

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 8, 2023, which determined the appellant was not eligible for disability assistance because:

She is absent from a lawful place of confinement under a temporary absence program (day parole) and resides at a halfway house that is funded, sponsored, or contracted by the federal government.

Part D - Relevant Legislation

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

Corrections and Conditional Release Act (CCRA) sections 66 and 99

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts**Relevant Evidence Before the Minister at Reconsideration****Ministry Records show:**

- On June 30, 2023 the appellant applied for assistance.
- She advised she is residing in a halfway house and is on conditional release (day parole). The appellant explained that Correctional Services Canada funds her housing and food; She receives \$4.00/day. As well, she receives \$157.14/ month from the Canada Pension Plan.
- On July 4, 2023 the appellant provided the ministry with a letter from the halfway house.
- On July 12, 2023 the ministry approved the appellant's application for Persons with Disabilities (PWD) designation effective August 1, 2023.
- On July 14, 2023 the ministry advised the appellant she is not eligible for disability assistance because she is on day parole and residing in a halfway house that is funded by Correctional Service Canada.
- On July 18, 2023 the appellant submitted her request for reconsideration.
- On August 3, 2023 the appellant provided a written statement acknowledging she is a federal parolee, residing in a halfway house.

Screen Shot from British Columbia Yukon Halfway House Association website (2023)

“What is a halfway house?

A halfway house is a community-based residential facility for offenders who have been allowed to serve part of their sentence under supervision in the community. Also known as community-based residential facilities, halfway houses are typically facilitated either by the Correctional Service of Canada or by voluntary agencies.”

Request for Reconsideration - summary (July 18, 2023)

The appellant states she does not believe the policy is fair and impartial. She is a senior citizen with a disability and cannot earn a living like people without a disability. Others living in the halfway house without a disability can earn as much money as they want without compromise. She adds that she is unable to work, unable to make a better life and believes this policy is discriminatory.

Letter to Whom It May Concern from the Appellant - summary (August 2, 2023)

The appellant writes that her application for disability benefits has been denied despite her application being “approved” implying that she meets the necessary requirements to

qualify. The rationale provided by the ministry is based on and is regulated through the intersecting jurisdictional boundaries between the provincial and federal governments.

She states her autonomy and independence are compromised because of the disabling effects of aging and injury both on and off the job. As such, it is paramount that her disability benefits are approved. As a senior citizen, her ability to find and maintain any employment congruent to her disability is unlikely. This means that she will be confined to poverty regardless of what she does and even if her disability benefits are approved, her earning capacity is severely restricted.

The appellant states she is a federal parolee who lives in a halfway house. Her food and accommodation are provided and she is given \$28.00/week, which she believes are the reasons for denying the disability benefit. She adds that there are numerous other women living in this halfway house - most of them are employed full time, earn a respectful income and are also being provided food and accommodation. They are not being told they cannot receive a pay cheque because of what is being provided, yet all are on parole. They are not paying rent and are unaffected by the imposed discriminatory double standard that she is facing. So being a disabled senior citizen seemingly allows both the provincial and federal governments to discriminate against a demographic of people, those on parole with a disability thus creating a separate class of people. The appellant adds this matter could affect anyone with a disability; It is not only because of age that people become disabled.

The appellant states further that the reason for halfway houses is so parolees are supervised and supported to create every available opportunity, so that once off of mandatory supervision (perhaps even at warrant expiry), parolees are able to continue living in the community without resorting back to old behaviours and returning to crime. The opportunity to succeed past warrant expiry is contingent on saving enough money to sustain independent living once on their own. For some, the halfway house is the only way that one can prepare for the day when they have to make it on their own in the community.

In addition, the appellant states it is unrealistic to expect anyone to survive on \$28.00/week, even if food and accommodation were provided. The appellant believes this policy is arbitrary and discriminatory and violates section 15(1) and (2) of the Charter of Rights and Freedoms (The Charter), section 7; Life, Liberty, and Security of The Person.

She also states if she is not permitted to improve her quality of life because of this arbitrary policy, then the policy must be amended so that a disabled person, living in a

halfway house, or not, should not be deprived of their rights and should not be segregated into a separate class of people. As well, the appellant states she should not be denied equal opportunity to create her own independence, preserve her autonomy and make a life for herself that is not incarceration. She states if the only matter preventing her from receiving disability benefits, is the \$28.00/week, she would forego it and purchase her own groceries and pay rent. This would allow her to preserve her dignity, self-respect and equally as important, her independence.

Letter to Whom It May Concern from the Halfway House (June 29, 2023)

The letter confirms that the appellant currently resides at the halfway house address.

She is being supervised on a day parole release and currently receives \$4.00/day (\$28.00/week) from Correctional Service Canada.

Additional Information

Appellant

Notice of Appeal (August 14, 2023)

The appellant states the ministry incorrectly defined day parole and temporary absences as one and the same when they are not. They are two separate and independent parts of release.

Submission - summary (August 28, 2023)

The submission provided by the appellant identifies issues that intersect with federal legislation and policy.

Provincial jurisdictions have accepted the PWD designation. Therefore, the proceeding jurisdiction is that of the federal government. As described to the appellant, it is because the federal government provides food, accommodation and \$28.00/week that her disability benefits have been withheld. Since the discriminatory aspect of this matter is due to a federal component of this appeal, the appellant believes it is where the province may lose jurisdiction. The appellant asks the following question:

Does the appeal process under provincial Jurisdiction have authority to address federal matters as submitted by the appellant? If yes, then the appellant asks to refer to the following.

The basis for this appeal is that the matter is relevant to the public interest and that:

- If left as is, would continue to affect the appellant's section 7 Charter Rights, and;
- If left as is, would also continue to discriminate against the appellant, an Indigenous Two-Spirit, Preoperative Transgender Woman and a senior citizen with a disability, and could potentially have a negative effect on others in the future.
- If left as is, would create further undue hardship where the appellant would be unable to improve her quality of life, and;
- If left as is, would continue to place the appellant at an unfair disadvantage and would be a continued violation of section 15(1) and (2) of The Charter.
- If left as is, would infringe on the spirit and intent as distinguished in the United Nations Declaration In The Rights Of Indigenous Peoples (UNDRIP).
- If left as is, the appellant will be unfairly restricted and severely limited in her ability to adequately progress in her preparations for her eventual "full parole" and return to society which is the expected outcome by the Parole Board of Canada (PBC).
- If left as is, the appellant would, in addition to all else, suffer from forced poverty. The appellant could accept that this may well be an unintended consequence of "bad policy." For that position to be accepted however, the respondent(s) would have to agree that it is bad policy and assist in the remedial process, beginning with immediately approving the payment of disability benefits and collaborating with the appellant on the remedy/creation of new policy that is fair and proportionate to the rest of society. The Charter - section 7, section 15 (1)(2).

Creating an understanding of the differences between forms of release and define specifically, what is applicable in each individual situation some of which may be subject to certain guidelines, (i.e., establishing a period of stability for an expected length of time.)

- If left as is, the misunderstanding between day parole and escorted absences will not be reconciled and other parolees could also suffer from the bad policy as it currently stands. It may be presumed that a parolee is required to return to the halfway house every night. This is entirely not accurate as the appellant has leave privileges approved by the PBC and administered by the halfway house. The appellant has earned three weekends per month away from the halfway house and qualifies for the fourth weekend away. The only provision is that daily reporting is required. This in turn means that the assessment as to whether the appellant should receive benefits based on the understanding that day parole is temporary is seriously flawed in particular if the assessment is devoid of this missing fact. A day parole certificate is not the same as a temporary absence. Once granted, liberty

cannot be suspended unless the appellant does something that would justify her return to custody. Anything short of a proper understanding of a day parole certificate must be corrected immediately and all affected decisions, past or present require remedy.

It is noted that the ministry accepted that the appellant did qualify for PWD designation according to law. The problem, as the appellant understands it, comes from the federal government having policies that intersect with provincial laws and inadvertently create this discriminatory practice.

Issue(s) Affecting the Appellant

The appellant is currently experiencing hardship borne out of a policy collision between federal and provincial governing bodies.

The appellant is a federal parolee living in a halfway house, provided to “released” federal incarcerates as part of the integration process that prepares the individual for an eventual and permanent return to their communities on full release either without or with lowered supervision requirements, which are all approved by the PBC until warrant expiry. These locations are provided only when the PBC authorizes the release of an individual from a federal prison as a day parole certificate. Day parole is a form of release and is not a temporary opportunity. Day Parole is not removed unless the corresponding conditions of release are violated, and suspension becomes the only mechanism available for the protection of society. These locations are intended for individual(s) to prepare for their imminent and permanent return to society as law-abiding citizens while using the least restrictive form of control. These locations are intended to be temporary yet will afford residents the opportunity to garner full-time employment while gradually adjusting to an environment other than a prison cell while assimilating into the community. It is also intended through fair and ethical treatment that any person will be afforded the same rights and responsibilities as other released incarcerates at this same location, and under federal laws that govern the release of incarcerated individuals. In this instance, the appellant is being denied the same opportunities because the federal and provincial governments do not allow the appellant the same Charter Rights as the other residents at this location, and in Canada.

The Charter – Section 15(1)(2)

One major difference is that any resident at this location, or any halfway house can have a full-time job earning any amount of money and not be compromised in any manner. They do not pay rent and they do not purchase their own food. Some continue to collect the \$28.00/week in addition to their earnings, which in most cases are substantial. The current

policies are unfair and require an overhaul. If left as is, a growing number of released incarcerates will face the same consequences. More “prisoners of age” are coming out of prisons at various ages, some seniors and while some may be younger albeit disabled. This policy should emulate the equality expectations of society and allow parolees to integrate with the same rights. There is a “duty to act fairly” at common law but this policy departs from that principle.

The appellant retains the rights of all members of society except those that are, as a consequence of the sentence, lawfully and necessarily removed or restricted; CCRA - section 4(d).

Requested Remedies:

1. The appellant states, above and beyond all else, create a new policy, which will respect all people, from all nations, and from all directions. This means that any parolee will expect to be treated like any other Canadian citizen, free of policy or practices that discriminate.
2. That the appellant’s application for disability benefits be approved in full and without delay with payments to commence as soon as possible and the disability benefit pro-rated to ensure that the food and accommodation portion of the benefit is withheld until such time as the federal funding for these essentials is terminated.
3. That, if approved, the appellant will be provided back pay, with interest from the date of the original application. All other benefits will be available to the appellant.

Refer To: Corrections and Conditional Release Act (CCRA), Sec 4 (d) Canadian Human Rights Act (CHRA), Sec. 3 & 5 Charter of Rights and Freedoms, Sec. 7, 15 (1) (2) Decision Making Policy Manual for Board Members, Sec 4, 6 & 7 United Nations Declaration In The Rights Of Indigenous Peoples (UNDRIP), Articles 21, 22, 23, 24, 39, 40, 43, 44, & 46

At the hearing, the appellant added that she has upcoming medical appointments and two surgeries pending. She also stated she will be on day parole for three years and renews her parole certificate every six months. The goal is full release. The appellant referred to a “Pathways Program” which she intends applying for and if approved would enable her to pay rent at the halfway house.

Ministry

At the hearing, the ministry stated that the legislation doesn't allow for discretion and added that section 14 of the Regulation states someone is not eligible for disability benefits if they are living in a halfway house at the time of intake – it's very black and white, not a subjective call.

The ministry did not object to the submission of the additional information.

Admissibility

The panel determined 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 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 disability assistance because:

She is absent from a lawful place of confinement under a temporary absence program (day parole) and resides at a halfway house that is funded, sponsored, or contracted by the federal government?

Appellant Position

The appellant argues that the ministry incorrectly defined day parole and temporary absences as one and the same when they are not. They are two separate and independent parts of release. Day parole is a form of release and is not a temporary opportunity. Day Parole is not removed unless the corresponding conditions of release are violated, and suspension becomes the only mechanism available for the protection of society. A day parole certificate is not the same as a temporary absence as once granted, liberty cannot be suspended unless the appellant does something that would justify her return to custody.

The appellant also argues that although it may be presumed that a parolee is required to return to the halfway house every night, this is not accurate as she has leave privileges approved by the PBC and administered by the halfway house. The only provision is that daily reporting is required.

The appellant argues further that the assessment as to whether or not the appellant should receive benefits, based on the understanding that day parole is temporary, is seriously flawed.

Ministry Position

The ministry notes the appellant explained that the ministry's policy is arbitrary and discriminating and that it violates the Charter. However, the ministry states that this reconsideration is regarding the appellant's eligibility for disability assistance under the Act and Regulation only.

The ministry acknowledges that some other residents at the halfway house may improve their finances because they are able to work in addition to having their meals and accommodation costs covered. However, the ministry argues that the legislation does not allow for discretion when determining the eligibility of a person in the appellant's circumstance.

The ministry previously established that the appellant is absent from a lawful place of confinement under a temporary absence program (day parole) and that the appellant resides in a halfway house, funded by the federal government.

The letter provided by the halfway house confirms the appellant resides there and is being supervised on a day parole release. Section 99(1) of the *Corrections and Conditional Release Act* (CCRA) defines day parole as the authority granted to an offender to be at large during the sentence providing the offender returns to a community-based residential facility, or other location each night (or at other intervals).

The ministry argues that it considers day parole to be a temporary absence program because the appellant is required to return as a condition of release. The CCRA defines a community-based residential facility as a place that provides accommodation to offenders who are on parole, statutory release, or temporary absence. The website for BC Yukon Halfway House Association states, "A halfway house is a community-based residential facility for offenders who have been allowed to serve part of their sentence under supervision in the community. Also known as community-based residential facilities, halfway houses are typically facilitated either by the Correctional Service of Canada or by voluntary agencies."

The ministry argues further that although halfway house is not defined in the Act and Regulation the ministry finds it has the same ordinary meaning as community-based residential facility. As the appellant is absent from a lawful place of confinement under a temporary absence program (day parole) and resides at a halfway house (or community-based residential facility) that is funded, sponsored, or contracted by the federal government the appellant is not eligible for disability assistance in accordance with Section 14 of the Regulation.

Panel Analysis

As the panel's jurisdiction lies only within the Act and Regulation, the panel will not address any Charter issues. Section 19.1 of the *Employment and Assistance Act* states that

section 44 (without jurisdiction over constitutional questions) of the *Administrative Tribunals Act* applies to this Tribunal.

Section 14, Regulation- Effect of being in prison or other lawful place of confinement

Section 14(b) of the Regulation states a person is not eligible for disability 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 appellant does not dispute that she lives in a halfway house and the letter from the halfway house confirms the appellant is being supervised on a day parole release and currently receives \$28.00/ week from Correctional Service Canada.

Sections 66 and 99, CCRA – definitions

Section 66(1)(3) of the CCRA states, *community-based residential facility* means a place that provides accommodation to offenders who are on parole, statutory release or temporary absence. Section 99(1) of the CCRA states, *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.

Temporary Absence vs Day Parole

The appellant argues that day parole and temporary absences are two separate and independent parts of release. The ministry argues that it considers day parole to be a temporary absence program because the appellant is required to return as a condition of release. The panel notes the ministry did not refute the appellant's argument that day parole and a temporary absence program are two separate forms of release granted under the CCRA.

The panel also notes that the purpose of the Regulation and the CCRA are different, the Regulation makes no reference to the CCRA and definitions for temporary absence and day parole are not provided in the Regulation. However, the panel notes the ministry included sections 66 and 99 of the CCRA in its decision and finds the definitions in these sections assist the panel in understanding what these terms mean.

The panel notes section 66(1)(3) of the CCRA sets out different types of release from incarceration (parole, statutory release or temporary absence). The panel finds if the

CCRA considered day parole and a temporary absence as the same type of release, they would not be listed separately.

The panel also notes section 99(1) of the CCRA states the intent of day parole is to prepare the offender for full parole or statutory release. The panel finds the intent of day parole to be broad in scope; preparing an offender for full parole would undoubtedly encompass many strategies. Therefore, the panel finds the ministry's argument that it considers day parole to be a temporary absence program because the appellant is required to return as a condition of release, is taken in too narrow a scope to align with the intent of day parole. Therefore, the panel finds the ministry decision that day parole is considered to be a temporary absence program unreasonable.

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 Regulation 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 and she would not be receiving more financial assistance than the legislation intends for a person with a disability.

Two clauses under 14(b), Regulation

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). The panel finds the second clause of section 14(b) is not in dispute.

At the hearing, the ministry stated that section 14 of the Regulation states someone is not eligible for disability benefits if they are living in a halfway house at time of intake. However, the panel finds this statement only considers the second clause under 14(b) of the Regulation.

As the panel finds day parole is not considered a temporary absence program, the panel finds the first clause under section 14(b) has not been met. As both clauses (temporary absence and residing at a halfway house) have to be met to find the appellant ineligible for disability assistance, the panel finds the ministry's decision unreasonable.

Conclusion

In conclusion, the panel finds the ministry decision, which determined that the appellant is not eligible for disability assistance was not a reasonable application of the legislation in the circumstances of the appellant.

The appellant is successful on appeal and the panel rescinds the ministry's decision.

Schedule of Legislation

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...other than a supplement under Division 7 [*Housing Stability Supplement*] of Part 5, while the person...
(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.

Corrections and Conditional Release Act

66 (1)...

(3) In this section, ***community-based residential facility*** means a place that provides accommodation to offenders who are on parole, statutory release or temporary absence.

Definitions

- **99 (1)** In this Part...

community-based residential facility has the same meaning as in subsection 66(3); (*établissement résidentiel communautaire*)

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; (*semi-liberté*)

Interpretation Act

Enactment remedial

8 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.

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Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount?

Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2023/09/06

Print Name

Vivienne Chin

Signature of Member

Date (Year/Month/Day)

2023/09/06

Print Name

Dawn Wattie

Signature of Member

Date (Year/Month/Day)

2023/09/06