

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (“the ministry”) dated 28 December 2016 that denied the appellant’s request that she be provided a transportation support allowance (TSA) in the form of money (\$52) for the months of October and November 2016. The ministry held that under section 24.1 of the Employment and Assistance for Persons with Disabilities Regulation, as the appellant received the TSA in the form of a bus pass for September, October and November, the ministry is not permitted to assist her with the other form of the TSA, \$52 in money, for October and November 2016.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 24.1, 81 and 51.

PART E – Summary of Facts

With the consent of the parties, the hearing was conducted in writing pursuant to section 22(3)(b) of the *Employment and Assistance Act*.

The evidence before the ministry at reconsideration included the following, as summarized from the ministry section of the appellant's Request for Reconsideration:

- The appellant is a recipient of disability assistance.
- The appellant applied for a 2016 bus pass on 12 September 2015. This was approved.
- On 03 August 2016, the appellant contacted the ministry. While she took issue with the TSA program, she stated that she wanted to cancel her bus pass in order to receive the additional \$77 per month (The \$52 TSA in money + the additional \$25 in increased disability assistance support allowance). She indicated that she was aware that she could continue to use her bus pass until the end of August. A service request was created to deal with her request
- On 12 August 2016, the service request was cancelled. It was noted that the appellant currently had a bus pass.
- On 01 September 2016, the TSA and the increase in disability assistance support allowance rates came into effect.
- On 28 October 2016, the appellant contacted the Ministry. She stated that she had requested the TSA in the form of money be added to her file in August 2016, but this had not been issued to her. Her bus pass was cancelled, effective 30 November 2016, as assistance for the November 2016 assistance month had already been issued.
- On 07 November 2016, the ministry noted that it wasn't able to provide an additional \$52 for a TSA as the appellant had an active bus pass.
- On 06 December 2016, the appellant again contacted the Ministry. She advised the ministry that she had received a letter in July 2016 about changes to the bus pass program and that she had advise the ministry by 05 August 2016 that she wished to opt out of the bus pass program and receive the \$52 TSA in cash, rather than in the form of a bus pass. She again requested that a \$52 TSA be issued to her for the October and November 2016 assistance months as her bus pass should have been cancelled.
- In her Request for Reconsideration dated 13 December 2016, under Reasons, the appellant writes:

“Refer to note of August 3, 2016. Arbitrary changes force “opt out” in order to receive the rate increase. Was done by MSDSI August 12, 2016 arbitrarily without consulting; reversed August 3, 2016 request by me. Give me the funds September – December 2016 @ \$52/month equals \$208 in total deducted against August 3, 2016 request as demanded by ministry itself.

Notice of Appeal

The appellant's Notice of Appeal is dated 05 January 2017. Under Reasons, she writes, referring to the reconsideration decision:

“August 03, 2016 I stated ‘I OPT OUT.’ (I did not state or indicate otherwise). Any decision/actions by Ministry was against my expressed wishes and annotated several times.”

Submissions on appeal

Before the hearing, the appellant provided the Tribunal with a 3-page submission. In her submission, the appellant states that on 03 August 2016, and according to ministry notes, she stated repeatedly, "I opt out" in relation the bus pass program. She argues that there is a notation of 12 August 2016 that would have been only an inside ministry decision that in no way took into account her clearly stated wishes to not pay funds going into the future on a monthly basis for a bus pass that she had not used in years.

She writes that she can purchase a daily bus pass from the transit authority for the chosen days at a much less expensive rate than \$52/month. She can also borrow a vehicle to travel to/from another city for healthcare and run errands and visit family for less than a bus pass would cost. She holds a valid drivers license and has kept it continuously to avail herself of borrowing a vehicle on occasion, and when she does so she pays for the fuel. At times she drives the owner's aged parent to various appointments and shopping when her disability permits.

The balance of the appellant's submission goes to argument (see Part F, Reasons for Panel Decision, below under the position of the appellant).

In an email dated 27 January 2017, the ministry stated that its submission in this matter will be the reconsideration summary provided in the Record of the Ministry Decision.

Admissibility of new information

The panel accepts the appellant's submission as argument.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry was reasonable to deny the appellant's request that she be provided a transportation support allowance (TSA) in the form of money (\$52) for the months of October and November 2016. More specifically, the issue is whether the following ministry determination is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant:

- Under section 24.1 of the EAPWDR, as the appellant received the TSA in the form of a bus pass for September, October and November 2016, the ministry is not permitted to assist her with the other form of the TSA, \$52 in money, for October and November 2016.

The relevant legislation is from the EAPWDR:

Disability assistance in the form of transportation support allowance

24.1 (1) The minister may provide to or for a family unit, for a calendar month, in respect of each applicant or recipient who is designated as a person with disabilities in the family unit, one of the following forms of transportation support allowance:

- (a) in money, in the amount of \$52;
 - (b) in kind, in the form of a monthly pass for the personal use of the person with disabilities to use a public passenger transportation system in a transit service area established under section 25 of the *British Columbia Transit Act*, or in a transportation service region as defined in the *South Coast British Columbia Transportation Authority Act*, which is deemed to have a value in the amount of \$52 for the purposes of this regulation.
- (2) If an applicant or recipient who is provided a transportation support allowance under either paragraph (a) or (b) of subsection (1) gives the minister notice that the recipient wishes to be provided the other form of transportation support allowance provided under that subsection, the minister may provide that other form of transportation support allowance for a subsequent month.
- (3) If the amount of disability assistance calculated in respect of a family unit under section 24 is less than the applicable amount for the family unit's transportation support allowance, disability assistance may be provided in accordance with this section up to an amount equal to the applicable amount for the family unit's transportation support allowance.
- [en. B.C. Reg. 175/2016, App. 1, s. 5.]

Transition for bus pass supplements - persons with disabilities

81 An annual pass is deemed to be a transportation support allowance provided in kind under section 24.1 (1) (b) [*disability assistance in the form of transportation support allowance*] if the annual pass has been provided to or for one of the following applicants or recipients:

- (a) an applicant or recipient who is designated as a person with disabilities and was provided an annual pass for personal use under section 51 (1) (a) [*bus pass supplement*], as it was immediately before the date this section came into force;
- (b) an applicant or recipient who becomes designated as a person with disabilities, who was provided an annual pass for personal use
 - (i) as the spouse of a person with disabilities under section 51 (1), or
 - (ii) under section 66 (1) [*bus pass supplement*] of the Employment and Assistance Regulation, B.C. Reg. 263/2002 [en. B.C. Reg. 175/2016, App. 1, s. 12.]

Bus pass supplement [as it read before section 81 came into force]

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's position

In her submission, the appellant argues that the TSA/bus pass program contravenes the BC Human Rights Code under section 8 as discriminating in accommodation, service and facility, as a spouse of a person with PWD designation over the age of 60 can be provided an annual bus pass for only \$45/year.

In the conclusion of her submission, the appellant writes:

"I officially opted out of the bus pass program on August 03, 2016. Therefore my bus pass (whose rules got changed 2/3 of the way through the calendar year) was arbitrarily declared null and void as of September 01, 2016 if I did not volunteer to pay \$52 per month for said bus pass I chose not to pay \$52/month clearly and succinctly

I called prior to the deadline of August 06, 2016 to "Opt out" of said bus pass program.

Any notes regarding the bus pass payments demanded by the ministry are in fact fraudulently obtained funds and due, in full to me, for the months of September October and November in the amounts of $\$52 \times 3 = \156 (no interest charged, at this time)."

The ministry's position

In the reconsideration decision, the ministry noted that the appellant requested a change in the form of her TSA from a bus pass to money on 03 August 2016. The ministry stated, "It is unfortunate that you did not bring it to the ministry's attention immediately when you received your September disability assistance that you did not receive the TSA in the form of money."

The position of the ministry, as set out in the reconsideration decision, is that in accordance with section 24.1 of the EAPWDR the Minister may provide one form of the TSA of \$52 each month. As the appellant received the \$52 TSA in the form of a bus pass for September, October and November 2016, the minister is not permitted to assist her with the other form of the \$52 TSA in the form of cash for October and November 2016 and therefore her request is denied.

Panel decision

The appellant argues that the new TSA provisions contravene the BC *Human Rights Code*.

The *Employment and Assistance Act* (EAA) establishes the jurisdiction of the Tribunal and this panel. Section 19.1(f) of the EAA imports section 46.3 of the *Administrative Tribunals Act*. The section reads:

Tribunal without jurisdiction to apply the *Human Rights Code*

46.3 (1) The tribunal does not have jurisdiction to apply the *Human Rights Code*.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

[]

The panel cannot therefore make a determination regarding the appellant's submission respecting the *Human Rights Code*.

Turning to the issue under appeal, the panel notes that in the Record of the Ministry Decision the ministry did not specify the type of bus pass that the ministry argues was provided to the appellant for the months of September, October and November 2016. EAPWDR section 24.1 refers to a *monthly* pass, which to the panel means a pass valid for one month, presumably sent out at the same time as cheque issue.

However, the appellant had been provided an *annual* bus pass for 2016 under section 51, before amended when section 24.1 came into force. The transitional section, section 81 (not cited by the ministry), states that such an annual pass is deemed to be a TSA in kind -- i.e. the same as a monthly pass under section 24.1(1)(b). The panel reads section 24.1(2) as providing for a recipient to elect to change the TSA from in kind (bus pass) to in money (\$52) at any time, and in the context of the transition, not having to wait until the annual pass expires

In explaining why the service request to change the TSA from in kind to in money was cancelled on 12 August 2016, the ministry explanation in the Request for Reconsideration was: "It was noted that you currently had a bus pass." (However, in the reconsideration decision, the ministry stated "However, no information was provided to indicate why the service was not provided.") This indicates to the panel that the ministry viewed the annual pass as a deemed monthly pass under section 81.

The Record has an entry for 28 October 2016 when the appellant contacted the ministry and raised the issue of not being provided the TSA in money for that month and previous months. The ministry noted that her bus pass was cancelled at that time. This suggests to the panel that the ministry viewed the annual pass being deemed a monthly pass.

In the reconsideration decision, the ministry states, "It is unfortunate that you did not bring it to the ministry's attention immediately when you received your September disability assistance you did not receive the TSA in the form of money." The ministry did not state that the appellant did not notice receiving a monthly pass. However, the ministry went on to state that as the appellant "received the \$52 TSA in the form of a bus pass for September, October and November 2016...", leaving it unclear as to whether she had been issued monthly passes for these months or whether the ministry was basing its decision on the annual pass being deemed monthly passes pursuant to section 81.

Taken together, the references noted above suggest to the panel that the ministry based its decision on the annual pass being deemed a monthly pass pursuant to section 81 for each of the months September, October and November.

The panel notes, however, that there is nothing in transition section 81 nor in section 24.1 that the annual pass would have to be surrendered or somehow cancelled as a precondition of a change from being provided the TSA in kind to being provided the TSA in money (\$52). Moreover there is nothing in the Record that the ministry advised the appellant that she must surrender or cancel her annual pass to change her TSA to receive the \$52/month.

Subsections (1) and (2) of EAPWDR section 24.1 provide the basic legislative framework for the TSA program. Under subsection (1), the minister may provide to an applicant or recipient with PWD

designation, for a calendar month, a TSA in the form of (a) money, in the amount of \$52 or (b) in kind, in the form of a monthly pass to use a public passenger transit service (bus pass); this pass is deemed to have a value in the amount of \$52. In the reconsideration decision, the ministry relied on this subsection, finding that as the appellant received the TSA in the form of a bus pass for September, October and November, the ministry was not able to assist her with the other form of the TSA, \$52 in money, for October and November 2016. (The ministry did not make a determination for September 2016).

Subsection (2) provides an equally critical aspect of the TSA program framework. This subsection states that if a recipient who is provided a TSA in one form gives the minister notice that the recipient wishes to be provided the other form of TSA, the minister may provide that other form for a subsequent month. In the reconsideration decision, the ministry acknowledged that the appellant requested a change in the form of her TSA from a bus pass to money on 03 August 2016. The ministry went on to state that it was “unfortunate” that the appellant had not brought to the ministry’s attention that she did not receive the TSA in the form of money, but did not explain why it had failed to meet its obligations under subsection (2).

In reaching its decision, the panel has taken the following into account: a) the Record shows that the appellant requested that she be provided the TSA in the form of money on 03 August 2016 and a service request was initiated to put this into effect; b) this service request was cancelled by the ministry for reasons not stated, and in any event without consulting with or advising the appellant; c) as noted above, there is nothing in the legislation requiring the surrender or cancellation of an annual pass that is deemed a monthly pass under section 81 in order to change from a TSA in kind to a TSA in the form of money; and d) there is no mention in the Record that the appellant was advised by the ministry that she must surrender or cancel her annual pass to change her TSA to receive the \$52/month.

In the panel’s view, the ministry decision is based on the narrow application of subsection (1) of section 24.1, without taking into account the broader legislative framework, the failure of the ministry to respond to the appellant’s 03 August 2016 request as provided in subsection (2), and the factors summarized above.

Conclusion

For the reasons discussed above, the panel finds that the ministry’s decision to deny the appellant’s request that she be provided a transportation support allowance (TSA) in the form of money (\$52) for the months of October and November 2016 is not reasonably supported by the evidence and is not a reasonable application of the legislation in the circumstances of the appellant. The panel therefore rescinds the ministry’s decision in favour of the appellant.

The panel is referring this decision back to the ministry as to amount, as the reconsideration decision did not make a determination in respect of the form of the TSA for September