

Part C – Decision Under Appeal

The issue under appeal is the Ministry of Social Development and Poverty Reduction (“the Ministry”) Reconsideration Decision of February 21, 2024. The Ministry held the Appellant was not eligible for a transportation supplement under Employment and Assistance for Persons with Disabilities Regulation section 54.2 (“the Regulation”).

Specifically, the Ministry was satisfied the Appellant was 18 years of age or older and had the Persons with Disabilities (PWD) designation. However, the Appellant was not eligible for the transportation supplement as she was not eligible to receive disability assistance as required under the Regulation.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation section 54.2. See Appendix.

Part E – Summary of Facts

The hearing took place on April 19, 2024, as an in-person hearing.

Background

The Appellant has a PWD designation and is over 18 years old. On November 14, 2023, the Ministry advised her that she was not eligible for the transportation supplement as her case was Medical Services Only (“MSO”) status. She does not currently receive disability assistance, therefore she is no longer eligible for the supplement. Although the Appellant had a bus pass in 2023, she was not eligible for renewal.

On February 13, 2024, the Appellant submitted a Request for Reconsideration.

On February 14, 2024, the Ministry determined her case was switched to MSO in error.

Currently the Appellant is receiving benefits from Canada Life in the amount of \$2,170.38 per month. The Appellant has not received PWD assistance since April 2023 due to income in excess. The Appellant’s case is PWD with no benefits issued.

On February 21, 2024, the Ministry completed its Request for Reconsideration decision (“the Reconsideration Decision”).

Information Provided after Reconsideration***Appellant Submission***

On February 27, 2023, the Appellant submitted her Notice of Appeal. Her reason for appeal is as follows:

“I am still employed during my work injury. The only difference is my wages come from Canada Life right now and not directly from my employer during WorkSafe.”

Appellant Evidence at Hearing

The Appellant advised the Panel that she has had PWD status for 20 years. She has difficulty walking. As a result of a workplace injury, including a back injury, she has had a WorkSafe claim for 3 years. She will have back surgery in April. She still has a job. She receives a benefit from Canada Life as a wage subsidy. As a result of receiving the benefit

from Canada Life as opposed to wages, her disability assistance was discontinued because funding from Canada Life is deducted dollar for dollar from disability assistance when her previous earned income was not. Overall, the loss to her income annually was \$6,000. As she does not have a bus pass, she has no means of transport. It is extremely stressful not having a bus pass. She emphasized that what she receives from Canada Life is wage replacement. As her MSO status was discontinued, her prescriptions and medical benefits were discontinued. She continues to have a WorkSafe claim which, if successful, may make her eligible for retraining.

The Appellant said she made several attempts to check if her disability assistance could be reinstated, given that the funding she received from Canada Life was wage replacement rather than an insurance policy. She was advised that that would be contrary to policy and the Ministry had no discretion in the matter.

Ministry evidence at hearing

At the hearing, the Ministry Representative (“the Representative”) reviewed the Ministry’s Reconsideration Decision. It is set out in the Ministry Position in Part F of this decision..

When asked the Representative provided the following information:

- The Appellant does not fall within the legislated categories to be eligible for MSO status. The Ministry had applied this status to the Appellant in error.
- If the Appellant moves to a training program (as part of her WorkSafe claim), the Ministry will consider how the payment shifted to see if it would be considered earned income.

The Representative noted that as the Appellant was not receiving disability assistance, she was not eligible for the bus pass and there is no discretion in this matter. The Ministry repeated that the Appellant had unearned “income in excess” of her assistance rate. It was the Representative’s recommendation that the Appellant ask for reconsideration of the decision regarding discontinuing her assistance due to the Canada Life benefit. The Ministry added that the Medical Services Plan and related programs may offer some health benefits.

Admissibility of New Evidence

The Panel is authorized under Section 22(4) of the *Employment and Assistance Act*, to consider evidence in addition to the information the Ministry had at the time of the Reconsideration Decision if it is reasonably required for a full and fair disclosure of all

matters related to the decision under appeal. At the hearing the Appellant provided the following new information:

- She has had PWD status for 20 years;
- Her WorkSafe claim stems from a back injury for which she is to have surgery later in April;
- Her claim is ongoing, and once determined, she may be eligible for retraining;
- As her disability assistance was discontinued when her source of income shifted, the overall loss to her income was \$6,000.

The Ministry did not raise any concerns regarding the new information provided by the Appellant. The Panel admits the new evidence as it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue on appeal is whether the Ministry's Reconsideration Decision which found the Appellant is not eligible for a monthly transportation supplement under the Regulation section 54.2 was reasonably supported by the evidence or was a reasonable application of the applicable provision in the circumstances of the Appellant.

Appellant Position

The Appellant states that she is in an ongoing WorkSafe injury claim which has lasted three years. She says she is still employed with her job and normally her wages complement her disability assistance. She notes that because her Canada Life wage replacement is deducted dollar per dollar she is no longer eligible for disability assistance. She notes her work injuries have caused her mobility issues, she does not have a car, and the bus is her only form of travel. She says the Ministry's determination regarding the bus pass (transportation supplement) is unfair as there is no change in her employment or her disability. The only difference is her wages now come from Canada Life rather than directly from her employer. The Appellant notes that because of her injury she is now more disabled than before but is receiving less support (\$6,000 less).

Ministry Position

The Ministry determined the Appellant was not eligible for the transportation supplement as she did not meet all three of the criteria required for this supplement. The Appellant meets the first two criteria: she is designated as a PWD, and she is over 18 years of age. However, the Appellant does not meet the third requirement. She is not in receipt of disability assistance as required under the Regulation section 54.2. The Appellant does not receive assistance because she is "income in excess" each month. The Ministry states it has no discretion in the matter.

The Ministry made a special comment in response to the Appellant's concerns regarding income from Canada Life being deducted from her disability assistance. The Ministry noted this issue is outside of the scope of the transportation supplement reconsideration. The Ministry invited the Appellant to make a separate Request for Reconsideration regarding this matter if she felt this to be unfair.

Panel Reasons

The Panel must consider whether the Ministry was reasonable in determining that the Appellant did not meet the legislated requirements to receive the transportation supplement. Under the Regulation section 54.2, the minister may provide a transportation supplement to a family unit that is eligible for disability assistance for a calendar month. In this case the Ministry determined the Appellant has a PWD designation, but she is not eligible for disability assistance as her monthly income exceeds what she would receive for disability assistance. As a result, the Ministry determined the Appellant does not meet the legislated requirement for the transportation supplement. The Appellant confirms that she no longer receives disability assistance for this reason. Given that the legislation requires the applicant to be eligible for disability assistance, and the Appellant is not eligible, the Panel finds the Ministry's determination that the Appellant is not eligible for the transportation supplement to be reasonable.

The Panel notes that because of being injured, the Appellant's eligibility for disability assistance changed as her additional income shifted from earned to unearned income in the form of a Canada Life wage replacement benefit. In its Reconsideration Decision the Ministry suggested the Appellant make a Request for Reconsideration regarding the status of her assistance as this is a concern for her. This recommendation was echoed by the Ministry representative at the hearing. The Panel urges the Appellant to carefully consider these recommendations.

Conclusion

The panel considered whether the Reconsideration Decision to deny the Appellant a transportation supplement was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the Appellant. The Panel finds that the Ministry was reasonable to determine that because the Appellant is not eligible to receive monthly disability assistance, she is therefore ineligible for the monthly transportation supplement. Accordingly, the Reconsideration Decision is confirmed. The Appellant is not successful in the appeal.

Appendix

Persons with disabilities transportation supplement

54.2 (1)The minister may provide a transportation supplement to or for a family unit that is eligible for disability assistance or hardship assistance for a calendar month, in respect of each recipient who is designated as a person with disabilities in the family unit, in one of the following forms:

- (a)in money, in the amount of \$52;
- (b)in kind, in the form of a pass, deemed to have a value of \$52 for the purposes of this regulation, for the personal use of the person with disabilities on a public passenger transportation system in
 - (i)a transit service area established under section 25 of the *British Columbia Transit Act*, or
 - (ii)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

Corrie Campbell

Signature of Chair

Date (Year/Month/Day)

2024/04/23

Print Name

Jan Broocke

Signature of Member

Date (Year/Month/Day)

2024/04/23

Print Name

Margarita Papenbrock

Signature of Member

Date (Year/Month/Day)

2024/04/23