

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

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “Ministry”) reconsideration decision dated August 2, 2018 which held that pursuant to section 66(1)(c) Employment and Assistance Regulation (“EAR”) the appellant was not eligible to receive a bus pass supplement because although he stated that he met the federal GIS eligibility requirements except the 10-year residence requirement, the appellant provided no evidence to support that assertion. The Ministry also determined that the appellant did not qualify for a bus pass supplement pursuant to the other criteria in section 66(1)(a) and (b) because he was not in receipt of a federal spouse’s allowance or in receipt of income assistance.

### **PART D – RELEVANT LEGISLATION**

s.66 Employment and Assistance Regulation (“EAR”)

s.11 Old Age Security Act (“OASA”)

## **PART E – SUMMARY OF FACTS**

The Ministry advised the appellant on July 3, 2018 that he was not eligible for a bus pass supplement (“BPS”). The appellant requested reconsideration of the Ministry decision.

In his request for reconsideration (“RFR”) the appellant states:

- He is a Canadian citizen who returned to Canada in February 2017 after the death of his American wife.
- Upon his return he applied for Old Age Security (“OAS”) and Guaranteed Income Supplement (“GIS”) but was informed that he would only qualify for a partial OAS pension as he did not meet the residency requirements.
- He was further advised that if he agreed to wait until September 2019 he would be eligible for the full amount of OAS and could then apply for GIS.
- He agreed to wait and signed a document stating such.
- In the meantime, he is living at his sister's home and working part time for a drywall company. He will be 69 in September 2018 and he has an artificial hip.
- He doesn't drive and must take transit every day to work.
- Part of his income last year included \$2500 in retroactive monies from Canada Pension Plan (“CPP”) and that amount won't be included in his 2018 income.
- He should qualify for the BPS as he is at “poverty level”.

Documentary evidence before the Ministry at reconsideration:

- Identification of the appellant being his identification card and his certificate of birth.
- A June 25, 2018 letter to the appellant advising him of the requirements to qualify for the BPS Program.
- The completed BC Bus Pass Program Online Request for Service.

The appellant's notice of appeal (“NOA”) states:

- He works part time 5 – 6 days per week at minimum wage.
- He has an artificial hip and he will be 69 years of age in September.
- He must work one more year before he receives OAS/GIS and he is requesting a bus pass so that he can eat properly and pay for room and board.

The appellant signed a release of information permitting his sister to be his representative (the “Representative”) and speak on his behalf.

At the hearing, the Representative provided the following information:

- If the appellant waits until he is 70 years old, he will get full OAS and then be eligible to apply for GIS.
- He will commence his application for OAS and GIS six months prior to his 70th birthday.
- It is obvious that the appellant qualifies pursuant to s.66(1)(c).
- The appellant never resided in the USA full time. He married an American woman and lived “under the radar”. She picked the appellant up on February 21, 2017 and brought him back to live with her.
- The appellant is a Canadian citizen. He didn't do his income tax for a long time but he is now doing everything properly. He is “short one year” and that is why he won't get OAS until he is 70-years-old.
- She wants the appellant to have the full amount of OAS and she encouraged the appellant to wait for his full OAS.
- She sent in photocopies of the appellant's documents regarding his OAS. She doesn't remember who she sent those documents to but believes they were sent to the Ministry.
- No one told the appellant to send in documents. She was simply trying to help the appellant apply for the BPS.
- The appellant is not computer literate.
- The appellant receives \$214.00 in CPP monthly.

At the hearing the Ministry relied on their reconsideration decision. The Ministry stated that they did not receive any documentation regarding the appellant's eligibility for OAS or GIS. The Ministry did state that even if the appellant provided proof that he would become eligible for OAS at age 70, the Ministry's decision would still be that it would be at that time that the appellant became eligible for GIS and therefore eligible for a BPS.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's decision to deny the appellant a BPS pursuant to section 66(1) EAR was reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant. Specifically, was it reasonable for the Ministry to determine that the appellant did not provide evidence that he met the eligibility requirements to receive GIS pursuant to s.66(1)(c)?

### The legislation provides:

s.66 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*

*(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.*

*(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 or in a transportation service region, as defined in the South Coast British Columbia Transportation Authority Act.*

s. 11 Old Age Security Act RSC 1985, c O-9

*pension means a monthly pension authorized to be paid under Part I; (pension)*

*pensioner means a person whose application for a pension has been approved; (pensionné)*

*Supplement payable*

*11 (1) Subject to this Part and the regulations, for each month in any payment period, a monthly guaranteed income supplement may be paid to a pensioner.*

### Panel Decision

The Ministry determined, and the appellant does not dispute, that the appellant does not qualify for a bus pass supplement pursuant to s.66(1)(a) or (b) because he does not have a spouse (a), and is not on income assistance (b).

With respect to 66(1)(c), the appellant argues that he will receive GIS when he commences receiving OAS in September, 2019. The legislation is clear in s.66(1)(c) EAR in that the applicant must "*meet(s) all of the eligibility requirements for the federal guaranteed income supplement except the 10-year residency requirement.*" The panel finds that it was reasonable for the Ministry to determine that the appellant did not meet the eligibility requirements for the federal GIS. As stated in s.11 OASA, a monthly GIS may be paid to a pensioner. A pensioner is defined in OASA as a person who is receiving a pension under OASA, or in other words someone who is receiving OAS. In this case, the appellant is not receiving OAS and has provided evidence (both oral through his Representative and written) that he will not receive OAS until September, 2019. In order for the appellant to meet the definition in s.66(1)(c) EAR he would need to be in receipt of OAS and therefore eligible for GIS, which he is currently not.

For these reasons, the panel finds the Ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.

**PART G – ORDER**

THE PANEL DECISION IS: (Check one)       UNANIMOUS       BY MAJORITY

THE PANEL       CONFIRMS THE MINISTRY DECISION       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?       Yes       No

**LEGISLATIVE AUTHORITY FOR THE DECISION:**

*Employment and Assistance Act*

Section 24(1)(a)  or Section 24(1)(b)

and

Section 24(2)(a)  or Section 24(2)(b)

**PART H – SIGNATURES**

PRINT NAME

MEGHAN WALLACE (by telephone)

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2018/OCT/03

PRINT NAME

ZELDA CRAIG

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/OCT/03

PRINT NAME

JANET WARD

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018/OCT/03