

Appeal Number 2024-0460

Part C – Decision Under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Poverty Reduction (the “**Ministry**”), dated December 10, 2024, in which the Ministry denied the Appellant’s request for bus pass supplement as she did not meet the eligibility requirement as set out in section 66 of the Employment and Assistance Regulation. More specifically, the Ministry determined that Appellant’s income, when combined with that of her spouse, exceeds the income threshold to be eligible for a Guaranteed Income Supplement contrary to section 66(1)(c) of the Employment and Assistance Regulation.

Part D – Relevant Legislation

Employment and Assistance Regulation (the “**Regulation**”), section 66

Old Age Security Act, RSC 1985, c O-9, section 3

Full text of the legislation is provided in the Schedule of Legislation at the end of the decision.

Part E – Summary of Facts

The Appellant's written hearing was held on January 9, 2025.

(a) The Reconsideration Decision

The evidence before the Ministry at the time of the Reconsideration Decision included the following:

- The Appellant is 65 years old and not receiving income assistance.
- The Appellant has a spouse.
- Neither the Appellant nor her spouse are receiving Old Age Security ("OAS") or the Guaranteed Income Supplement ("GIS").
- The Appellant's 2023 Notice of Assessment, indicating a total taxable income of \$16,966.00.
- The Appellant's spouse's 2023 Notice of Assessment, indicating a total taxable income of \$21,364.00.
- Together, the Appellant and her spouse have a combined taxable income of \$38,330.00.

On October 29, 2024, the Ministry denied the Appellant's request for a bus pass supplement (the "Bus Pass") because the combined income of her and her spouse exceeded \$21,136.00.

For clarity, the Ministry advised:

"... The eligibility requirements for individuals over 65 years of age are based on income. We have reviewed the documentation you submitted and have determined that your combined income totals \$38,330.

To qualify as a senior, 65 years of age or over, with a spouse 65 years of age or over, your yearly combined income must not exceed \$29,136..."

On November 26, 2024, the Appellant applied for Reconsideration. In doing so, she wrote:

"... I'm writing to request for a reconsideration about my application for a senior bus pass, because from what I see, I feel like I meet the eligible conditions under the Section 66 (1) (c) of the Employment and Assistance Regulations as mentioned in Section 2 of this Reconsideration form.

According to the denial letter and the section 2 of this form, my application was denied because our 2023 combined income \$38,330 was greater than the GIS threshold of \$29,136.

Then I looked up the relevant regulations for GIS on the federal government website, and found out that the GIS threshold for our family unit seems to be \$52,848 instead of \$29,136, because my spouse is not receiving an OAS pension..."

The Appellant also provided the Ministry with the following print-out from Canada.ca regarding qualifications for GIS:

Do you qualify for the Guaranteed Income Supplement

You may be able to get this benefit if:

- you are 65 or older
- you live in Canada
- you receive the Old Age Security (OAS) pension
- your income is below \$22,056 if you are single, widowed, or divorced
- your income plus the income of your spouse/common-law partner is below:
 - \$29,136 if your spouse/common-law partner receives the full OAS pension
 - \$52,848 if your spouse/common-law partner does not receive an OAS pension
 - \$40,800 if your spouse/common-law partner receives the Allowance

On December 10, 2024, the Ministry maintained its denial of the Appellant's request for the Bus Pass as it determined that Appellant's income, when combined with that of her spouse, exceeded the income threshold to be eligible for a GIS contrary to section 66(1)(c) of the Employment and Assistance Regulation. For clarity, the Ministry explained:

"... Section 66(1)(a) and (b) does not apply to you because you are not in receipt of the GIS, and you are not in receipt of income assistance.

It is important to note, according to the Government of Canada Website, eligibility for the Guaranteed Income Supplement is reviewed every year effective in July and is based on the applicant's net income in the previous calendar year. In your case GIS eligibility is reviewed in the 2023 tax year.

You have provided information to the ministry regarding your residency which confirms you became a permanent resident to Canada on October 7, 2017. Therefore, the ministry finds that you are currently not in receipt of either OAS or GIS because you do not meet the 10-year residency requirement. Additionally, the ministry's computer system receives a data match with Service Canada to confirm if an applicant is in receipt of GIS. In your case, the data match indicates you are not in receipt of either OAS or GIS.

In order to determine if you would be eligible for GIS (other than not meeting the 10-year residency requirement), the ministry refers to the Government of Canada Website and takes into consideration, if you had met the 10 years residency requirement, would your income be within the threshold amount for a single

applicant. It is important to note that 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, persons with an individual income up to \$148,451 are eligible for the maximum OAS amount of \$727.67 per month (depending on how long they have resided in Canada from 18 years of age). Therefore, based on your income, the ministry determines you would meet the eligibility requirement for full OAS.

Accordingly, IF you and your spouse were in receipt of full OAS, you would only be eligible for GIS if your combined income is less than the threshold amount of \$29,136.

According to your 2023 tax assessment, your net income is \$16,966 and your spouse's net income is \$21,943, for a combined net income of \$38,909 minus \$579.00 from T5007 Statement of Benefits equals \$38,330 which exceeds the \$29,136 threshold amount and makes you ineligible for GIS due to your income. As such, the ministry is not satisfied you meet all of the federal GIS eligibility requirements except the 10-year residency requirement.

You had explained that you felt that the GIS income threshold should be \$52,848 as your spouse/common law partner does not receive an OAS pension. However, as stated above, your spouse would qualify for the full OAS pension if you met the 10-year residency requirement, as your income is under \$148,451. Therefore, the ministry is satisfied that the \$29,136 income threshold for assessing GIS is correct.

The ministry determines your request for the bus pass supplement does not meet one of the criteria set out in Section 66(1) to be eligible for the bus pass supplement..."

(b) The Notice of Appeal

On December 11, 2024, the Appellant filed a Notice of Appeal in which she wrote:

"... The reason I am dissatisfied with this decision is that I feel like the decision was made just based on assumptions such as "If you and your spouse were in receipt of full OAS" etc., but we are not actually in receipt of any OAS. So I still feel that the GIS threshold for us should be \$52,848 instead of \$29,136..."

(c) The Hearing

The Appellant's written hearing was held on January 9, 2025. Neither party submitted any additional evidence in advance of the hearing. As a result, the Panel was not required to make a determination regarding the admissibility of additional evidence pursuant to section 22(4) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's Reconsideration Decision, in which the Ministry found the Appellant ineligible for the Bus Pass supplement as provided for under Section 66 of the Regulation.

(a) Appellant's Position

The Appellant argues that she qualifies for the Bus Pass because the Ministry applied an incorrect income threshold in the Reconsideration Decision. Specifically, the Appellant contends that her income threshold for GIS eligibility should be calculated at \$52,848.00, not \$29,136.00 as determined by the Ministry.

(b) Ministry's Position

The Ministry maintains that the Appellant does not qualify for the Bus Pass under Section 66 of the Regulation for the same reasons set out in its Reconsideration Decision.

(c) Panel Decision

Section 66(1) of the Regulation allows the Ministry to provide a Bus Pass if the applicant contributes \$45.00 to the cost of the Bus Pass and meets one of the following criteria:

- (a) They receive the federal spouse's allowance or GIS; or
- (b) They are at least 60 years old and receive income assistance; or
- (c) They are at least 65 years old and meet all the GIS eligibility requirements except the 10-year residency requirement.

(i) Section 66(1)(a) of the Regulation

It is undisputed that the Appellant does not receive a federal spouse's allowance or GIS. Therefore, the Panel finds that the Ministry reasonably applied Section 66(1)(a) of the Regulation in determining the Appellant does not qualify for the Bus Pass under that section of the legislation.

(ii) Section 66(1)(b) of the Regulation

While the Appellant is over 60 years old, it is undisputed that she does not receive income assistance, a monthly shelter allowance, room and board, or reside in an emergency shelter or transition house. As a result, the Panel finds that the Ministry reasonably applied Section 66(1)(b) of the Regulation in determining the Appellant does not qualify for the Bus Pass under that section of the legislation.

(iii) Section 66(1)(c) of the Regulation

To qualify under Section 66(1)(c) of the Regulation, an applicant must be at least 65 years of age and meet all GIS eligibility requirements except the 10-year residency requirement. In this case, the Ministry does not dispute that the Appellant satisfies the age requirement.

However, to assess GIS eligibility, which includes the requirement that a person receives OAS, the Ministry reviewed income thresholds, determining that the Appellant's combined family income exceeded the threshold of \$29,136.00. This threshold was based on the assumption that the Appellant's spouse would be entitled to receive a full OAS pension if not for the 10-year residency requirement.

The Ministry begins its analysis of GIS eligibility by engaging in a hypothetical determination of OAS entitlement. Where a person does not meet the 10-year residency requirement, the Ministry assumes the individual would apply for and receive OAS, if eligible. On this basis, the Ministry determined that the Appellant and her spouse, except for the residency requirement, would qualify for OAS and subsequently applied the \$29,136.00 GIS income threshold, which applies to individuals whose spouses receive the full OAS pension.

The Panel finds this determination to be unreasonable. First, individuals with fewer than 40 years of Canadian residency do not qualify for a full OAS pension. Instead, they may qualify for a partial OAS pension if they are over 65 years of age, a Canadian citizen or legal resident and have resided in Canada for at least 10 years after the age of 18. Under the rules governing partial OAS entitlement, the amount of the pension is calculated as a proportion of 40 years. For example, a person with 20 years of Canadian residency would receive 50 percent of the full OAS amount. This distinction between full and partial OAS is well-established under Section 3 of the *Old Age Security Act* and is further confirmed by explanations provided on the Government of Canada website.

In this case, the Appellant became a permanent resident of Canada on October 7, 2017, and her spouse's period of Canadian residency is also noted to be less than 10 years. The Panel notes that there is no evidence of the legal residency or citizenship status of the Appellant's spouse. However, assuming that the Appellant's spouse is a legal resident of Canada, even if the 10-year residency requirement were hypothetically waived, neither the Appellant nor her spouse would meet the 40-year residency threshold required for a full OAS pension. As such, the Ministry's assumption that the Appellant's spouse would qualify for full OAS is unsupported by the evidence and contrary to the rules governing OAS entitlement.

The Ministry's reliance on the \$29,136.00 GIS income threshold, which applies to individuals whose spouses receive full OAS pensions, was therefore unreasonable. A higher threshold, such as \$52,848.00, which applies when a spouse does not receive OAS, or an intermediate threshold reflecting partial OAS entitlement, would more accurately reflect the Appellant's circumstances. The Ministry appears to assume that the Appellant's spouse would qualify for full OAS based only on their age and income.

The Panel notes that section 66(1)(c) of the Regulation lacks clarity regarding how GIS eligibility should be assessed. Specifically, it is unclear whether eligibility is determined as if the person had been resident in Canada for 10 years or as if the 10-year residency

requirement did not exist altogether. This ambiguity raises significant challenges when interpreting and applying the provision. In such cases, courts have recognized that ambiguity in social welfare legislation should be resolved in favor of the claimant. In *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461, the Court held that, in interpreting social welfare legislation “where there is ambiguity in the meaning of a statute, the ambiguity should be resolved in favour of the applicant seeking benefits under the legislation.”

The Panel finds that, except for the 10-year residency requirement, the Appellant and her spouse might qualify for a partial OAS pension, not a full OAS pension. Consequently, the Ministry’s reliance on the \$29,136.00 income threshold was not reasonable. The evidence supports the conclusion that a higher income threshold should apply, but the Panel is not equipped to determine the exact amount without further information about the Appellant’s and her spouse’s years of residency in Canada, and whether the Appellant’s spouse would meet the requirements for receiving OAS, other than the 10-year residency requirement.

(d) Conclusion

The Panel finds that the Ministry’s decision to deny the Appellant a Bus Pass was an unreasonable application of section 66 of the Regulation in the Appellant’s circumstances.

The Panel rescinds the Ministry’s decision and refers the matter back for reassessment so that the Ministry can determine the appropriate GIS income threshold based on the Appellant’s specific circumstances, including her and her spouse’s years of residency in Canada and any partial OAS entitlement if not for the 10-year residency requirement.

The Appellant is successful on appeal.

Schedule of Legislation

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] 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](#).

[am. B.C. Regs. 175/2016, App. 2; 85/2022, App. 1, [s. 3](#).]

Old Age Security Act, RSC 1985, c O-9

Payment of full pension

3 (1) Subject to this Act and the regulations, a full monthly pension may be paid to

(a) every person who was a pensioner on July 1, 1977;

(b) every person who

(i) on July 1, 1977 was not a pensioner but had attained twenty-five years of age and resided in Canada or, if that person did not reside in Canada, had resided in Canada for any period after attaining eighteen years of age or possessed a valid immigration visa,

(ii) has attained sixty-five years of age, and

(iii) has resided in Canada for the ten years immediately preceding the day on which that person's application is approved or, if that person has not so resided, has, after attaining eighteen years of age, been present in Canada prior to those ten years for an aggregate period at least equal to three times the aggregate periods of absence from Canada during those ten years, and has resided in Canada for at least one year immediately preceding the day on which that person's application is approved; and

(c) every person who

(i) was not a pensioner on July 1, 1977,

- (ii) has attained sixty-five years of age, and
- (iii) has resided in Canada after attaining eighteen years of age and prior to the day on which that person's application is approved for an aggregate period of at least forty years.

Payment of partial pension

(2) Subject to this Act and the regulations, a partial monthly pension may be paid for any month in a payment quarter to every person who is not eligible for a full monthly pension under subsection (1) and

- (a) has attained sixty-five years of age; and
- (b) has resided in Canada after attaining eighteen years of age and prior to the day on which that person's application is approved for an aggregate period of at least ten years but less than forty years and, where that aggregate period is less than twenty years, was resident in Canada on the day preceding the day on which that person's application is approved.

Amount of partial pension

(3) Subject to [subsection 7.1\(3\)](#), the amount of a partial monthly pension, for any month, shall bear the same relation to the amount of the full monthly pension for that month as the aggregate period that the applicant has resided in Canada after attaining 18 years of age and before the day on which the application is approved, determined in accordance with subsection (4), bears to 40 years.

Rounding of aggregate period

(4) For the purpose of calculating the amount of a partial monthly pension under subsection (3), the aggregate period described in that subsection shall be rounded to the lower multiple of a year when it is not a multiple of a year.

Additional residence irrelevant for partial pensioner

(5) Once a person's application for a partial monthly pension has been approved, the amount of monthly pension payable to that person under this Part may not be increased on the basis of subsequent periods of residence in Canada.

R.S., 1985, c. O-9, s. 3

[2012, c. 19, s. 448](#)

[2021, c. 23, s. 270](#)

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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

Anil Aggarwal

Signature of Chair

Date (Year/Month/Day)

2025/01/09

Print Name

Susan Ferguson

Signature of Member

Date (Year/Month/Day)

2025/01/28

Print Name

Bill Haire

Signature of Member

Date (Year/Month/Day)

2025/01/28