

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision made under section 24.1 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* and dated January 31, 2017 that denied the appellant's request for reimbursement of a transportation support allowance, deducted from her monthly benefits, in money in the amount of \$52 per month for September and October 2016.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 5
Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 24.1 and 29

PART E – Summary of Facts

Nature of the Appellant's Application

The Appellant who is designated as a Person with Disabilities was in receipt of a transportation support allowance in the form of a bus pass. She had requested that the allowance be paid to her in money (\$52 per month) instead of in the form of a bus pass, but her assistance for the months of September 2016 through January 2017 was reduced by \$52 per month, because of provision of the allowance in the form of a bus pass. She requested reconsideration and was reimbursed \$52 for each of November 2016, December 2016 and January 2017, but was not reimbursed for the months of September 2016 or October 2016 on the grounds that the earliest request from the appellant to change the form of allowance was September 23, 2016.

Evidence at the Time of Reconsideration

A. The decision to be reconsidered which allowed the Appellant reimbursement of money deducted from her monthly support in the amount of \$52 for each of November 2016, December 2016 and January 2017, but denied her reimbursement for the months of September 2016 and October 2016,

B. A letter from a social worker, the Appellant's advocate, dated January 16, 2017 in support of the Appellant, advising the ministry that the Appellant had requested cancellation of the bus pass in August 2016 over the phone with a worker, but was still having money deducted from her monthly Persons with Disabilities allowance had attempted contact with the ministry but received no return call until September 23, 2016 when a worker left a message advising the Appellant to "consider how much she would use the bus pass to make her decision". The social worker also attached a printout from the ministry website entitled "Transportation Support/BC Bus Pass for people receiving disability assistance" said to be from the ministry website which advised, among other things, "*At any time, you can decide to contact the ministry and cancel your BC Bus Pass and instead receive your \$52 Transportation Support Allowance on your next assistance payment*"

C. A letter dated December 21, 2016 to the ministry from the Appellant

- asking for the ministry to reconsider the bus pass issue stating that the Appellant had previously requested to the ministry to stop the bus pass but that for the last three months the ministry has continued to deduct \$52 per month for the bus pass program.
- advising that she had spoken to her MLA October 2016
- requesting she be removed from the bus pass quote program, advising that she had not authorized the deductions from her support for the months of September, October and November 2016 and does not authorize deductions for December 16, 2016, nor for any part of 2017 unless she "*I put in writing otherwise*", and asking that her name and deductions from the bus pass program be "*removed.....from the Bus program through MSDI*"
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Evidence Provided on Appeal

Additional Evidence - Appellant

The appellant gave evidence orally and in a written submission dated February 7, 2017 that she placed a call to the ministry prior to August 5, 2016 with the intention of giving notice that she wished her allowance in money instead of a bus pass and left a message, but no one returned her call. She then called again in mid-August and left a voicemail saying that she wanted to cancel her bus pass and have her subsidy in money. In response a ministry worker called her back, while she was riding

the skytrain in Vancouver and on another call, and left a message telling the Appellant that she had given her notice too late, and telling the Appellant she had no choice, had to keep her “card”, meaning her bus pass, and that’s the way it is. The Appellant then called back after listening to this message, left her own message, but no one returned her call.

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 concerning giving the ministry notice that the Appellant wished her transportation support allowance in money rather than in the form of a monthly bus pass. The panel finds that the additional evidence is 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 issue is whether or not the Ministry of Social Development and Social Innovation's (the Ministry) reconsideration decision made under section 24.1 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* and dated January 31, 2017 that denied the appellant's request for reimbursement of a transportation support allowance, deducted from her monthly benefits, in money in the amount of \$52 per month for September and October 2016, 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 for Persons with Disabilities Act (EAPDWA)

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 (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.

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

General Scheme of the Legislation

The *EAPWDA* section 5 empowers the minister to provide a person designated as a Person with Disabilities with a transportation support allowance under section 24.1 *EAPWDR*, either in money (\$52 per month) or in the form of a bus pass.

Appellant's Position

The Appellant's position was that she had given notice in mid-August 2016 that she no longer wished her transportation support allowance in the form of a bus pass but wished it in the form of money instead and could not understand why the ministry did not act on her request, cancel the bus pass and provide her with the allowance in money.

Ministry Position

No representative of the ministry attended the hearing.

Analysis

***EAPWDA* section 5, *EAPWDR* section 24.1(1) & (2)**

Section 5 *EAPWDA* and section 24.1(1) *EAPWDR* provide that the ministry may provide a transportation support allowance in the form of money in the amount of \$52 per month or in the form of a monthly bus pass, provided that the applicant is a Person with Disabilities. There is no age or other requirement.

Section 24.1(2) *EAPWDR* provides that someone in receipt of a transportation support allowance may give the minister notice that the person requires the other form of allowance and the minister may provide it for a subsequent month. This section does not provide any specific period or form of notice to be given to the Minister.

***EAPWDR* section 29**

This section requires a person to report certain changes in that person's circumstances by the 5th day of the calendar month following the calendar month in which one of those changes occurs; all of the changes referred to in this section are changes in family income or composition. There is nothing in this section dealing with giving notice for any other type of change.

Panel Finding

The panel finds that the Appellant is a Person with Disabilities in receipt of a transportation support allowance and that in August 2016 she gave notice to the ministry that she wished her allowance to be provided in the form of money rather than a bus pass.

The panel finds that in relying upon section 29 of the *EAPDWR* for the proposition that a person is required to report changes by the 5th day of the month following the month of the change, the reconsideration officer did not apply the legislation reasonably, because that section only applies to changes in family income or composition, and not to a change in the form of transportation support allowance provided under section 24.1(1) *EAPDWR*.

The panel finds that the reconsideration officer, in not applying section 24.1(2) of the *EAPWDR*, which does not specify any specific period or form of notice when a change of type of allowance is

requested, did not apply that enactment reasonably.

Conclusion

The panel finds that the reconsideration decision, which determined that the Appellant was not entitled to reimbursement of \$52 per month for September and October 2016, was not a reasonable application of the applicable enactments in the circumstances of the Appellant.

The panel rescinds the ministry's decision and the Appellant is successful in her appeal.