

Part C – Decision Under Appeal

Under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated September 6, 2022, that found the appellant was not eligible for a bus pass supplement.

The ministry stated that the appellant did not meet the requirements set out in section 66(a) or (b) of the Employment and Assistance Regulation (the Regulation) because the appellant does not receive any of the qualifying benefits – the federal spouse’s allowance, the federal guaranteed income supplement (GIS), or income assistance under sections 2, 4 or 9 of Schedule A of the Regulation.

The ministry also found that the alternative requirements of section 66(1)(c) were not met because the appellant did not meet all of the eligibility requirements for the GIS, despite the exception to the 10 year residency requirement, because the combined income of the appellant and her spouse is more than the GIS threshold.

Part D – Relevant Legislation

Employment and Assistance Regulation (the Regulation), section 66

Part E – Summary of Facts**Information before the ministry at reconsideration**

The appellant is over the age of 65, is married, and is not receiving income assistance. The appellant became a permanent resident in Canada in 2014.

The appellant applied to the ministry for a bus pass supplement and was denied on August 2, 2022. The appellant requested reconsideration of the decision on the basis that the appellant's T4 information submitted to the Canada Revenue Agency (CRA) was not correct, which the appellant explained, is why the yearly combined income of the appellant and her spouse was \$29,929 and exceeded \$26,688. The appellant states that the correct T4 information has now been sent to the CRA. Documentation respecting the income of the appellant and her spouse before the ministry at reconsideration included:

- 1) CRA Notice of assessment for the appellant for tax year 2021 which indicated that the appellant's total income was \$29,490 and net income was \$29,447.
- 2) CRA Notice of assessment for the appellant's spouse for tax year 2021 which indicated that both total and net income were \$1,018.
- 3) CRA T1 Adjustment Request form for the appellant's spouse.

(The Panel notes that each Notice of assessment indicates that a \$579 deduction applies to the above net income amounts.)

Information provided on appeal and admissibility**Notice of Appeal, dated Sep 14, 2022**

The appellant states that the 2021 combined net income of the appellant and her spouse does not exceed \$26,688 and that the CRA is in the process of conducting a reassessment.

Notice of reassessment for the appellant for tax year 2021 (issued Sep 19, 2022)

The appellant's total income is identified as \$23,547; net income is \$23,533. Again, a \$579 deduction applies to the net income.

The ministry did not provide a submission for the written hearing.

The panel hearing the appeal was also hearing the appellant's spouse's appeal for a bus pass supplement and therefore was aware that the appellant and her spouse had each submitted their own CRA Notice of reassessment for tax year 2021 to the Tribunal for their separate appeals. The panel considered both reassessments to be relevant to the issue of both appeals and that it would be procedurally unfair to consider each reassessment in isolation. Accordingly, the panel adjourned the written hearing to allow time for the Tribunal office to contact the appellant's spouse and ask if he would consent to his Notice of reassessment being considered for this appeal. By email to the Tribunal office, the appellant's spouse provided consent. The

panel notes that the Notice of reassessment for the appellant's spouse indicated that there was no change to the spouse's total and net income for tax year 2021 (\$1,018) and that the same \$579 deduction from net income applies.

The panel admitted the appellant's Notice of Appeal and the Notice of reassessment for both the appellant and her spouse under section 22(4) of the *Employment and Assistance Act* as information reasonably required for full and fair disclosure of the matters at issue. The panel considered the information to be directly related to the issue of the appellant's eligibility for the bus pass supplement.

The positions of both parties are set out in Part F of this decision.

Part F – Reasons for Panel Decision

Issue on Appeal

The issue on appeal is whether the ministry's decision to deny the appellant a bus pass supplement was reasonably supported by the evidence or a reasonable application of the legislation. Specifically, was the ministry reasonable when deciding that the appellant was not eligible for the bus pass supplement because the appellant did not receive the federal spouse's allowance, the GIS, or income assistance, and would not be eligible for the GIS because the combined income of the appellant and spouse was more than the allowable GIS limit?

Relevant 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.

Government of Canada website (www.canada.ca) information

Eligibility requirements for the federal GIS are set by the Government of Canada. As shown on the Government of Canada's website, to receive GIS, a married person must meet the following requirements:

- 1) be age 65 or older,
- 2) live in Canada,
- 3) get the Old Age Security (OAS) pension,

- 4) have income below the threshold of \$26,688 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 Government of Canada website indicates that the basic OAS pension eligibility criteria for a person living in Canada are:

- 1) be age 65 or older
- 2) be a Canadian citizen or legal resident when the application is approved
- 3) have resided in Canada for at least 10 years since the age of 18.

Respecting the OAS pension, the Government of Canada website indicates that to receive the OAS, a person's income must be less than \$129,757, regardless of marital status. Individuals who have lived in Canada for less than 40 years (after age 18) will not receive the full OAS pension; instead, a partial payment based on the number of years in Canada will be received.

Appellant's Position

The appellant's position is that the ministry's decision is based on inaccurate information and that the correct information shows that the combined income of the appellant and her spouse is below the \$26,688 GIS threshold, which makes the appellant eligible for the bus pass supplement.

Ministry's Position

The ministry's position is that the appellant does not meet any of the criteria under section 66(1) of the Regulation to qualify for a bus pass supplement.

The ministry states that section 66(1)(a) and (b) does not apply to the appellant because the appellant does not receive the federal spouse's allowance, federal GIS, or income assistance. The ministry notes that information from Service Canada confirms that the appellant does not receive either OAS or GIS.

The ministry states that the appellant is not eligible for a bus pass under section 66(1)(c) because the appellant does not meet all the eligibility requirements for the federal GIS even given the exception to the 10-year requirement. The ministry states that to determine if the appellant would be eligible for GIS if the 10 year residency requirement was met, it must determine whether the appellant's income would be within the GIS threshold for income for an applicant with a spouse. The ministry notes that to review GIS eligibility, OAS eligibility must first be considered. Noting that persons with an individual income of up to \$129,757 are eligible for the maximum OAS amount, depending on how long they have resided in Canada from 18 years of age, the ministry determined that based on the individual incomes of the appellant and the appellant's spouse, both would be eligible for full OAS. Accordingly, the appellant would only be eligible for GIS if the combined income of the appellant and her spouse is less than the threshold amount of \$26,688.

Based on the 2021 tax assessments, the ministry determined that the combined net income of the appellant and her spouse is \$29,929 which is more than the \$26,688 GIS threshold. Therefore, even if the appellant had met the 10 year residency requirement, the appellant would not be eligible for GIS. The ministry noted that the appellant is welcome to reapply once the 2021 income tax return has been reassessed by the CRA.

Panel Decision

The panel finds that the appellant does not meet the bus pass criteria of section 66(1)(a) and (b) because the appellant does not receive the federal spouse's allowance, federal GIS or income assistance under the Employment and Assistance Act.

Respecting whether the appellant meets the alternate criteria of section 66(1)(c) to qualify for the bus pass supplement, the issue is whether the appellant would be eligible to receive the federal GIS but for the 10 year residency requirement, a requirement the appellant does not meet.

It is not disputed that the appellant meets the first and second requirements for the GIS as the appellant is over 65 and lives in Canada.

The third requirement is that a person is receiving the OAS pension. The requirements to receive the OAS are set out on the Government of Canada website and include residing in Canada for 10 years. When considering eligibility for a bus pass supplement, eligibility for the OAS must be considered as if the residency requirement does not apply. It is not disputed that the appellant meets the first two requirements for the OAS as the appellant is over 65 years of age and is a legal resident of Canada. The Government of Canada website also indicates that a person's income must be less than \$129,757, regardless of marital status, to receive the OAS pension. The panel finds that for the purposes of determining eligibility for the bus pass supplement, it was reasonable for the ministry to decide that a person would be eligible for the full OAS pension if the criteria other than length of residence are met. Based on the income of the appellant and her spouse, as reported on both the Notices of assessment and the Notices of reassessment, the panel finds that it was reasonable for the ministry to determine that, but for the residency requirements, the appellant and her spouse would both be eligible for the full OAS pension.

The fourth, and final, requirement for the GIS is that the combined income of the appellant and her spouse must fall within the applicable GIS income threshold. In the appellant's case, as a married person whose spouse would be eligible to receive the full OAS pension, the GIS threshold is \$26,688. The panel notes that the reconsideration decision does not explain how the ministry determined the yearly combined income of the appellant and her spouse. However, a summary of the original decision, as described in the ministry portion of the Request for Reconsideration form, indicates that the ministry relied on the 2021 Notice of assessment amounts for the total income of the appellant (\$29,490) and her spouse (\$1,018) "less \$579 matching the bus pass T5007 income" to determine that the combined net income of the appellant and her spouse equals \$29,929.

The panel finds that based on the Notice of reassessments for the appellant and her spouse, the only amount that has changed for the calculation used by the ministry is the appellant's total income, which has been reduced to \$23,547. The panel finds that based on this amount, according to the ministry's formula for determining combined net income, the combined net income of the appellant and her spouse is now \$23,986 (\$23,547 plus \$1,018 less \$579). As this amount is below the \$26,688 GIS threshold, the panel finds that the appellant would now meet the final requirement to be eligible for the GIS, if there was no 10 year residency requirement.

Therefore, the panel finds that the ministry's decision to deny the appellant a bus pass supplement under section 66(1) of the EAR is not reasonably supported by the evidence.

The panel rescinds the decision. The appellant is successful on appeal.

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

Jane Nielsen

Signature of Chair

Date (Year/Month/Day)

2022/10/20

Print Name

Carmen Pickering

Signature of Member

Date (Year/Month/Day)

2022/10/20

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2022/10/20