

APPEAL NUMBER
2021-00046

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated February 8, 2021, which determined that the appellant was not eligible to receive a transportation supplement effective January 2021, as per sections 5 of the *Employment and Assistance for Persons with Disabilities Act* and 54.2 of the *Employment and Assistance for Persons with Disabilities Regulation*. The ministry determined that the appellant was ineligible for disability assistance as of November 2020 because they turned 65 years of age and their OAS/GIS income exceeded the ministry's rate of disability assistance and was also ineligible for the transportation supplement.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) – section 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – section 54.2

PART E – SUMMARY OF FACTS

Relevant Evidence Before the Minister at Reconsideration

Ministry records show:

- The appellant turned 65 in September 2020.
- The last month they received disability assistance was October 2020.
- The appellant was ineligible for disability assistance as of November 2020 because they turned 65 and their Old Age Security/Guaranteed Income Supplement (OAS/GIS) income exceeded the ministry's rate of disability assistance.
- The appellant continued to receive \$52 as a transitional transportation supplement for November and December 2020 - provided under BC Employment and Assistance Policy.

Request for Reconsideration (January 25, 2021)

The appellant is requesting \$52/monthly for transportation to and from his daycare program.

Notice of Appeal (February 23, 2021)

The appellant is requesting that \$52 be put in their bank account to cover the cost of transportation three days/week. The appellant feels neglected because they turned 65 and feels this is unfair.

The panel determined that the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision, which determined that the appellant was not eligible to receive a transportation supplement effective January 2021, as per sections 5 of the *Employment and Assistance for Persons with Disabilities Act* and 54.2 of the *Employment and Assistance for Persons with Disabilities Regulation*, 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

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.

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*.

The ministry also included section 66 of the *Employment and Assistance Regulation* in the reconsideration decision, which refers to a bus pass supplement that the minister may provide "to or for a family unit, other than the family unit of a recipient of disability assistance...". The ministry noted that if the appellant uses public transportation regularly, they may consider applying for a bus pass under this legislation. The panel found, as the ministry did not make a determination under section 66 of the *Employment and Assistance Regulation*, eligibility for a bus pass would need to be determined, separately, if the appellant applies.

Appellant Argument

The appellant argues that they are being neglected simply because they turned 65, and this is unfair.

Ministry Argument

The ministry argues that as the appellant is no longer a recipient of disability assistance (because their OAS/GIS income exceeds the ministry's rate of disability assistance), they are no longer eligible to receive a transportation supplement as per section 54.2 of the EAPWDR.

Analysis

As ministry records show the appellant continued to receive \$52 as a transitional transportation supplement for November and December 2020 - provided under BC Employment and Assistance Policy, the panel determined the first month the appellant did not receive the transportation supplement for was January 2021.

In its reconsideration decision, the ministry stated that the denial of the transitional transportation supplement (provided for November and December 2020) is not open to a reconsideration decision as it is only permitted in policy and not under legislation.

The panel's jurisdiction is limited to the application of the legislation so the panel's decision in this appeal applies only to the eligibility of the transportation supplement, provided under the legislation, and not to the two months transitional transportation supplement, provided under policy.

Section 5, EAPWDA - disability assistance and supplements

Under section 5 of the EAPWDA, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it. Ministry records show the appellant was ineligible for disability assistance as of November 2020 because they turned 65 years of age and their OAS/GIS income exceeded the ministry's rate of disability assistance. The appellant argues that they are being neglected simply because they turned 65, and this is unfair. Based on the evidence (ministry records), the panel finds the ministry reasonably determined the appellant was not eligible to receive disability assistance after November 2020 under section 5 of the EAPWDR as the appellant's OAS/GIS income exceeded the ministry's rate of disability assistance.

Section 54.2, EAPWDR - transportation supplement

Section 54.2 of the EAPWDR states that the minister may provide a transportation supplement for a family unit that is eligible for disability assistance and sets out the options and monthly amounts. The ministry argues that as the appellant is no longer a recipient of disability assistance (because their OAS/GIS income exceeds the ministry's rate of disability assistance), they are no longer eligible to receive a transportation supplement as per section 54.2 of the EAPWDR.

As the panel finds the ministry reasonably determined the appellant was not eligible to receive disability assistance after November 2020 under section 5 of the EAPWDR, the panel also finds the ministry reasonably determined the appellant was not eligible to receive supplements under section 54.2 of the EAPWDR. In other words, the transportation supplement can only be provided to someone who is eligible to receive disability assistance.

Conclusion

The panel concludes that the ministry's reconsideration decision, which determined that the appellant was not eligible to receive a transportation supplement effective January 2021, as per sections 5 of the *Employment and Assistance for Persons with Disabilities Act* and 54.2 of the *Employment and Assistance for Persons with Disabilities Regulation*, was a reasonable application of the legislation in the circumstances of the appellant. The appellant is not successful on 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

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/04/15

PRINT NAME

Rick Bizarro

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/15

PRINT NAME

Kim Read

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/04/15