

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) reconsideration decision dated September 25, 2023 (the Decision), which found that the Appellant did not qualify for a bus pass supplement (the Supplement).

Part D – Relevant Legislation

Employment and Assistance Act (the Act), Sections 1 and 4

Employment and Assistance Regulation (the 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

According to the Decision, the Appellant is 75 years old and is not receiving income assistance.

The evidence the Ministry had when it made the Decision included:

- The Appellant’s request for reconsideration, signed by the Appellant on September 6, 2023 (the Reconsideration Request), in which the Appellant says:

“Please reconsider your decision. My year to date income is around \$8k. I no longer have any income/work. I started to get EI (employment assistance) benefits in August. I am attaching here my ROEs (records of employment) and year to date pay stub. My spouse is not working this year; she has (a) problem with her knees and is waiting for ...surgery”;

- Three ROEs from two different employers, in the name of the Appellant, showing earnings in 2022 and 2023 as follows:

ROE Date	Earnings Period	Earnings Year	Total Earnings
August 15, 2023	August and September 2022	2022	\$5,324.80
August 11, 2023	November 7, 2022 to August 5, 2023	2022 and 2023	\$8,053.30
August 3, 2023	January 15, 2023 to February 5, 2023	2023	\$2,946.01

- A pay cheque stub in the name of the Appellant, dated August 5, 2023, for the pay period July 23, 2023 to August 5, 2023 (the Pay Stub). The Pay Stub includes the following payment information:

Current Gross Pay Amount	Current Net Pay Amount	Year-to-Date Gross Pay Amount	Year-to-Date Net Pay Amount
\$418.08	\$411.27	\$9,160.07	\$8,435.53

- A Notice of Assessment in the name of the Appellant for the 2022 tax year (the Appellant’s NOA). The Appellant’s NOA shows total income, net income and taxable income of \$11,888;
- A Notice of Assessment in the name of the Appellant’s spouse for the 2022 tax year (the Spouse’s NOA). The Spouse’s NOA shows total income of \$18,471, and net income and taxable income of \$18,399;

- A goods and services tax/harmonized sales tax credit and BC climate action tax credit notice in the name of the Appellant for the 2022 base year (the Tax Credit Notice). The Tax Credit Notice shows 2022 family net income of \$30,287; and,
- Two letters from the Ministry, both dated June 27, 2023, in which the Ministry asked the addressee to confirm their income and marital status (the June 27 Letters). One letter is addressed to the Appellant and the other is addressed to the Appellant's spouse. Both letters ask the addressee to provide copies of their 2022 NOAs, 2022 Tax Credit Notices, and "T5007 forms from all sources" issued to the Appellant and his spouse in 2022.

Additional Evidence After Reconsideration

In the notice of appeal, which was signed on October 3, 2023, the Appellant says his financial condition is not good this year, and he is attaching "*all the supporting documents*" to assist in the appeal.

Additional Information Provided at the Hearing

The Appellant was represented at the hearing by his daughter (the Representative).

At the hearing, the Representative said the Appellant acknowledges that the Decision is based on income received in 2022, but in 2023 the family unit's income will be significantly lower because the Appellant's spouse is not working. The Representative also confirmed that the Appellant did not qualify for the federal guaranteed income supplement (GIS) because he has not lived in Canada for 10 years.

The Representative said that the Appellant has just had surgery (which is why he didn't attend the hearing), and has been having other health issues. Additionally, she explained that the Appellant's spouse was awaiting knee surgery, thereby affecting the spouse's ability to work. The Representative explained that, since sometime in September 2023, the Appellant has been receiving \$366 biweekly in employment insurance benefits, and will continue to receive the employment insurance benefits for a total of 23 or 24 weeks.

The Representative said the Appellant and his spouse had received the Supplement in 2021. The Ministry explained that the Supplement is for each calendar year, and the June 27 Letters were form letters sent to all then-current Supplement recipients in June or July of each year, to determine if recipients would be eligible for the Supplement in the following year. The Ministry said the Appellant's family unit would continue to receive the 2022 calendar year Supplement through December 2023, but would not be eligible for the Supplement in calendar year 2024. This is because the Appellant's family unit income in 2022 exceeded the income threshold set out in the legislation. The Ministry said that the Appellant could reapply for the 2025 Supplement in June or July 2024, and the income test

would then be applied based on the family unit's income in 2023, as reported in the Appellant's NOA and the Spouse's NOA, and the 2023 Tax Credit Notice.

In response to a question from the Panel, the Ministry said the "*T5007 forms from all sources*" referred to in the June 27 Letters was a federal tax form which shows the total income assistance and other benefits, including the Supplement, that each Ministry client received in each calendar year. The form is mailed by the Ministry to clients in February each year, and is also provided to the Canada Revenue Agency (the CRA). The Ministry explained that, even though the T5007 form is asked for in the June 27 Letter, the Ministry does not require the information because it has a record of the income assistance and other benefits provided to each client every year. The Ministry also said that income assistance and other benefits are not taxable, but must be included in a person's income tax return and are used to calculate a client's Supplement eligibility. In this case, the Appellant was not sent the T5007 form in February 2023 because the Appellant's family unit had only received \$215 in total benefits from the Ministry in 2022, and the Ministry does not mail out the form to clients who receive less than \$500.

At the hearing, the Ministry relied on the Decision by summarizing the provisions set out in Section 66 of the Regulation. The Ministry said the Appellant's family unit income in 2022 was \$30,287, which exceeds the GIS income threshold of \$27,984, and therefore the Appellant's family unit was not entitled to the Supplement in 2024. The Ministry said that it "*understands the client's situation has changed*" in 2023, but the Ministry has to rely on the federal government's calculation of assessed income in determining eligibility for the Supplement, and does not have the discretion to make any exceptions to the requirements set out in the Provincial legislation.

In response to a question from the Panel about whether there were any other benefits that the Appellant's family unit might be entitled to, the Ministry said the Appellant could ask the federal government for a "*Statement of Estimated Income*" form (ISP-3041). The Ministry said the form was not available online, but the Appellant could contact the federal government's 1-800 number and ask for a copy. The Ministry said it did not know if the Appellant would qualify for or receive any additional federal benefits as a result, but it is "*similar to what the client is asking us to do*".

In terms of other options, the Ministry suggested the Appellant contact the Seniors Services Society, which is a social services agency that might be able to assist the Appellant's family unit's transportation needs because one of the services they provide is a service where volunteers drive senior citizens to medical appointments, etc.

Admissibility of Additional Evidence

Section 22(4) of the *Employment and Assistance Act* says that a panel can consider evidence that is not part of the record when the Ministry made its decision. But first the panel must

consider if the new information is relevant to the decision. If a panel determines that any new evidence can be admitted, it must decide if the decision was reasonable considering the new information.

No new evidence is included in the Appellant's notice of appeal because the information included with the notice of appeal had been provided to the Ministry before the Decision. Specifically, in the Reconsideration Request, the Appellant stated that the family unit's income in 2023 was expected to be below the threshold amount set out in Section 66 of the Regulation, and provided copies of the ROEs and the Pay Stub indicating that his income for 2023 was expected to be under the threshold amount.

The following new information was provided at the hearing:

- Information provided by the Representative about:
 - The Appellant's current medical condition; and,
 - The Appellant's status regarding the amount and duration of his employment insurance benefits; and,
- Information provided by the Ministry about:
 - The timing of the review of clients' Supplement eligibility and when any changes to Supplement eligibility go into effect; and,
 - Possible options open to the Appellant to address the challenge the family unit faces because it does not qualify for the Supplement in 2023.

The Ministry did not object to the Panel considering any of the new evidence presented by the Representative at the hearing.

The Panel admits the new information provided by the Representative at the hearing because the new information might be relevant to the decision. The weight the Panel assigns to the new information is provided in the Reasons for the Panel Decision section below.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's decision that the Appellant did not qualify for the Supplement was reasonably supported by the evidence, or a reasonable application of the legislation in the Appellant's circumstances.

Appellant's Position

The Appellant's position is that he should receive the Supplement in 2024 because the family unit's 2023 income will be significantly lower than it was in 2022.

Ministry's Position

The Ministry's position is that the legislation requires that it use the Appellant's net income calculations from his 2022 tax returns to determine his family units eligibility for the Supplement in 2024, and that information confirms that the Appellant will not be eligible for the Supplement next year.

Panel Decision

Section 4 of the *Act* says the Ministry may provide a Supplement to a family unit if it is eligible for it. Eligibility requirements for a Supplement are contained in Section 66 of the Regulation.

Section 66 lists three different circumstances under which someone in the applicant's family unit might qualify for a Supplement. The first circumstance, identified in section 66(1)(a), is when a family unit member receives the federal GIS or the spouse's allowance. The second circumstance, identified in section 66(1)(b), is when someone in the family unit is 60 or more years old and receives income assistance. In the Decision, the Ministry found that neither of these first two circumstances applied to the Appellant. The Panel notes that the Representative acknowledged at the hearing that neither the Appellant nor his spouse was eligible for the GIS. In the Decision, the Ministry said that Appellant was 75 years old, and no evidence has been submitted to indicate that the Appellant's spouse is under 60 years of age. The Panel finds that the Ministry reasonably determined that no one in the family unit would qualify under section 66(1)(a) or (b).

The third situation where a family unit member might qualify for the Supplement is described in section 66(1)(c). Section 66(1)(c) says that a family unit member might qualify for the Supplement if they are 65 or more years old and if they meet all the eligibility requirements for the federal GIS except the 10 year residency requirement. Excluding the 10 year residency requirement, the other GIS eligibility requirements are based on an income test.

In the Decision, the Ministry said that if the Appellant and his spouse were receiving the full old age security amount, they would only be eligible for GIS if their combined income

was less than the threshold amount of \$27,984. The Panel notes that the Government of Canada website says that the GIS benefit is reviewed in January, April, July and October of each year to reflect increases in the cost of living as measured by the Consumer Price Index. For the current quarter (October to December 2023), the threshold amount is \$28,320 for someone over 65 with a spouse who receives a full old age security pension.

In the Decision, the Ministry determined that the Appellant and his spouse had a combined net income of \$30,287 in 2022. The Panel notes that the Tax Credit Notice shows the Appellant's and the spouse's 2022 net family income as \$30,287. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant's net family income exceeds the GIS threshold amount.

Regarding the timing of the change in eligibility for the Supplement, the Panel notes that the legislation does not say when a change in eligibility takes effect. At the hearing, the Ministry said that, when someone who has been receiving the Supplement is no longer eligible, Ministry policy is to stop providing the Supplement on December 31 of the year in which that recipient was found to no longer be eligible.

The Panel notes that the income test is reasonably determined on net income and tax credits, as determined for tax purposes, and that those assessments cannot be made before individuals have filed their annual tax returns and been assessed. This doesn't happen until several months into the following calendar year. The Ministry policy could be to stop providing the Supplement to a recipient who ceases to be eligible in the month following the application of the rule set out in section 66 of the Regulation. However, the Panel notes that in this case, that policy would have had the Ministry stop providing the Supplement to the Appellant in July or August 2023, which would have resulted in the Appellant's family unit not receiving the Supplement four or five months earlier than the current end date (December 31, 2023).

Also because of the timing of the Supplement eligibility period, the Panel assigns no weight to the new information provided by the Appellant at the hearing, as it has no impact on the Appellant's family unit's eligibility for the Supplement in 2024.

Conclusion

The Panel finds that the Decision, which determined that the Appellant did not qualify for a bus pass supplement was reasonably supported by the evidence and was a reasonable application of the legislation in the Appellant's circumstances.

The Decision is confirmed and the Appellant's appeal is not successful.

Schedule of 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 ... a supplement on behalf of the family unit, and includes

(a) the person's spouse, if the spouse is a dependant ...

"family unit" means an applicant ... and the applicant's ... dependants ...

Income assistance and supplements

4 Subject to the regulations, the minister may provide ... 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 ... 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*] or 6 [*people receiving room and board*] 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

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2023/10/30

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2023/10/30

Print Name

Kim Louie

Signature of Member

Date (Year/Month/Day)

2023/10/30