

**Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated November 16, 2021, which determined that the appellant was not eligible for a moving supplement to pay for cleaning services as per section 55 of the Employment and Assistance for Persons with Disabilities Regulation.

**Part D – Relevant Legislation**

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

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 55

See attached Schedule of Legislation

## Part E – Summary of Facts

### Relevant Evidence Before the Minister at Reconsideration

#### Ministry records show:

- The appellant is currently a sole recipient of disability assistance.
- In August 2021, the appellant was forced to vacate her residence out of fear of physical harm. She found alternative accommodations.
- On October 13, 2021 the appellant contacted the ministry to request a moving supplement to cover the cost to move her personal belongings from her previous residence to her parent's address, and for the cost of cleaning services to clean the previous residence.
- On October 22, 2021 the ministry approved a \$984.38 moving supplement but found the appellant ineligible for assistance with cleaning services.

#### Application for Moving Supplement (October 13, 2021)

##### *attachments*

Cleaning quotes from three companies (\$567.00, \$735.00, \$787.50)

Moving estimates from three companies (October 6, 12, 26, 2021)

- estimates include itemized breakdown of expenses (e.g. times for load, travel, unload, fuel surcharge, insurance, blankets etc.)

#### Request for Reconsideration Summary (November 16, 2021)

The appellant states the ministry's decision to deny her application for a cleaning related moving cost supplement was incorrect and unreasonable because the definition of moving costs clearly includes such costs.

Further, the appellant argues the main reason for the denial appears to be the ministry's interpretation of the scope of the term, moving cost, as defined in the EAPWDR and what costs fall within the definition of a moving cost. The definition refers to two types of moving costs, the cost of moving a family unit and the cost of moving a family's unit's personal effects. It is not disputed that the second part of this definition covers costs of hiring a moving company to transport a family unit's personal effects from the place being vacated to a new location but what the ministry has failed to recognize is that the first definition of moving cost also captures additional costs related to the moving of the family unit itself not just their personal effects.

In the appellant's view the definition must be read as a whole so one sees that the cost of moving a family unit does not include the cost of storing personal effects, a living cost, the cost of accommodation and meals, or a transportation cost, as storage costs have an additional eligibility requirement while living costs and transportation costs are each distinctly defined terms with their own eligibility requirements. If the drafters of the EAPWDR had intended moving costs to include the types of costs covered under the definitions of a living cost or transportation cost, then the regulation would have specified as much. Instead moving costs refers broadly to the costs of moving both a family unit and their personal

effects. One must assume all the words of the definition were intended to and do have meaning. Therefore, contrary to the decision one must conclude that moving cost, defined in the EAPWDR, includes the costs that a family unit must incur in order to move from one place to another, excluding living or transportation costs. While it is not necessary to speculate as to the full scope of this definition one can infer that it likely includes costs such as boxing, packing up personal effects or dump fees and it plainly includes the necessary cost to clean one's residence at the end of a tenancy. The applied for cleaning service costs are properly considered moving costs because this end-of-tenancy cleaning is required by the landlord.

In addition, the appellant states she lacks the human resources to carry out the required cleaning. She is moving from a large two story property that does not appear to have been cleaned at all by her estranged husband. The landlord expects the property will be fully cleaned, and all personal effects removed. This will require substantial deep cleaning, a massive endeavor for which a significant amount of intense labor is required. The flat rate quotes obtained estimate that it may take up to 20 hours for specialized professional cleaners to complete the cleaning.

The appellant states she cannot do this cleaning herself as she suffers from a severe physical disability, which prevents her from attempting almost any moderate or sustained physical activity. She is a recipient of disability assistance which demonstrates the ministry's recognition of the physical limitations imposed by this disability. The cleaning must be undertaken soon as the landlord wishes to have the property presentable for sale as soon as possible and the appellant does not have personal contacts or relatives able to carry out this cleaning.

The appellant also states she lacks the financial resources necessary to carry out the cleaning requirements. She provided three quotes for the required cleaning services, which range from \$567.00 to \$787.50. Even the lowest quote is greater than 33% of her total monthly disability assistance payment. She has no other sources of income. Her limited financial means are fully dedicated to other necessities such as food, rent, clothing and transportation.

### **Additional Information**

With the consent of the parties, the hearing was conducted as a written hearing under section 22(3)(b) of the *Employment and Assistance Act*.

### **Appellant**

#### **Notice of Appeal (November 25, 2021)**

##### *Reasons for Appeal*

The ministry's reconsideration decision unreasonably applied the definition of moving costs under the EAPWDR to deny the appellant eligibility for moving-related cleaning costs.

#### **Written Submission of the Appellant Summary (December 6, 2021)**

In the written submission, the appellant argues the only issue is the scope of the definition for a moving cost under the EAPWDR. The definition of a moving cost provides for costs, not only for moving personal

effects but also for costs of moving the family unit. In the appellant's case it was necessary for her to seek payment for a cleaning service because she lacked the resources to carry out or pay for the end-of-tenancy cleaning required by the landlord.

On October 22, 2021, the ministry approved the moving-service component but denied funding for the cleaning costs, claiming without any evidence, precedent, or clear reasons, that cleaning costs cannot form part of a moving cost supplement. On November 1, 2021, the appellant submitted a request for reconsideration.

On November 16, 2021, the ministry made its reconsideration decision, again claiming that the definition of a moving cost under the EAPWDR prevented cleaning costs from being funded as a moving cost supplement. The ministry acknowledged that a thorough cleaning upon ending a tenancy is expected and normally included as part of the tenancy agreement and that it is reasonable for the appellant not to have the resources to pay for these cleaning costs. However, the ministry nevertheless maintained that cleaning costs are incurred outside of the move, concluding again that cleaning services do not meet the eligibility criteria for a moving supplement.

#### LEGAL ARGUMENT

Subsection 55(1)(a) of the EAPWDR defines a moving cost as the cost of moving a family unit and the family unit's personal effects from one place to another. A plain text reading immediately exposes the ministry's misreading of the definition. A moving cost is not restricted solely to the cost of hiring a moving company to transport personal effects to a new place. Nor would the definition of a moving cost include storage costs, living costs or transportation costs, each of which have their own eligibility criteria under section 55.

All the words of the definition for moving cost must be ascribed meaning. The Governor in Council would not have provided for the moving of the family unit itself if a moving cost was only intended to cover the cost of transporting personal effects as the ministry appears to claim. The first part of the definition must therefore be given its full scope as well. It appears to provide more broadly for the costs of moving a family unit itself; i.e. costs that are directly related to the process of moving a family unit from one place to another. One might call such costs the general moving costs. While the definition of a moving cost in the EAPWDR clearly provides for general moving costs to cover the move-out costs of a family unit itself, the ministry's interpretation denies any meaning whatsoever to this element of the definition, unreasonably denying the appellant's application.

The plain text reading of the definition of a moving cost, considering the other relevant terms of the EAPWDR, clearly makes room for end-of-tenancy cleaning costs as part of a moving supplement. The unreasonableness of the ministry's position is underscored by the fact that the reconsideration decision acknowledged that cleaning is often a requirement to end a tenancy. Given this admission, it was illogical and self-contradictory for the ministry to then conclude that the cleaning services were not a necessary moving cost. If the end-of-tenancy cleaning of the appellant's former residence was a contractual obligation, which is not disputed, and the appellant lacked the resources to perform or pay for the necessary cleaning, which is admitted, then there is no reasonable basis in the facts of this case to have

denied the cleaning costs. How can the ministry simultaneously claim that cleaning is often a necessary requirement for tenants to end a tenancy but not a necessary cost for those tenants? It would only make logical sense if a tenant's legal and financial obligations could be disregarded when considering their moving costs.

Ministry

The ministry stated its submission will be the reconsideration summary provided in the Record of Ministry Decision.

The panel considered the additional information to be argument.

## **Part F – Reasons for Panel Decision**

The issue on appeal is whether the ministry's reconsideration decision that determined the appellant was not eligible for a moving supplement to pay for cleaning services, as per section 55 of the EAPWDR was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of the decision.

### **Appellant Argument**

The appellant argues that it was unreasonable for the ministry to decide that a moving cost cannot apply to the end-of-tenancy cleaning costs.

Subsection 55(1)(a) of the EAPWDR defines a moving cost as the cost of moving a family unit and the family unit's personal effects from one place to another. A plain text reading immediately exposes the ministry's misreading of the definition. A moving cost is not restricted solely to the cost of hiring a moving company to transport personal effects to a new place. Nor would the definition of a moving cost include storage, living, or transportation costs, each of which have their own eligibility criteria under Section 55.

All the words of the definition for moving cost must be ascribed meaning. The Governor in Council would not have provided for the moving of the family unit itself if a moving cost was only intended to cover the cost of transporting personal effects as the ministry appears to claim. The first part of the definition must therefore be given its full scope as well. It appears to provide more broadly for the costs of moving a family unit itself; i.e. costs that are directly related to the process of moving a family unit from one place to another (general moving costs).

The plain text reading of the definition of a moving cost, considering the other relevant terms of the EAPWDR, clearly makes room for end-of-tenancy cleaning costs as part of a moving supplement. The unreasonableness of the ministry's position is underscored by the fact that the ministry acknowledged that cleaning is often a requirement to end a tenancy. Given this admission, it was illogical and self contradictory for the ministry to then conclude that the cleaning services were unnecessary moving costs. If the end-of-tenancy cleaning of the appellant's former residence was a contractual obligation, which is not disputed, and the appellant lacked the resources to perform or pay for the necessary cleaning, which is admitted, then there is no reasonable basis in the facts of this case to have denied the cleaning costs. How can the ministry simultaneously claim that cleaning is often a necessary requirement for tenants to end a tenancy but not a necessary cost? It would only make logical sense if a tenant's legal and financial obligations could be disregarded when considering their costs of moving.

### **Ministry Argument**

The ministry's position is that cleaning services do not meet the definition of a moving cost as defined under the EAPWDR for the purposes of the moving supplement. The ministry states that it has discretion to award such costs provided they are reasonable and directly related to the moving process but argues

that a thorough cleaning upon ending a tenancy is expected and normally included as part of the tenancy agreement and is not a cost of moving a family but rather a cost incurred outside of the move.

The ministry also argues that the moving supplement is limited to the cost of moving the appellant and her personal effects only and does not include costs that may be incurred for cleaning supplies or cleaning services. Cleaning services do not meet the eligibility criteria for a moving supplement. The cleaning services are not a moving cost required to move the appellant to her new residence nor are they a moving cost required to move her personal belongings to her parent's residence.

The ministry further argues although it is reasonable that the appellant does not have the resources to pay this cost, it is not a cost that may be provided as a moving supplement. The request for assistance with cleaning services does not meet the eligibility criteria for a moving supplement, and as such, the ministry is unable to approve this request.

### **Analysis**

#### Section 5 EAPWDA - disability assistance and supplements

Section 5 states, subject to the regulations, the minister may provide a supplement to a family unit that is eligible for it. The panel notes ministry records show the appellant is a sole recipient of disability assistance.

#### Section 55(1) EAPWDR definitions - moving costs

Section 55(1) states, moving cost means the cost of moving a family and the family's personal effects from one place to another.

The panel notes the legislation defines moving cost as the cost of moving a family but does not specify exactly which costs are included under this definition. The panel also notes the ministry approved a \$984.38 moving supplement. Evidence submitted by the appellant includes estimates for the move and information in these estimates includes a breakdown of expenses such as times for load, unload, fuel surcharge, insurance, blankets etc.. The panel finds that this evidence supports the argument that a move entails many expenses besides the physical transportation.

The ministry argues that although it has discretion to award other costs, provided they are reasonable and directly related to the moving process, a thorough cleaning upon ending a tenancy is expected and normally included as part of the tenancy agreement and is not a cost of moving a family but rather a cost incurred outside of the move. The panel finds the cost of cleaning is not outside the move, but instead due to the move.

In addition, the panel finds it is illogical for the ministry to claim that cleaning is often a necessary requirement to end a tenancy but not a necessary cost. As well, the panel notes the ministry is aware of the appellant's financial and physical limitations and the requirement of a labour intense move-out clean, and notes the ministry states it has discretion to award such costs.

The panel finds the ministry's decision applied a very narrow interpretation of the definition of moving costs and finds instead that moving costs should be interpreted in a broader sense, as a move involves many other costs, including cleaning services for the residence being vacated.

For all the reasons above, the panel finds the ministry decision unreasonable.

**Conclusion**

In conclusion, the panel finds the ministry's reconsideration decision, which determined that the appellant was not eligible for a moving supplement to pay for cleaning services, as per section 55 of the EAPWDR was not a reasonable application of the legislation in the circumstances of the appellant.

The appellant is successful on appeal.



## Schedule of Legislation

### Employment and Assistance for Persons with Disabilities Act

#### **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.

### Employment and Assistance for Persons with Disabilities Regulation

#### **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.

Appeal Number 2021-0229

**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)

Section 24(2)(a)       or Section 24(2)(b)

**Part H – Signatures**

Print Name

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2021/12/17

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2021/12/17

Print Name

Diane O'Connor

Signature of Member

Date (Year/Month/Day)

2021/12/17