

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated 21 January 2013 which determined that the appellant was not eligible to receive a bus pass supplement under section 51(1) of the Employment and Assistance for Persons with Disabilities Regulation because the appellant is ineligible for disability assistance since he started receiving Canada Pension Plan income in excess of his disability assistance.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 51.

PART E – Summary of Facts

The evidence before the Ministry at reconsideration consisted of:

- In November 2010 the appellant was declared eligible for disability assistance and received those payments until February 2012.
- In February 2012, the appellant's file was transferred from 'disability assistance' to 'medical services only' as his income received from the Canada Pension Plan (CPP) exceeded his disability assistance rate and he was thus determined ineligible for disability assistance anymore.
- A request for reconsideration dated 7 January 2013 signed by the appellant who states that he has paid for the CPP all his life and qualified for disability but his CPP income is just over what he would receive as disability assistance. He indicates that he believes this policy is discriminatory as a regular one-zone pass amounts to 10% of his income and that he cannot afford it.

In his Notice of Appeal dated 1 February 2013 the appellant reiterates he believes the ministry's decision discriminates against people who have paid into CPP all their lives and qualified for disability benefits and that he should be allowed an annual bus pass.

At the hearing, the appellant stated that he was on CPP disability benefits that barely exceeded the ministry's income assistance and that it cost him 10% of his income to pay for his bus pass, which he could not afford. He also said he felt there was an arbitrary line set that prevented him from the bus pass supplement that should not exist since he was nonetheless disabled, indicating that he was aware of people who were in much better shape than him that were provided with such supplement. He reiterated that he had paid CPP all his life and that now he qualified for disability benefit but was denied the bus pass supplement while people who never contributed to the CPP qualified for disability income and thus, for a bus pass supplement, which he said was unfair. He finally said that denying this supplement amounted to discrimination and that if he was still denied it, he would bring the matter before the Human Rights Coalition where he believe it would be an easy win. The ministry indicated that in February 2012, the appellant's CPP payments started exceeding the amount of disability assistance he would otherwise be eligible to, at that time by only a few dollars but that differential increased slightly in 2013 because of CPP indexation to the cost of living.

The panel determined the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was in support of the records before the Minister at reconsideration and particularly that it was confirming such evidence, providing more details.

PART F – Reasons for Panel Decision

The issue under appeal in this case is whether the Ministry's decision that the appellant was not eligible to receive a bus pass supplement under section 51(1) of the EAPWDR because the appellant is ineligible for disability assistance since he started receiving Canada Pension Plan income in excess of his disability assistance was either a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation can be found at section 51(1) of the EAPWDR:

51 (1) The minister may provide a supplement to or for a family unit that is eligible for disability assistance and contributes \$45 to the cost to provide an annual pass for the personal use of
(a) a person with disabilities in the family unit, or [...]

The ministry argues that it does not have any latitude but to apply the legislation and that because the appellant's CPP monthly payments exceeded what he would otherwise be eligible for in terms of disability assistance, then he ceased being eligible to such assistance and, consequently, he does not meet the criteria of s. 51(1) of the EAPWDR for a bus pass supplement. The ministry further argues that there is no legislative discretion that would allow any exception. Finally the ministry recognizes that the appellant has the Person with Disabilities (PWD) designation but that does not make him eligible for a bus pass supplement because he must also receive disability assistance, which he does not.

The appellant argues that first, his CPP disability payment barely exceeds the disability assistance he could get from the ministry and that a monthly bus pass cost him over 10% of his CPP payments, which is unaffordable for him. Secondly, he argues that the legislation provides for an arbitrary line between eligibility and ineligibility and he finds himself on the wrong side of that line. He further argues that people who do not receive CPP end up having about the same monthly income than him but because they receive disability assistance payment by the ministry they end up qualifying for a bus pass supplement, unlike him which he argues is unfair. Thirdly, he argues that he has been paying CPP all his life and became eligible to the disability benefit but people who did not contribute to the CPP end up being better off than him because they get the bus pass supplement in addition to their disability assistance. He argues that depriving him from the bus pass supplement discriminates against him as he has the PWD status but not the assistance and is a violation of his human rights.

The panel finds the ministry's determination that the appellant, while having a PWD designation, receives CPP income in excess of his disability assistance rate and therefore became ineligible to disability assistance and, consequently, ineligible for a bus pass supplement under s. 51(1) of the EAPWDR is a reasonable application of the legislation in the circumstances of the appellant. In terms of the appellant's argument that the legislation draws a line that is discriminatory and unfair to him, the panel acknowledges the argument but determines it has no jurisdiction over this issue under s. 24(1) of the Employment and Assistance Act (EAA) that states the panel must determine whether the decision is a reasonable application of the applicable enactment in the circumstances of the appellant. Additionally, pursuant to s. 19.1 of the EAA, s. 46.3 of the Administrative Tribunals Act applies to the tribunal and provides that the tribunal does not have the jurisdiction to apply the Human Rights Code. Therefore, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.