IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Atfield v. Employment and Assistance Appeal Tribunal,*** 2006 BCSC 1480

Date: 20060922
Docket: S062413
Registry: Vancouver

Between:

William J. Atfield Jr.

Petitioner

And:

Employment and Assistance Appeal Tribunal and Minister of Employment and Assistance

Respondents

Before: The Honourable Mr. Justice Groberman

Oral Reasons for Judgment

In Chambers
September 22, 2006

Appearing on his own behalf	W.J. Atfield
Counsel for the Attorney General of British Columbia	S.J. Martorana
Place of Hearing:	Vancouver, B.C.

[1] **THE COURT:** This is a judicial review application from a decision of the Employment and Assistance Appeal Tribunal given February 3, 2006, following a hearing February 1, 2006. That appeal decision concerned a claim for moving expenses by Mr. Atfield. The situation with regard to the moving expenses is an unfortunate one.

[2] In October of 2005, Mr. Atfield's landlord, the Trinity Housing Society, gave him notice that he would have to vacate his unit in fairly short order. The reason for the notice was that Mr. Atfield's daughter was no longer living with him a sufficient proportion of the time to qualify him to remain in the unit that he was renting. Fortunately, the Society was able to accommodate Mr. Atfield in a smaller and less expensive unit and he desired to move to that unit

[3] On October 17 or 18, 2005 – there is some dispute as to which date, but nothing turns on it – Mr. Atfield went to his social assistance worker for another reason, and asked the worker whether moving expenses would be available to him. Exactly what passed between the worker and Mr. Atfield is a matter of dispute, but, it is common ground that the worker told Mr. Atfield that he would qualify for moving expense reimbursement pursuant to section 55(2)(d) of the ***Employment and Assistance for Persons with Disabilities Regulation***, B.C. Reg. 265/2002.

[4] The worker's notes indicate that Mr. Atfield was told he would qualify, but that he would have to obtain estimates of his moving expenses and provide them to the Ministry. Mr. Atfield disputes that, and says he was not told that he had to obtain estimates. In any event, the Ministry was later advised of his new address, and Mr.

Atfield did move. He provided what purported to be estimates and a bill indicating the amount spent on the move. With the moving expenses and change of utilities, it comes, as I understand it, to about $400.

[5] The Ministry rejected the claim for moving expenses, citing s. 55(3)(b) of the Regulation, which states that:

> (3) A family unit is eligible for a supplement under this section only if
>
> (b) a recipient in the family unit receives the minister's approval before incurring those costs.

[6] The concurrent findings by the tribunal and workers below is that the approval of the moving costs that appears to have been given on October 17 or 18 was conditional upon estimates being provided to the Ministry. That finding of fact is disputed by Mr. Atfield, but it appears to me that there was some evidence upon which such a finding could be made. Although I am reluctant to accept that finding, I do find that under the ***Administrative Tribunals Act,*** S.B.C. 2004. c. 45 and under the law of judicial review, I am bound by it. I must say that I would not have come to the same conclusion. I would have found, rather, that the request for estimates was not a condition of approval, but rather a request to facilitate the granting of the allowance.

[7] I would not interpret s. 55(3)(b) as mandating estimates prior to the approval of moving expenses. With all due respect to the Ministry, which apparently has a policy to that effect, I find such an interpretation to be a patently unreasonable interpretation of the section. There are a number of factors leading me to that conclusion. Moves must sometimes be made in exigent circumstances; given the limited ability of recipients, particularly in some parts of the province, to even obtain estimates, I cannot accept that it was intended that estimates would always be necessary. I also note that there is protection for the Ministry in s. 55(4)(a) of the Regulation, which limits the amount of reimbursement to the least expensive appropriate mode of moving.

[8] Under the circumstances, a decision based on the idea that estimates must always be provided under s. 55(3)(b) prior to a move taking place is a patently unreasonable interpretation of the statute. It may be, however, that a worker has the discretion to demand estimates before approving moving expenses in appropriate circumstances. I turn, then, to the question of whether such an exercise of discretion was patently unreasonable in the instant case.

[9] The circumstances that the parties found themselves in in late October of 2005 were that Mr. Atfield needed to move, with haste. He was going to lose his then-current place of residence, and a satisfactory place of residence had come available. There was no guarantee that such a satisfactory residence would be available in the future.

[10] Limited time was available to arrange the move, and the move was one that clearly would be an economical one, being, as I understand it, within the same development. Under the circumstances, the demand that estimates be provided before a moving expenditure supplement would be approved was patently unreasonable.

[11] As such, the rejection of the moving expense, or at least the rejection contingent upon the provision of estimates before the move, was not a decision that should be allowed to stand. I find, therefore, that the requirement that estimates be provided prior to the move ought to be overturned, and, as a result, I find that there was prior approval of moving expenses under s. 55(3) of the Regulation.

[12] I would pause to say that this case is a very unusual one. Through circumstances that I need not go into, and are largely irrelevant, Mr. Atfield managed to find resources temporarily to lay out money for the move. In a typical situation, I would expect that the Ministry would be asked to front the money for the move, and in such a circumstance it seems to me entirely reasonable to demand evidence of the cost, in the form of proper estimates, before money is advanced.

[13] My decision, therefore, should not be taken as a precedent suggesting that in all cases estimates are unnecessary prior to a moving expense being incurred. I am saying merely that in this particular case, and in the circumstances that Mr. Atfield found himself in at the time of the move, it was patently unreasonable for the Ministry to require estimates from him prior to the move taking place. It is important to recognize that he was not seeking the money prior to actually expending it; what he was seeking was assurance that he would receive reimbursement for such expenditures as were necessary to effect the move.

[14] The result, then, is that I find that judicial review must be granted. The tribunal failed to consider the issue of whether the worker’s exercise of discretion had been patently unreasonable; in other words, it failed to consider

a crucial aspect of the decision it was reviewing. I am directing that the Ministry reimburse Mr. Atfield for "the cost of the least expensive appropriate mode of moving," pursuant to s. 55(4)(a) of the Regulation.

[15] I recognize that Mr. Atfield has provided some material substantiating the cost of the move, but I also understand that the Ministry, for quite proper reasons, may wish to argue that the material was insufficient. Some amount is quite obviously payable, *i.e.* the cost of disconnecting and reconnecting utilities, which should not be a matter of dispute. The real area of concern may be the amount paid for actually moving goods from one place to another. I do not know if that is a matter of controversy or not but, if it is, it is appropriately determined within the administrative process rather than by this court. The parties have agreed that the best place for that matter to be resolved is at the Tribunal, rather than remitting this matter to the original line worker.

[16] In the circumstances, I am remitting the matter to the Tribunal with a direction that it determine the cost of the least expensive appropriate mode of moving, and to order reimbursement of that amount.

"H.M. Groberman, J."
The Honourable Mr. Justice H.M. Groberman

October 24, 2006 – ***Revised Judgment***

Corrigendum to the Oral Reasons for Judgment issued advising that the first sentence of paragraph 13 should be amended by the addition of the word "not" and should read as follows:

> 13. My decision, therefore, should not be taken as a precedent suggesting that in all cases estimates are unnecessary prior to a moving expense being incurred.

The listing of counsel on the first page should also be amended as follows:

Appearing on his own behalf	W.J. Atfield
Counsel for the Attorney General of British Columbia	S.J. Martorana