

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the "**Ministry**") dated July 5, 2023 (the "**Reconsideration Decision**"), in which the Ministry denied the Appellant's request for a moving supplement for storage fees as he did not meet all the criteria under section 55 of the *Employment and Assistance for Persons with Disabilities Regulation*.

Part D – Relevant Legislation

- *Employment and Assistance for Persons with Disabilities Regulation* (the "**Regulation**") – section 55

Note: The full text is available after the Decision.

Part E – Summary of Facts**(a) The Reconsideration Decision**

The evidence before the Ministry from the Reconsideration Decision consisted of:

The Appellant is the recipient of disability assistance. As a result, he receives \$1358.50 per month for disability assistance and supplements, which includes \$983.50 for a support allowance, and \$375.00 for a shelter allowance. \$1000.00 of the disability assistance and supplements are paid directly to the treatment centre where the Appellant currently resides (the "**Treatment Centre**") for rent.

On October 11, 2022, the Appellant advised the Ministry that:

- he moved to the Treatment Centre and his belongings were placed in storage;
- the storage fees (the "**Fees**") he incurred were under his friend's name (the "**Friend**"); and
- he needed assistance to pay the Fees while receiving treatment at the Treatment Centre.

On November 7, 2022, the Ministry asked the Appellant to submit invoices to verify the Fees (then) incurred. The Appellant advised:

- he had given up his apartment so that he could receive treatment at the Treatment Centre;
- his Friend paid the Fees from September to November 2022;
- he submitted receipts from a storage company for September, October and November 2022 which identified Fees of \$309.75 for each month billed to the Friend.

On November 15, 2022, the Ministry approved the Appellant's request for a moving supplement of \$929.25 to pay the Fees for September to November 2022. Payment was made to the Appellant so that he could reimburse the Friend.

On December 8, 2022, the Appellant contacted the Ministry to request further assistance with the Fees for an additional three (3) months.

On December 19, 2022, the Appellant provided another receipt for \$309.75 for Fees for December 2022. Again, the Fees were billed to the Friend.

On December 23, 2022, the Ministry denied the Appellant's request for further Fees because, "*Your request was denied as it does not meet policy as your belongings have been in storage for 3 months and this is no longer part of a move. Further, the Ministry does not pay for invoices issued in someone else's name*" (the "**December 23rd Decision**"). [Note: During oral submissions, the Appellant advised that he did not receive the December 23rd Decision as it was mailed to an address at which he (then) no longer resided. On January 11, 2023 the Appellant updated his address with the Ministry; this is when he learned of the December 23rd Decision and requested a reconsideration of it].

On January 11, 2023, the Appellant commenced the second phase of his recovery program ("**Second Stage Treatment**").

On February 28, 2023, the Appellant's request for a moving supplement for Fees incurred between December 2022 to February 2023 was approved at the reconsideration of the Ministry's (then) denial of the Fees (the "**Prior Reconsideration Decision**"). In total, the Ministry approved the Fees for December 2022 to February 2023 which amounted to \$929.75.

On May 4, 2023, the Appellant contacted the Ministry and made another request for a moving supplement by submitting a further invoice and receipt evidencing that further Fees had been incurred (\$389.73) and paid (\$303.75). Again, the Fees were paid by the Friend.

On May 11, 2023, the Ministry denied the Appellant's Request for Fees because, "*... Client incurred costs before receiving minister's approval and is now requesting reimbursement. Minister does not consider there to be exceptional circumstances, client not eligible for moving supplement...*" (the "**Decision**").

On June 20, 2023, the Ministry received the Appellant's request for reconsideration of the Decision (the "**Request**"). In support of the Request, the Appellant provided a letter from his advocate (the "**Advocate**") stating, amongst other things:

- there can be no refusal to pay for the Fees;
- in the Prior Reconsideration Decision, the Ministry agreed to pay the Fees with no end date;
- an appeal of the Decision was not required; and
- the Ministry was acting unreasonably and causing the Appellant to suffer stress while in recovery.

The Advocate provided information related to the Prior Reconsideration Decision which, amongst other things, consisted of:

- the Appellant completed a 90-day program beginning on September 22, 2022, and ending on January 11, 2023;
- the Appellant is currently undergoing the Second Stage Treatment;
- financial stress and the loss of his belongings are detrimental the Appellant's recovery;
- the Appellant is searching for long-term housing; and
- the Appellant's personal belongings cannot be accommodated at the Treatment Centre.

Moreover, the Advocate suggested that the Appellant's rights, as provided for by the *Charter of Rights and Freedoms* (the "**Charter**"), were being infringed.

On June 27, 2023, the Appellant provided the Ministry with an additional invoice for the Fees (\$303.75) which was due on July 1, 2023. Again, the Fees were billed to the Friend.

On July 5, 2023, the Ministry issued the Reconsideration Decision wherein it denied the Request for the following reasons:

"Based on review of the information provided, the ministry is satisfied that you do not have the resources available to pay for the rental of the storage unit. Although the storage units were paid for already as indicated on the receipts, you previously stated that the account was under a friend's... name and that you are required to pay them back, so it is reasonable that you do not have the resources to pay for it yourself.

The criteria permitted in accordance with Section 55 (2) (a)-(g) of the Regulation as described below in Appendix B does not apply to your continuous storage of your belongings as you are not in the process of moving or needing to vacate your residence.

Storage fees can be covered when an individual is moving, if the ministry is satisfied that storing the personal effects is necessary to preserve the personal effects. You have been storing your belongings since at least October 2022 when you declared you were in a recovery facility and your items were in storage. The letters provided dated January 11, 2023, and January 20, 2023, state that you are in the process of finding long term housing while in temporary second-stage housing. However, it has now been 7 months since those letters were issued stating you are looking for housing, allowing you a significant amount of time to find suitable housing and retrieve your belongings from storage.

Additionally, you did not receive the ministry's prior approval before incurring the costs of storing your belongings beyond February 2023. It was stated in your previous reconsideration approval for storage fees that the ministry covering them was temporary and any future need for storage would need to be evaluated separately by the ministry. Your previous approval covered the period from December 2022 to February 2023 only. While the ministry acknowledges that your current living situation does not permit you to store your belongings there, it is important to note that no new circumstances have been identified since your last request that would hinder your ability to cover your current storage expenses or find suitable housing, with no evidence to support that you have already found more permanent housing that includes space for your personal belongings. As a result, the ministry is not satisfied that exceptional circumstances exist as the cost of ongoing storage beyond February 2023 is not considered unexpected.

As you have not satisfied all criteria under Section 55 of the EAPWD Regulation, the ministry has denied your request for a moving supplement for storage fees."

(b) The Appeal

On August 2, 2023, the Appellant filed a Notice of Appeal (the "**Appeal Notice**"). In the Appeal Notice, the Appellant wrote:

"... PLEASE SEE ATTACHED ALREADY APPEALED AND PAID..."

Presumably, the Appellant was referring to his documents previously submitted in support of the Prior Reconsideration Decision and the Request.

The Appellant's in person Appeal hearing was heard on September 14, 2023. The Appellant was joined by the Advocate. The Ministry appeared by telephone.

(c) Oral Submissions

At the Appeal hearing, the Appellant and the Advocate both confirmed their preferred pronouns as "he/his". The Appellant explained that he is a recovering addict; indeed, the Appellant volunteered that he has been an addict for approximately 40 years. Though on the road to recovery, the Appellant faces daily obstacles that act as triggers that could derail the progress he has made to date. For example, the current housing crisis impacts his inability to find long-term housing, and the threat of not being able to place his personal belongings in storage causes the Appellant stress that could cause him to relapse.

The Appellant explained that, as he has yet to find long-term housing, his move is still ongoing as his stint in the Treatment Centre is temporary for the purposes of Second Stage Treatment. Briefly, the Treatment Centre is a recovery residence focused on providing a recovery program for adult men who are experiencing difficulties with substance dependency. Currently, the Appellant resides with other men and shares a furnished bedroom along with common areas such as a kitchen and living area. The Appellant is on a wait list for BC Housing; however, there is no timeline for when such housing will be offered to him. As a result, the Appellant submits that he is still in the course of his move until he finds housing outside of the Treatment Centre.

The Appellant referred the Panel to the Prior Reconsideration Decision wherein the Ministry wrote, *"... This letter further indicates that the second stage housing were you currently reside is unable to accommodate your belongings. As such, the ministry is satisfied that the move for which you were previously approved to receive a moving supplement for storage is still ongoing, and that further assistance to cover storage fees is required during the course of this move... As such, ministry approves your request for a moving supplement of \$929.50 to cover storage fees for the months of December 2022 to February 2023 while you are in the process of moving..."* The Appellant submits that his circumstances have not changed since the Prior Reconsideration Decision was rendered; therefore, the reasoning within it should continue to apply and bar any further decisions to the contrary.

The Ministry referred to and relied upon the Appeal Record which largely consisted of the Reconsideration Decision. The Ministry explained that every request for a moving supplement is treated independently of a prior request of the same nature; therefore, the Ministry's findings in the Prior Reconsideration Decision did not necessarily apply to the current Reconsideration

Decision before the Panel. The Ministry also referred the Panel to the Prior Reconsideration Decision wherein the Ministry wrote, "... *Please note, as storage fees are intended to be temporary while you are in the process of securing new housing, any future need for storage would be assessed separately by ministry staff...*"; in short, every request for a moving supplement is a new and independent request. The Ministry also submitted that the Appellant's circumstances neither met the requirements of section 55(2) of the *Regulation*, nor were they exceptional. For clarity, the Ministry explained that the term "*exceptional circumstances*" is undefined but meant to address situations that are unexpected or that defy the norm. Regardless, the Ministry noted that the Appellant failed to obtain its prior approval before incurring the further Fees.

The Ministry had no objection to the Appellant's oral submissions or additional evidence. The Panel determined that the Appellant's submissions and evidence were admissible as additional evidence pursuant to section 22(4) of the *Employment and Assistance Act* as it was reasonably required for a full and fair disclosure of all matters related to the decision under Appeal. More specifically, the additional evidence contributed to the Panel's understanding of the circumstances surrounding the Appeal.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Reconsideration Decision in which the Ministry denied the Appellant's request for a moving supplement for the Fees as he did not meet all the criteria under section 55 of the *Regulation*.

(a) Appellant's Position

The Appellant argues that he should be eligible for a moving supplement as:

- he had to leave his prior residence so that he could enter the Treatment Centre to receive treatment which is temporary in nature;
- the Ministry continues to pay \$1,000.00 per month directly to the Treatment Centre to cover the Appellant's room and board;
- he pays \$200.00 per month to the Treatment Centre for room and board related to the Second Stage Treatment in addition to the \$1,000.00 already paid by the Ministry;
- his intention is to leave the Treatment Centre upon the completion of his Second Stage Treatment;
- his move is still ongoing as he has yet to find long-term residential housing;
- the storage of his personal belongings is required to preserve them as the Treatment Centre is unable to accommodate them;
- a failure to obtain a moving supplement could cause him to relapse given that stability is an important part of his recovery and treatment; and
- the Prior Reconsideration Decision gives rise to a legitimate expectation that he will continue to receive a moving supplement as his circumstances have not changed since it was handed down.

(b) Ministry's Position

The Ministry maintains that the Appellant is ineligible for a moving supplement for the same reasons stated in the Reconsideration Decision. It is Ministry position that the Appellant's circumstances neither met the requirements of section 55(2) of the *Regulation*, nor were they exceptional.

(c) Matters of Jurisdiction

Before addressing the merits of the Appeal, the Panel notes that it is unable to consider the Appellant's arguments related to alleged infringements of his *Charter* protected rights given that such arguments are outside of the Tribunal's jurisdiction in accordance with section 19.1 of the *Employment and Assistance Act* which states that section 44 of the *Administrative Tribunals Act*

applies. For clarity, section 44(1) of the *Administrative Tribunals Act* states that the Tribunal does not have jurisdiction over constitutional questions.

(d) Panel Decision

Pursuant to section 55(1) of the *Regulation*, "moving cost" means the cost of moving a family unit and the family unit's personal effects from one place to another, and 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 them.

Pursuant to section 55(2) of the *Regulation*, the Minister may provide a moving supplement in the following circumstances:

- 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;
- if the family unit is being compelled to vacate the family units rented residential accommodation for any reason, including the following: the accommodation is being sold; the accommodation is being demolished; the accommodation has been condemned;
- if the family unit's shelter costs would be significantly reduced as a result of the move; or
- if required to move to avoid an imminent threat to the physical safety of any person in the family unit.

Pursuant to section 55(3) of the *Regulation*, a moving supplement may be provided only if there are no resources available to the family unit to cover the moving costs, and the family unit receives the Minister's approval before incurring those costs. However, section 55(3.1) of the *Regulation* provides that prior approval is not required if the Minister is satisfied that exceptional circumstances exist.

(i) Do the Fees constitute "moving costs"?

The Ministry does not dispute that the Fees constitute moving costs. Indeed, there is no dispute that the Appellant is attempting to move his personal effects from one place to another, and that storing the Appellant's personal effects is necessary to preserve them.

(ii) Does the Appellant meet one (1) or more of the criteria listed in section 55(2) of the *Regulation*?

While the Ministry found that the Appellant's circumstances did not fit within one (1) of the criteria listed in section 55(2) of the *Regulation*, the Panel finds that the Appellant does fit within one (1) of the criteria listed in section 55(2).

Briefly, 55(2)(c) of the *Regulation* provides that a moving supplement may be provided to an individual if the individual is being compelled to vacate their rented residential accommodation for any reason. The Panel finds that the inclusion of the term “*any reason*” allows for a broad and purposeful interpretation of the relevant legislation.

In the circumstances, the Panel finds that the only way the Appellant could receive treatment to address his substance dependency issues was by admitting himself into the Treatment Centre to undergo various programs including the Second Stage Treatment. Put differently, the Appellant would not have received the type of treatment he requires to address his substance dependency and addiction issues if he stayed in his prior rented residential accommodation.

The Panel finds that the Ministry’s historical attempts to confine the Appellant’s move based on the number of months that had passed since he left his prior residence is unreasonable given its own conflicting decisions. For example, in the December 23rd Decision, the Ministry appeared to suggest that any move lasting longer than three (3) months no longer constituted a move. However, the Ministry changed its position in the Prior Reconsideration Decision where it approved the Fees beyond the three (3) month period. While the passage of time since a move commenced is a consideration that the Ministry ought to consider when deciding to approve a moving supplement, the Panel finds it is not, in and of itself, the sole consideration.

To the extent that the Ministry argues that the Appellant’s move can no longer be considered temporary given the passage of time, the Panel finds that each move must be viewed in context and account for unique circumstances. In the case of the Appellant, the Panel finds that he is still in the process of moving as he is looking for long-term housing so that he can leave his temporary accommodations at the Treatment Centre. While the Appellant’s current temporary arrangement provides him with some stability, it is by no means meant to be long-term or a permanent solution to his housing needs. Rather, it is akin to transitional housing that is meant to assist individuals during their addiction recovery just as hospitals do when they care for patients recovering from other health ailments; in both cases, the patients are anticipated and expected to leave.

As a result of the foregoing, the Panel finds that the Appellant was compelled to leave his prior rented residence due to his substance addictions; therefore, the Appellant does fit within one (1) of the criteria listed in section 55(2) of the *Regulation*.

(iii) Did the Appellant obtain the Minister’s prior approval. In the alternative, are the Appellant’s circumstances exceptional?

The Ministry does not dispute that the Appellant lacks the resources to pay the Fees. As a result, the Appellant satisfies section 55(3)(a) of the *Regulation*.

As it relates to section 55(3)(b) of the *Regulation*, the Appellant submits that he did not require the Minister’s prior approval before incurring the further Fees. Rather, the Appellant submits that the Prior Reconsideration Decision serves to suggest that the Minister approved his ability to incur the Fees in the future. While the Prior Reconsideration Decision could have been more clearly worded, the Panel finds that the Prior Reconsideration Decision cannot be read in the manner the

Appellant suggests; indeed, the Ministry clearly advised the Appellant that all future requests would be independently viewed when it wrote, "... *Please note, as storage fees are intended to be temporary while you are in the process of securing new housing, any future need for storage would be assessed separately by ministry staff...*" As a result, the Panel finds that the Appellant did not receive the Minister's prior approval to incur the Fees; therefore, the Appellant does not satisfy section 55(3)(b) of the *Regulation*.

Even if the Appellant incurred the Fees without receiving the Minister's prior approval, section 55(3.1) of the *Regulation* permits the Ministry to provide a moving supplement if the Minister is satisfied that exceptional circumstances exist. While the term "*exceptional circumstances*" is undefined, the Ministry explained it is meant to capture situations that are unexpected or that defy the norm. Upon questioning from the Panel, the Ministry did not take issue when it was suggested that exceptional circumstances could include situations that are beyond one's control.

In this case, the Ministry found, "... *with no evidence to support that you have already found more permanent housing that includes space for your personal belongings. As a result, the ministry is not satisfied that exceptional circumstances exist...*" Contrary to the Reconsideration Decision, the Panel finds that the Appellant's circumstances are exceptional. Here, the Appellant has provided evidence that he is confronted by two (2) issues beyond his control. First, the Appellant is grappling with the nation-wide housing crisis which has impeded his ability to find suitable long-term housing. Second, the Appellant is undergoing treatment to address an addiction. If the Appellant were able to control his substance dependency issues, he would be battling something other than an addiction which is not the case; hence, his addiction issues are also beyond his control.

As a result of the foregoing, the Panel finds that the two (2) issues confronting the Appellant, combined, provide for an exceptional circumstance that warrants an exception as provided for by section 55(3.1) of the *Regulation*.

(d) Conclusion

The Panel finds that the Ministry's decision to deny the Appellant's request for a moving supplement pursuant to section 55 of the *Regulation* was an unreasonable application of the applicable legislation in the circumstances. As a result, the Appeal is successful.

While the Panel finds the Appellant successful in this Appeal, it notes the Ministry's prior advisement that any future need for storage will be assessed separately by Ministry staff. As a result, the Appellant should be prepared to provide evidence his ongoing treatment and efforts to seek out long-term housing as a failure to do so may be seen as contrary to the exceptional circumstance currently confronting him. Further, the Appellant is encouraged to seek the Minister's prior approval before incurring further Fees as the relevant legislation requires.

(e) Legislation

Employment and Assistance for Persons with Disabilities Regulation, BC Reg 265/2002

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](#).]

2023-0224

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

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2023/09/14

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2023/09/14

Print Name

Diane C. O'Connor

Signature of Member

Date (Year/Month/Day)

2023/09/14