

### **PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated 2<sup>nd</sup> August 2018 in which the ministry found that the appellant was not eligible to receive a bus pass supplement in accordance with Section 66. In particular, the ministry determined that:

- the appellant has not been designated as a "person with disabilities", as defined under Section 2 of the Employment and Assistance for Persons with Disabilities Act and therefore he is not a recipient of disability assistance from the Province of British Columbia;
- although the appellant is at least 60 years old, he is not a receipt of income assistance from the Province of British Columbia;
- the appellant has not provided any evidence to confirm that he receives a federal spouse's allowance or federal guaranteed income supplement (GIS); or
- although the appellant is at least 65 years old, he has not provided any evidence to confirm that he meets all the federal GIS eligibility requirements except the 10-year residency requirement.

### **PART D – RELEVANT LEGISLATION**

-Employment and Assistance Act - EAA - Section 4

-Employment and Assistance Regulation - EAR - Section 66

## **PART E – SUMMARY OF FACTS**

The evidence and documentation before the minister at the reconsideration consisted of the following:

1. Original decision of the ministry dated 1<sup>st</sup> June 2018;
2. A letter dated 5<sup>th</sup> June 2018 from the ministry to the appellant, which amongst other matters, stated that the appellant is not eligible for a bus pass as he did not meet one of the described criteria i.e. (i) receiving federal Guaranteed Income Supplement (GIS), or the federal allowance, or allowance for a survivor; (ii) being between 18-64 years of age and receiving income assistance for persons with disabilities from the Province of British Columbia (BC); (iii) being between 60-64 years of age and receiving income assistance from BC; (iv) being over 65 years of age and would qualify for GIS but does not meet the Canadian 10 year residency requirement; (v) being between 60 -64 years of age, living on a First Nations reserve and receiving disability assistance from the band officer; or (vi) being between the 60-64 of age, living on a First Nations reserve and receiving assistance from the band office;
3. A letter dated 14<sup>th</sup> June 2018 from the appellant to the ministry, which amongst other matters, stated that the appellant (i) is 75 years old; (ii) has been residing in BC for 52 years; (iii) is registered with the Canadian Government as “disabled” for several years; (iv) is registered with the City of Vancouver as “handicapped” for several years; (v) has been certified with several disabilities, including vision, hearing, neuropathy; and (vi) had acquired other disabilities many years ago in another country;
4. Request for Reconsideration (RFR) signed by the appellant on 14<sup>th</sup> June 2018, which amongst other matters, stated that (i) the appellant is over the age of 65 years; (ii) the appellant is a person with disabilities designation (PWD) registered and approved by the federal Canada Revenue Agency since 2011; (iii) the appellant was filing an application as a person with disabilities designation with the ministry office in the Lower Mainland; (iv) the appellant is registered as a disabled person with SPARC; (v) the appellant has acquired other disabilities many years ago in another country; and (vi) the appellant meets the criteria of the BC Bus program for seniors under the Canadian Charter of Rights and Freedoms, Section 52 of the Canadian Constitution Act (1982), Part 1, Section 1 (b) of the Bill of Rights under the Canadian Constitution (1960), Section 15 of Canadian Constitution act (1882), and Article 14 of the International Covenant on Civil and Political Rights.

The additional evidence and documentary information before the panel at the time of the hearing of the appeal reconsideration consisted of the following:

1. A letter dated 14<sup>th</sup> June 2018 from the ministry to the appellant stating that the ministry has denied the appellant’s request for a bus pass supplement on the grounds that, although he is at least 60 years old, he is not in receipt of income assistance, nor has he provided any evidence to confirm that he receives a federal spouse’s allowance or federal guaranteed income supplement (GIC), or that he meets all the federal GIC eligibility requirements except the 10 year residency requirement;
2. The reconsideration decision dated 2<sup>nd</sup> August 2018; and
3. A Notice of Appeal dated 7<sup>th</sup> August 2018 signed by the appellant in which the appellant states that the Reconsideration Decision violated the standard human rights rules and regulations of the Canadian Constitution, the Criminal Code of Canada and International regulations as well as a disabled individual.

At the first hearing of this appeal, held on 10<sup>th</sup> September 2018, the appellant submitted approximately 96 pages of new documentary information (“NDI”) in support of his appeal (see below). As the ministry representative was attending the hearing on that day by telephone, the panel made a decision to adjourn the hearing to give an opportunity to the ministry to review the NDI and make submissions to the panel relating to the admissibility of NDI.

The NDI, amongst other documents included, (i) information relating to the appellant’s professional career, the appellant’s membership, correspondence and work with national, local and international corporations and organizations; (ii) information relating to the appellant from Canadian and USA educational institutions; (iii) media reports; (iv) local, national and international legislation and conventions relating to civil and political rights; (v) correspondence relating to the appellants interactions with national security authorities of several countries; (vi) a copy of the first page of a BC application form for Person with Disabilities Designation dated 31<sup>st</sup> May 2018; (vii) a letter dated 19<sup>th</sup> August 2011 from the Canada Revenue Authority confirming disability tax credit (DTC) for the appellant; (viii) a copy of a Parking Permit Wallet Card for People with Disabilities; (ix) and copies of letters from

several medical professionals (respectively dated 19<sup>th</sup> January 2017, 10<sup>th</sup> November 2017 and 18<sup>th</sup> May 2018) relating to several medical conditions of the appellant, which are more particularly described by the appellant in his letter dated 14<sup>th</sup> June 2018 to the ministry, which was before the ministry at the time of reconsideration.

The appellant submitted that the NDI should be admitted as additional evidence, as it is in support of the information and records that were before the minister during the reconsideration in accordance with Section 22(4)(b) of EAA.

The ministry representative, however, objected to the admission of the NDI on the grounds that it related to (i) national and international legislations, conventions and other matters not in issue before the panel and went beyond the jurisdiction and competence of the panel and (ii) that the said issues were therefore not considered by the ministry at the time of reconsideration.

The ministry representative did not submit any new evidence at the hearing and relied upon the reconsideration decision dated 2<sup>nd</sup> August 2018.

The panel's comments and determination as to the relevance of the NDI is set out in detail below in Part F – Reasons For Panel Decision.

The panel finds that, having regard to the relevant issues it has to decide, all of the evidence before it establish the following relevant facts:

1. The oral evidence of the appellant and the NDI submitted by him are admissible as additional evidence pursuant to the provisions of Section 22(4)(b) of EAA, as they are consistent with the evidence or position taken by the appellant in the record of ministry's reconsideration decision and aim to substantiate or corroborate the information and records before the ministry at reconsideration.
2. The appellant has not been designated as a "*person with disabilities*", as defined under Section 2 of the Employment and Assistance for Persons with Disabilities Act of British Columbia,
3. The appellant does not receive income assistance or disability assistance from the Province of British Columbia;
4. The appellant is not a recipient of federal spouse's allowance or federal Guaranteed Income Supplement (GIS); and
5. Although the appellant is at least 65 years old, he has not provided any evidence to confirm that he receives a federal spouse's allowance or federal guaranteed income supplement (GIC); or that he meets all the federal GIC eligibility requirements except the 10 year residency requirement.

## PART F – REASONS FOR PANEL DECISION

The issues in this appeal is the reasonableness of the ministry's decision, which denied the appellant's request for a bus pass supplement on the grounds that: (i) the appellant has not been designated as a "person with disabilities", as defined under Section 2 of the Employment and Assistance for Persons with Disabilities Act; (ii) although the appellant is at least 60 years old, he is not in receipt of income assistance or disability assistance; (iii) the appellant has not provided any evidence to confirm that he receives a federal spouse's allowance or federal guaranteed income supplement (GIC); or (iv) although the appellant is at least 65 years old, he has not provided any evidence to confirm that he meets all the federal GIC eligibility requirements except the 10 year residency requirement.

The relevant legislation is as follows:

### EAA

#### 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.

### EAR

#### 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

- 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 [*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
- 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.

The ministry relied upon the reconsideration decision and argued that the appellant did not meet any of the criteria prescribed under Section 66 (1) of EAR and was therefore ineligible for a bus pass supplement.

The appellant did not deny any of the facts described in the reconsideration decision but argued that he was entitled to receive a bus pass supplement on the grounds described in his letter to the ministry dated 15<sup>th</sup> June 2018 and reiterated by him in his Notice of Appeal dated 7<sup>th</sup> August 2018, the NDI and through his oral testimony at the hearing.

## Panel Decision

### New Documentary Information (NDI)

As stated above in Part E (Summary of Evidence), the NDI included, (i) information relating to the appellant's professional career, the appellant's membership, correspondence and work with national, local and international corporations and organizations; (ii) information relating to the appellant from Canadian and USA educational institutions; (iii) media reports; (iv) local, national and international legislation and conventions relating to civil and political rights; (v) correspondence relating to the appellants interactions with national security authorities of several countries; (vi) a copy of the first page of a BC application form for Person with Disabilities Designation dated 31<sup>st</sup> May 2018; (vii) a letter dated 19<sup>th</sup> August 2011 from the Canada Revenue Authority confirming disability tax credit (DTC) for the appellant; (viii) a copy of a Parking Permit Wallet Card for People with Disabilities; (ix) and copies of letters from several medical professionals (respectively dated 19<sup>th</sup> January 2017, 10<sup>th</sup> November 2017 and 18<sup>th</sup> May 2018) relating to several medical conditions of the appellant, all of which are more particularly described in the appellant's letter dated 14<sup>th</sup> June 2018 to the ministry, which was also before the ministry at the time of reconsideration.

The panel only has to deal with evidence that relates to issues it has to decide under this appeal. Such issues are described above in Part C (Decision Under Appeal). The panel has to determine whether the reconsideration decision, which denied a bus pass supplement for the appellant, was, or was not, reasonably supported by evidence before the ministry at reconsideration, or was, or not, a reasonable application of the applicable British Columbia legislation in the circumstances of the appellant.

Having carefully reviewed the contents of the NDI, the panel finds that the NDI has no relevance to the provincial issues described above that are before the panel for determination and therefore places no weight on the NDI. Furthermore, the panel makes the following specific findings relating to the national legislation and international conventions referred to in the submissions of the appellant.

### Canadian Charter of Rights and Freedoms in the Canadian Constitution Act of 1982 and the Canadian Human Rights Act of 1985:

The panel notes that pursuant to the provisions of Section 19.1 the EAA, the panel is bound by the provisions of Sections 44 and Section 46.3 of the Administrative Tribunals Act of BC [SBC 2004] Chapter 45 (ATA):

- Section 44 of the ATA expressly provides that the EAA Tribunal does not have jurisdiction over constitutional questions.
- Section 46.3 of the ATA expressly provides that the EAA Tribunal does not have jurisdiction to apply the Human Rights Code.

Having regard to the foregoing provincial legislative provisions that apply to and bind the panel, the panel finds that it has no jurisdiction to deal with any of the constitutional and human rights issues raised by the appellant.

Therefore, the panel cannot and does not express any views relating to the issues raised by the appellant relating to the:

- "Charter of Rights and Freedoms" described in the Canadian Constitution of 1982, which was preceded by the "Canadian Bill of Rights" enacted in 1960,
- "Equality Rights" described in the Canadian Constitution Act of 1982, and
- Canadian Human Rights Act of 1985.

Article 14 of the International Covenant on Civil and Political Rights (“Covenant”):

The panel also notes that its jurisdiction is limited to dealing with issues arising under prescribed legislation of the Province of British Columbia and does not extend to any issues arising under federal legislation or International Covenants or Conventions. In particular, the panel noted the provisions of Section 19 of the EAA, which expressly prescribes that a Tribunal panel can only consider decisions that are appealable under three BC Provincial Acts, namely the *EAA*, *the Employment and Assistance for Persons with Disabilities Act* and *the Child Care Subsidy Act*.

Therefore, the panel cannot and does not express any view on any issue appealable under the provisions of the federal Criminal Code and the International Covenant and Conventions raised by the appellant.

Reconsideration Decision:

With regard to the ministry's reconsideration decision, the panel notes that Section 66 (1) of EAR provides that the minister may provide a bus pass supplement to a family unit who is a recipient disability assistance, and contributes \$45 towards the cost provided such family unit (i) receives federal spouse's allowance or federal GIS, (ii) is 60 or more years of age and receives income assistance from the Province of British Columbia, or is 65 years of age or more and meets all the eligibility requirements for federal GIS except the 10 year residency requirement.

The panel finds that, having regard to the relevant issues it has to decide, all of the evidence before it establish the following relevant facts:

- has not been designated as a “*person with disabilities*”, as defined under Section 2 of the Employment and Assistance for Persons with Disabilities Act, as envisaged under Section 66 (1) of EAR and therefore he is not a recipient of disability assistance from the Province of British Columbia;
- is not in receipt of income assistance from the Province of British Columbia, although he is at least 60 years old;
- has not provided any evidence to the ministry before the reconsideration decision or at the hearing of this appeal to establish that, although he is 60 years old, he is a recipient of federal spouse's allowance or federal Guaranteed Income Supplement (GIS); and
- has not provided any evidence to the ministry before the reconsideration decision or at the hearing of this appeal to establish that, although he is at least 65 years old, he meets all the federal GIS eligibility requirements except the 10 year residency requirement.

Based on the facts established by the relevant evidence before the panel, the panel finds that the ministry reasonably determined that the appellant did not meet the legal requirements for the issuance of a bus pass supplement. The ministry's reconsideration decision was reasonably supported by the evidence and is a reasonable application of the applicable legislation in the circumstances of the appellant.

The panel therefore confirms the ministry's Reconsideration Decision.

<b>PART G – ORDER</b>	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> RESCINDS THE MINISTRY DECISION	
If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME TAJDIN MITHA	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/10/01

PRINT NAME NANCY EIDVIK	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/10/01

PRINT NAME REECE WRIGHTMAN	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/10/01