

Appeal Number
2023-0264

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated August 11, 2023, which determined that the appellant was not eligible to receive a bus pass supplement, as his request did not meet the criteria set out in section 66(1) of the Employment and Assistance Regulation (the Regulation).

Part D – Relevant Legislation

Employment and Assistance Act – Sections 1 and 4
Employment and Assistance Regulation – Section 66

A full text of the relevant legislation is provided in the Schedule of Legislation after the Reasons in Part F below.

Part E – Summary of Facts

Relevant Evidence Before the Minister at Reconsideration:

- The appellant is over 75 years old and is not in receipt of income assistance.
- On April 22, 2022, the appellant explained that he does not meet the residency requirements because he left Canada for a period of about 20 years. He moved back to Canada in 2019 and has been here ever since.
- On July 12, 2023, the ministry advised the appellant he had not met any of the criteria to be eligible for the bus pass program and as such he was not eligible for the bus pass at this time.
- On July 25, 2023, the appellant submitted a Request for Reconsideration, in which he requested that the family income be adjusted with a reduction of \$35,052.75 for a net income of \$14,522. The appellant's position is that his net income was overstated by the amount of \$35,052.75, which is income of the appellant's spouse.

Information Provided After the Decision

In the Notice of Appeal, the appellant re-iterated what he said above in the Request for Reconsideration.

The appellant made a submission after providing the Notice of Appeal, in an email dated September 8, 2023, that stated he had nothing to add to what he had previously submitted, except that the "big dollar value of Guaranteed Income Supplement (GIS) in 2022 was inclusive of a substantial arrears for the past years which were paid in the year 2022....".

Admissibility of New Evidence

Section 22(4) of the Act says a panel can consider evidence that is not part of the record when the Ministry made its decision. But first the panel must decide if the new information is relevant to the decision.

The panel determined the new 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 Act.

Part F – Reasons for Panel Decision

The issue before the panel is whether the ministry's decision that the appellant was not eligible for a bus pass supplement was reasonably supported by the evidence or a reasonable application of the legislation. That is, was the ministry reasonable to decide that the appellant was not eligible for a bus pass supplement?

Ministry Position

- Section 66(1)(a) and (b) of the Regulation do not apply to the appellant because he is not in receipt of the GIS, and he is not in receipt of income assistance.
- Evidence provided regarding residency confirms the appellant became a permanent resident to Canada in 1989.
- However, a review of his file indicates that he had left Canada for approximately 20 years, and then moved back to Canada in 2019, and therefore he does not meet the residency requirements at this time.
- The appellant is not in receipt of either OAS or GIS, because he does not meet the 10-year residency requirement.
- To determine if the appellant would be eligible for GIS (other than not meeting the 10-year residency requirement), the ministry takes into consideration whether his income would be within the threshold amount for a single applicant.
- To review GIS eligibility, the ministry would first need to determine OAS eligibility.
- Based on the Government of Canada website, regardless of a person's marital status, a person who is 75 years of age and over with an individual income up to \$137,331 is eligible for the maximum OAS amount of \$768.46 per month (depending on how long they have resided in Canada from 18 years of age).
- Based on the appellant's income, the ministry determines that he would meet the eligibility requirement for full OAS.
- If the appellant was in receipt of full OAS, he would only be eligible for GIS, if his income is less than the threshold amount of \$27,984.
- According to the appellant's 2022 tax assessment, his family net income is \$49,570.
- As the appellant's spouse is currently receiving OAS/GIS, the ministry deducted full 2022 OAS/GIS of \$14,117.42 as well as the T5 of \$579 he submitted, yielding:
\$49,570 2022 family net income - \$14,117.42 2022 OAS/GIS - \$579 T5 = \$34,873.58.
- The amount of \$34,873.58 exceeds the GIS maximum threshold amount of \$27,984.
- The ministry determines the appellant's request for the bus pass supplement does not meet any of the eligibility criteria set out in Section 66(1).

Appellant's Position

- The appellant states that his net income was grossly miscalculated.
- He is saying that his spouse's income should be deducted from the family income of \$49,570, to determine his eligibility for GIS.
- He states that the "big dollar value of Guaranteed Income Supplement in 2022 of \$32,277.33 was inclusive of a substantial arrears for the past years, which were paid in the year 2022, which [sic] fact can be audited when the incomes for the past years 2021 & 2020 are evaluated and compared".
- The appellant provided a copy of his spouse's T4A(OAS), which indicates her net OAS supplements paid in 2022 were \$32,277.33.
- The appellant explained in his Notice of Appeal that this amount of \$32,277.33 plus her gross pension paid of \$2,775.42= \$35,052.75, should be excluded from the total income of \$49,570, which would yield a family income of \$14,517.25. This amount falls below the GIS maximum threshold amount of \$27,984, rendering him eligible for a bus pass.

Panel Decision

The panel notes section 1(1) of the Act interprets "applicant", "dependent", and "family unit for the purposes of the legislation. An "applicant" for a supplement (bus pass) means the person in a family unit who applies for a supplement on behalf of the family unit, and includes the person's spouse, if the spouse is a dependant. A "dependant" is anyone who resides with the person and who is the spouse. A "family unit" means an applicant and his dependants. The panel finds it follows that it would be necessary to include the incomes of both spouses to calculate eligibility for a supplement, of a family unit comprising the two persons.

Under section 66 there are three options for a family unit to qualify for a bus pass. The minister may provide an annual pass for the personal use of a person in the family unit who:

- a) receives the federal spouse's allowance or federal guaranteed income supplement,
- (b) is 60 or more years of age and receives income assistance under sections 2, 4, 6, or 9 of Schedule A of the Act, or
- (c) is 65 years of age or more and meets all the eligibility requirements for the federal guaranteed income supplement except the 10-year residency requirement.

The panel notes ministry records show that a Service Canada data match confirms the appellant is not currently in receipt of GIS. Therefore, the panel finds the ministry reasonably concluded the appellant is not eligible for a bus pass supplement under section 66(1)(a) of the Regulation.

The panel notes ministry records also show although the appellant is more than 60 years old, he is not in receipt of income assistance. Therefore, the panel finds the ministry reasonably concluded the appellant is not eligible for a bus pass supplement under section 66(1)(b) of the Regulation.

The panel notes ministry records state the appellant, and his wife would only be eligible for GIS if their combined income was less than \$27,984 and as per the appellant's 2022 tax assessments, their net income was \$49,570, which exceeds the \$27,984 threshold.

The appellant does not dispute his 2022 family income. In his submission are Notices of Assessment from the Canada Revenue Agency (CRA) showing Total Income of \$13,064 and \$36,506, respectively for the appellant and his spouse. This yields a total family income of \$49,570. However, in the Notice of Appeal, the appellant stated his correct income in 2022 should be \$14,522 as he believes his spouse's income should be subtracted from the total.

The panel finds that although section 66(1)(c) does not require the 10-year residency to be met, it does require that the appellant meets all other eligibility requirements for the federal GIS. As the panel finds the appellant's and his spouse's combined income (\$49,570) exceeded the allowable threshold for GIS eligibility (\$27,984), the panel finds the ministry reasonably concluded that the appellant is not entitled to a bus pass supplement under section 66(1)(c) of the Regulation. Although the ministry calculated a total family income of \$34,873.58 and the panel finds the total family income is \$49,570, both figures are over the \$27,984 allowable threshold for GIS eligibility.

The panel acknowledges the appellant's difficult situation, but it is bound by the legislation.

Conclusion

The panel finds the ministry's reconsideration decision, which determined that the appellant was not eligible for a bus pass supplement under section 66 of the Regulation, was a reasonable application of the legislation in the circumstances of the appellant. The appellant is not successful on appeal.

APPLICABLE LEGISLATION

Employment and Assistance Act

Interpretation

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for income assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person...

"family unit" means an applicant or a recipient and his or her dependants;

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

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

Employment and Assistance Regulation

Bus pass supplement

66 (1) The minister may provide a supplement to or for a family unit, other than the family unit of a recipient of disability assistance, that contributes \$45 to the cost, to provide an annual pass for the personal use of a person in the family unit who

- (a) receives the federal spouse's allowance or federal guaranteed income supplement,

(b) is 60 or more years of age and receives income assistance under section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board] or 9 [people in emergency shelters and transition houses] of Schedule A, or

(c) is 65 years of age or more and meets all of the eligibility requirements for the federal guaranteed income supplement except the 10-year residency requirement.

(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 or in a transportation service region, as defined in the South Coast British Columbia Transportation Authority Act.

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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
Bill Farr

Signature of Chair

Date (Year/Month/Day)
2023/09/25

Print Name
Connie Simonsen

Signature of Member

Date (Year/Month/Day)
2023/09/23

Print Name
Joseph Rodgers

Signature of Member

Date (Year/Month/Day)
2023/09/23