

APPEAL NUMBER

2020-00184

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry's) reconsideration decision dated July 10, 2020, which denied the appellant's request for a retroactive dollar amount as a transportation supplement for the period January 2019 through January 2020. The ministry found that the appellant received the transportation supplement over this period in kind, in the form of a bus pass, and is not eligible for a transportation supplement in more than one of the two forms, pursuant to Section 54.2(1) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 54.2

PART E – SUMMARY OF FACTS

With the oral consent of the appellant, a ministry observer attended but did not participate in the hearing.

The evidence before the ministry at the time of the reconsideration decision included:

- Copy of Bus Pass in the appellant's name;
- Statement of Bus Pass usage for the period January 1, 2019 to January 2, 2020 showing no entries;
- Confirmation of Assistance dated August 21, 2019 indicating amounts given to the appellant for support (\$808.42), shelter: rent (\$375) and dietary allowance (\$40) and a bus pass with no dollar amount listed;
- Confirmation of Assistance dated May 7, 2020 indicating amounts given to the appellant for support, rent, dietary allowance and "transportation supplement \$52";
- Statement of Income Verification for the appellant showing no \$52 transportation supplement for January 2019 through February 2020 and "return of \$52 transportation supplement of \$52" in March 2020; and,
- Request for Reconsideration dated April 6, 2019.

In the Request for Reconsideration, the appellant wrote:

- On November 14, 2018 the appellant contacted the ministry to ask how the bus program works. The appellant asked if the appellant could have a bus pass as well as the transportation supplement [dollar amount of \$52 per month], but the explanation was not clear to the appellant.
- The appellant received a bus pass in the mail.
- In December 2018, the appellant called the ministry and the appellant thought the appellant could have the bus pass as well as the dollar amount.
- In January 2019, the appellant contacted the ministry to say the appellant did not want to use the bus pass and would stick to driving the appellant's car. The appellant was told to either return the bus pass or throw it away. The appellant was told by the ministry that the [dollar amount] would be added back on to the monthly [disability assistance].
- When the appellant looked on the 'My Self Serve' [on the ministry website], the appellant saw the words "bus pass," and the appellant thought the appellant was receiving the monthly [dollar amount].
- In January 2020, the appellant contacted the ministry to say that the appellant needed a bus pass to travel to a class. The appellant was told that there was already a bus pass that was active. The appellant found the bus pass in the appellant's belongings.
- The appellant asked the ministry if the appellant could receive the back-dated amount that the appellant had not been receiving for the last year since it was not the appellant's fault that the ministry did not previously cancel the bus pass.
- On February 4, 2020, the appellant spoke to a supervisor with the ministry and explained that the appellant never used the bus pass from January 2019 to January 2020 and the appellant should have been receiving the [dollar amount] and would like the amount of \$624 reimbursed.
- The supervisor with the ministry stated that the best the ministry could do was to give the appellant \$52 for January and \$52 for February 2020.

- The appellant checked the 'My Self Serve' and it showed "transportation supplement \$52."

Additional information

In the Notice of Appeal dated July 21, 2020, the appellant expressed disagreement with the ministry reconsideration decision and wrote:

- The ministry made a mistake.
- The appellant spoke to the ministry on the telephone and asked the ministry to give the appellant the transportation supplement of \$52 per month effective January 2019 instead of the monthly bus pass.
- The ministry did not submit the appellant's request and the appellant did not realize until a year later when the appellant decided to ask about a bus pass again.
- The appellant assumes the conversations with the ministry were recorded.

At the hearing, the appellant stated:

- The appellant is a Person With Disabilities (PWD) and the appellant cannot take public transit and has a note from the appellant's doctor that the appellant needs to travel by car.
- The appellant thought about taking the bus once a week for a class if the appellant could find someone to accompany the appellant on the bus.
- In November 2018 the appellant knew the appellant needed to get to the class so the appellant contacted the ministry to ask how the bus program works. The ministry stated that the bus pass program is run by BC Transit, which is separate, but the ministry is part of that program. The appellant asked if the appellant could have a bus pass as well as the transportation supplement [dollar amount of \$52 per month], but the explanation was not clear to the appellant.
- In December 2018, the appellant called the ministry again but was still confused about how the transportation supplement works.
- In January 2019, the appellant realized there was no one who could accompany the appellant on the bus so the appellant decided to drive to the class and use the disability permit for up to 3 hours of parking. The appellant called the ministry to say the appellant would drive and did not want to use the bus pass. The appellant was told to dispose of the bus pass so someone else could not use it.
- The appellant does not have a record of the date that the appellant called the ministry. On the appellant's personal calendar there is a general note at the beginning of the month of January 2019 with a 'To Do' list that the appellant requested the bus pass and then cancelled the bus pass.
- The appellant was told by the ministry that the dollar amount of \$52 would be added back on to the monthly PWD assistance.
- The appellant did not bother to look at the monthly report as the appellant hardly ever looks at it because there is no requirement to fill it out unless there is a change in income from employment. Since the appellant had no change in income, the appellant did not complete a report.
- In January 2020, the appellant decided to take another class and the appellant contacted the ministry to say that the appellant needed a bus pass. The appellant was told that there was already a bus pass that was active. The appellant looked for and found the

bus pass in the appellant's belongings.

- The ministry stated that the appellant would have to go to a retail dealer to validate the bus pass.
- The appellant realized that \$52 was being deducted every month since January 2019 and the ministry had said the bus pass would be cancelled but this was not done. The appellant asked to speak to a ministry supervisor.
- On February 4, 2020, the appellant spoke to a supervisor with the ministry and explained the whole situation that the appellant never used the bus pass from January 2019 to January 2020 and the appellant should have been receiving the \$52 per month and would like the amount of \$624 reimbursed.
- The supervisor with the ministry stated that the best the ministry could do was to give the appellant \$52 for January and \$52 for February 2020.
- The appellant asked the ministry to go back and listen to the recording of the conversation between the appellant and the ministry and the ministry supervisor stated they could not do that.
- The appellant has provided documents to show that the statements are not clear, as on the Confirmation of Assistance form of August 21, 2019 where there is a minus sign after the bus pass entry and it looks like the ministry is subtracting the bus pass.
- The appellant has shown that the bus pass card was never activated over the period January 2019 to January 2020.
- The appellant did not notice that the monthly amount of assistance was different. None of the words on the Confirmation of Assistance statement made sense to the appellant. There is a repayment deduction of \$20 but no deduction for a bus pass.
- Since the mistake was made by the ministry, the appellant is entitled to be reimbursed from January 2019 to February 2020, less the amounts paid for January and February 2020, for the total of \$520 requested by the appellant.
- The Income Verification form was provided to the appellant by the ministry and it makes things clear but this was not provided to the appellant until the reconsideration process and the appellant would have understood better if this was provided earlier.
- On the 'My Self Serve' website, the appellant can only see the previous month and not the whole history of previous assistance amounts.
- In 2014 the appellant had some health issues and the appellant had never requested a bus pass until 2019, which was the first time.
- The appellant remembers getting a letter in the mail from the ministry that the appellant could receive \$52 per month or a bus pass as a transportation supplement, but the appellant does not remember when this letter was received.
- Even in January 2020 when the appellant talked with the ministry the appellant was assured the bus pass would be cancelled but when the appellant talked with the supervisor it still had not been cancelled. The appellant recalls contacting the ministry at the beginning of the month of January 2020.
- The appellant used to go into the ministry office every month and the cheque would be mailed out after completing the stub. The appellant found it very difficult to be in the ministry office. The ministry switched the process to direct deposit to a bank account and, as a PWD, the appellant did not have to fill out a stub unless there is a change and there is no need for the appellant to go into the 'My Self Serve' account.

The ministry relied on the reconsideration decision as summarized at the hearing. The ministry clarified that:

- The reconsideration officer reviewed the appellant's file with the ministry and wrote that there was no indication on the ministry's file in January 2019 that the appellant requested a change in form of the transportation supplement to the dollar amount.
- When a client calls, the process is that the ministry pulls the client's file and makes a note of the conversation. The client can request a mailed statement of their assistance amounts or view the information online.
- If there had been a cancellation of the bus pass, there would have been an increase in the appellant's monthly assistance by \$52, which the appellant could have noticed earlier.
- In 2017 there was a change to the transportation supplement that allowed a choice of either the dollar amount each month or a bus pass, but there has never been an option to have both the bus pass and the dollar amount.
- If the ministry receives notice that a client wishes a change in the form of the transportation supplement, if they have already been issued the bus pass for the month the change will be effective for the following month.
- The ministry record indicates the appellant contacted the ministry on January 30, 2020, at the end of the month when the bus pass would have already been issued for the month.

The panel considered that there was no additional information for which a determination of admissibility was required under Section 22(4)(b) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's decision, which denied the appellant's request for a retroactive dollar amount as a transportation supplement for the period January 2019 through January 2020 as the ministry found that the appellant received the transportation supplement over this period in kind, in the form of a bus pass, and is not eligible for a transportation supplement in more than one of the two forms, pursuant to Section 54.2(1) of the EAPWDR, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 54.2 of the EAPWDR provides:

Persons with disabilities transportation supplement

- 54.2 (1) The minister may provide a transportation supplement to or for a family unit that is eligible for disability assistance or hardship assistance for a calendar month, in respect of each recipient who is designated as a person with disabilities in the family unit, in one of the following forms:
- (a) in money, in the amount of \$52;
 - (b) in kind, in the form of a pass, deemed to have a value of \$52 for the purposes of this regulation, for the personal use of the person with disabilities on a public passenger transportation system in
 - (i) a transit service area established under section 25 of the British Columbia Transit Act, or
 - (ii) a transportation service region as defined in the South Coast British Columbia Transportation Authority Act.
- (2) If a recipient who is provided a supplement under either paragraph (a) or (b) of subsection (1) gives the minister notice that the recipient wishes to receive the other form of supplement provided under that subsection, the minister may provide that other form of supplement for a subsequent month.
- (3) An annual pass, as defined in section 51 (2) [spouse bus pass supplement], is deemed to be a supplement provided in kind under subsection (1) (b) of this section if the annual pass was provided to or for a recipient who is designated as a person with disabilities and who was previously provided the annual pass for personal use
- (a) as the spouse of a person with disabilities under section 51 (1), or
 - (b) under section 66 (1) [bus pass supplement] of the Employment and Assistance Regulation.

Panel decision

Under Section 54.2(1) of the EAPWDR, the ministry may provide a transportation supplement to a recipient of disability assistance who has the Persons With Disabilities (PWD) designation as either money [Section 54.2(1)(a)] or a bus pass [Section 54.2(1)(b)]. Section 54.2(2) sets out that if the recipient is provided a transportation supplement as money or as a bus pass and gives the ministry notice that the recipient wishes to receive the other form of the supplement, the ministry may provide that other form of supplement for a subsequent month.

Position of the parties

In the reconsideration decision, the ministry wrote that the appellant had been receiving the transportation supplement in the form of the dollar amount and the appellant had requested a change to the bus pass in January 2019. The ministry wrote that there is no indication in the ministry's files that the appellant subsequently requested a change in the form of the transportation supplement back to the dollar amount, and there is no evidence until January 2020 to support the claim that the appellant wanted the dollar amount rather than the bus pass. The ministry wrote that the appellant did not inform the ministry until January 2020 that the appellant had requested the dollar amount and was not in receipt of the dollar amount, even though there had been a decrease in the appellant's disability assistance amount by \$52 commencing in January 2019 due to the appellant's receipt of the bus pass.

The ministry wrote that only one form of the transportation supplement may be provided by the ministry each month under Section 54.2(1) of the EAPWDR and, as the appellant was provided the transportation supplement in the form of a bus pass for the period January 2019 to January 2020, the ministry cannot provide the appellant with the other form of the transportation supplement [the dollar amount] prior to February 2020. The ministry's position is that the appellant provided notice that the appellant wished to receive the transportation supplement in the form of the dollar amount of \$52 per month [Section 54.2(1)(a)] on January 30, 2020 and the ministry may provide that form of supplement for the subsequent month, or February 2020.

In the Notice of Appeal the appellant wrote that the appellant asked the ministry to give the appellant the transportation supplement of \$52 per month effective January 2019 instead of the monthly bus pass and the ministry did not submit the appellant's request. The appellant wrote that the appellant did not realize the ministry's mistake until a year later when the appellant decided to ask about a bus pass again. The appellant wrote that there is an assumption that the conversations with the ministry are recorded to check the accuracy of the appellant's claim.

At the hearing, the appellant stated the appellant thought about taking the bus once a week for a class if the appellant could find someone to accompany the appellant on the bus and the appellant acknowledged requesting the bus pass from the ministry. In the Request for Reconsideration, the appellant wrote that the appellant received a bus pass in the mail. At the hearing, the appellant stated that the appellant realized in January 2019 that there was no one who could accompany the appellant on the bus so the appellant decided to drive to the class and the appellant called the ministry to say the appellant did not want to use the bus pass. The appellant stated that the ministry advised the appellant to dispose of the bus pass so someone else could not use it and that the dollar amount of \$52 would be added back on to the appellant's monthly PWD assistance. The appellant stated that the appellant did not bother to look at the monthly report as the appellant hardly ever looks at it because there is no requirement to fill it out unless there is a change in income from employment.

The appellant stated at the hearing that it was not until January 2020, when the appellant decided to take another class, that the appellant contacted the ministry to say that the appellant needed a bus pass. The appellant stated that the ministry advised the appellant that there was already a bus pass that was active. The appellant stated that the appellant found the bus pass but the bus pass card was never activated over the period January 2019 to January 2020. The appellant stated that since the mistake was made by the ministry not to change the form of the transportation supplement, the appellant is entitled to be reimbursed from January 2019 to February 2020, less the amounts paid for January and February 2020, for the total of \$520 requested by the appellant.

Analysis

Section 54.2(2) of the EAPWDR states that if a recipient who is provided a supplement as either money in the amount of \$52 or in kind, in the form of a bus pass, gives the ministry notice that the recipient wishes to receive the other form of supplement, the ministry may provide that other form of supplement for a subsequent month. In January 2019 the appellant was in receipt of the transportation supplement in the form of a bus pass, pursuant to Section 54.2(1)(b) of the EAPWDR. The appellant claimed to have provided notice to the ministry in January 2019 that the appellant wished to receive the transportation supplement in the form of money in the amount of \$52, pursuant to Section 54.2(1)(a) of the EAPWDR. Although the appellant stated that this notice was provided to the ministry sometime in January 2019, the appellant stated at the hearing that the appellant does not have a record of the date that the appellant called the ministry. The appellant stated that there is a general note in the appellant's personal calendar at the beginning of the month of January 2019 with a 'To Do' list that the appellant requested the bus pass and then subsequently cancelled the bus pass.

Unlike the appellant's conversation with the supervisor of the ministry in February 2020 where the name of the supervisor and the date of the conversation were noted by the appellant, the appellant did not have a record of the specific day or the name of the person at the ministry with whom the appellant spoke in January 2019, which makes it difficult to verify the appellant's information. The appellant claimed there was a telephone conversation between the appellant and the ministry sometime in January 2019 and the ministry checked the appellant's ministry file and could not find a note to confirm that the appellant made a request in January 2019 to receive the transportation supplement in the form of the dollar amount. At the hearing, the ministry confirmed that the usual process is for the ministry to make a note of any conversations with the client in the client's file.

Section 54.2(2) of the EAPWDR requires that the recipient give the ministry "notice" of the desired change in the form of the transportation supplement and the onus remains on the person claiming that notice was provided to give sufficient evidence of this notice, such as a specific verbal confirmation or a form of written notice. The appellant also had the option to confirm that the notice had been received by the ministry by checking the appellant's assistance

amount and making an inquiry of the ministry upon discovering that the dollar amount of \$52 had not been added, as expected, in February 2019.

Although the appellant requested retroactive payment of the transportation supplement in the dollar amount for the period January 2019 to January 2020, the panel finds that the appellant was in receipt of the bus pass over this period and Section 54.2 of the EAPWDR only allows for one of the two forms of supplement and does not provide for retroactive payment of the dollar amount. The ministry acknowledges that the appellant provided notice of the requested change in the form of the transportation supplement in January 2020 and the panel finds that the ministry reasonably concluded that the ministry may provide the dollar amount for a subsequent month, commencing February 2020.

Conclusion

The panel finds that the ministry reconsideration decision, which denied the appellant's request for a retroactive dollar amount as a transportation supplement for the period January 2019 through January 2020, was a reasonable application of the applicable enactment in the appellant's circumstances and the panel confirms the ministry's decision. Therefore, the appellant's appeal is not successful.

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2020-00184

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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020-08-12

PRINT NAME

Kevin Ash

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-08-12

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-08-12