

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (“Ministry”) dated July 21, 2023, in which the Ministry denied income assistance and Medical Services Only (“MSO”) benefits. The Ministry determined that:

- the Appellant was not eligible for income assistance because his income exceeded the rate of assistance for a sole recipient;
- the Appellant was not eligible for MSO coverage because he was not in receipt of income assistance or disability assistance previously, he did not have Persons with Disabilities (“PWD”) designation and he did not qualify as a person who has persistent multiple barriers to employment (“PPMB”).

Part D – Relevant Legislation

Employment and Assistance Regulation (“Regulation”), section 66.1, definitions of “continuation date”, “continued person” and “qualifying person”, and section 66.3
Medical and Health Care Services Regulation, section 11
Employment and Assistance Act (“Act”), sections 22(4), 24(1) and (2)

Part E – Summary of Facts

The hearing took place in person. The Appellant attended with a support person to help with communication. The Ministry attended by telephone.

Evidence before the Ministry at Reconsideration:

The Appellant moved to British Columbia from Ontario. He is self-employed as an educator and consultant, earning approximately \$4,500 per month.

The Appellant needs a power wheelchair and other assistive devices because of a severe disability. He recognized that his annual income exceeds the income test for income assistance as a sole applicant but asked for MSO coverage for expenses related to his wheelchair and other assistive devices.

The Appellant told the Ministry that he is aware of others who have MSO benefits while working full-time.

Additional Evidence:

The Appellant provided recent letters of employment from three post-secondary institutions, confirming the Appellant's expected income of approximately \$6,000 per month from September to December 2023, and approximately \$4,000 per month from January through to the beginning of May 2024.

At the hearing, the Appellant stated:

- In Ontario, wheelchair expenses are covered under OHIP, which is the equivalent of the Medical Services Plan in British Columbia.
- Without MSO coverage, he will have to use his retirement savings to repair or replace his wheelchair and other assistive devices.
 - When his power wheelchair stops working, the cost of replacement is approximately \$15,000.
 - The cost of replacing his screen reader, which is his only way of communicating if he is alone, is approximately \$3,000.
 - In the ten months he has been in British Columbia, he has spent \$2,000 for batteries and a new footrest for the wheelchair.
- His current income from three jobs is well under \$50,000, and he does not have extended health benefits.
- He is considering moving back to Ontario because of the constant anxiety, knowing that he has no other resources when problems arise.

In answer to a question from the Panel, the Appellant said that he had explored the Ministry's suggestion in the Reconsideration Decision, that he consider applying for assistance as a life-threatening health need, but again, his income is too high for him to qualify.

Admissibility of Additional Evidence:

The Ministry did not object to the admissibility of the additional written and oral evidence.

The Panel finds that the additional evidence is reasonably required for the full and fair disclosure of all matters in the appeal. Therefore, the Panel finds that the additional evidence is admissible under s. 22(4) of the Act.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's Reconsideration Decision is reasonably supported by the evidence or is a reasonable application of the legislation in the Appellant's circumstances. The Ministry determined that the Appellant was not eligible for income assistance because his income exceeded the rate of assistance for a sole recipient, and he was not eligible for MSO coverage because he was not in receipt of income assistance or disability assistance previously, he did not have PWD designation and he did not qualify as PPMB.

Appellant's Position:

The Appellant does not disagree with the Ministry's application of the legislation and recognizes that his submissions may be outside the scope of the Panel's authority to consider. He agrees that he does not qualify for income assistance because his income exceeds the amount of income assistance for a sole recipient under the Act. However, he submits that people in his circumstances, who have disabilities but whose earnings exceed the rate of income assistance, should be able to receive MSO coverage without having to be eligible for PWD designation or qualify as PPMB, both of which are "income-tested."

The Appellant says that he knows people who were receiving disability assistance as PWD, then began working full time, earned more than the \$42,000 maximum allowable income and continued to receive MSO coverage. He argues that the Ministry is creating a two-tier system that adds to the structural barriers that people with disabilities face, which is counter to the stated goals of the Government of British Columbia.

The Appellant withdraws his argument that the Act and Regulation contravene the Canada Health Act criterion of portability.

Ministry Position:

The Ministry says that, while they are sympathetic to the Appellant's circumstances, the Ministry is bound by the legislation.

Under the legislation, the Appellant is not eligible for income assistance or disability assistance because his income exceeds the amount of monthly assistance for a sole recipient. The Ministry says that, under section 66.3 of the Regulation, the Appellant could be eligible for MSO coverage only if he was a "qualifying person". The Appellant is not a "qualifying person", as he was not receiving income assistance or disability assistance

previously, and he does not have PPMB or PWD designation. Therefore, the Ministry says that the Appellant is not eligible for MSO coverage.

The Ministry adds that, if the Appellant's position is that the legislation should change, that argument should be directed to politicians, not the Ministry.

Panel Decision:

The Appellant agrees that the Ministry has correctly applied the legislation and agrees that he is not eligible to receive income assistance or disability assistance because his income exceeds the monthly benefit. However, he maintains that the legislation is not fair to someone in the Appellant's situation. Further, he says that there are other people who receive MSO while working full-time and earning more than \$42,000 (the maximum adjusted net income a "continued person" can earn before they cease to be eligible for MSO). Therefore, the Appellant argues that the legislation is not applied consistently, nor does it promote substantive equality for people with disabilities.

While the Appellant argues that there are people who receive MSO while working full time and earning more than \$42,000, the Panel notes there may be individual circumstances that bring those people within the requirements of the legislation. Alternatively, those people may be receiving benefits to which they are not entitled. Either way, the Panel can only consider whether the Ministry was reasonable in its determination of eligibility for this Appellant.

Under section 24 of the Act, the Panel is only authorized to consider whether a Ministry's Reconsideration Decision is reasonably supported by the evidence or is a reasonable application of the applicable legislation in the Appellant's circumstances. The Appellant does not disagree with the Ministry's application of the legislation. His arguments go to wider issues, where he alleges there are gaps in the legislation. Those issues are beyond the scope of the Panels' jurisdiction.

The Panel finds that the Ministry reasonably determined that the Appellant is not eligible for income assistance because his income exceeds the rate of assistance for a sole recipient. The Panel also finds that the Ministry reasonably determined that the Appellant is not eligible for MSO coverage because he is not a "continued person" under section 66.3 of the Regulation: the Appellant was not receiving income assistance or disability assistance previously, nor is he a "qualifying person", as he has not qualified as PPMB.

Conclusion:

While the Panel is sympathetic to the Appellant's circumstances, the Panel finds that the Ministry's Reconsideration Decision is a reasonable application of the legislation in the Appellant's circumstances. The Appellant is not successful in the appeal.

Schedule of Legislation

Employment and Assistance Regulation

Definitions

s. 66.1 In this Division:

"continuation date",

(a) in relation to a person who is a main continued person under section 66.3 (1) [*access to medical services only*] or 66.4 (1) [*access to transitional health services*] as a result of having been part of a family unit on the date the family unit ceased to be eligible for income assistance, means that date, and

(b) in relation to a dependent continued person under section 66.3 (2) or 66.4 (2) of a main continued person, means the continuation date of the main continued person;

"continued person" means

(a) a main continued person under section 66.3 (1) or 66.4 (1), or

(b) a dependent continued person under section 66.3 (2) or 66.4 (2);

"qualifying person" means a person who

(a) has persistent multiple barriers to employment, or

(b) is a recipient of income assistance who is described in section 8 (2) (b) [*people in special care*] of Schedule A.

Access to medical services only

s. 66.3 (1) Subject to subsection (4), a person is a main continued person if

(a) the person was

(i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for income assistance, and

(ii) a qualifying person on that date, and

(b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance.

(2) Subject to subsection (6), a person is a dependent continued person if

(a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date, and

(b) the person is currently a dependant of that main continued person.

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of income assistance, ceased to be eligible for income assistance

(a) on a date the family unit included a person aged 65 or older,

(b) as a result of a person in the family unit receiving an award of compensation under the [Criminal Injury Compensation Act](#) or an award of benefits under the [Crime Victim Assistance Act](#), or

(c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry.

(4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if

(a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and

(b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (c).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4), a main continued person under subsection (1) meets the income test for a calendar month if,

(a) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(b) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the adjusted net income of the main continued person does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation.

(7.1) For the purposes of subsection (7) (b),

(a) "adjusted net income" has the same meaning as in section 7.6 of the Medical and Health Care Services Regulation, and

(b) a reference in section 7.6 of the Medical and Health Care Services Regulation to an "eligible person" is to be read as a reference to the main continued person.

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the main continued person's continuation date occurs.

Medical and Health Care Services Regulation

Eligibility for supplemental services based on income

s. 11 (1) An applicant for supplemental services must

(a) submit to the commission an application in a form and manner specified by the commission, and

(b) include in the application any information, authorizations, declarations and verifications required by the commission.

(2) For the purposes of subsection (1) (b), the commission may require information, authorizations, declarations and verifications reasonably necessary

(a) to determine that the applicant is an eligible person, or

(b) to verify the net income or adjusted net income of the applicant.

(3) If the adjusted net income of an eligible person does not exceed \$42 000, the eligible person and, if applicable, the following persons, are eligible for supplemental services:

- (a) if the eligible person has a qualifying spouse, the spouse;
- (b) a child of the eligible person;
- (c) if the eligible person supports a post-secondary student, the post-secondary student.

Employment and Assistance Act

s. 22 (4) A panel may consider evidence that is not part of the record as the panel considers is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Decision of panel

s. 24 (1) After holding the hearing required under section 22 (3) [*panels of the tribunal to conduct appeals*], the panel must determine whether the decision being appealed is, as applicable,

- (a) reasonably supported by the evidence, or
- (b) a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

(2) For a decision referred to in subsection (1), the panel must

- (a) confirm the decision if the panel finds that the decision being appealed is reasonably supported by the evidence or is a reasonable application of the applicable enactment in the circumstances of the person appealing the decision, and
- (b) otherwise, rescind the decision, and if the decision of the tribunal cannot be implemented without a further decision as to amount, refer the further decision back to the minister.

APPEAL NUMBER 2023-0220

Part G – Order

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

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

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

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

Part H – Signatures

Print Name
Susan Ferguson

Signature of Chair

Date (Year/Month/Day)
2023/September/13

Print Name
Maryam Majedi

Signature of Member

Date (Year/Month/Day)
2023/September/13

Print Name
Diane O'Connor

Signature of Member

Date (Year/Month/Day)
2023/September/13