

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision (the Decision) dated August 29, 2023, which denied the appellant’s request for income assistance and medical services only (MSO) coverage.

Part D – Relevant Legislation

Employment and Assistance Act (the Act) section 1, 2, 4 and 22(4)
Employment and Assistance Regulation (the Regulation) section 1, 10(2), 28, and 66.1, 66.3 and 76.
Schedule A section 1, 2, and 4
Schedule B section 1, 6, and 7

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 Ministry at Reconsideration**

According to the information provided by the ministry in the Decision:

- The appellant is a single applicant of income assistance and is legally represented by their mother and sister (the co-committee).
- On May 15, 2023, the appellant applied for income assistance, and on the application listed Canada Pension Plan Disability (CPPD) benefits as income.
- As part of the application and verification process, the appellant submitted bank records showing regular monthly deposits from the Insurance Corporation of British Columbia (ICBC) in the amount of 677.86 and from CPPD in the amount of \$1119.11.
- On May 24, 2023, the appellant submitted a Supreme Court of British Columbia order naming the appellant's mother and sister as co-committees of the appellant's estate.
- On May 30, 2023, the appellant submitted a Persons with Disabilities Designation (PWD) Application form – Prescribed Class.
- On July 12, 2023, the ministry contacted a co-committee who confirmed the appellant receives CPPD of \$1119.11 and ICBC income of \$677.86 which is more than the rate of assistance for their family unit size.
- On July 24, 2023, the ministry reviewed the appellant's application and determined that based on their declared income of \$1796.97 per month they would not be eligible for assistance. Additionally, the ministry noted the appellant is not eligible to apply for PWD because they are not eligible for income assistance.

On August 15, 2023, the appellant submitted a Request for Reconsideration form on which the co-committee indicated that:

- The difference between the appellant's income and prescribed benefit is only \$261.47 monthly. The co-committee added that their sibling/son, the appellant, is severely brain injured and has complex medical needs. She asked that the appellant be put on MSO coverage so that they can have access to funding for necessary and expensive equipment, like a lift, wheelchair, and medical bed to live a functional life.
- The co-committee noted that this equipment is in constant need of repair and replacement and there simply isn't sufficient funds to do that. In addition, the appellant is also a type 2 diabetic and requires additional medication and devices (testing & monitoring equipment).
- The appellant needs total care but lives outside of a long-term care facility.

New Evidence Provided on Appeal

In the Notice of Appeal, the co-committee stated:

- When the appellant was initially injured, they did not have access or advocacy for the PWD application.
- Had the appellant applied in the early years following the accident, they would still have access to the MSO coverage portion to this day.
- The appellant is severely brain injured and depends on full time medical care, and requires the use of a wheelchair, lift and medical bed.
- The appellant is paralyzed on his left side and is nonverbal since the accident.
- While the appellant's family has tried to find financing for the appellant's equipment, it is becoming increasingly more difficult.
- An example of the type of expensive medical equipment the appellant requires was provided.
- The co-committee stated that the appellant needs assistance and is looking to the government to help the appellant have a better quality of life.

The co-committee made an emailed submission on September 30, 2023 (the appellant submission). The appellant submission:

- Provided an example of some of the expenses that the appellant must incur to live a quality life. This example is in the form of an invoice for a custom cervical orthosis in the amount of \$1378.
- States that the appellant needs the cervical orthosis to enable them to lift their head up so as not to aspirate on food.
- Says that the appellant and their family have no support and the appellant is expected to pay for all medical equipment to enhance and prolong their life.

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.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's Decision determining the appellant was not eligible for income assistance and MSO coverage was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The Appellant's Position

The appellant's position is that:

- They are severely brain injured, has complex medical needs, and needs MSO coverage to have access to funding for equipment and other extended health benefits.
- The equipment needed (which includes a wheelchair, lift, medical bed, and orthosis) is not optional but necessary to live a functional life.
- They are paralyzed on the left side and nonverbal since the accident.
- The family provides what it can, but it is struggling financially.
- The appellant needs total care, lives outside Long Term Care, and receives 16 hours of support daily. They depend on full time medical care.
- The co-committee is asking for reconsideration of the MSO coverage, as they have no way of funding items needed by the appellant.

The Ministry's Position

The ministry's position is that the appellant did not satisfy all the criteria under the Employment and Assistance Regulation (the Regulation), specifically:

1. Eligibility for income assistance:

The legislation does not allow for discretion when calculating the appellant's net income. As the appellant's net income is greater than the rate of assistance for their family unit size, the appellant is not eligible for income assistance under Section 10(2) of the Regulation.

2. Eligibility for Medical Services Only:

The appellant has not previously received income assistance or disability assistance and does not have a Persons with Persistent Barriers (PPMB) to employment or a Persons with Disabilities (PWD) designation. Thus, the appellant does not meet the requirements of Section 66.3 of the Regulation and is not eligible for MSO.

3. **Eligibility to apply for Persons with Disabilities designation:**

There is no legislative authority to deny the appellant's right to apply for the PWD designation, but if the appellant did apply for the PWD designation, their eligibility for disability assistance would need to be assessed based on their income and assets at that time.

Analysis

1. **Eligibility for income assistance:**

The panel makes the following findings:

- The appellant's income from CPPD and ICBC meets the definition of unearned income under Section 1 of the Regulation.
- There are no exemptions under Schedule B of the Regulation for these types of income.
- As per Schedule A of the Regulation, the appellant's income assistance rate is \$1060 per month; (\$560 support and \$500 shelter). No evidence has been presented to indicate that the appellant would be entitled to any other allowances, although in the request for reconsideration the co-committee suggests that the appellant would also receive an additional \$52 in the form of a transportation allowance if they had a PWD designation.
- The appellant's monthly unearned income from CPPD and ICBC is \$1796.97, and the appellant did not dispute this.
- The appellant's bank information confirms their income is more than the \$1060 rate of assistance for their family unit, and there is no evidence to show they are no longer in receipt of income that exceeds their rate of assistance.
- The legislation does not allow for discretion when calculating the appellant's net income.
- Since the appellant's net income is greater than the rate of assistance for their family unit size, the appellant is not eligible for income assistance under Section 10(2) of the Regulation.

2. **Eligibility for Medical Services Only:**

The panel makes the following findings:

- Under Section 66.3 of the Regulation, MSO coverage is only available to certain categories of former recipients of income assistance who meet specific eligibility criteria.
- To be eligible for MSO coverage, a family unit must include a qualifying person on the date the family unit ceased to be eligible for income assistance or disability assistance and meet the applicable income test for the family unit.
- To be a qualifying person, one must have either a PPMB or PWD designation.
- The appellant was not previously in receipt of income assistance or disability assistance and does not have a PPMB or PWD designation.
- Therefore, the appellant does not meet the requirements of Section 66.3 of the Regulation and is not eligible for MSO coverage.

3. Eligibility to apply for Persons with Disabilities designation:

The panel finds that the appellant's eligibility to apply for the PWD designation was not an issue in this appeal. The ministry stated there is no legislative authority to deny the appellant the right to apply for eligibility for the PWD designation. The ministry noted in addition that the appellant may wish to contact the ministry to discuss eligibility for wheelchair expenses and other devices, under the Life-Threatening Health Needs category. The panel notes that the Life-Threatening Health Needs supplement is available to persons not eligible for income or disability assistance (under section 76 of the Regulation and section 69 of the Employment and Assistance for Persons with Disabilities Regulation) provided the eligibility requirements, which include an income test, are met.

Conclusion

The panel finds the ministry's Decision, which determined the appellant is not eligible for income assistance under Section 10(2), and for MSO coverage under Section 66.3 of the Regulation, was reasonably supported by the evidence. Therefore, the Panel confirms the Ministry's Decision, and the appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance Regulation

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
...
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

Limits on income

10 (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependent.

(2) A family unit is not eligible for income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

Schedule A Income Assistance Rates

Maximum amount of income assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [amount of income assistance] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of
 (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2 ...

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of Support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$560.00

Monthly shelter allowance

(2) The monthly shelter allowance for a family unit to which section 15.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Minimum	Column 3 Maximum
1	1 person	\$75	\$500

Schedule B- Net Income Calculation

Deduction and exemption rules

1When calculating the net income of a family unit for the purposes of section 28 (b) [amount of income assistance] of this regulation,

- (a) the following are exempt from income:
 - (i) any income earned by a dependent child attending school on a full-time basis ...
 - ... (lvi) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the Department of Public Safety and Emergency Preparedness Act (Canada),

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6 of this Schedule,

(c) all earned income must be included ... and

(d) all unearned income must be included ...

Deductions from earned income

2 The only deductions permitted from earned income are the following:

(a) any amount deducted at source for

- (i) income tax,
- (ii) employment insurance,
- (iii) medical insurance,
- (iv) Canada Pension Plan,
- (v) superannuation,
- (vi) company pension plan, and
- (vii) union dues ...

Access to medical services only

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.

Health supplement for persons facing direct and imminent life-threatening health need

76 (1) The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [general health supplements] and 3 [medical equipment and devices] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

(a) the person faces a direct and imminent life-threatening need and there are no resources available to the person's family unit with which to meet that need,

(b) the health supplement is necessary to meet that need,

(c) the adjusted net income of any person in the family unit, other than a dependent child, does not exceed the amount set out in section 11 (3) of the Medical and Health Care Services Regulation, and

(d) the requirements specified in the following provisions of Schedule C, as applicable, are met:

(i) paragraph (a) or (f) of section (2) (1);

(ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

(2) For the purposes of subsection (1) (c),

(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 a person in the family unit, other than a dependent child.

APPEAL NUMBER 2023-0281

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)

2023/10/17

Print Name

Simon Clews

Signature of Member

Date (Year/Month/Day)

2023/10/17

Print Name

Kevin Ash

Signature of Member

Date (Year/Month/Day)

2023/10/17