

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision dated September 15, 2015 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 9 and 51

## PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Decision of the Employment and Assistance Appeal Tribunal dated February 28, 2013 in which the panel confirmed the ministry's reconsideration decision that the appellant was not eligible to receive a bus pass supplement under Section 51 of the EAPWDR because he was in receipt of Canada Pension Plan (CPP) income in excess of the amount of his disability assistance and, therefore, was not eligible for disability assistance;
- 2) Letter dated July 22, 2015 to the ministry in which the appellant requested a disability transit pass application for 2015;
- 3) Letter dated August 10, 2015 to the ministry in which the appellant requested a disability transit pass application for 2015;
- 4) Letter dated August 18, 2015 to the appellant in which the ministry denied the appellant's request for a bus pass; and,
- 5) Request for Reconsideration dated September 1, 2015.

In his Request for Reconsideration, the appellant stated that:

- He worked hard all his life to qualify for CPP Disability benefits and he should not be penalized.
- Receiving benefits from the federal government in no way should absolve the province from providing the services provided to those with Persons With Disability (PWD) status.
- The line is very arbitrary.
- He was told that if he were receiving assistance solely he could earn up to \$800 per month and not be penalized.
- He was told that CPP Disability benefits count as "unearned income," that he has done nothing to earn this amount.
- He worked hard and paid out of his income for these benefits.
- He is asking for equal treatment as a disabled person.
- There is an exception for those who meet the requirement for GIS but are not eligible due to the 10-year residency requirement but those who have lived here all of their lives get no help.
- The amount he has paid for monthly one-zone passes plus add-ons is a hardship as it represents 10% of his income.
- The amount he receives for CPP Disability benefits over what he would receive for assistance does not cover this.
- He asks that the ministry extend the disability pass on the basis of hardship, or that an exception be made on the basis of compassion.

### *Additional Information*

In his Notice of Appeal dated September 20, 2015, the appellant stated that money is extended to refugees but there is no help for disabled persons at home. Paying for a regular pass inflicts a hardship and must change.

At the hearing, the appellant stated that:

- He spends \$91 each month for his transit pass for an adult, 1-zone pass.
- Since he now receives \$973 per month in CPP disability benefits, the cost of the transit pass represents 10% of his income and is a financial hardship.
- He spends \$3,094 each year for the monthly transit pass plus day passes and add-ons and this has to come out of his own pocket. He would like the pass on compassionate grounds.

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- When he has to go to see his audiologist in another community, he has to purchase an additional day pass of \$9.70 which represents a hardship to him.
  - He has nothing left after paying for his food, he is not able to save anything and he sometimes has to do without. If his bus pass was paid, he could be fully self-sufficient. Paying for the bus pass is the “straw that breaks the camel’s back.”
  - He worked hard to qualify for CPP disability benefits which are considered “unearned” income by the ministry.
  - He believes it is unfair that those who receive assistance are entitled to the transit pass. It should be recognized that he is also a disabled person in need. He is disabled to the extent that he is unable to obtain or sustain meaningful employment.
  - Providing the transit pass to him would not bankrupt the province and the world would not come to an end. If \$1 million can be found to assist refugees, then funds are arguably available to help people at home too.
  - His MLA’s office has said that they are working to change the legislation but 2 ½ years later nothing has changed. The federal and provincial governments should be working together.
  - He will keep fighting to secure the transit pass.
  - Asked what has changed in his circumstances since the previous decision by the Tribunal, the appellant stated that he had to surrender his driver’s license because his balance has deteriorated due to Parkinson’s disease. He can no longer do volunteer work that involves standing for several hours. His CPP disability benefits have gone up from \$922 per month in 2013 to \$973 per month in 2015 but the difference still does not cover the cost of the transit passes. He is not aware of any changes to the legislation that applies to him but it is still unfair.
  - His request for consideration of this issue by the Human Rights Tribunal was rejected, as was his appeal of that decision, as they said there was no discrimination.

The ministry relied on its reconsideration decision, as summarized at the hearing. The ministry stated that:

- The appellant has PWD designation but was transitioned to Medical Services Only (MSO) in March 2012.
- The amount of his CPP Benefits (\$925.56) exceeded the amount of his disability assistance (\$906.42) and he was no longer eligible for disability assistance.
- The appellant’s 2013 request for a bus pass was denied by the ministry at reconsideration and this was upheld by a decision of the Employment and Assistance Appeal Tribunal.
- The legislation has not changed since the appellant’s last appeal.
- The ministry is a payer of last resort so all other benefits must be relied upon first.
- The appellant’s circumstances have not changed since he is still receiving CPP disability benefits in excess of his disability assistance rate of \$906.42 for a single person. The ministry will extend a right of reconsideration to allow the client an opportunity to show whether there has been a change in circumstances.
- Since the appellant has transitioned to MSO, he is still entitled to many medical benefits.

## 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 9 of the EAPWDR provides:

### **Limits on income**

- 9 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.
- (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

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 18 of the Employment and Assistance Act (EAA) provides:

### **No appeal from decision based on same circumstances**

- 18 If a person reapplies for income assistance, hardship assistance or a supplement after
- (a) the eligibility of the person's family unit for the income assistance, hardship assistance or supplement has been determined under this Act,
  - (b) a right of appeal under section 17 (3) has been exercised in respect of the determination referred to in paragraph (a), and
  - (c) the decision of the tribunal in respect of the appeal referred to in paragraph (b) has been implemented, no right of reconsideration or appeal exists in respect of the second or a subsequent application unless there has been a change in circumstances relevant to the determination referred to in paragraph (a).

### *Appellant's position*

The appellant's position is that he worked hard all his life to qualify for CPP Disability benefits and he is disabled and it is unfair that those in receipt of disability assistance qualify for the bus pass supplement. The appellant argued that he spends \$3,094 each year for the monthly transit pass plus day passes and add-ons when he has to go to see specialists such as his audiologist in another community, which represents a hardship to him. The appellant argued that the bus pass should be provided by the ministry on the basis of hardship, or that an exception be made on the basis of compassion.

### *Ministry's position*

The ministry's position is 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 argued that there is no legislative discretion that would allow any exception.

### *Panel decision*

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. Although the appellant has a PWD designation, he has been transitioned to receive MSO since March 2012, and at the time of his request for the bus pass supplement in July 2015, as he is in receipt of CPP disability benefits in an amount that exceeds his disability assistance rates. The appellant acknowledged that he currently receives \$973 per month in CPP disability benefits and he does not dispute that the disability assistance rate for a single person is \$906.42. Section 9(2) of the EAPWDR stipulates that a family unit is not eligible for disability assistance if the net income of the family unit equals or exceeds the amount of disability assistance determined for the family unit. The appellant argued that he spends \$3,094 each year for the monthly transit pass plus day passes and add-ons when he has to go to see specialists in another community, which represents a hardship to him; the ministry pointed out that with MSO the appellant is entitled to apply for medical benefits under Schedule C of the EAPWDR, which may include a supplement for medical transportation under Section 2(1)(f) if the criteria in the section are met. However, 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 there is no discretion provided in the section for the ministry to determine otherwise.

### *Conclusion*

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 he continues to be ineligible for disability assistance, was a reasonable application of the applicable enactment in the appellant's circumstances and the panel confirms the ministry's decision.