

APPEAL NUMBER
2020-00278

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (Ministry) reconsideration decision dated December 4, 2020 which held that the appellant was not eligible for a bus pass supplement pursuant to Sections 66 (1) of the *Employment and Assistance Regulation* (EAR).

The ministry also determined that the appellant does not meet the criterion of section 66 (1) of the EAR as the appellant does not:

- (a) receive the federal spouse's allowance (SA) or federal guaranteed income supplement (GIS),
- (b) is 60 or more years of age and receives income assistance under section 2, 4, 6 or 9 of Schedule A of the EAR
- (c) is 65 years of age or more and meets all of the eligibility requirements of the federal GIS except the 10- year residency requirement.

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PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation – EAR – section 66 (1).

PART E – SUMMARY OF FACTS

Evidence at Reconsideration

- 1 Verification of old age supplement OAS/GIS (old age security)
- 2 Request for Reconsideration (RFR), signed and dated November 18, 2020, which, in part, stated the following:
 - Received federal allowance for survivors for 10 years.
 - Now at 65 years of age the survivor's allowance is no longer as the appellant now receives OAS.
 - The appellant has appealed the denial of the survivor's allowance, but a decision can take 8 months.
 - As a result, the appellant's income has seen a significant reduction.
 - A representative at Canada Pension Plan suggested that the ministry make an exception for the appellant until the appeal process is complete.

Evidence at Appeal

Notice of Appeal (NOA), dated December 14, 2020 and completed by the Tribunal staff over the phone, which stated, in part, "I am currently not receiving my spousal allowance" due to the ministry's delay. "I am entitled to the bus pass".

Evidence at the Hearing

At the hearing, the appellant stated, in part, the following:

- From age 60 she received a bus pass from the ministry at a reduced cost but when she turned 65 and started receiving her OAS, her SA was automatically cancelled.
- She is currently appealing this decision by the federal government and was told on November 5, 2020 that a decision regarding her appeal could take 8 months.
- The appellant was assured by a representative at Canada Pensions that her SA should be re-instated. The ministry can confirm this with them. Therefore, the ministry should re-instate her bus pass eligibility.
- She is disabled and was on Canada Pension Disability benefits, which are financially inferior to BC's disability benefits for which she did not qualify.
- As a result of her disability and no bus pass, she is unable to leave her home or attend medical appointments.

At the hearing, the ministry relied on its reconsideration decision and added the following:

- In the case of the appellant, the decision rests with section 66 (1) (a) which states that the recipient of the bus pass supplement must receive SA or GIS to be eligible. The appellant currently does not receive either benefit.
- The bus pass supplement is for seniors who receive SA or GIS.
- When the appellant reached age 65, she was no longer eligible for SA or her spouse's GIS. However, she can apply for her own GIS benefit.
- If the appellant's SA or GIS was re-instated at any point in 2020, then the appellant would have transitioned seamlessly to her 2021 bus pass supplement.
- Once the appellant is receiving either SA or GIS then she will be eligible for the bus pass supplement.
- There is no discretion in the legislation or ministry policy for individuals, like the appellant, who are transitioning from one benefit to another.

PART F – REASONS FOR PANEL DECISION

The issue at appeal is whether the ministry's decision that found that the appellant is not eligible for a bus pass supplement pursuant to Section 66 (1) of the EAR was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 66 (1) of the EAR sets out the following:

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.

The Ministry's Position

The ministry argued that the appellant no longer receives either spousal allowance or a guaranteed income supplement and therefore is not eligible for a bus pass supplement pursuant to section 66 (1) of the EAR.

The Appellant's Position

The appellant argued that she has been assured that her spousal allowance will be re-instated, but that process will take 8 months. She is unable to get around without a bus pass due to her disability and it will be debilitating for her if she is not able to get to her appointments.

The Panel's Decision

The ministry determined, and the appellant did not dispute, that the appellant does not meet the criterion of sections 1, 2 and 4 of the *Employment and Assistance Act* and therefore is not eligible for income assistance or any benefit pursuant to the *Employment and Assistance Regulation*.

Similarly, the ministry determined, and the appellant did not dispute, that appellant does not meet the criterion of sections 1, 3, 4, 5, and 6 of the *Employment and Assistance for Persons with Disabilities Act* and therefore is not eligible for disability assistance or any benefit pursuant to the *Employment and Assistance for Persons with Disabilities Regulation*.

Until the appellant turned age 65, she was receiving a bus pass supplement pursuant to section 66 (1) of the EAR. In particular, the ministry relied on section 66 (1) (a) to provide the appellant with a bus pass supplement and it states that to be eligible for a bus pass supplement one must receive the federal spouse's allowance or federal guaranteed income supplement.

Subsections (b) and (c) are not applicable in the case of the appellant and the appellant did not dispute this. Section 66 (1) (b) and (c) state that to be eligible for a bus pass supplement one (b) is 60 or more years of age and receives income assistance under section 2, 4, 6 or 9 of Schedule A of the EAR or (c) is 65 years of age or more and meets all of the eligibility requirements of the federal GIS except the 10-year residency requirement.

The ministry denied the appellant the bus pass supplement pursuant to section 66 (1) (a), and therefore the Panel's decision will also focus on this section.

Paragraph 66(1)(a) provides that those who are not eligible for income assistance or disability assistance, may be eligible for a bus pass supplement if in receipt of the federal spouse's allowance or federal guaranteed income supplement. The appellant does not deny that currently she does not receive either SA or a GIS. The panel finds that the ministry's interpretation of the legislation was reasonable and that it has applied the correct legislation. However, the panel acknowledges that the legislation itself is not reasonable because it does not allow for discretion for those individuals whose benefits have been delayed due to bureaucratic processes. Unfortunately, the panel does not have the jurisdiction to overturn legislation or make exceptions to what is stated in legislation. As a result, the panel finds that ministry was reasonable in determining that the appellant is not eligible for a bus pass supplement pursuant to section 66 (1) (a) of the EAR.

Conclusion

The panel finds that the ministry reasonably concluded that the evidence establishes the criteria set out in Section 66 (1) of the EAR have not been met. The panel therefore finds that the ministry's decision to deny the appellant's request for a bus pass supplement was a reasonable application of the legislation and was supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful at appeal.

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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

Neena Keram

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/01/06

PRINT NAME

David Handelman

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/01/06

PRINT NAME

Laurie Kent

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/01/06