

PART C – Decision under Appeal

This is an appeal of a decision of the Ministry of Social Development ('the ministry') dated December 28, 2012. The ministry found that the appellant was not eligible for a bus pass subsidy. The ministry found that he was no longer eligible as he is no longer eligible for disability assistance. The ministry relied on section 51 of the Employment and Assistance for Persons With Disabilities Regulation ('EAPWDR').

PART D – Relevant Legislation

EAPWDR section 51

PART E – Summary of Facts

Evidence before the ministry at the time of its reconsideration:

- A note from the appellant's general practitioner, dated October 10, 2012, stating that '[the appellant] suffers from psoriatic arthritis and diabetes mellitus, he has hypertension. He would benefit from a bus pass as he has significant joint mobility issues from his arthritis.'
- The reconsideration decision states that the appellant switched from disability assistance to medical services only (MSO) in February 2012 as he started receiving CPP income in excess of his disability assistance rate.
- A letter from the appellant, dated December 12, 2012, stating the following:
 - When he turned 60 he was eligible for a pension from his previous employer. He also received a call from the ministry stating that there would be changes because he was receiving CPP disability.
 - He sought legal advice regarding his employer pension. Rather than place the money in trust, he was advised to take it as monthly income, which he did.
 - The combined total of CPP and the employer pension is essentially the same as the amount he previously received on disability assistance, however the cost of a bus pass has risen from \$45 per year to \$552 per year.
 - He was advised by the ministry that had his employer pension been placed in trust he still be eligible for the bus pass subsidy.
 - He has macular degeneration, dermatitis, high cholesterol, high blood pressure, psoriatic arthritis, psoriasis and hypertension.
 - He is unable to maintain his lifestyle with the additional amount he must pay.

Evidence presented at the hearing:

The appellant provided oral evidence that his lawyer gave him the wrong advice. He should have placed the money in trust instead of receiving it as income. His employer told him that once the election was made to receive it as income it cannot be reversed. His income is essentially the same as it was when he was on disability assistance but now he must pay \$552 per year for a bus pass, rather than \$45.

He receives \$136 from his employer pension and an amount over \$800 from CPP disability. He couldn't recall the exact amount.

In response to questioning, the ministry stated that the appellant's income was in excess of the amount to be eligible for disability assistance.

Under section 22(4)(b) of the Act, the Panel admitted the new evidence as it is in support of information and records which were before the Ministry at the time of its decision.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision dated December 28, 2012, which found that the appellant was not eligible for a bus pass subsidy, was reasonably supported by the evidence, or a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Section 51 of the EAPWDR states:

Bus pass supplement

- 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
 - (b) the spouse of that person if that spouse
 - (i) is 60 or more years of age,
 - (ii) receives the federal spouse's allowance or federal guaranteed income supplement, or
 - (iii) is 65 years of age or more and meets all of the eligibility requirements for the federal guaranteed income supplement except the 10 year residency requirement.
- (2) In this section, "**annual pass**" means an annual pass to use a public passenger transportation system in a transit service area established under section 25 of the *British Columbia Transit Act*.

The appellant doesn't argue that his income is in excess of the eligibility level for disability assistance but that he was given poor advice from his lawyer regarding the placement of his employer pension into a trust fund. He feels that it is unfair that his income is essentially the same as it was prior to receiving CPP disability and the employer pension, and that he shouldn't have to pay more for a bus pass.

The ministry argued that, as he is in receipt of these two pensions, he no longer meets the eligibility criteria for disability assistance, which is the test in legislation for a bus pass supplement.

The panel notes that there was not a dispute regarding the level of income now received by the appellant nor whether he met the threshold for disability assistance. The appellant was concerned about the apparent unfairness resulting from receiving advice which he doesn't consider was in his interest, and the fact that he receives approximately the same income now as he did under disability assistance, but must pay much more for a bus pass.

The panel is sympathetic with the appellant but does not find that the ministry was unreasonable. Section 51 is clear that the family unit must be eligible for disability assistance to receive the bus pass for \$45. There is no evidence that the appellant is eligible for disability assistance.

In conclusion, the panel confirms the ministry's decision, finding it was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.