

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated January 7, 2013 which denied the appellant's request for a supplement to cover the cost of an annual bus pass. The Ministry held that the requirements of Section 51 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) were not satisfied as the appellant is not eligible for disability assistance.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR),
Sections 42.1 and 51

Employment and Assistance for Persons With Disabilities Act (EAPWDA), Sections 1, 5, 6, and 14

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision consisted of the Request for Reconsideration- Reasons.

In his Notice of Appeal, the appellant stated that he disagrees with the ministry's reconsideration decision because he has no way to get to his appointments in his community without a bus pass. He gets just enough money per month to live and he cannot afford to buy a bus pass every month. The appellant stated that he needs some way to do his food shopping so he can eat and live.

In his Request for Reconsideration, the appellant stated that he needs a bus pass to get to his appointments and to pick up his cheque at the ministry office at the end of every month. The appellant stated that he should not have to lose his annual bus pass, that he is on disability and he receives disability rates every month. The appellant stated that it may say that he is on hardship but he still receives the disability rate. He needs the ability to travel on the bus to his appointments. The appellant stated that he should not have been convicted of welfare fraud, that the investigator got the amount that he did not claim wrong, that it was \$3,585.74 not \$6,000. The appellant stated that he is being unfairly targeted and emotionally damaged because of this.

At the hearing, the appellant stated that he was convicted of welfare fraud and he has served his time and he has to pay the amount back. The appellant stated that he is still receiving the same amount from the ministry and that it is disability even though it has been labeled "hardship assistance." The appellant stated that by calling it hardship assistance, he is no longer eligible for the employment earnings exemption, or for dental coverage or the yearly bus pass. The appellant stated that he needs a bus pass to get around his community because it is not a small town. The appellant stated that he is dealing with Crohn's disease and he has to see his doctor and go shopping for food and pay his bills. He does not have someone to drive him around and they would want gas money anyway that he cannot afford on a limited income. The appellant stated that he does not believe that he should be restricted in this way for one conviction and the amount that he did not claim as income was much less than what the investigator stated. The appellant stated that it was actually his ex-spouse that reported the amounts while he was busy working. The appellant stated that he has already served 3 months in house arrest, he has a criminal record, that he made a mistake and he should not be further penalized on top of that. The appellant stated that he cannot survive without disability assistance because it is his only source of income. The appellant stated that this restriction is not fair to him as a person.

The ministry relied on its reconsideration decision which included evidence that the appellant received a Persons With Disabilities (PWD) designation in August 2004. The appellant was convicted of fraud under \$5,000 in October 2011 and subsequently received a lifetime ban from receiving disability assistance due to a criminal conviction of fraud in respect of receiving assistance that he was not eligible to receive. The appellant has been in receipt of hardship assistance since February 2012. On December 4, 2012, the appellant requested the 2013 bus pass supplement and his request was denied.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision which denied the appellant's request for a supplement to cover the cost of an annual bus pass because the appellant is not eligible for disability assistance, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the appellant's circumstances.

Section 51 of the EAPWDR provides:

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.

Section 1 of the EAPWDA provides:

"**disability assistance**" means an amount for shelter and support provided under section 5 [disability assistance and supplements];

"**hardship assistance**" means an amount for shelter and support provided under section 6 (1) [hardship assistance];

Section 5 of the EAPWDA provides:

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.

Section 6 of the EAPWDA provides:

Hardship assistance

6 (1) Subject to the regulations, the minister may provide hardship assistance to or for a family unit that

- (a) is eligible for it, and
- (b) is not eligible for disability assistance.

(2) If hardship assistance is repayable, before providing it the minister may specify and require a particular type of security for repayment.

Section 14 of the EAPWDA provides:

Consequences for conviction or judgment in relation to Act

- 14 (1) A family unit that includes a person who is convicted of an offence under the Criminal Code in relation to obtaining money, under this Act or the Employment and Assistance Act, by fraud or false or misleading representation is subject to the consequence described in subsection (5) for a family unit that matches the person's family unit for the lifetime of the person beginning with the first calendar month following the date of the conviction.
- (2) A family unit that includes a person who is convicted of an offence under this Act or the Employment and Assistance Act is subject to the consequence described in subsection (5) for a family unit that matches the person's family unit, beginning with the first calendar month following the date of conviction,
- (a) after a first conviction, for a period of 12 consecutive months,
- (b) after a second conviction, for a period of 24 consecutive months, and
- (c) after a third conviction, for the lifetime of the person.
- (3) If
- (a) [Repealed 2006-22-10.]
- (b) a court has given judgment in favour of the government in an action for debt against a person for obtaining disability assistance, hardship assistance or a supplement under this Act, or income assistance, hardship assistance or a supplement under the Employment and Assistance Act, for which he or she was not eligible, unless the disability assistance, hardship assistance, income assistance or supplement was provided to or for the person in error, the minister may declare that the person's family unit is subject to the consequence described in subsection (5) for a family unit that matches the person's family unit for the prescribed period, beginning with the first calendar month following the date of the judgment.
- (4) The periods prescribed for the purpose of subsection (3) may vary with the number of applicable judgments.
- (5) If a family unit includes
- (a) only persons described in subsection (1) or (2), or subsection (3) if the minister has made a declaration under that subsection, the family unit is not eligible for disability assistance for the applicable period, and
- (b) one or more persons described in subsection (1) or (2), or subsection (3) if the minister has made a declaration under that subsection, and at least one other person, the amount of disability assistance, hardship assistance or a supplement provided to or for the family unit must be reduced by the prescribed amount for the applicable period.

The appellant's position is that he still receives the disability rates even though it is being called "hardship assistance." The appellant argues that he should not have been convicted of welfare fraud and that the investigator got the amount that he did not claim wrong. The appellant argues that he has done his time for his conviction, that he has to pay the amount back, and he should not have this additional restriction of no bus pass. The appellant argues that he is dealing with Crohn's disease and needs a bus pass to get to his appointments, to shop for food, and to pick up his cheque at the ministry office. The appellant argues that he is being unfairly targeted and emotionally damaged because of this.

The ministry argues that the appellant has the PWD designation but he is ineligible for disability assistance due to a criminal conviction and a lifetime ban on eligibility for disability assistance under Section 14 of the EAPWDA. The ministry argues that the appellant has been in receipt of hardship assistance since February 2012 provided under Section 6 of the EAPWDA and Section 42.1 of the EAPWDR. The ministry argues that since the appellant is not eligible for disability assistance, he does not qualify for the bus pass supplement, pursuant to Section 51 of the EAPWDR. The ministry argues that the bus pass supplement is not available to hardship assistance recipients even though the assistance rates for shelter and support are the same.

Under Section 51 of the EAPWDR, a bus pass supplement may be provided to or for a family unit that is eligible for disability assistance. Section 1 of the EAPWDA defines "disability assistance" to mean an amount for shelter and support provided under Section 5 of the Act and defines "hardship assistance" to mean an amount provided under Section 6 of the Act. Although the appellant has a PWD designation, he has been eligible for and in receipt of hardship assistance, pursuant to Section 6 of the EAPWDA and Section 42.1 of the EAPWDR, since February 2012 and at the time of his request for the bus pass supplement in December 2012. While the amount that the appellant receives each month as hardship assistance may be the same as the amount he previously received as disability assistance, the ministry pointed out that the appellant has been found eligible for hardship assistance under Section 6 of the EAPWDA and that he has a lifetime ban from eligibility for disability assistance as a consequence of his criminal conviction for fraud. One of the requirements for eligibility for hardship assistance, as set out in Section 6, is that the family unit is not eligible for disability assistance. The appellant did not dispute that he has a criminal conviction for fraud with respect to assistance that he was not eligible to receive and that he received a lifetime ban from eligibility for disability assistance as a consequence, but he argues that he has done his time and he should not have this additional penalty since he needs the bus pass to get to his appointments, to shop for food and to pick up his cheques. The panel finds that the ministry reasonably concluded that the provisions of Section 51 of the EAPWDR make the bus pass supplement available only to those eligible for disability assistance and not for those eligible for hardship assistance, and that there is no discretion provided in the section for the ministry to determine otherwise.

The panel finds that the ministry's reconsideration decision, which denied the appellant's request for a supplement to cover the cost of an annual bus pass because the appellant is not in receipt of disability assistance, was a reasonable application of the applicable enactment in the appellant's circumstances and the panel confirms the ministry's decision.