

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated December 22, 2022. The ministry determined that the appellant is not eligible for a backdated bus pass supplement, transportation support allowance or transport supplement in the form of money for the period of January 1, 2016 to July 2022.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation

- Section 51 (prior to September 1, 2016),
- Section 24.1 (September 1, 2016 to December 31, 2017), and
- Section 54.2 (January 1, 2018 to present)

Adult Guardianship Act, section 37

Part E – Summary of Facts

From the ministry file:

- The appellant is a recipient of disability assistance. His file reopened in January 2015.
- On January 4, 2016, the ministry had a conversation with the appellant regarding his request for a bus pass. The ministry advised that his request for a bus pass supplement was approved, but he would be required to pay \$45 at the bank to the bus pass program first. The ministry sent him a letter advising him about the bus pass program requirements.
- On January 9, 2016, a transaction of \$45 was received for the appellant's bus pass. The ministry provided the appellant with a bus pass.
- From September 1, 2016, to July 22, 2022 the appellant received monthly bus passes.
- There were multiple interactions with the appellant. He moved in March 2016 and was provided with assistance with moving, furniture and other supplements.
- On July 12, 2022, the appellant advised he never received his bus pass and had never used it. He further stated he was not aware he was not receiving the transportation supplement. He requested the ministry cancel the bus pass.
- On July 14, 2022, the appellant enquired about a refund.
- On July 26, 2022, the appellant was advised the ministry was unable to provide a refund for a bus pass that he never received or reported lost or stolen.
- On September 6, 2022, the appellant enquired once more about the bus pass from 2016 which he advised he had not received. He stated at the time the pass was sent out, a community service society under the Adult Guardianship Program ["the guardian"] was his guardian and the ministry would be in the wrong to have sent him information as there was supposed to be no contact due to his inability to act for himself. He was looking to recoup funds which he never received. He requested a breakdown of stubs to show he was in receipt of a bus pass in 2016 but the ministry advised that a separate request would have to be made for that information.
- On September 7, 2022, the appellant contacted the ministry again advising the ministry made a mistake and went against his guardianship contract when they issued the bus

pass to him in January 2016. The ministry reviewed the appellant's file history and noted he submitted a Certificate of Incapability on March 2, 2015, and a Termination of Contract with the guardian on July 29, 2015. The ministry advised the appellant that the conversation with him in January 2016 would have been valid because there was no active contract with him and the guardian at that time.

- On September 27, 2022, the ministry completed a Request for Reconsideration package as the appellant indicated he wanted the reason his request was denied in writing.
- On October 27, 2022, the appellant called enquiring about bus pass refunds, and the ministry reminded him of his right to request a reconsideration of the ministry's decision. The appellant requested an extension and advised he would submit the request by November 1, 2022.
- On November 15, 2022, the appellant enquired about an update on his Request for Reconsideration. The ministry advised they had not received his Request for Reconsideration. He advised he had submitted it already, but the ministry loses everything. The appellant was requested to submit the information again.

In his Request for reconsideration the appellant wrote:

- "In July 2022 as soon as I was informed I was in receipt of a bus pass since 2016. I informed the ministry I have never ordered a bus pass [or] received a bus pass.
- My bus pass was revoked as of January 2016.
- The ministry determined I was under a certificate of incapacity under Human Resources Canada. Under this Act you cannot issue or disperse funds on my personal request. You must go through my guardian.
- These funds were dispensed against the Adult Guardianship Act."

New Information:

In a letter dated July 10, 2023 the appellant's advocate provided the following information:

- The appellant was admitted to an assisted living facility in January 2015 due to end-stage liver failure complications.
- He was referred to an adult guardianship program for assistance managing his finances including his monthly benefits issued by the ministry.

- A Certificate of Incapability was completed by a physician.
- After receiving a liver transplant in hospital, the appellant returned to the assisted living facility in April 2015.
- No supplements were approved, and the appellant was not issued any additional funds.

The advocate also provided 4 documents:

1. A "Certificate of Incapability"
 - issued by Human Resources Development Canada,
 - titled "Information about the Old Age Security and/or Canada Pension Plan beneficiary", and
 - completed by a physician who signed and dated the form January 2015.
2. A letter dated July 10, 2015, titled "Re: Termination of Contract", signed by the appellant, and faxed to the ministry on July 29, 2015. It states:
 - "I would like to revoke the contract I have with [the guardian] and I would like a cheque made in my name to be directed to the above mailing address."The advocate states that the appellant has no recollection of signing this document and that the signature does not appear to be in his handwriting.
3. A letter titled "To Whom it may Concern" from the guardian, faxed on July 31, 2015. It states:
 - "Please find enclosed a copy of letter for revocation from [the appellant. He] states he is no longer in need of our services.
 - Please send [his] Monthly Support Cheques to him in [sic] the address below."According to the advocate this letter was faxed to the ministry.
4. A letter titled "Re: Cancellation of Services", signed by the appellant, faxed on July 31, 2015. It states:
 - "Please be advised I wish to cancel the adult guardianship contract with [the guardian].
 - I was involuntarily referred to [the guardian] at the time when I suffered severe liver failure. I have since had a transplant and am in full recovery.
 - I have never been a client of Service Canada and do not consider the Certificate of Incapability dated January 2015 completed by [the physician] to be legally valid or binding on [the guardian] in any way.
 - I shall consider your termination of service a complete fulfillment of your duties and responsibilities. Please promptly mail the full account balance to me at [my address]."

The advocate states that this letter was faxed to the ministry.

According to the advocate the appellant stated that

- he has no recollection of signing this document and does not recognize the signature, and that
- he did not terminate his contract with the guardian.

Admissibility of New Information

The panel finds that the information provided by the appellant's advocate is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel's understanding of the circumstances surrounding the appellant's request for a backdated bus pass supplement. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

Part F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision that found the appellant not eligible for a backdated bus pass supplement, transportation support allowance or transport supplement in the form of money for the period of January 1, 2016 to July 2022 was reasonably supported by the evidence or a reasonable application of the relevant legislation in the appellant's circumstances.

Appellant's Position

The appellant argues he is eligible for a refund for bus pass supplements that were issued by the ministry but were not received by him. The appellant's advocate argues that the contract termination letters drafted by the guardian and submitted to the ministry are not valid because the appellant should not have been able to terminate the guardianship contract without a second physician assessment or a court order. The appellant was still under contract with the guardian in January 2016 when the ministry received the request for a bus pass. The appellant was incapable of managing his affairs and unable to make any financial decisions, including requesting a bus pass or transportation supplement.

Ministry's Position

The ministry determined that when they provided the appellant with a bus pass as per his request of January 4, 2016, they were not required to consult with his former guardian. The order had been revoked in July 2015. There were also multiple interactions with the appellant; he was provided with assistance with moving, furniture and other supplements when he moved out of his care home in March 2016. He did not argue he should not have been provided with these supplements.

The ministry determined further that from January 2016 to August 2016 there was no option to receive the supplement in the form of money. The bus pass supplement was issued in the form of a bus pass only. From September 2016 onwards, the ministry could have provided *one* form of either money or a bus pass for the transportation support allowance/ transportation supplement each month. As the appellant received the transportation support allowance/transportation supplement each month until July 22, 2022, in the form of a bus pass, the ministry is not permitted to assist him with the other form (money) for the same period.

Panel Decision

The Employment and Assistance for Persons with Disabilities Regulation includes a supplement that can provide clients with a bus pass. Individuals may receive this supplement either in the form of a bus pass or in the form of money. They cannot receive both at the same time. The Regulation also provides individuals with the option to request money instead of a bus pass. Before September 1, 2016, individuals could only receive the supplement in the form of a bus pass. The Regulation does not contain provisions respecting refunds.

According to ministry records, the appellant was issued bus passes during the period in question. A bus pass has no monetary value after its expiration date. There is no evidence that the appellant or a guardian requested a conversion from bus pass to money. It is not clear why the appellant or guardian waited 6 years before they put their concerns into action. Consequently, the panel finds the appellant was not eligible for the requested refund and the ministry was reasonable when it determined that the appellant was not eligible for a backdated bus pass supplement, transportation support allowance or transport supplement in the form of money.

While the appellant and his advocate argue that the ministry ignored a valid guardianship agreement when it followed the appellant's instructions, the panel finds the ministry was reasonable when it followed up on the appellant's personal request for a bus pass without consulting the guardian. The panel finds that there is insufficient evidence of a valid guardianship in place concerning the appellant for purposes outside of the CPP/OAS programs. The Notice of Incapability provided by the advocate is not in the Form 2 required by the BC Adult Guardianship Act. Instead, it appears to be a form for use with CPP and OAS payments. As there is not enough evidence for a valid guardianship agreement the panel finds the appellant could have asked for – and did ask for – the bus pass as stated by the ministry. The bus passes were provided according to the appellant's direction.

Even if there had been a valid guardianship agreement, the ministry would have been following the guardian's instructions by a) sending the cheques to the appellant's address and b) dealing with the appellant directly concerning these matters.

While the appellant argues he never received any bus pass from the ministry, the panel finds there is sufficient evidence that the ministry acted in good faith and sent the bus passes to the address they had on file for the appellant.

As the appellant received assistance, including the bus passes, it cannot be said that the ministry acted unreasonably or inappropriately in continuing to fund the appellant in these circumstances. Any claim the appellant might have would be against the guardian for breach of fiduciary duty.

Conclusion

Based on the above analysis the panel finds that the ministry's decision not to provide a backdated bus pass supplement, transportation support allowance or transport supplement in the form of money for the period of January 1, 2016 to July 2022 is reasonably supported by the evidence and a reasonable application of the relevant legislation in the appellant's circumstances. The appellant is not successful on appeal.

Any claim the appellant may have with respect to any improper actions falls outside the scope of jurisdiction of the tribunal and would more appropriately be brought under the *Adult Guardianship Act* in the BC Supreme Court.

Employment and Assistance for Persons with Disabilities Regulation

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*.

(2) If a recipient who is provided a supplement under either paragraph (a) or (b) of subsection (1) gives the minister notice that the recipient wishes to receive the other form of supplement provided under that subsection, the minister may provide that other form of supplement for a subsequent month.

(3) An annual pass, as defined in section 51 (2) [*spouse bus pass supplement*], is deemed to be a supplement provided in kind under subsection (1) (b) of this section if the annual pass was provided to or for a recipient who is designated as a person with disabilities and who was previously provided the annual pass for personal use

- (a) as the spouse of a person with disabilities under section 51 (1), or
- (b) under section 66 (1) [*bus pass supplement*] of the Employment and Assistance Regulation.

Section 24.1 BEFORE repealed by BC Reg 193/2017, effective January 1, 2018.

Disability assistance in the form of transportation support allowance

24.1 (1) The minister may provide to or for a family unit, for a calendar month, in respect of each applicant or recipient who is designated as a person with disabilities in the family unit, one of the following forms of transportation support allowance:

(a) in money, in the amount of \$52;

(b) in kind, in the form of a monthly pass for the personal use of the person with disabilities to use a public passenger transportation system in a transit service area established under section 25 of the *British Columbia Transit Act*, or in a transportation service region as defined in the *South Coast British Columbia Transportation Authority Act*, which is deemed to have a value in the amount of \$52 for the purposes of this regulation.

(2) If an applicant or recipient who is provided a transportation support allowance under either paragraph (a) or (b) of subsection (1) gives the minister notice that the recipient wishes to be provided the other form of transportation support allowance provided under that subsection, the minister may provide that other form of transportation support allowance for a subsequent month.

(3) If the amount of disability assistance calculated in respect of a family unit under section 24 is less than the applicable amount for the family unit's transportation support allowance, disability assistance may be provided in accordance with this section up to an amount equal to the applicable amount for the family unit's transportation support allowance.

Section 51 BEFORE amended by BC Reg 175/2016, effective September 1, 2016.

Bus pass supplement

51 (1) The minister may provide a supplement to or for a family unit that is eligible for disability assistance and contributes \$45 to the cost to provide an annual pass for the personal use of

- (a) a person with disabilities in the family unit, or
- (b) the spouse of that person if that spouse
 - (i) is 60 or more years of age,
 - (ii) receives the federal spouse's allowance or federal guaranteed income supplement, or
 - (iii) 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.

(2) In this section, "**annual pass**" means an annual pass to use a public passenger transportation system in a transit service area established under section 25 of the *British Columbia Transit Act*.

Adult Guardianship Act

When authority ends

37 (1)-(2) *[Not in force — see Supplement]*

(3) Statutory property guardianship ends if

- (a) the Public Guardian and Trustee is the statutory property guardian and the Public Guardian and Trustee
 - (i) is satisfied that the adult no longer needs a statutory property guardian, and
 - (ii) has provided notice to the adult that the adult no longer has a statutory property guardian,
- (b) following a second assessment under section 33 (3), or a reassessment under section 34,
 - (i) a qualified health care provider determines that the adult is capable of managing the adult's financial affairs and notifies a health authority designate of the determination, and
 - (ii) the health authority designate accepts the determination of capability and notifies the Public Guardian and Trustee of the determination,
- (c) the court ends the statutory property guardianship under section 35, or
- (d) the court appoints, under the *Patients Property Act*, a committee responsible for managing the adult's affairs.

(4) If statutory property guardianship ends under subsection (3), the certificate of incapability issued under section 32 is cancelled.

APPEAL NUMBER 2023-0057

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) and Section 24(1)(b)
Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Inge Morrissey

Signature of Chair

Date (Year/Month/Day)

2023/07/25

Print Name

David Handelman

Signature of Member

Date (Year/Month/Day)

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2023/07/31