellant was eligible for income assistance, backdated from eligibility being determined by the ministry on May 17, 2021.

In the information before the ministry, the appellant wrote "On October 6th was to receive funds – so no claim submitted. Gave back huge to beautiful community. Now without and in need."

At the hearing, the appellant stated that the last two years of her life "was a blur." The appellant confirmed that the bank to bank transfer into her account of \$135,484.90 was the result of the sale her personal residence and that the storage fees were also because of the sale of her personal residence. The appellant confirmed that she did not move away from the community that she resided in at the time her personal residence was sold.

The appellant told the panel that the storage units contained everything that is precious to her, including medical devices, legal documents, photographs and other mementos of her family.

The panel determined that it was appropriate under section 22(4) of the *Employment and Assistance Act* to admit this additional evidence because the panel considers it reasonably required for a full and fair disclosure of all matters related to the decision under appeal, although it was not determinative of the matter under appeal.

At the hearing, the ministry confirmed that it was relying upon the information in the reconsideration decision.

PART F – REASONS FOR PANEL DECISION

Introduction

The issue at appeal is whether the reconsideration decision dated July 7, 2021 which held that the appellant was not eligible for a supplement for moving costs was reasonably supported by the evidence or a reasonable application of the enactment in the appellant's circumstance.

Summary of The Relevant Legislation

Section 4 of the EA permits the ministry to provide a supplement to or for a family unit that is eligible for it.

Section 57 of the EAR establishes that the ministry may provide a supplement to a family unit for "the cost of... 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" if:

1. The family unit is eligible for income assistance or hardship assistance;
2. There are no resources available to the family unit to cover the cost;
3. A recipient in the family unit receives the minister's approval before incurring the costs; and
4. The cost of storing the family unit's personal effects is because of one of the following:
 - a. If a recipient in the family unit is not working and is required to move because they have confirmed employment somewhere else in Canada;
 - b. If the move is to another province or country if the move is required to "improve its living circumstances";
 - c. If the move is to somewhere else in British Columbia because the family is renting residential accommodation and that accommodation is being sold, demolished or condemned;
 - d. If the move is to somewhere else in British Columbia and the family unit's shelter costs would be "significantly reduced"; or
 - e. If the move is to somewhere else in British Columbia to avoid an imminent threat to the physical safety of any person in the family unit.

The Appellant's Position

The appellant in the Notice of Appeal and at the hearing stated that she would be devastated if she lost all her belongings, that include family possessions, photographs, legal documents and medical devices. The appellant stated that she had no resources to pay the outstanding debt and that the storage company had been very lenient in enforcing its rights regarding the Cut Lock Notice, the Past Due Notice and the Notice of Lien Proceedings for both storage units.

The appellant also stated that she was under a doctor's care, had a diagnosed disability and had been "living on the streets" for two months. She said that she could not stand the thought of "everything that is precious" and all their "treasures" being "thrown out into the yard."

The Ministry's Position

The ministry affirmed key aspects of the decision at reconsideration including:

1. The appellant was not eligible for income assistance or hardship assistance at the time the expenses for the storage of her personal effects were incurred;
2. The ministry was not satisfied that there were no resources available to the appellant to cover the costs of the storage of their personal effects;
3. The cost of storing the appellant's personal effects was not connected to any of reasons for incurring the expense under section 57(2) of the EAR; and
4. The appellant did not have the ministry's approval prior to incurring storage fee costs and that there were no exceptional circumstances that prevented the appellant from getting prior approval.

The Panel's Decision

The panel notes that the ministry only has the discretion to provide a supplement for moving costs when the specified legislated criteria are satisfied and those criteria include that the cost of storing the family unit's personal effects must be incurred "while the family unit is moving". The ministry does not have any discretion to provide a supplement to protect or "preserve the personal effects" of a person unless the legislated criteria are satisfied.

The panel finds that between February 1, 2021 and May 1, 2021, the appellant incurred a cost for storing the family unit's personal effects.

As stated above, the appellant was determined to be eligible for income assistance as of May 12, 2021. Consequently, at the time she requested a supplement for moving costs she was eligible for income assistance or hardship assistance as required by section 57(2) of the EAR. However, she was requesting a supplement for moving costs that were incurred prior to her eligibility for income assistance.

The ministry, in its initial decision concluded that "[the appellant] is not eligible for the storage fees which happened when she was not a recipient of income assistance". A close reading of section 57(2) of the EAR leads to the conclusion that there is no requirement that the "living cost", "moving cost" or "transportation cost" be incurred while the family unit is eligible for income assistance or hardship assistance. However, on reconsideration and at the hearing of the appeal the ministry did not rely on the fact that the moving costs were incurred when the appellant was not entitled to income assistance. Instead, the ministry relied on its determination that the appellant did not satisfy the other legislated criteria.

The ministry determined that it was not satisfied that the appellant did not have the resources to pay for the storage fees between February 1, 2021 and May 1, 2021. The ministry had information that the appellant had transferred approximately \$115,300 from her account to another account (or accounts) between October 7, 2020 and January 8, 2021 but the appellant did not provide any information whether she had control of the accounts that received the transfers or had any continued access or entitlement to those resources. Consequently, the panel finds that the ministry was reasonable in determining that it was not satisfied that there were no resources available to the family unit to cover the storage costs as required by section 57(3)(a).

The ministry also determined that "it is not satisfied your reason for moving out of your previous residence was for any of the listed reasons [in section 57(2)(a) to 57(2)(e)]. The panel is satisfied based on the information provided by the appellant that the reason she had to store her personal effects was because she sold her residence. The panel is satisfied this reason is not one of the reasons listed in section 57(2)(a) to 57(2)(e) in particular:

- a. The appellant was not required to move because of confirmed employment somewhere else in Canada and the appellant remained in the same community she had resided in before she sold her residence;
- b. The appellant did not move to another province or country;
- c. The appellant did not move because she was renting residential accommodation;
- d. The appellant did not move to somewhere else in British Columbia; and
- e. The appellant did not move to avoid an imminent threat to her physical safety.

Consequently, the panel finds the ministry was reasonable in its determination the appellant did not satisfy the criteria imposed by section 57(2)(a) to 57(2)(e).

There was no dispute that the appellant had not requested or received the ministry's approval prior to incurring storage fee costs. The appellant identified that the reason she did not seek ministry approval was because she received funds on October 6th. Consequently, the panel finds that there was no "exceptional circumstance" explaining why the appellant did not receive the minister's approval before incurring the storage costs – the appellant did not receive the minister's approval because she would not have been entitled to the supplement. Therefore, the panel finds the ministry was reasonable in its determination on this issue.

Conclusion

The panel confirms the ministry decision and the appellant is not successful in her appeal.

Extracts of The Relevant Legislation

EA section 4:

EAR section 57: Supplements for moving, transportation and living costs

57 (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 income 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, 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.

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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

Trevor Morley

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/08/11

PRINT NAME

Inge Morrissey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/08/11

PRINT NAME

Robert McDowell

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/08/11