

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated September 12, 2022, which determined the appellant was not eligible for income assistance and disability assistance, under the Employment and Assistance Regulation, section 15 and the Employment and Assistance for Persons with Disabilities Regulation, section 14.

Specifically, the ministry determined the appellant was not eligible for assistance due to being absent from a lawful place of confinement under a temporary absence program and residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government.

Part D – Relevant Legislation

Employment and Assistance Act (EAA), section 1

Employment and Assistance Regulation (EAR), section 15

Employment and Assistance for Persons with Disabilities Act (EAPWDA), sections 1, 4

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 14

Part E – Summary of Facts

Relevant Evidence Before the Minister at Reconsideration

Ministry Records show:

- On June 21, 2022 the ministry determined the appellant was eligible for the Persons with Disabilities (PWD) designation, effective July 1, 2022.
- On July 22, 2022 the appellant contacted the ministry to request disability assistance and reported that he was out on parole and currently staying at a shelter, receiving \$40 every 10 days, and needed further assistance.

Day Parole Certificate (June 22, 2022)

Correctional Services Canada

Correctional and Conditional Release Act

The certificate certifies that the appellant has been granted day parole.

- effective date, June 22, 2022
- end date, December 1, 2022

Request for Reconsideration (August 22, 2022) - summary

The appellant states he is on day parole, not a temporary absence and the two are different. He should not be disqualified and should be paid retroactively to June 22, 2022.

The appellant adds that there are five types of release; Correctional Services Canada (CSC) defines them as different.

1. temporary absences
 - escorted temporary
 - unescorted temporary
 - work release
2. day parole
3. full parole
4. statutory release
5. release on expiry of sentence

The appellant provided instructions as to where this information can be found on the CSC website.

Email from Appellant to Ministry (September 9, 2022)

The appellant states his storage locker is in serious arrears and he is at risk of his personal belongings and vehicle being sold to recoup the arrears. He spoke with the ministry on September 1st and was reassured that his file would be expedited and that he would be contacted either later that day or the following day. The timeline was not adhered to as promised. The appellant also states that he received information that he would receive a decision no later than September 10th, and then found out it was the 15th. He keeps getting incorrect information, which he relays to the locker manager and now he looks like he's lying. The appellant is asking for a decision and an accurate date of expected monies so he can retain his belongings and vehicle.

Additional Information

Appellant

Notice of Appeal (September 20, 2022)

The appellant states he does not agree that the ministry correctly applied its legislation and policy in determining him ineligible for assistance.

Appellant Submission (October 11, 2022) - summary

- On June 22, 2022, the appellant was granted a conditional release in the form of day parole to allow him to resume his activities as a citizen in the community under supervision.
- As a condition of his release, the appellant must participate in counselling and conflict resolution skills, reside at a community residential facility and follow a treatment plan.
- At the facility, meals and accommodation are provided and the appellant also receives approximately \$120 a month.
- While still incarcerated, the appellant applied for income assistance. He also completed his application for PWD designation and was approved effective July 1, 2022.
- When the appellant was informed of his eligibility for PWD designation, a ministry worker orally informed him that after he submitted his parole paperwork he would receive his first PWD payment in July. At that point the ministry was already aware that the appellant was going to be staying in a halfway house.
- In July, the appellant did not receive his monthly payment and contacted the ministry. During this conversation he also discussed the possibility of receiving a crisis supplement to cover the cost of his storage space.
- On August 3, 2022, the ministry informed the appellant that he was ineligible for disability assistance and crisis supplements.
- Throughout this period, and until the present, when the appellant accesses his "My SelfServe" it confirms that he is in receipt of assistance. He continues to receive notifications when his monthly report is due.
- The appellant has expenses beyond what is provided at the community facility, and beyond what can be covered by his monthly allowance.
- The appellant's vehicle is being held as a surety for his storage locker fees. Upon his release he intended to get it out to increase his mobility, in which case he would also need to pay for insurance and gas. He cannot do this without increased income.
- When the appellant's parole comes to an end on December 1, 2022, he will transition back into community living. He is working diligently to set himself up for independent living after his time on parole comes to an end. The ministry's denial of the appellant's eligibility has significantly increased the difficulty of this reintegration process.
- Because of the appellant's disability dealing with these legal challenges is extremely onerous. The inconsistent and contradictory information he has received from the ministry has prevented him from fully focusing on his reintegration into the community. He is eager to focus his attention on reintegration, and to receive the financial supports necessary to facilitate that transition.

At the hearing, the appellant reiterated the arguments in his submission. The appellant also stated that when he was incarcerated, the ministry advised him he would receive a cheque upon release. This didn't happen. However, he was given a piece of paper that indicated a cheque would be printed – which didn't happen either.

Ministry

At the hearing, the ministry added that day parole is still considered a temporary absence. The appellant is receiving support as part of a corrections program and must check in at the halfway house. He is receiving room and board at a government-funded halfway house and is not eligible for the disability assistance. In regard to the appellant's information on the MySelf Serve stating he is eligible for benefits, the ministry explained that it has to have an open file in order to assess disability assistance. This may have caused confusion in regard to eligibility.

The panel determined all 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 that determined the appellant was not eligible for income assistance and disability assistance under the EAR, section 15 and the EAPWDR, section 14, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, did the ministry reasonably determine the appellant was not eligible for assistance due to being absent from a lawful place of confinement under a temporary absence program and residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government?

The ministry stated that the original decision also referenced ineligibility under section 57 of the EAPWDR (crisis supplement). However, as there are no arguments or evidence pertaining to eligibility for a crisis supplement in the reconsideration decision, the panel will not address this section of the legislation.

Relevant sections of the legislation relied on by the ministry can be found in the Schedule of Legislation (Appendix A) at the end of this decision.

Appellant Argument

Sections of the legislation relied on by the appellant can be found in the Schedule of Legislation (Appendix B) at the end of this decision.

The appellant argues he was denied disability income assistance on August 3, 2022 based on section 14(b) of the EAPWDR and on the "Persons Residing in Halfway Houses" section of the ministry's Policy and Procedure Manual.

The appellant argues that section 14 of the EAPWDR does not apply to his circumstances, and thus he is eligible for disability assistance. He further submits that the ministry's interpretation of the term "temporary absence program" was incorrect and unreasonable.

He argues he is on day parole and not a temporary absence program and there is nothing in the EAPWDR that speaks to disqualifying him from disability assistance on day parole. Day parole is different from temporary absence, and the regulation only disqualifies him if he is on a temporary absence and resides at a halfway house - this combination is not part of his situation. The appellant also argues he should be entitled to payments retroactively to June 24, 2022.

Arguments provided by Appellant's Advocates – summary**Legislative factors**

The federal *Correctional and Conditional Release Act* (CCRA) sets out different types of release from incarceration. In both the federal and provincial correctional systems, parole is governed and administered by the Parole Board of Canada.

Parole is a type of conditional release that allows an offender to serve part of their sentence in the community. It is intended to facilitate participation in ongoing community-based activities, and ease transition back into the community. Parolees must obey certain conditions; if they abide by their conditions, at the end of the parole period they are fully released into the community. If they do not, then the Parole Board of Canada can terminate or revoke their parole and they must return to a correctional facility.

Temporary absences from correctional facilities are governed by separate legislative conditions and processes. Sections 17, 17.1 and 18 of the CCRA set out conditions for work releases and escorted temporary absences from correctional facilities. The conditions for granting unescorted temporary absences are at sections 116-118 of the CCRA. Additionally, under sections 22-25 of the provincial *Correction Act (CA)* the provincial Minister of Public Safety has the authority to authorize an inmate's temporary absence from a provincial correctional center. Temporary absences under either the federal CCRA or the provincial CA are authorized for specific purposes – for example, for reasons relating to medical needs, community service, or parental responsibility. They are short term and temporary; at the end of an authorized temporary absence, the offender must return to the correctional facility to continue their sentence. Meaning of “temporary absence program”

The distinction between day parole and temporary absences is further clarified below.

Under the federal CCRA, the definition of inmate under section 2(1)(b)(ii) states that inmate means a person who is temporarily outside penitentiary for reasons other than a temporary absence, work release, parole or statutory release, but is under the direction or supervision of a staff member or of a person authorized by the Service. Furthermore, the definitions of full parole, day parole, and unescorted temporary absence, in the Act clearly indicate that each are separate statuses for inmates and have their own independent processes. This distinction is further supported by the existence of sections 107 and 108, which set out that only federal or provincial parole boards have authority to grant parole, while section 116 grants the Board authority (but not sole authority) to authorize temporary absences. As a result, not only are parole and temporary absences written as individual reasons for being outside penitentiary in the federal CCRA they are subject to distinct governance and administrative regimes.

Under the provincial CA, section 22 lays out a framework that enables the minister to authorize temporary absences and provides potential reasons for approval as well as maximum durations for absences in contrast while the CA has a specific framework for said temporary absences. Under section 31.1 the Act grants jurisdiction over parole decisions to the National Parole Board as per section 108(2) of the CCRA.

The appellant's eligibility hinges entirely on whether day parole falls within the meaning of “temporary absence program” in section 14(b) of the EAPWDR. There are two conditions to this exclusionary provision: first, that the person be absent from a lawful place of confinement under a temporary absence program; and second, that the person is living in a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government. The appellant does not dispute that his living circumstances meet the second condition of this provision, nor that he is absent from a lawful place of

confinement. The only interpretive question, then, is whether he is absent from a lawful place of confinement under a temporary absence program.

The ministry's Policy and Procedure Manual states that all persons residing in halfway houses are ineligible for assistance. In the ministry's denial decision, the only reasoning provided states that the ministry determines day parole is a temporary absence from confinement with the appellant residing at a halfway house and as such, is considered to be a person absent from a lawful place of confinement under a temporary absence program. The ministry also states the conditions of the appellant's release meet the intent of the legislation.

The appellant submits, neither of these positions are reasonable or supported by the legislation. The only reasonable interpretation of the words "temporary absence program" is that day parole is not a temporary absence program. The plain language of the legislation leads to the conclusion that day parole is not a temporary absence program, since day parole is a conditional, rather than a temporary form of release. "Temporary absence program" is not defined in the Act or Regulations. Section 14 of the EAPWDR has the only use of this term in either the Act or Regulations. In the absence of a specific definition, words are presumed to have their ordinary meaning. Black's Law Dictionary defines "temporary" as "lasting for a time only; existing or continuing for a limited (usual short) time; transitory (p. 1476). Similarly, the Canadian Oxford Dictionary defines "temporary" as "lasting or meant to last only for a limited time" (page 1493). Day parole is not a temporary absence; it generally does not last, nor is it intended to last, for only a limited time. It is a conditional release from a correctional center.

As discussed above, parole is defined and administered through the federal CCRA and is designed to facilitate an inmate's gradual transition back into the community. While there is a possibility that a parolee who breaches the conditions of their parole may return to the correctional center, the intended end point of a conditional release is not to return to the correctional center, but full reintegration into the community. The plain language of section 14 clearly does not support the ministry's reading of the provision. Parole is not designed nor intended as a temporary absence, and therefore a "temporary absence program" cannot reasonably be understood to include parole.

The untenability of the ministry's position is further revealed by examining section 14 in its entirety and in its broader legislative context. The ministry's Policy and Procedure Manual states that all persons residing in halfway houses are ineligible for assistance. However, this interpretation is not a reasonable interpretation of the legislation. The Regulations clearly specify that a person is not eligible for disability assistance or supplements if they are absent from a lawful place of confinement under a temporary absence program and are residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government. The legislature is presumed to not speak unnecessarily; the fact that there are two separate clauses to this provision indicate that they fulfill separate purposes. If the intention of legislature was to exclude everyone residing at a halfway house, the entire first clause of the above provision would be unnecessary. The provision would simply read "a person is not eligible for disability or assistance if the person is residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government". Additionally, the meaning of "temporary absence program" must be interpreted harmoniously with other statutes. The federal CCRA clearly defines parole and temporary absences as separate types of release. These definitions are highly instructive in the interpretation of

these terms within provincial legislation. Legislation, policy and other operation documents and communications surrounding the operation of correctional facilities refer commonly to parole and temporary absences as separate types of release; it is clear that they have well-defined and distinct meanings in the world of corrections. Where this is the case, the only reasonable interpretation of the legislature's intent is that the legislature was aware of these meanings and intended to follow them. In fact, provincial legislation has specifically incorporated and reaffirmed the distinction between conditional release like parole and temporary absence from correctional facilities. For example, section 20 of the CA requires an inmate to submit to urinalysis "if abstention from an intoxicant is a condition of a temporary absence, work program, voluntary treatment program or conditional release". This language reaffirms the distinction between a temporary absence and a conditional release, like day parole.

Section 22 of the provincial CA sets out circumstances in which the provincial minister may authorize a temporary absence from a correctional center. The marginal note for this section is "temporary absences". In contrast, in BC only the Parole Board of Canada can authorize parole from provincial and federal facilities. The provincially legislated difference in procedures once again confirms that BC, as well as Canada, sees parole and temporary absences as separate types of release.

As discussed above, the legislature is presumed to be speaking in one voice. Language used in one Act is highly instructive in interpreting the meaning of that same language in another act. The language and general scheme of the provincial CA – which clearly reaffirms the distinction set out in the federal legislation between parole and temporary absences – must be considered in interpreting the meaning of "temporary absence program" in the Act and Regulations at hand. The design of the Act contemplates that if a person meets the prescribed eligibility criteria – in other words, if they have received the PWD designation and meet the financial requirements – they are presumed to be eligible for disability assistance. Only in specific, legislatively defined circumstances is a person who otherwise meets the eligibility criteria ineligible for assistance – for example, if an applicant is on strike or locked out.

The legislation has carved out these ineligibility criteria specifically, and those provisions must be interpreted narrowly. The overall scheme of the Act is intended to facilitate the delivery of supports to those who meet the disability designation and financial criteria. By definition, people who meet these criteria are going to be in significant need of support due to the intersection of their disability and their poverty. It is contrary to the scheme of the Act to narrow access to assistance, based on an overly broad interpretation of provision. To the extent that the language of the provision creates any ambiguity, that ambiguity must be resolved in favour of the applicant.

Administrative factors

It is a firmly entrenched principle of administrative law that legislation and regulations trump policy. The ministry's Policy and Procedure Manual states that persons residing in halfway houses have their basic needs met through the corrections systems, which is funded by provincial and federal government. Persons residing in halfway houses are subject to several types of release; however, all persons residing in halfway houses are not eligible for assistance.

However, this statement is not supported by any explicit language in the EAPWDR or the EAPWDA. Therefore, the language of section 14(b) of the EAPWDR must be taken to supersede the language in the Policy and Procedure Manual.

Judicial Precedence

In *Hudson versus Employment and Assistance Appeal Tribunal*, 2009 BCSC 1461, the BC Supreme Court made a number of binding findings with respect to eligibility for designation as a person with disabilities under the EAPWDA and EAPWDR. In particular at paragraph 35, 62 and 63 the Honorable Madam Justice Koenigsberg stated that any ambiguity in the interpretation of the EAPWDA should be resolved in the favour of the applicant seeking benefits under the legislation and that the action should be interpreted with a benevolent purpose in mind.

In this case the direct contradiction between the ministries policy found the EAPWDR is a clear ambiguity and should be resolved in the appellant's favour having in mind the benevolent purpose of the EAPWDA/EAPWDR.

Conclusion

The appellant submits he should not have been denied his request for disability income assistance on the basis of section 14(b) of the EAPWDR nor on the basis of the "persons residing in halfway houses" section of ministry's Policy and Procedure Manual.

The only reasonable interpretation of the Act, read in its entire context harmoniously with the scheme and object of the legislation, is that a person granted day parole is not absent from a lawful place of confinement under a temporary absence program. By the ministry's own evidence, the appellant would be eligible for disability assistance were he not living in a community facility. From a policy perspective, PWD assistance and the corresponding opportunities, is necessary to facilitate his reintegration into the community. It is an unreasonable application of the legislation for the ministry to conclude either that the appellant is barred from receiving assistance merely because he is living in a halfway house, or that he is barred because day parole a form of "temporary absence program". Neither of these interpretations of the legislation are reasonable. Neither are supported by the plain language of the provision, the intention of the legislation, the meaning of corresponding federal and provincial legislation, or the scheme of the Act itself. Accordingly, the only acceptable outcome of this hearing is for the reconsideration decision to be rescinded.

Ministry Argument

The ministry argues it determined the appellant does not meet the conditions of eligibility for income assistance, disability assistance, and supplements. As the appellant initially contacted the ministry to request assistance in June 2022, and his PWD designation became effective July 2022, the EAA and regulations apply to the appellant for the month of June 2022, and the EAPWDA and regulations apply to the appellant for the months of July 2022 onward. The ministry states that the effects of being in prison or other lawful place of confinement is the same under both Acts.

The ministry argues that as per the regulations, a person is not eligible for income assistance, disability assistance or supplements while the person “is absent from a lawful place of confinement under a temporary absence program and is residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government.”

The ministry determined day parole is a temporary absence from confinement with the appellant residing at a halfway house funded or contracted by the federal, or provincial, government. The appellant is part of a corrections program, must check in at the halfway house where the appellant resides, and receives support. This program falls under the intent of the legislation for temporary absence programs. The ministry argues that, as such, the appellant is considered to be a person absent from a lawful place of confinement under a temporary absence program and the conditions of his release meet the intent of the legislation. The appellant, therefore, is not eligible for income assistance, disability assistance and supplements.

When asked if the appellant could have the disability assistance rate determined as a person receiving room and board, the ministry responded that this kind of program was deemed a temporary absence program and funded by the government, so that approach had not been used.

The ministry also provided a copy of the applicable policy.

Policy: “Persons residing in halfway houses (also called Community Corrections Facilities) have their basic needs met through the corrections system, which is funded by provincial and federal governments. ...Persons residing in halfway houses are subject to several types of release; however, all persons residing in halfway houses are not eligible for assistance.”

Majority Panel Analysis

Section 1, EAA – income assistance definition

Section 1 (EAA) states “income assistance” means an amount for shelter and support provided under the legislation.

Section 15, EAR - effect of being in prison or other lawful place of confinement

Section 15(b) of the EAR states that a person is not eligible for income assistance while the person is absent from a lawful place of confinement under a temporary absence program and is residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government. The majority panel finds, section 15 of the EAR, the effect of being in prison or other lawful place of confinement is the same as section 14 of the EAPWDR. Therefore, an analysis of the effect of being in prison or other lawful place of confinement can be found under section 14 (EAPWDR) below.

Sections 1 and 4, EAPWDA – disability assistance and persons with disabilities definitions and eligibility

Section 1 of the EAPWDA states disability assistance means an amount for shelter and support and person with disabilities means a person designated under the legislation as a PWD. Section 4 of the EAPWDA states to be eligible for disability assistance, a family unit must include a PWD.

The panel notes ministry records show on June 21, 2022 the ministry determined the appellant was eligible for the PWD designation, effective July 1, 2022.

Section 14. (EAPWDR) – effect of being in prison or other lawful place of confinement

Section 14(b) of the EAPWDR states a person is not eligible for disability assistance or supplements while the person is absent from a lawful place of confinement under a temporary absence program and is residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government.

Temporary Absence vs Day Parole

The appellant argues that because he is not under a temporary absence program, he does not meet the disqualifying criteria of section 14(b) regardless of the fact that he is in a halfway house. The ministry argues that it determined day parole is a temporary absence from confinement.

The panel notes evidence in the form of a Day Parole Certificate (June 22, 2022) issued by CSC supports the appellant's argument that he is on day parole. The panel also notes information on the CSC website demonstrates that temporary absences and day parole are separate types of release.

In addition, the panel notes the following argument from the appellant, which expands on the difference between day parole and temporary absences.

The CCRA sets out different types of release from incarceration. Parole is a type of conditional release that allows an offender to serve part of their sentence in the community. It is intended to facilitate participation in ongoing community-based activities, and ease transition back into the community. While there is a possibility that a parolee who breaches the conditions of their parole may return to the correctional center, the intended end point of a conditional release is not to return to the correctional center, but full reintegration into the community. Temporary absences are authorized for specific purposes – for example, for reasons relating to medical needs, community service, or parental responsibility. They are short term and temporary; at the end of an authorized temporary absence, the offender must return to the correctional facility to continue their sentence.

The panel notes the purposes of the EAPWDA and the CCRA are different, and the EAPWDA makes no references to the CCRA. However, the panel also notes definitions for temporary absence and day parole are not provided in the EAPWDA, nor the EAPWDR. Therefore, the definitions in the CCRA assist the panel in understanding what these terms mean. The distinction between day parole and temporary absence program is a plausible one.

Section 8 of the *Interpretation Act* states, "Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects." The aim of the EAPWDR is to provide necessary assistance to persons with disabilities. A liberal interpretation means that ambiguities are resolved in favour of those needing assistance. The appellant has already medically been determined to be a person with disabilities. If the legislation can be

interpreted such that the appellant is entitled to disability assistance as a person receiving room and board, the assistance amount would be low after deducting an unearned income of approximately \$120 a month. The appellant would not be receiving more financial assistance than the legislation intends for a person with disability. In addition, if eligible for assistance, the appellant would be able to apply for supplements the legislation intends for a person with disabilities.

Although there may be some ambiguity in the term “temporary absence program” in section 14(b) of the EAPWDR, as the majority panel found the distinction between day parole and temporary absence program plausible, and any ambiguity should be resolved in favour of the appellant, the majority panel finds that day parole is not a temporary absence program.

Two clauses under 14(b), EAPWDR

The panel notes that the word “and” in section 14(b) of the EAPWDR stipulates that both requirements are to be met to satisfy the legislation (i.e. under a temporary absence program and residing at a halfway house, that is funded, sponsored or contracted for by the federal, or a provincial, government). In his submission, the appellant states he is residing at a halfway house, meals and accommodation are provided and he receives approximately \$120 a month – funded by the government. The panel finds the second clause of section 14(b) is not in dispute.

However, as the majority panel finds day parole cannot be considered a temporary absence program, the majority panel finds the first clause under section 14(b) has not been met.

Policy

The panel notes the wording in the ministry Policy and Procedure Manual, “...all persons residing in halfway houses are not eligible for assistance.” However, the panel is not bound by policy, only by legislation.

Therefore, with the above analysis, the majority panel finds the ministry’s decision to disqualify the appellant under section 14(b) of the EAPWDR unreasonable.

Majority Conclusion

In conclusion, the majority panel finds the ministry decision that determined the appellant was not eligible for income assistance and disability assistance under the EAR, section 15 and the EAPWDR, section 14, was not a reasonable application of the legislation in the circumstances of the appellant.

Specifically, the majority panel finds the ministry did not reasonably determine the appellant was ineligible for assistance due to being absent from a lawful place of confinement under a temporary absence program and residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government. The appellant is successful on appeal.

Dissenting Opinion

In the reconsideration decision, the ministry determined that the appellant is not eligible for income assistance and disability assistance due to being a person who is absent from a lawful place of confinement under a temporary absence program and residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial government.

The appellant argued that since he is currently on day parole, he cannot be under a temporary absence program, and since he is not under a temporary absence program, section 14(b) of the EAPWDR does not apply to him. In support of his argument, the appellant cited a number of provisions from the federal Corrections and Conditional Release Act ("CCRA"):

Corrections and Conditional Release Act

- 2(1) In this Part,
inmate means
- (a) ...
 - (b) a person who, having been sentenced, committed or transferred to penitentiary,
 - (i) is temporarily outside penitentiary by reason of a temporary absence or work release authorized under this Act, or
 - (ii) is temporarily outside penitentiary for reasons other than a temporary absence, work release, parole or statutory release, but is under the direction or supervision of a staff member or of a person authorized by the Service;

- 99(1) In this Part,
day parole means
 the authority granted to an offender by the Board or a provincial parole board to be at large during the offender's sentence in order to prepare the offender for full parole or statutory release, the conditions of which require the offender to return to a penitentiary, community-based residential facility, provincial correctional facility or other location each night or at another specified interval;

unescorted temporary absence means an unescorted temporary absence from penitentiary authorized under section 116;

116(1) the Board may authorize the unescorted temporary absence of an offender referred to in paragraph 107(1)(e) where, in the opinion of the Board,

- (a) the offender will not, by reoffending, present an undue risk to society during the absence;
- (b) it is desirable for the offender to be absent from the penitentiary for medical, administrative, community service, family contact, including parental responsibilities, personal development for rehabilitative purposes or compassionate reasons;
- (c) the offender's behaviour while under sentence does not preclude authorizing the absence; and
- (d) a structure plan for the absence has been prepared.

The appellant argued that the CCRA defines parole and temporary absences as separate types of release and hence day parole is a distinct form of release and does not fall within the meaning of “temporary absence program” under s.14(b) of the EAPWDR.

Section 14 of EAPWDR reads:

14. A person is not eligible for disability assistance or supplements while the person
 - (a) is detained in a lawful place of confinement, such as a federal or provincial correctional institution, jail, lockup, prison or camp, or
 - (b) is absent from a lawful place of confinement under a temporary absence program and is residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial government.

In determining whether the definition in one Act can be transferred to another Act, the courts have enunciated a variety of factors that need to be considered: how closely the statutes are related, the extent to which their language tracks one another, whether they target the same mischief and so on. In *Janzen v. Platy Enterprises Ltd.* [1989] 1 S.C.J. No.41, for example, Dickson C.J. emphasized the importance of the statutes having a similar purpose and structure (see R. Sullivan, *Construction of Statutes*, 7th ed. page 426).

The EAPWDR and the CCRA are not dealing with the same subject or enacted to achieve the same or a similar purpose.

The language of the two statutes does not track one another either. The EAPWDR makes no references to the CCRA, nor does the CCRA make any reference to the EAPWDR. If the term “a temporary absence program” in s.14 of the EAPWDR is intended to mean “the temporary absences” as defined in the CCRA, then s.14(b) would have been drafted to read: “A person is not eligible... *under the temporary absence program as defined in the CCRA....*”.

It will be noted from the CCRA provisions cited by the appellant that there are different types of temporary release such as day parole, escorted and unescorted temporary absences, work release, statutory release, etc. If the appellant’s interpretation is to be adopted such that s.14(b) only applies to persons who are under the temporary absence program as defined in the CCRA, then there will be a legal vacuum in that there will be no legislation in the EAPWDR to deal with persons who are temporary absent under other forms of temporary release.

The appellant also argued that as the EAPWDR is a benefit-conferring statute, a liberal approach should be adopted and any ambiguity should be resolved in favour of the appellant.

Section 14 provides that a person is not eligible for disability assistance or supplements while (a) the person is detained in a lawful place of confinement, or (b) is absent from a lawful place of confinement under a temporary absence program and is residing at a halfway house that is funded, sponsored or contracted for by the federal or a provincial government. It expressly stipulates that those who fall under subsections (a) or (b) are not eligible. The dissenting panel member does not agree that a liberal approach should be used as s.14 is not a benefit-conferring provision, it is an exclusionary provision. Further, merely because arguments ascribing different meanings for an expression can be raised does not mean that the legislation is ambiguous. As the court said in *Bell ExpressVu Partnership v. Rex*, [2002] 2 S.C.R. 559 (para.30) “... it is not appropriate to take as one’s starting point the premise that differing interpretations reveal an ambiguity.” There is no ambiguity that remains to be resolved in favour to the appellant.

It is trite law that the modern approach to statutory interpretation requires that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the Parliament” *R v. Sharpe*, [2001] 1 S.C.R. 45.

Section 14 broadly divides persons who are in prison or other lawful place of confinement into two categories: the first category refers those who are detained in a lawful place of a confinement, and the second category includes all those who are temporarily absent from a lawful place of confinement under a temporary absence program and are residing at a halfway house that is funded, sponsored or contracted for by the federal or a provincial government. Nowhere in the EAPWDR indicates that s.14(b) is limited to apply to those under the temporary absence program as defined in the CCRA. If the legislative intent was to restrict s.14(b) to apply only to those who are under the temporary absence program as defined in the CCRA, then s.14(b) would have worded differently to expressly refer to the CCRA, and there would be other provisions in the EAPWDR to deal with those who are under other forms of temporary release such as day parole or work release etc. The dissenting panel member takes the view that it cannot possibly be the intention of the Legislature to leave a statutory vacuum in the legislation.

The dissenting panel member takes the view that day parole is a temporary absence program under which program the person is allowed to be temporary absent from the correctional centre subject to certain conditions.

The appellant quoted the ministry’s policy which states that “all persons residing in halfway houses are ineligible for assistance” and argued that if the intention of legislature was to exclude everyone residing at a halfway house, then the entire first clause of s.14(b) would be unnecessary and the provision would simply read “a person is not eligible for disability assistance if the person is residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial government”.

There may be cases where the residents of the halfway house are discharged offenders. In such cases, these persons are not under a temporary absent program but they are residing at halfway houses. The policy serves to explain the policy intent that those who are residing at halfway houses that are funded by the government are also not eligible for assistance under the EAR or the EAPWDR as they have their basic needs met through the corrections system.

The policy reads: “Persons residing in halfway houses (also known as Community Corrections Facilities) have their basic needs met through the corrections system, which is funded by provincial and federal governments. The supports include accommodation, meals, and a weekly allowance. Persons residing in halfway houses are subject to several types of release; however, all persons residing in halfway houses are not eligible for assistance.”

The policy recognizes that there are several types of release. The policy intent is clear that s.14(b) is intended to encompass persons who are temporary absent from the correctional centres under different types of release.

The appellant stated that he has expenses beyond what is provided at the halfway house and that he needs the disability assistance to pay for his expenses including his storage locker fees.

The dissenting panel member takes the view that whether the appellant has expenses beyond the allowances provided at the halfway house is irrelevant to the determination under s.14(b).

In construing a statute, it is important to consider the entire context and the objective of the legislation and adopt an interpretation which is consistent with and gives effect to the legislative purpose. An interpretation

which is inconsistent with and does not serve that purpose should be avoided. The appellant's interpretation would create a statutory vacuum and make the system under s.14 unworkable.

Having considered the interaction between the EAPWDR and the CCRA, the dissenting panel member takes the view that the two statutes are not dealing with the same subject or enacted to achieve the same or similar purpose, the two statutes are not related at all. They are not intended to be read together and it is inappropriate to simply take the definition from the CCRA and apply it to the EAPWDR.

And having considered the entire context and the legislative intent of the EAPWDR, the dissenting panel member takes the view that day parole is "a temporary absence program" for the purpose of s.14(b). The dissenting panel member finds that the ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the applicable enactment in the circumstances of the appellant.

Schedule of Legislation

Appendix A

Employment and Assistance Act

Interpretation

1 (1)In this Act:

"income assistance" means an amount for shelter and support provided under section 4 [*income assistance and supplements*];

"supplement" means any form of assistance specified by regulation, other than income assistance, hardship assistance or financial assistance provided under section 6 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act;

Employment and Assistance Regulation (EAR)

Effect of being in prison or other lawful place of confinement

15 A person is not eligible for income assistance or supplements while the person (a)is detained in a lawful place of confinement, such as a federal or provincial correctional institution, jail, lockup, prison or camp, or (b)is absent from a lawful place of confinement under a temporary absence program and is residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government.

Employment and Assistance for Persons with Disabilities Act

Interpretation

1 (1)In this Act:

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];

"person with disabilities" means a person designated under section 2 [*persons with disabilities*];

"supplement" means any form of assistance specified by regulation, other than disability assistance, hardship assistance or financial assistance provided under section 7 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act;

Application of Act

4 To be eligible for disability assistance or hardship assistance under this Act, a family unit must include a person with disabilities.

Employment and Assistance for Persons with Disabilities Regulation

Effect of being in prison or other lawful place of confinement

14 A person is not eligible for disability assistance or supplements while the person
(a) is detained in a lawful place of confinement, such as a federal or provincial correctional institution, jail, lockup, prison or camp, or
(b) is absent from a lawful place of confinement under a temporary absence program and is residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government.

Appendix B

Employment and Assistance for Persons with Disabilities Act

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
- (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

Application of Act

4 To be eligible for disability assistance or hardship assistance under this Act, a family unit must include a person with disabilities.

Employment and Assistance for Persons with Disabilities Regulation

Division 3 — Specific Circumstances of an Applicant or Recipient That Affect Eligibility

Effect of strike or lockout on eligibility

13 A family unit is not eligible for disability assistance if an applicant is on strike or locked out.

Effect of being in prison or other lawful place of confinement

14 A person is not eligible for disability assistance or supplements while the person

- (a) is detained in a lawful place of confinement, such as a federal or provincial correctional institution, jail, lockup, prison or camp, or
- (b) is absent from a lawful place of confinement under a temporary absence program and is residing at a halfway house that is funded, sponsored or contracted for by the federal, or a provincial, government.

Effect of recipient being absent from BC for more than 30 days

15 The family unit of a recipient who is outside of British Columbia for more than a total of 30 days in a year ceases to be eligible for disability assistance or hardship assistance unless the minister has given prior authorization for the continuance of disability assistance or hardship assistance for the purpose of

- (a) permitting the recipient to participate in a formal education program,
- (b) permitting the recipient to obtain medical therapy prescribed by a medical practitioner,
- or
- (c) avoiding undue hardship.

Correction Act

Urinalysis

20(1) An authorized person may demand that an inmate submit to urinalysis

...

(b) if abstention from an intoxicant is a condition of a **temporary absence, work program, voluntary treatment program or conditional release** and urinalysis is required to monitor an inmate's compliance with the condition....

Temporary absences

22 (1) The minister may authorize an inmate to be absent from a correctional centre with or without escort, subject to any conditions that the minister considers appropriate, if in the minister's opinion the absence is necessary or desirable

(a) for medical, educational or humanitarian reasons, or

(b) to assist in the inmate's rehabilitation or reintegration into the community.

(2) A temporary absence under this section may be authorized for a maximum period of 60 days and may be renewed by the minister for one or more periods of a maximum of 60 days on reassessment of the case.

(3) Despite subsection (2), a temporary absence for medical reasons may be authorized for an unlimited period.

(4) and (5) [Repealed 2007-8-11.]

(6) During the period of a temporary absence authorized under subsection (1), the inmate is subject to the rules, regulations and discipline of the correctional centre, as applicable, and must obey all instructions given to him or her by the person in charge of the correctional centre.

Jurisdiction of the National Parole Board

31.1 The National Parole Board is authorized to exercise in British Columbia the jurisdiction described in section 108(2) of the *Corrections and Conditional Release Act* (Canada)

Corrections and Conditional Release Act (Federal)

2(1) In this part,

inmate means

(a) a person who is in a penitentiary pursuant to

(i) a sentence, committal or transfer to penitentiary, or

(ii) a condition imposed by the Parole Board of Canada in connection with day parole or statutory release, or

(b) a person who, having been sentenced, committed or transferred to penitentiary,

(i) is temporarily outside penitentiary by reason of a temporary absence or work release authorized under this Act, or

(ii) is temporarily outside penitentiary for reasons other than a **temporary absence**, work release, **parole** or statutory release, but is under the direction or supervision of a staff member or of a person authorized by the Service; [emphasis added]

day parole has the same meaning as in Part II;

parole has the same meaning as in Part II;

unescorted temporary absence has the same meaning as in Part II;

....

Escorted Temporary Absences

Temporary absences may be authorized

17 (1) The institutional head may, subject to section 746.1 of the *Criminal Code*, subsection 140.3(2) of the *National Defence Act* and subsection 15(2) of the *Crimes Against Humanity and War Crimes Act*, authorize the temporary absence of an inmate, other than an inmate described in subsection 17.1(1), if the inmate is escorted by a staff member or other person authorized by the institutional head and, in the opinion of the institutional head,

- (a) the inmate will not, by reoffending, present an undue risk to society during an absence authorized under this section;
- (b) it is desirable for the inmate to be absent from the penitentiary for medical or administrative reasons, community service, family contact, including parental responsibilities, personal development for rehabilitative purposes or compassionate reasons; (c) the inmate's behaviour while under sentence does not preclude authorizing the absence; and
- (d) a structured plan for the absence has been prepared. The temporary absence may be for an unlimited period if it is authorized for medical reasons or for a period of not more than five days or, with the Commissioner's approval, for a period of more than five days but not more than 15 days if it is authorized for reasons other than medical reasons.

....

99(1) In this part,

day parole means

the authority granted to an offender by the Board or a provincial parole board to be at large during the offender's sentence in order to prepare the offender for full parole or statutory release, the conditions of which require the offender to return to a penitentiary, community based residential facility, provincial correctional facility or other location each night or at another specified interval;

full parole means the authority granted to an offender by the Board or a provincial parole board to be at large during the offender's sentence;

parole means full parole or day parole;

unescorted temporary absence means an unescorted temporary absence from penitentiary authorized under section 116;

Unescorted Temporary Absence

Minimum time to be served

115 (1) Subject to subsection (2), the portion of a sentence that must be served before an offender serving a sentence in a penitentiary may be released on an unescorted temporary absence is

(a) in the case of an offender serving a life sentence, other than an offender referred to in paragraph (a.1), the period required to be served by the offender to reach the offender's full parole eligibility date less three years;

(a.1) in the case of an offender described in subsection 746.1(3) of the Criminal Code, the longer of

(i) the period that expires when all but one fifth of the period of imprisonment the offender is to serve without eligibility for parole has been served, and

(ii) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with subsection 120.2(2), less three years;

(b) in the case of an offender serving a sentence for an indeterminate period, other than an offender referred to in paragraph

(b.1), the longer of

(i) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with section 761 of the Criminal Code, less three years, and

(ii) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with subsection 120.2(2), less three years;

(b.1) in the case of an offender serving a sentence for an indeterminate period as of the date on which this paragraph comes into force, the longer of

(i) three years, and

(ii) the period required to be served by the offender to reach the offender's full parole eligibility date, determined in accordance with subsection 120.2(2), less three years; and

(c) in any other case, the longer of

(i) six months, and

(ii) one half of the period required to be served by the offender to reach their full parole eligibility date.

...

116(1): the Board may authorize the unescorted temporary absence of an offender referred to in paragraph 107(1)(e) where, in the opinion of the Board, 8

(a) the offender will not, by reoffending, present an undue risk to society during the absence; (b) it is desirable for the offender to be absent from the penitentiary for medical, administrative, community service, family contact, including parental responsibilities, personal development for rehabilitative purposes or compassionate reasons;

(c) the offender's behaviour while under sentence does not preclude authorizing the absence; and

(d) a structured plan for the absence has been prepared.

Jurisdiction of Parole Board

107(1) Subject to this Act, the *Prisons and Reformatories Act*, the *International Transfer of Offenders Act*, the *National Defence Act*, the *Crimes Against Humanity and War Crimes Act* and the Criminal Code, the Board has exclusive jurisdiction and absolute discretion

(a) to grant parole to an offender;

(b) to terminate or to revoke the parole or statutory release of an offender, whether or not the offender is in custody under a warrant or apprehension issued as a result of the suspension of the parole or statutory release;

- (c) to cancel a decision to grant parole to an offender, or to cancel the suspension, termination or revocation of the parole or statutory release of an offender.
- (d) to review and to decide the case of an offender referred to it pursuant to section 129: and
- (e) to authorize or to cancel a decision to authorize the unescorted temporary absence of an offender who is serving, in a penitentiary,
 - (i) a life sentence imposed as a minimum punishment or commuted from a sentence of death,
 - (ii) a sentence for an indeterminate period, or
 - (iii) a sentence for an offence set out in Schedule I or II.

Offences under provincial Acts

(2) The jurisdiction of the Board under subsection (1) extends to any offender sentenced to a sentence imposed under a provincial Act that is to be served in a penitentiary pursuant to section 743.1 of the Criminal Code, whether that sentence is to be served alone or concurrently with or consecutively to one or more other sentences imposed under an Act of Parliament or a provincial Act.

108(1) Where a provincial parole board has not been established in a province, the Board has, in respect of offenders serving sentences in a provincial correctional facility in that province, the same jurisdiction and discretion that it has in respect of offenders under paragraphs 107(1)(a) to (c).

Offences under provincial Acts

(2) Subject to subsection (3), the jurisdiction of the Board under subsection (1) extends to any offender sentenced to a sentence imposed under a provincial Act that is to be served concurrently with or consecutively to a sentence imposed under an Act of Parliament.

Part G – Order	
The panel decision is: (Check one) <input type="checkbox"/> Unanimous <input checked="" type="checkbox"/> By Majority	
The Panel <input type="checkbox"/> Confirms the Ministry Decision <input checked="" type="checkbox"/> 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 <input type="checkbox"/> No <input type="checkbox"/>	
Legislative Authority for the Decision:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
Section 24(2)(a) <input type="checkbox"/> or Section 24(2)(b) <input checked="" type="checkbox"/>	

Part H – Signatures	
Print Name Connie Simonsen	
Signature of Chair	Date (Year/Month/Day) 2022/10/26

Print Name Margarita Papenbrock	
Signature of Member	Date (Year/Month/Day) 2022/10/26
Print Name Mimi Chang (Dissenting)	
Signature of Member	Date (Year/Month/Day) 2022/10/26