

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (“ministry”) reconsideration decision dated June 1, 2022, in which the ministry denied the appellant’s request for a supplement to pay storage fees.

The ministry determined that:

1. it was not satisfied that the appellant did not have the resources to pay the storage fees;
2. the appellant did not receive prior approval from the ministry before incurring the storage fees beyond the first month that the ministry had approved;
3. the ministry was not satisfied that exceptional circumstances existed, such that the appellant would be excused from receiving prior approval.

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

Part E – Summary of FactsEvidence before the Ministry at Reconsideration:

The appellant and the ministry disagree about the evidence the ministry had at the time of the reconsideration decision. The panel will summarize the facts about which there is no dispute, and then set out the 2 versions of events.

Facts that are not in dispute:

The appellant is a recipient of benefits under the EAPWDA.

The appellant had to move from her accommodation on February 18, 2021 because the municipality had determined that the residence was unsafe and it was to be 'decommissioned'. The appellant has been unable to find permanent housing since February 18, 2021. Since then, at various times she has lived in a hotel paid by the ministry, a shelter, her vehicle and a friend's garage. She has been in hospital several times, including 2 ½ weeks in the fall of 2021. She has 'couch-surfed' with friends, most recently staying with an ex-fiancé. All of these living arrangements have been temporary, and she continued to look, unsuccessfully, for long term housing.

On February 9, 2021, the appellant asked the ministry for a supplement to pay for storage fees for her personal effects when she moved out. The ministry approved the request for a supplement in the amount of \$413.28 to pay storage fees to storage company #1.

On June 11, 2021, the appellant asked the ministry for assistance paying storage fees. The appellant gave the ministry a rental agreement with storage company #2, as well as a receipt dated February 18, 2021, in the amount of \$352.80. The ministry has paid the appellant a supplement for one month of storage fees as pre-approved in February 2021.

On August 24, 2021, the appellant visited the ministry office.

On October 27, 2021, the appellant submitted receipts from storage company #2 for payment of storage fees for the months of September, October and November 2021, in the amount of \$330.75 per month.

On February 9, 2022, the appellant gave the ministry a receipt from storage company #2 in the amount of \$330.75 for February storage fees.

On April 12, 2022, the appellant gave the ministry a receipt from storage company #2 in the amount of \$357.00 for April storage fees.

The appellant's ex-fiancé paid the storage fees each month as a loan to the appellant. The appellant repaid as much of the monthly fee as she could afford each month, but she owes him \$3,300 for storage fees so far, and he will not be able to continue to lend her money.

On May 5, 2022, the ministry contacted the appellant by telephone and told her that her request for a supplement to pay for storage fees was denied.

The appellant suffers from a number of serious health conditions that have been made worse by the stress of being homeless.

Appellant's version of evidence before the ministry at reconsideration:

The appellant maintains that she sent the ministry receipts for storage fees for every month from February 2021 through April 2022, and not just the receipts that were included in the appeal record.

The appellant says that the ministry's record of telephone conversations with her is incorrect, that the ministry did not tell her until May 5, 2022 that her storage fees would not be paid. She also says that the ministry records, and the reconsideration decision, fail to show these telephone conversations that she did have with ministry employees:

1. On February 9, 2021, a ministry employee told her that the supplement for storage fees was approved, and did not tell her that the supplement was temporary or that she would have to re-apply for the supplement for future months;
2. Between February and June 2021, the appellant phoned the ministry multiple times to talk about her housing problems, but found that "temporary Covid staff" could not answer her questions;
3. On more than one occasion she asked for a supervisor to call her, but no one phoned her back;
4. On June 11, 2021, when she phoned to ask about payment of ongoing storage fees, a ministry employee told her to re-submit the February invoice because it was missing from her file, that they would "fix it" but it would take 7 to 10 days.

Ministry's version of evidence before the ministry at reconsideration:

The ministry advised that, according to their records:

1. A supervisor from the ministry told the appellant on August 24, 2021, that her request for a supplement to pay storage fees was denied.
2. On August 24, 2021, the appellant asked for a reconsideration package to appeal the denial of the supplement, and on August 25, 2021, the ministry called the appellant to tell her that the reconsideration package was ready to be picked up.
3. On October 7, 2021, the ministry closed the service request for the request for reconsideration because the package had not been picked up.
4. After the ministry received the February 2022 storage fee receipt, the ministry determined that the appellant was not eligible for a supplement for storage fees but was not able to contact the appellant to tell her this decision.
5. From February 18, 2021 until May 3, 2022, the ministry records the appellant as having "no fixed address."

Additional Evidence:1. *Written submission #1:*

The appellant provided a written submission in which she stated that:

- a. "Since February 18/2021 I have submitted my receipts [sic] for storage and was approved."
- b. As soon as she was told that the ministry was not paying the storage fees, she returned the appeal package quickly.
- c. In the telephone call with the ministry on June 11, 2021, the ministry employee told her that "things must have "slipped through the cracks" and to "re-submit original papers for storage receipts [sic]. I did that & was told things would be corrected."
- d. One of her parents died on May 16, 2020, and the other parent died on June 25, 2021. As a result, she became suicidal, leading to hospitalization overnight in July 2021.
- e. In addition, she was involved in 2 car accidents on June 30 and July 1, 2021, again resulting in visits to hospital.
- f. Due to stress, medical issues and looking for a place to live, she was not checking her banking information. She thought the ministry was paying the storage fees and assumed the reason she was short of money every month since June 2021 was because of extra costs of gas and food due to being homeless.
- g. On August 11, 2021, she was at the hospital when her phone was damaged and became unusable. She had no phone for a period of time after that – the next time she remembers having her own phone was October 26, 2021, when she was in hospital for another procedure. As a result, she did not receive phone messages or phone calls mentioned by the ministry on August 24 or 25, or October 7, 2021.
- h. She was in hospital from September 6 to 18, 2021.
- i. She only submitted multiple receipts together once, on October 27, 2021, when she sent receipts for September, October and November together. She was told by the ministry that she had to submit storage fee receipts within 30 days, and these 3 receipts were all within that time.
- j. If she does not repay her ex-fiancé the money he has loaned her for storage fees she is afraid that he will ask her to leave, and she will have nowhere to live.
- k. She was never told in February 2021 that the supplement to pay for storage fees was temporary or would expire.

The appellant provided a written statement from her ex-fiancé confirming that he has paid the storage fees since June 2021 as a loan to the appellant, and she has repaid him only a small amount. She owes him \$275 x 12 months, for a total of \$3,300.

2. *Written submission #2:*

The appellant provided a further written submission the day before the hearing, providing additional details about multiple serious health issues, including detailed lists of medications and changes and increases in medications after she became homeless.

Oral evidence at the hearing:

Appellant:

The appellant said that she was never told that she would have to reapply for the supplement, or that she needed prior permission for storage fees. Her chronic pain is “off the scale,” she is “barely able to live,” and cannot do anything besides look for housing.

When she spoke to the ministry on the phone on June 11, 2021, she was told to re-send the February 2021 receipt because the ministry employee said that they could not find it.

The appellant maintained that the ministry could not have phoned her on August 24 or 25, or October 7, 2021, as they claim, because she did not have a phone then. She admits that she might have been at the ministry office on August 24, 2021, because she does recall being at the ministry office twice in 2021, though she does not recall that meeting, or why she went to the ministry office on those 2 occasions. However, she says that, if she had been denied the supplement on August 24, she would have appealed the decision; she did not appeal then because she was not told the request had been denied. She denied asking for a reconsideration package and insisted that she was not told that she needed to get prior approval for storage fees.

While the appellant agreed that she might have used other people’s phones during the time she did not have her own phone, she said that the conversations in the ministry records, that say she was told in August 2021 that the supplement was denied, simply did not happen. She also stated that, although she did not have a permanent residence, she had arranged for mail to be forwarded from her previous address to her ex-fiancé’s address, so she would have received mail from the ministry. The ministry had told her only to let them know when she had a new permanent address.

She is certain that she sent every storage receipt to the ministry, every month, because she sent them by fax from a community organization, and she waited there until they received confirmation of transmission of the fax.

Admissibility of Additional Evidence:

The ministry did not object to the additional evidence provided by the appellant in the 2 written submissions, or to the additional oral evidence of the appellant at the hearing.

The additional evidence provides further information about the appellant’s circumstances and the communication that did or did not take place between the appellant and the ministry about payment of the storage fees. Therefore, the panel determined that the additional evidence is admissible under section 22(4) of the Employment and Assistance Act as it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision to deny the appellant a supplement for storage fees was reasonable.

Legislation:

The full text of the legislation is set out in the Schedule attached to this decision.

Appellant's Position:

The appellant maintains that the ongoing storage fees are "moving costs" because, being without permanent accommodation, she is still moving, and has been moving for the past 16 months. Since February 2021, she has been using her best efforts to find permanent accommodation, without success.

The appellant maintains that she was never told that approval of the storage fee back in February 2021 was only for one month of storage. She believed that approval was ongoing, to cover storage fees for as long as she was without a permanent residence.

She insists that the ministry's records are simply wrong, when they state that they told her on August 24, 2021 that the ministry was denying her request for storage fees. The appellant is adamant that the conversation did not happen. In the past, the ministry always phoned and notified her by mail when a request was refused, and she knew to promptly deliver the paperwork to ask for reconsideration of the decision. She says that the fact that she did not deliver a request for reconsideration until May 2022 shows that she was not told that the request was denied until then.

If the ministry had sent a notification by mail to her last address, she would have received it because she had arranged for mail forwarding through Canada Post. She did not think it was necessary to give the ministry a new mailing address because Canada Post told her that all her mail would be forwarded. She maintains that she should not be expected to know that the ministry had noted in her file that she had no fixed address, or that the ministry would not send mail to her last known address.

She has many serious health issues that meant that whatever energy she had was directed at finding a place to live, and so she did not check her bank account. As a result, she did not know that the ministry was not depositing the supplement to pay the ongoing storage fees. Her ex-fiancé was paying the storage fees for her, and she was reimbursing him out of her available funds, which she thought included the supplement to cover storage fees. She did not have enough money in her account to repay the whole monthly storage cost each month, but assumed she was short of funds because of the extra gas and food expenses associated with homelessness.

Therefore, because the ministry did not tell her they were only paying one month of storage, and she could not find out that information for herself, she argues that the ministry should pay for the ongoing storage fees.

Ministry's Position:

The ministry was satisfied that the appellant was moving for a reason listed in section 55(2), that is, because the accommodation had been condemned. The ministry was also satisfied that storage was necessary to preserve the appellant's personal effects and that the storage fees incurred by the appellant were the least expensive appropriate cost.

The ministry notes that ministry records show that a supervisor spoke to the appellant directly on August 24, 2021 and told the appellant that she was ineligible for the supplement for storage fees beyond the month pre-approved in February. The ministry suggests that, if the appellant has a different recollection, it may be that the appellant has forgotten, or does not remember accurately because of the stress and medical issues that she describes. The ministry relies on its records as an accurate record of its interactions and communications with the appellant.

In any event, the legislation does not authorize the ministry to pay storage fees retroactively, when there was no pre-approval, and the ministry is not satisfied that there were extraordinary circumstances. The ministry was aware of the appellant's situation and does not consider that her circumstances qualified as "extraordinary circumstances" that would excuse her from getting pre-approval.

At the hearing, the ministry's representative raised additional arguments that the ministry did not include in the reconsideration decision. They stated that a supplement for moving costs only includes temporary storage fees while someone is in the process of moving from one place to another, not ongoing storage fees such as those the appellant incurred. Further, the ministry representative said that, because the appellant's ex-fiancé has paid the storage fees, the ministry now views the amounts paid by the ex-fiancé as a debt of the appellant, not as storage fees, and the ministry does not pay a recipient's debts. The representative also said that, in their opinion, the ministry should be paying the storage fees until August 24, 2021, when according to the ministry's records the ministry first told the appellant that she was not eligible for a supplement for storage fees beyond February 2021.

Panel Decision:

Both the panel and the ministry are bound by the legislation that sets out the circumstances in which the ministry may provide a supplement for storage fees.

EAPWDR section 55(1) defines "moving costs" as "the cost of moving a family unit and the family unit's personal effects from one place to another." Moving costs can include storage fees while the person is moving, if the ministry is satisfied that storage is necessary to preserve the personal effects.

Under EAPWDA section 5 and EAPWDR section 55, the ministry may provide a supplement for moving costs if:

- the person is moving for one of the reasons listed in section 55(2);
- the person has no resources to cover the cost; and
- the person receives the ministry's approval before incurring the costs.

The supplement is limited to the least expensive appropriate cost for storage.

The ministry was satisfied that the appellant was moving for a reason listed in section 55(2), because her residence was being "decommissioned." The ministry was also satisfied that storage was necessary to preserve the appellant's personal effects, and that the storage fees were the least expensive appropriate cost.

The ministry determined that the appellant only had prior approval for the February 2021 storage fees, and there were no "exceptional circumstances" that would excuse her from getting approval before incurring the expenses. Further, the ministry was not satisfied that the appellant did not have resources available to cover the costs, because the storage fees were being paid each month.

The appellant maintains that she was led to believe that the storage fees would be paid on an ongoing basis from February 2021 onward, and the ministry failed to notify her otherwise. Therefore, the appellant argues that the ministry should pay the ongoing storage fees.

The ministry records show that the appellant obtained prior approval for one month of storage in February 2021, and that approval was temporary. The appellant then submitted an invoice for February 2021. The appellant had a telephone conversation with the ministry on June 11, 2021, asking for a supplement for storage fees since February. The appellant says that she was told to re-submit the February invoice, because it was missing. Then, according to ministry records, on August 24, 2021, a ministry supervisor told the appellant that her request for a supplement for moving costs beyond February 2021 was denied. On August 25, 2021, the ministry prepared a "reconsideration package," so that the appellant could request reconsideration of the denial decision, but the package was never picked up.

Where the appellant's recollection and the ministry's records differ, the panel accepts the ministry's evidence of its interactions and communications with the appellant. The panel notes that the appellant's evidence at the hearing was not consistent and tended to change according to what she heard from the ministry. Further, the appellant has suffered from significant stress and health issues that may have affected her memory and her recollection of events. She acknowledged that she did not remember, for example, where she was staying in August 2021, or the reasons she visited the ministry office in person twice in 2021. The panel does not suggest that the appellant was misrepresenting the events relating to the storage fees – only that the appellant's recollection may not be reliable, and where her recollection differs from the ministry records, the panel finds that the ministry records are more likely to be reliable.

At the hearing, the ministry representative raised further arguments not included in the reconsideration decision. The representative said that, under the legislation, the ministry could only pay storage fees on a temporary basis, while a person was moving from one residence to

another, and not, as in the appellant's case, while a person was without a permanent residence for an extended time. The representative also argued that, once the appellant's ex-fiancé had paid the storage fees, the ministry viewed that amount as a debt, rather than storage fees, and the ministry does not pay a recipient's debts. The ministry did not raise these arguments in the reconsideration decision, and in any event, it is not necessary for the panel to consider those arguments to decide the issue in this appeal.

Regarding the ministry representative's assertion that, in their opinion, the appellant should be eligible for the supplement up until August 2021, the panel notes again that both the panel and the ministry are bound by the legislation, which requires prior approval for a supplement for storage fees as part of moving expenses. The panel cannot consider the ministry representative's opinion when determining the extent of the ministry's authority under the legislation to pay a supplement for storage fees.

The legislation is clear that a person is eligible for a supplement for storage fees only if they receive approval from the ministry before incurring those costs. It may be that the ministry could have been clearer in some of its communications with the appellant, as it does not appear that she was aware that she needed to ask for prior approval of additional storage fees after February 2021. However, the appellant did not have that prior approval; therefore, under the legislation, the ministry cannot provide the supplement unless the ministry is satisfied that there were exceptional circumstances that excused the failure to get prior approval. The panel finds that, while the appellant faced challenges in communicating with the ministry and checking her bank account, the ministry was reasonable in its determination that the circumstances were not exceptional.

The panel finds that, based on the additional evidence of the appellant that her ex-fiancé paid the storage fees as a loan and she did not have enough money to pay him back each month, the ministry's determination that the appellant had resources to pay the storage fees, at least from June 2021 onwards, is no longer reasonably supported by the evidence. However, the panel finds that the ministry's determination that the appellant was not eligible to receive a supplement for storage fees beyond February 2021, because she did not have prior approval from the ministry, was a reasonable application of the legislation in the appellant's circumstances.

Conclusion:

The panel finds that the ministry's decision to deny the appellant a supplement for storage fees after February 2021 was a reasonable application of the legislation in the appellant's circumstances. The appellant is not successful in the 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.

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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)

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

Part H – Signatures

Print Name

Susan Ferguson

Signature of Chair

Date (Year/Month/Day)

2022/07/04

Print Name

Patrick Cooper

Signature of Member

Date (Year/Month/Day)

2022/07/04

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2022/06/30