

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision dated January 20, 2017, that denied the Appellant's application for a supplement for an annual bus pass

(a) Under the *Employment and Assistance Act (EAA)* section 4 and the *Employment and Assistance Regulation (EAR)* section 66 on the grounds the Appellant had not shown that

(i) she was in receipt of the federal spouse's allowance or federal guaranteed income supplement

and

(ii) was not yet 60 years old and in receipt of income assistance under section 2 of Schedule A (monthly support allowance, monthly shelter allowance, room and board assistance or assistance for people in emergency shelters),

and

(b) Under the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)* section 5 and *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* section 51, on the grounds that the Appellant had not shown that

(i) she was a person with disabilities

(ii) she was 60 years of age

(iii) she was in receipt of the federal spouse's allowance or federal guaranteed income supplement,

and

(c) Under the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)* section 5 and *EAPWDR* section 24.1 on the grounds that

(i) she was not designated as a Person with Disabilities.

## PART D – Relevant Legislation

*Employment and Assistance Act (EAA) section 4 and the Employment and Assistance Regulation (EAR) section 66*

*Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 5 and Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 24.1 and 51*

## PART E – Summary of Facts

### **Nature of the Appellant's Application**

The Appellant applied for a bus pass, was turned down and requested Reconsideration. At Reconsideration she was again denied. She appeals to the Tribunal.

### **Evidence at the Time of Reconsideration**

The evidence before the ministry at the time of Reconsideration consisted of:

- A. An Application for a bus pass submitted to the ministry on July 28, 2016
- B. A letter to the Appellant from the ministry dated August 9, 2016 advising the Appellant of the criteria needed to qualify for a bus pass and advising her that she was not eligible for one
- C. A Request for Reconsideration dated January 9, 2017, in which the Appellant states
  - that she is disabled and in receipt of Canada Pension Plan disability benefits and attaching a T4A(P) for 2015 as a proof, stating that it was provided in support of “*alternate grounds for designation under section 2 of the Act*”, referring to the *Employment and Assistance for Persons with Disabilities Act* and then quoting section 2.1(e) of the *Employment and Assistance for Persons with Disabilities Regulation* “a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada)”
  - that because of the foregoing she fully meets the criteria and is eligible to apply for a BC Bus Pass

### **Evidence Provided on Appeal**

#### **Additional Evidence**

##### **Additional Written Evidence - Spouse's Letter**

The Appellant provided a letter from her spouse dated February 6, 2017. In that letter, the spouse stated

- that he was advised in the fall of 2015 that he would be receiving the federal guaranteed income supplement retroactive to July that he was told by a friend he could obtain a BC bus pass when he qualified for the supplement so he applied for and received a bus pass
- his spouse, the Appellant, will receive a set amount of money in the form of the Canada Pension Plan (CPP) disability pension which is been her sole source of income since 1995 that he receives a certain amount of money from 4 domestic and one foreign pensions, plus such RRSP/TFSA savings that they cash in
- and attaching a letter from Human Resources Development Canada dated November 29, 1996 addressed to the Appellant explaining CPP disability benefits
- that he has lived with the appellant for about 40 years, noting that about 36 years ago the Appellant was diagnosed with a particular medical condition shortly after giving birth, and had another serious illness about 28 years ago, following which he persuaded her to stop working and apply for a CPP disability pension
- that the Appellant currently suffers from some five medical conditions and explaining them, advising that the Appellant has had various a medical and other assessments
- that neither the Appellant nor her spouse is owned a car for over a decade, belonged to a car

- 
- share co-op, and that the Appellant, while holding a driver's license, cannot drive
  - that the spouse takes the bus to another city once a week to swim and uses his bus pass when visiting the Appellant's family and their daughter in other cities in British Columbia and when they travel by bus the Appellant has to pay the full eight dollar fare and for all other transit services.

#### **Additional Oral Evidence – Appellant**

At the hearing the Appellant submitted that

- that it was four years from when she was diagnosed with various medical conditions until she accepted that she was disabled and should apply for Canada Pension Plan disability benefits and during that four year time she would work and then be bed-written for a period of time
- that the family income decreased about 30% after she stopped working and her spouse advised her to apply for a BC bus pass because of her disability
- that she has never applied for Persons with Disability status in British Columbia
- that at the time of reconsideration she had filed a T4A(P), which is a Statement of Canada Pension Plan Benefits for taxation purposes, in proof of receipt of her CPP benefits

#### **Ministry's Position Concerning the Additional Evidence**

No representative of the ministry attended the hearing.

#### **Panel Finding Concerning the Additional Evidence**

Pursuant to section 22(4)(b) of the *EAA*, the panel may admit as evidence only the information and records that were before the minister when the decision being appealed was made or oral or written testimony in support of that information and records.

The panel finds that at the time of reconsideration there was evidence that the Appellant had qualified for Federal Canada Pension Plan disability benefits and that the additional evidence of the Appellant's medical conditions, taking the bus as opposed to driving, the letter from Human Resources Development Canada dealing with her disability, that she was diagnosed with various medical conditions for years before she applied for CPP disability benefits, and her spouse's situation are in support of information or records that was before the Ministry at the time of reconsideration, and is therefore admissible.

#### **Ministry**

No representative of the Ministry attended this hearing. There was facsimile confirmation that the Ministry received the Notice of Hearing on February 15, 2017. Pursuant to section 86(b) of the *Employment and Assistance Regulation* the panel proceeded with hearing the appeal.

## PART F – Reasons for Panel Decision

### Issue

The decision under appeal is the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision dated January 20, 2017, that denied the Appellant's application for a supplement for an annual bus pass

(a) Under the *Employment and Assistance Act (EAA)* section 4 and the *Employment and Assistance Regulation (EAR)* section 66 on the grounds the Appellant had not shown that

(i) she was in receipt of the federal spouse's allowance or federal guaranteed income supplement

and

(ii) was not yet 60 years old and in receipt of income assistance under section 2 of Schedule A (monthly support allowance, monthly shelter allowance, room and board assistance or assistance for people in emergency shelters),

and

(b) Under the *Employment and Assistance Act (EAA)* section 4 and the *Employment and Assistance Regulation (EAR)* section 66, on the grounds that the Appellant had not shown that

(i) she was a person with disabilities

(ii) she was 60 years of age

(iii) she was in receipt of the federal spouse's allowance or federal guaranteed income supplement,

and

(c) Under the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)* section 5 and *EAPWDR* section 24.1 on the grounds that

(i) she was not designated as a Person with Disabilities.

was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

### Relevant Legislation

#### Employment and Assistance Act

##### Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

#### Employment and Assistance Regulation

##### Bus pass supplement

66 (1) The minister may provide a supplement to or for a family unit, other than the family unit of a recipient of disability assistance, that contributes \$45 to the cost, to provide an annual pass for the personal use of a person in the family unit who

(a) receives the federal spouse's allowance or federal guaranteed income supplement,

(b) is 60 or more years of age and receives income assistance under section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board] or 9 [people in emergency shelters and transition houses] of Schedule A, or

(c) 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.

## **Employment and Assistance for Persons with Disabilities Act**

### **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.

## **Employment and Assistance for Persons with Disabilities Regulation**

### **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) .....
- (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.

### **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 the spouse of a person with disabilities in the family unit if that spouse

- (a) is 60 or more years of age,
- (b) receives the federal spouse's allowance or federal guaranteed income supplement, or
- (c) is 65 years of age or more and meets all the eligibility requirements for the federal guaranteed income supplement except the 10 year residency requirement.

## **General Scheme of the Legislation**

The general scheme of the legislation is that the minister may provide a supplement for a bus pass in 3 different ways.

If the application is under the *Employment and Assistance Act (EAA)* and *Employment and Assistance Regulation (EAR)* an applicant must not be part of a family unit receiving disability assistance, and must

- be in receipt of the federal spouse's allowance or the federal guaranteed income supplement
- be 60 years of age or older, and be in receipt of income assistance for any of (a) monthly support allowance, (b) monthly shelter allowance, (c) room and board or (d) emergency shelter or transition houses, or
- be 65 years of age or more and meet all the eligibility requirements for the federal guaranteed income supplement except the 10 year residency requirement, and
- pay \$45 towards the annual cost

If the application is under the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)*, then section 5 of the *EAPWDA* and section 51 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* sets out the requirements. An applicant must

- be the spouse of a person designated as a Person with Disabilities
- the spouse must be in receipt of the federal spouse's allowance or the federal guaranteed income supplement
- the spouse must be 60 years of age or older, or
- the spouse be 65 years of age or more and meet all the eligibility requirements for the federal guaranteed income supplement accepted the 10 year residency requirement
- pay \$45 towards the annual cost

If the application is under the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA), then section 5 of the EAPWDA and section 24.1 *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), then

- the applicant must have designation as a Person with Disabilities

## **Appellant's Position**

### **Appellant's Written Argument**

The Appellant submitted a Notice of Appeal dated January 27, 2017 with written argument stating

- that she is a person considered to be disabled under section 42(2) of the *Canada Pension Plan* (Canada) (CPP), and
- that as the minister may designate someone who has reached 18 years of age as a Person with Disabilities for the purposes of the EAPWDA if they are in one of the prescribed classes of persons described in section 2.1 EAPWDR, and that a person considered disabled under the CPP is in such a prescribed class by reason of section 2.1(e) EAPWDR, therefore
- she is such a person and does qualify for a bus pass
- argument concerning the meaning of the verb "prescribe" and its relation to a grant of rights by prescription, setting out its etiology and relating it to section 3 (a) of the EAPWDA, and relating it to the Minister's enabling section 5 of the EAPWDA
- she then sets out the dictionary definition of "supplement" in section 1 of the EAPWDA and section 24.1(1)(b) EAPWDR, which is the minister's enabling section allowing a transportation support allowance
- the meaning of the noun "supplement"
- setting out section 2(2) of the EAPWDA and section 24.1(b) of the EAPWDR and arguing that as she is disabled under section 42 (2) of the *Canada Pension Plan*, and arguing that she has applied for a bus pass supplement only and is not a recipient of income assistance or disability assistance does not mean she is not entitled to a bus pass

### **Appellant's Spouse's Written Argument**

At appeal, in his letter dated February 6, 2017, the spouse also submitted as argument:

- asking why the Appellant is ineligible for a bus pass when her income is less than half of his and when she is physically incapable of driving to medical appointments
- that after reviewing the ministry responses, and the legislation, that the Tribunal has a legal path to agreeing with the Appellant that she is eligible for a bus pass and
- giving his belief that the ministry's receipt of the CPP disability pension was omitted in error and
- arguing that he cannot believe that officialdom would purposely deny a person with the Appellant's disabling illnesses a bus pass because they are on federal rather than provincial disability, saying that such flies in the face of common sense and is not in accordance with section 15 of the Canadian Charter of Rights and Freedoms

### **Oral Submissions**

- The Appellant and her spouse argued that as the spouse had obtained a bus pass, and had a greater income than the Appellant, so should the Appellant
- that under section 2.1(e) of the EAPWDR, the Appellant qualified for a bus pass because she was a person considered to be disabled under section 42(2) of the CPP, and the proof of that

was her T4A(P) for 2015 and the letter of November 29, 1996 from Human Resources Development Canada

- that when the spouse obtained a bus pass, it was as soon as he was awarded the status of someone with federal disability, and so the Appellant should also be awarded that status
- that because of section 2(2) *EAPWDA* and section 2.1 *EAPWDR*, the appellant should not need to apply for Persons with Disability status

### **Ministry Position**

The ministry did not attend the hearing.

### **Analysis**

#### ***EAA* section 4 and *EAR* section 66**

These sections state that the ministry may provide a bus pass supplement provided that the applicant receives the federal spouse's allowance or federal guaranteed income supplement, is 60 or more years of age and receives income assistance under section 2 of Schedule A (monthly support allowance, monthly shelter allowance, room and board supplement or a supplement for someone in an emergency shelter) or is over age 65 and meets other eligibility requirements.

#### **Panel Finding**

The panel finds that the ministry may provide a bus pass supplement provided the requirements of section 66 *EAR* are met, but that at reconsideration there was no evidence that the Appellant was in receipt of the federal spouse's allowance or federal guaranteed income supplement, and the evidence was clear that the Appellant was 59 years of age, not 60 or more years of age. At reconsideration there was no evidence that the Appellant was in receipt of any form of income assistance.

The panel finds that it is not necessary to refer to the legislative condition where an applicant is 65 years of age or more nor is it necessary to refer to the requirement for \$45 payment.

The panel finds that at reconsideration the ministry reasonably determined that as the Appellant was not yet 60 years of age, was not in receipt of the federal spouse's allowance or federal guaranteed income supplement, was not in receipt of one of the four specified forms of income assistance, and that she was therefore not entitled to a bus pass pursuant to the *Employment and Assistance Act* and *Regulation*.

#### ***EAPWDA* section 5 and *EAPWDR* section 51**

These sections provide that the ministry may provide a bus pass supplement provided the applicant is the spouse of a person designated as a Person with Disabilities, is in receipt of the federal spouse's allowance or federal guaranteed income supplement, is 60 years of age or more, or is over age 65 and meets certain other requirements.

#### **Panel Finding**

The panel finds that the ministry may provide a bus pass supplement provided the requirements of section 51 *EAPWDR* are met, but that at reconsideration there was no evidence that the Appellant

had a spouse designated as a Person with Disabilities, no evidence that the Appellant was in receipt of the federal spouse's allowance or the federal guaranteed income supplement and the evidence was clear that the Appellant was 59 years of age, not 60 or more years of age.

The panel finds that it is not necessary to refer to the legislative condition where an applicant is 65 years of age or more nor is it necessary to refer to the requirement for \$45 payment.

The panel finds that at reconsideration the ministry reasonably determined that as the appellant was not yet 60 years of age, did not have a spouse designated as a Person with Disabilities, there was no evidence that the Appellant was in receipt of the federal spouse's allowance or the federal guaranteed income supplement and that she was 59 years of age, not 60 or more years of age, and that she was therefore not entitled to a bus pass pursuant to the *Employment and Assistance for Persons with Disabilities Act and Regulation*.

#### **EAPWDA section 5 and EAPWDR section 24.1**

These sections provide that the ministry may provide transportation support allowance in the form of monthly bus pass, provided that the applicant is a Person with Disabilities. There is no age or other requirement.

#### **Panel Finding**

The Panel finds that the ministry may provide a transportation support allowance in the form of monthly bus for the use of the person who is designated as a Person with Disabilities.

The panel finds that section 2.1 of the *EAPWDR* is an enabling section, which allows the minister to designate someone as a Person with Disabilities for the purposes of section 2(2) of the *EAPWDA*, but does not in and of itself confer the status of a Person with Disabilities upon an applicant. The panel finds that despite the Appellant's argument that under section 2.1(e) of the *EAPWDR* that as a person in receipt of federal disability benefits, and thus considered to be a disabled under section 42(2) of the *Canada Pension Plan*, in order to have status as a Person with Disabilities, the Appellant would have had to apply for and been granted that status under section 2(2) of the *EAPWDA*, which she has not done.

The panel finds that at reconsideration the ministry reasonably determined that the appellant was not a Person with Disabilities and was therefore not entitled to a transportation support allowance in the form of a monthly bus pass.

#### **Conclusion**

The panel finds that at reconsideration the ministry was reasonable when it determined that the Appellant was not entitled to a bus pass supplement under either the *EAA* and *EAR* or the *EAPWDA* and *EAPWDR*, and that the decision was reasonably supported by the evidence.

The panel confirms the ministry's decision and the Appellant is not successful in her appeal.