

Appeal Number 2022-0036

Part C – Decision Under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated February 9, 2022, in which the ministry denied the appellant’s request for a bus pass supplement for himself and his spouse. The ministry was not satisfied that the appellant met any of the criteria for eligibility under section 66(1) of the Employment and Assistance Regulation (“EAR”).

Part D – Relevant Legislation

EAR, Section 66(1)

Part E – Summary of Facts

The appellant and his spouse are both over 65 years old. They have been permanent residents of Canada since 2017. The appellant does not receive income assistance.

The Government of Canada sets eligibility criteria for receiving the Old Age Security (“OAS”) pension and the Guaranteed Income Supplement (“GIS”).

According to the Government of Canada website, the basic OAS pension eligibility criteria for a person living in Canada are:

1. age 65 or older;
2. Canadian citizen or legal resident when the application is approved;
3. lived in Canada for at least 10 years since the age of 18.

Regarding the OAS pension, the Government of Canada website says, “Not everyone receives the full [OAS] pension. The amount you receive depends on the number of years you have lived in Canada. If you lived in Canada for less than 40 years (after age 18) you will receive a partial payment amount.”

Neither the appellant nor his spouse is eligible to receive the OAS pension because they have not lived in Canada for at least 10 years.

According to the Government of Canada website, for a married person the criteria for receiving federal GIS are:

1. age 65 or older;
2. living in Canada;
3. receiving the OAS pension;
4. income below the threshold of \$25,728 for a married person whose spouse receives the full OAS pension, or \$45,656 for a married person whose spouse does not receive an OAS pension.

The income threshold for receiving the OAS pension is \$129,757 for an individual, regardless of marital status.

In 2020, the combined income of the appellant and his spouse was \$29,585.

Part F – Reasons for Panel Decision

The issue is whether the ministry was reasonable in its decision to deny the appellant a bus pass supplement under section 66(1) of the EAR.

Legislation:

Under section 66(1) of the EAR, the ministry may provide an annual bus pass to a person who meets 1 of 3 criteria:

1. receives the federal spouse's allowance or federal GIS;
2. is over 60 years old and receives income assistance; or
3. is 65 years of age or more and meets all of the eligibility requirements for the federal GIS except the 10 year residency requirement.

Appellant's position:

The appellant says that he and his spouse are eligible for the bus pass supplement because they are over 65 and meet all the eligibility requirements for the federal GIS except the 10 year residency requirement. He maintains that they would qualify for GIS, except for the 10 year residency requirement, because the income threshold that applies in their circumstances is \$46,656, not \$25,728.

The appellant reasons that the lower income threshold only applies when the spouse receives a full OAS pension. His spouse does not receive the OAS pension now and will not receive the full OAS pension in future because they have not lived in Canada for 40 years since the age of 18. Therefore, he argues that the higher income threshold applies, their joint income of \$29,585 is less than \$46,656 and they would qualify for federal GIS. If they would qualify for federal GIS, except for the 10 year residency requirement, then they should be entitled to receive the bus pass supplement.

Ministry's Position:

The ministry says that the appellant does not meet any of the criteria under section 66(1), and therefore the appellant is not eligible to receive a bus pass supplement for himself and his spouse. They do not receive the federal spouse's allowance or GIS, nor do they receive income assistance, so they are not eligible under section 66(1)(a) or (b) of the EAR.

The ministry maintains that the appellant and his spouse are not eligible under section 66(1)(c) either. To determine whether the appellant would be eligible for federal GIS except for the 10 year residency requirement, the ministry must first determine OAS pension eligibility. Both the appellant and his spouse would have been eligible for the full OAS pension, if not for the residency requirement.

If the appellant and his spouse were both in receipt of the full OAS pension, they would only be eligible for federal GIS if their combined income was less than \$25,728. Eligibility for federal GIS would be based on the combined net income of the appellant and his spouse in the 2020 tax

year. Their combined income in 2020 was more than \$25,728, therefore they would not have been eligible for federal GIS, and they do not meet the criterion in section 66(1)(c).

Panel Decision:

The appellant and his spouse do not meet the criteria in section 66(1)(a) and (b) for receiving a bus pass supplement because neither he nor his spouse receive the federal spouse's allowance, federal GIS or income assistance under the Employment and Assistance Act.

For people who are not receiving any of those government income benefits, under section 66(1)(c) the ministry may provide the bus pass supplement for people who would be eligible to receive federal GIS if not for the 10 year residency requirement. Neither the applicant nor his spouse have been resident in Canada for 10 years.

To receive federal GIS, a person must first be receiving the OAS pension. Where an applicant for the bus pass supplement does not meet the 10 year residency requirement, the ministry must engage in a hypothetical determination of eligibility for federal GIS. To be eligible for federal GIS, a person must be receiving the OAS pension. Therefore, the ministry begins by considering whether the applicant would be eligible for the OAS pension, which includes the assumption that the person would apply for and receive the OAS pension if they were eligible.

The ministry must then go on to determine whether the applicant meets the other requirements for federal GIS, one of which is the annual income threshold. For a married person, the income threshold for eligibility depends on whether their spouse is also receiving the OAS pension.

In the appellant's circumstances, the ministry has determined that both the appellant and his spouse would be eligible, and therefore would apply for and receive the OAS pension, if not for the 10 year residency requirement. The panel finds that it is reasonable for the ministry to be consistent in making the same hypothetical determination of eligibility for both the appellant and his spouse.

The panel does not accept the appellant's argument that, if a spouse could receive less than the full OAS pension, then the higher income threshold should apply. For the purposes of determining eligibility for the bus pass supplement, the panel finds that it is reasonable for the ministry to assume that applicants would be eligible for the full OAS pension if they meet the criteria other than length of residence.

The panel finds that, if both the appellant and his spouse were receiving the OAS pension, they would not qualify for federal GIS, even if they met the 10 year residency requirement, because their combined income of \$29,585 is more than the income threshold of \$25,728.

Therefore, the panel finds that the ministry's decision to deny the appellant a bus pass supplement for himself and his spouse under section 66(1) of the EAR was a reasonable application of the legislation in the appellant's circumstances.

The panel confirms the ministry reconsideration decision. The appellant is not successful in the appeal.

Legislation:

Employment and Assistance Regulation

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.

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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)

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

Part H – Signatures

Print Name

Susan Ferguson

Signature of Chair

Date (Year/Month/Day)

2022/03/23

Print Name

Elaine Jeffery

Signature of Member

Date (Year/Month/Day)

2022/03/23

Print Name

Roy Wares

Signature of Member

Date (Year/Month/Day)

2022/03/23