

### Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("Ministry") Reconsideration Decision dated April 8, 2025, in which the Ministry found the Appellant was not eligible for Medical Services Only from 2013 to the present. The Ministry found that section 61.1 of the Employment and Assistance for Disabilities Regulation (access to Medical Services Only) does not apply in the Appellant's circumstances because she did not give the Ministry the information it requested to assess her situation. The Ministry also found the Appellant is not eligible for reimbursement of her medical expenses under section 23(5) of the Regulation.

### Part D – Relevant Legislation

The Ministry based the Reconsideration Decision on the following legislation:

Employment and Assistance for Persons with Disabilities Regulation ("Regulation") – sections 23, 61.01, and 61.1

Employment and Assistance for Persons with Disabilities Regulation ("2013 Regulation") – section 61.1 - *Past version: in force between 2013-07-07 and 2013-12-12*

*The full text is available in the Schedule after the decision.*

**Part E – Summary of Facts**

The Ministry had the following information and documents at the time of the Reconsideration Decision:

**1. A Record of Decision indicating that:**

- On August 1, 2013, the Appellant contacted the Ministry and said she no longer needed disability assistance because she received an inheritance. The worker mentioned Medical Services Only. The Appellant said she would contact the local office to discuss that program as well as the amount of her inheritance. The Appellant said she would return the cheques for August and September 2013 benefits.
- On October 18, 2013, the Ministry's system auto-closed the disability assistance file upon receiving the returned cheques and not hearing from the Appellant.
- On November 25, 2013, the Appellant contacted the Ministry and said she turned 65 in July 2013 and had an immediate need for medication. The Ministry noted that because the file was closed, the Appellant was no longer enrolled in the Ministry's health coverage. The Appellant requested a review for Medical Services Only.
- On December 2, 2013, the Appellant contacted the Ministry to discuss her options. The Ministry requested confirmation of the inheritance, bank statements for the previous sixty days, and confirmation of all monthly income and expenses. The Ministry provided information about the Fair Pharmacare program. The Appellant said she was unsure of her ability to gather all the requested documents.
- On April 1, 2014, the Ministry reviewed the Appellant's service request for a review of her Medical Services Only status. The Ministry noted that no documents were submitted, and the Appellant had not contacted the Ministry. The Ministry closed its review of eligibility for Medical Services Only.
- On July 18, 2024, the Appellant contacted the Ministry after speaking with a medical equipment supplier for her CPAP machine. The Ministry agreed to reopen the Appellant's case to Medical Services Only because the Appellant was receiving federal benefits prior to her file being auto-closed.
- On July 25, 2024, the Appellant signed an HR0080R document, and her case was reopened on July 26, 2024.
- On August 8, 2024, the Appellant requested reimbursement for medical expenses between October 2013 and July 2024. The Appellant said there was no way for her to know that her case was closed until she contacted the Ministry on July 18, 2024. The Ministry asked the Appellant to submit receipts for review and assessment.
- On November 20, 2024, the Appellant brought her medical records to the local Ministry office.
- On December 12, 2024, a Ministry manager (Client Relations and Service Quality) reviewed the Appellant's file and said that no decision had been made on eligibility for Medical Services Only from 2013 to the current date.

- On December 23, 2024, the Ministry determined that the file did not close in error in 2013 and that the Appellant was not eligible for Medical Services Only. The Ministry requested a review by another manager (Policy and Procedural Implementation).
- On January 8, 2025, the second manager confirmed that the 2013 file was closed correctly due to eligibility for disability assistance not being determined. The Ministry also found that the Appellant was not eligible for Medical Services Only from October 2013 to January 2025.
- The Ministry explained that under the legislation in force in 2013, eligibility for Medical Services Only was based on section 61.1 of the Employment and Assistance with Disabilities Regulation. The Ministry said that none of the eligibility criteria listed in that section applied to the Appellant's situation.
- On January 13, 2025, the Appellant spoke to a Ministry worker who discussed the file review and advised the Appellant of the Ministry decision. The Ministry explained the right to reconsideration which the Appellant accepted.
- On February 7, 2025, the Appellant submitted a Request for Reconsideration with an extension request, approved until March 10, 2025.
- On April 8, 2025, the Ministry completed its review of the Request for Reconsideration and found the Appellant ineligible for Medical Services Only, and ineligible for reimbursement of medical expenses from the past ten years.

**2.** A copy of Ministry policy, "Eligibility for Medical Services Only" which explains that the purpose of the designation is "to assist some recipients transitioning to self-sufficiency as they move from income assistance or disability assistance into employment or other income support programs." The policy says that a family unit with PWD designation is eligible for Medical Services Only when they leave assistance at age 65 or older if they meet the eligibility criteria, including receiving a federal Guaranteed Income Supplement or spouse's allowance.

If the client no longer meets the eligibility criteria, they remain eligible for Medical Services Only "for one year from the date they became ineligible." The policy lists health supplements such as dental services, eye exams, and medical therapies which may be covered for Medical Services Only recipients if specific criteria for each type of supplement are met.

**3.** An Employment and Assistance for Persons with Disabilities Review form signed by the Appellant on July 25, 2024, indicating among other things that:

- She owns a home and a vehicle.
- She pays monthly mortgage costs and other expenses.
- She receives dividends in a chequing account;
- has monthly income from Canada Pension and Old Age Security; and
- additional income of \$8,000, and investments valued at \$623,000.

- On page 5 of the form the Appellant agreed to provide accurate and complete information when she applies for or receives Ministry assistance, report all money, and report any change in circumstances that might affect her eligibility for assistance.

4. A Request for Reconsideration (not signed) had the Appellant's request for an extension until March 2025, to get help with composing her response. As of April 8, 2025, the Ministry had not received any additional information.

### **New evidence since the Reconsideration**

#### **Appellant's Written Submissions**

The Appellant's Notice of Appeal was received at the Tribunal on April 30, 2025. The Tribunal granted the Appellant's request for an adjournment so that an advocate could review the documents and prepare for the hearing.

The Appellant was represented by a poverty law advocate from a community organization. The Advocate sent a thirty-six-page submission package, received at the Tribunal on June 23, 2025. The package included the following documents:

1. A submission from the Advocate with headings that included "Summary of Relevant Facts, Relevant Legislative Framework, Grounds for Appeal, and Remedy Requested." The submission had details about the Appellant's background and contact with the Ministry that was not in the Ministry record:

- Between January 2012 and August 2013, the Appellant had a modest inheritance of approximately \$7,000 - \$8,000 and inquired about Medical Services Only.
- The Appellant was experiencing profound grief due to a family member's death. She was also undergoing cancer treatment "and exhibiting cognitive and functional limitations that affected her ability to respond to documentation requests and engage with administrative processes."
- The Appellant said she had consistent communication difficulties with the Ministry between June 2011 and June 2012 and received conflicting and inconsistent information. The Appellant said she was not offered case management support, targeted outreach, accommodation, or follow-up communication.
- The Appellant's file was closed due to procedural inactivity, "not an informed withdrawal." The Appellant said there was no formal notice "or timely communication" to say that her file was closed, or that her eligibility for Medical Services Only was at risk.

- Between 2013 and 2024, the Appellant said she was unaware that Medical Services Only coverage had not been maintained. She incurred over \$100,233.41 in out-of-pocket medical costs.

**2.** A letter from the Appellant to the Ministry dated November 20, 2024 (Exhibit A), stating that her disability status was finally reinstated last month after being discontinued when she turned 65 in 2013. The Appellant attached a Fair Pharmacare information sheet and included a table of medical expenses from 2013 to 2023, with amounts for "cancer diagnosed" ranging from \$3,710.25 to \$20,008.34 (total amount \$100,233.41). The Appellant said that she plans to take her case to her elected representatives and the media if her request for reimbursement is ignored.

**3.** A table (six pages, Exhibit B) titled "Detailed/Dated Outline of Activity with Ministry of Social Development from Start to Current Date." Entries from March 2, 2011, to June 12, 2012, stating that:

- The Appellant mailed a Persons with Disabilities application to the Ministry which was approved effective June 1, 2011. The Appellant said the approval letter stated that "medical/dental coverage was exempt from time limits." The Appellant said she only received a "partial medical/pharmaceutical discount."
- In 2011, the Appellant submitted bank statements, utility bills, income statements and other documents and noted that she went to three Ministry offices, then followed up with a phone call because "no one had any idea" what another Ministry worker had said.
- On January 16, 2012, the Appellant contacted the Ministry again and was told that her file was closed due to inactivity, "but shouldn't have closed the medical file too" and it would be backdated to January 1, 2012. The Ministry requested documentation to confirm the Appellant's non-discretionary trust fund. The Appellant's file was closed again "with no notice, question or explanation."
- In March 2012, the Appellant said she asked to speak to a Ministry supervisor three times. The Appellant was worried about her ever-increasing medical bills (medications, surgeries, and medical transportation costs) and a delay affecting her medical coverage. The Appellant expressed difficulty obtaining the trust account documents the Ministry had requested.
- By the end of March 2012, the Appellant said she finally spoke to the Ministry and for the third time, the Ministry "promised my meds and dental surgeries bills would be reimbursed." The Appellant said she eventually received reimbursement for medical transportation.
- The May - June 2012 entries describe the Appellant's frustrated attempts to contact the Ministry to get her medical and dental bills covered. The Appellant had surgery in early May 2012, and by mid-June her dental claim had been rejected and the bill sent

to Collections. When she finally spoke to the Ministry, they said her dental work would be covered but she would no longer be reimbursed for medications.

**3.** Tables, tax receipt reports, invoices, and receipts/prescriptions from pharmacies and other service providers (seventeen pages) for medical expenses in 2024 and 2025 (Exhibits C and D). Expenses included medications, dentures, eye care, CPAP/nasal headgear, ambulance/medical transportation, home care, and physiotherapy/kinesiology for rehabilitation from hip replacement surgery.

- "Total medical" for 2024 was \$9,029.87.
- "Total to May 31, 2025" was \$2,344.32.

#### *Admissibility of New Evidence – written submissions*

The Ministry raised no objection to the documents submitted on appeal. The panel finds that the Appellant's additional evidence is admissible under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

#### **Evidence at the Hearing**

The hearing format was a teleconference. The Appellant filed a Notice of Appeal dated April 4, 2025. The Appellant received a 4-week extension from the Tribunal to mail her written submission. The Appellant and her advocate attended the hearing along with a Ministry representative.

#### *Appellant's testimony*

The Appellant and Advocate gave more detail about the Appellant's background and history with the Ministry:

- The Appellant was a caregiver for two close relatives who lived outside her community and passed away. The Appellant was dealing with different Ministry offices during that time and did not have access to all her documentation as she was away from home.
- The Appellant transitioned to federal benefits at age 65 and thought that her claim for the Disability Tax Credit every year would confirm her disability status for the Ministry.
- The Appellant's file was re-opened in 2024, but she was only granted temporary coverage with no recognition of the ten-year gap. She only received "one month of Medical Services Only for July 1 – 31, 2024 and no reimbursement at all," despite signing papers in the office and submitting receipts for eye and oral exams. The Appellant said Fair Pharma Care was all she had in July 2024, and she wants to know why she wasn't covered by Fair Pharma Care prior to that.

- The reconsideration process was complicated by recent surgery in March 2025. The Appellant is also waiting for a CT scan due to a recent nodule on her adrenal gland.
- When asked if she made any effort to seek Medical Services Only when facing medical bills of over \$100,000, the Appellant said she made "copious efforts in 2011 – 2012, spoke with many workers and supervisors and was told three times in three years that she had to reapply." The Appellant explained that she did not contact the Ministry again until 2024 (when the CPAP supplier mentioned medical coverage) because she was sick from surgery and chemotherapy, grieving the death of her relatives, and "did not have the emotional, mental, or physical ability to cope."
- The Appellant said that in 2024, she "finally had the mental acuity to add up and summarize all her expenses." Before that, she was in "LaLa land with diminished cognition and memory" and no family support because most of her relatives are dead. The Appellant said she files everything in a five-inch file, relies on hard copies, and knows that she was not informed in writing in 2011, 2012, and 2013 that her file was closed.
- When asked why the appeal submission states financial hardship when the Employment and Assistance for Persons with Disabilities Review shows over \$600,000 for investments (as well as dividends in her chequing account), the Appellant said she bought a house instead of renting, and she receives \$350 per month from a small trust. The Appellant said her main source of income is federal pensions (Canada Pension and Old Age Security) which started at age 65 and she has lived at her current address since 2019.

### *Ministry's testimony*

The Ministry explained its processes and its communications with the Appellant in more detail:

### *2013 – 2014 File closure*

- The way the Ministry system works is to auto-close a file after two months of inactivity and lack of communication from the client. The cheque production was turned off in 2013 when the Appellant said she did not need assistance anymore and returned her last two cheques (\$461.79 per month disability assistance).
- The Ministry said it could not assess eligibility for Medical Services Only without information about the inheritance and any other assets. The Ministry requested documents in August, November, and December 2013 but none were provided. The service request was left open until March 2014.

- The Ministry said it did not see any letters on file from 2013 – 2014 and did not know if the process back then was to send letters or reminders to clients or communicate in writing when the file is closed. The Ministry said that its processes are tighter now than they were then.

#### *2024 – File opened in error*

- The Medical Services Only file was opened on July 26, 2024, because upon review, the Ministry thought it had been closed in error back in 2014. The Ministry informed the Appellant that the file was reopened, and she could submit receipts.
- The Ministry explained that the file should not have been reopened in 2024 because although the Appellant was receiving a federal pension, she was not receiving disability assistance.
- When asked about the relevance of federal benefits to Medical Services Only, the Ministry explained that being in receipt of federal benefits before the file was closed did not make the Appellant eligible for Medical Services Only from age 65. The Ministry said that if the file was closed only because the Appellant was receiving federal pension payments, there would have been an error. But in the Appellant's case, federal benefits did not come into play because the Ministry did not know if the Appellant was still eligible for disability assistance.
- The Ministry said that while the Appellant kept the Person with Disabilities designation, she could not switch to Medical Services Only (based on her age and receipt of a federal pension) because the Ministry needed information about her inheritance to assess if she qualified for disability assistance.
- The Ministry explained that the inheritance might not have allowed the Appellant to meet the criteria for disability assistance and Medical Services Only because larger inheritances or monetary awards need to be in a discretionary trust for the client to remain eligible for Ministry assistance. The Ministry repeated that it could not determine the amount of the inheritance (or whether it was in a trust) because the Appellant did not provide documents as requested.
- The Ministry said the file was reopened in error from July 26, 2024, to January 2025. The Ministry said the Appellant submitted documents (medical receipts) for reimbursement in November 2024.
- Upon further review by Ministry managers and confirmation that the file was reopened in error in July 2024, the file was closed again on January 8, 2025.

#### *Reimbursement of medical expenses*

- The Ministry said it did not know what expenses were covered in July 2024 when the Appellant said she received Medical Services Only for one month (while the file was



reopened in error). However, the Appellant would not have been reimbursed for the past ten years of medical expenses because “back pay refers to PWD support and shelter, not medical benefits and health supplements.”

- The Ministry explained that even when clients are eligible for Medical Services Only, the full amount of expenses would not be covered. Many medications are not covered and require special authorization. The Ministry has fee schedules for dental procedures, and legislation limits amounts for other things. Payments for dental and eye exams are paid to the provider through Blue Cross, not to the client. Medical transportation is a separate application form, and the Ministry of Social Development and Poverty Reduction is not responsible for the Fair Pharmacare program.
- The Ministry confirmed that it would not ask the Appellant to repay anything she received while the file was open due to a Ministry error.

#### *Admissibility of New Evidence – oral submissions*

Neither party had any objections to each other’s statements. The panel finds that the oral evidence from both parties is admissible under section 22(4) of the *Employment and Assistance Act* as evidence that 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 reasonably determined that the Appellant was not eligible for Medical Services Only from 2013 to the present because she did not provide the requested information. Was the Ministry reasonable to find that section 61.1 of the Employment and Assistance for Disabilities Regulation (access to Medical Services Only) does not apply in the Appellant's circumstances? Was the Ministry reasonable to find that the Appellant is not eligible for reimbursement of her medical expenses under section 23(5) of the Regulation?

**Appellant's Position**

The Appellant's position is that her file was closed in error, resulting in medical expenses far beyond her means as a pensioner with disabilities. The Appellant says that her medical expenses for the past ten years should be covered because she was eligible for Medical Services Only when her file was mistakenly closed.

The Appellant acknowledges that she did not respond to the Ministry's request for documentation in 2013 but says that the Ministry did not give her any support, follow up, or notice of file closure, and she was unaware that her file would auto-close after two months if she did not get back to the Ministry. The Appellant says she was overwhelmed by her family circumstances and medical treatment for her serious illness, and she was away from her home without access to the requested documents.

The Advocate submits that the Ministry's "strict, technical application of the Regulation" did not adequately reflect the Appellant's circumstances. The Appellant was not unwilling to provide information and she "is not seeking special treatment", but rather a "compassionate and contextual interpretation of the Regulation." The Advocate urges trauma-informed approach that recognizes the "administrative breakdown" that has seriously impacted the Appellant's well-being.

*Advocate's legal arguments*

The Advocate gave the following interpretations of legislation and common law principles:

- Under section 61.1(a) and (b) of the Regulation, a person with disabilities may retain eligibility for Medical Services Only if they were part of a qualifying family unit when they ceased to receive disability assistance but were receiving Canada Pension or another qualifying pension and had no other forms of income.
- Section 61.1(3) is intended to ensure continuity of support for persons with disabilities whose needs remain unchanged when transitioning to federal pension benefits at age 65.

- The Ministry's decision to view the Appellant's situation as outside the named categories in section 61.1(3) of the Regulation may have overlooked both the intent of the legislation and the Appellant's ongoing financial and health-related needs. The Appellant's communications with the Ministry were confusing, "she was never told to do 'x' by 'x' date, the consequences were not explained, and communications were verbal, not written down."
- Section 23(3.01) of the Regulation allows for retroactive eligibility for supplements where a reconsideration results in a change to the Ministry's original decision. When an administrative gap leads to a denial of benefits that would otherwise have been granted, the Tribunal has discretion under section 23(3.01) to authorize retroactive eligibility. This statutory discretion exists to address situations like the Appellant's where administrative oversight has caused a long-standing loss of support despite underlying eligibility.
- Also, section 23(4) of the Regulation permits backdated payments up to twelve months where eligibility existed, but payment was not made.
- The reopening of the file in 2024 supports the Appellant's continuing eligibility for Medical Services Only coverage. The Appellant's income remained below the financial threshold for Medical Services Only and she continued to receive federal pension benefits and no other forms of assistance.
- By reopening the file, the Ministry "effectively acknowledged that the Appellant remained continuously eligible for Medical Services Only coverage." To deny retroactive coverage "particularly when the gap was caused by administrative circumstances, and not personal ineligibility would result in a significant and ongoing inequity."
- If the Panel finds that technical eligibility under section 61.1 of the Regulation was not fully established in 2013, the minimum reimbursement that should be awarded is \$11,374.19, for medically necessary expenses incurred from January 2024 to May 31, 2025.

#### *Procedural fairness and duty to accommodate*

The Advocate submits that greater sensitivity from the Ministry is warranted under principles of procedural fairness and duty to accommodate persons with disabilities. The Advocate says the Tribunal has both the jurisdiction and responsibility to remedy the outcome and ensure administrative equity.

The Advocate submits that the common law duty of fairness requires decision makers to consider the vulnerability of individuals and the impact of the decision. Citing case law from the Supreme Court of Canada, *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2

SCR 817, the Advocate says that procedural fairness must be responsive to the context including the individual's circumstances and significance of the benefit at stake.

The advocate cited human rights case law to show that public systems must accommodate the needs of persons with disabilities to the point of undue hardship. Furthermore, the BC Court of Appeal in *Chingee v. British Columbia (Minister of Social Development)*, 2012 BCCA 250, said that benefits programs must be interpreted and applied in a way that furthers their remedial objectives and respects the dignity of recipients.

## **Ministry's Position**

### *Eligibility for Medical services Only*

The Ministry's position is that the Appellant is not eligible for Medical Services Only because her file was not closed in error in 2014 and should not have been reopened in 2024. The Ministry says that section 61.1 of the Regulation does not apply in the Appellant's circumstances because the Ministry could not determine that the Appellant "ceases to be eligible for disability assistance" as required under this section of the legislation.

The Ministry said at the hearing that it can't determine eligibility when it is not provided with documents to determine if the Appellant was eligible. The Ministry concluded that the Appellant "accepted that [she] was not eligible for MSO" in 2013 because she did not pursue it by giving the Ministry the documents it requested. While the Appellant provided receipts in 2024, the Ministry said it closed the file because the Appellant was not in receipt of disability assistance at that time, and did not cease to be eligible for disability assistance when she turned 65 or for any other reason set out in section 61.1 of the Regulation.

### *Eligibility for reimbursement of medical expenses*

The Ministry's position is that the Appellant is not eligible for reimbursement for medical expenses incurred from 2014 to 2024. The Ministry says that if the Appellant had been found eligible for Medical Services Only, the effective date would be November 20, 2024, and not the past ten years. The Ministry said that section 23(5) of the Regulation does not allow the Ministry to backdate assistance prior to the calendar month in which the person requests it.

## **Analysis – Eligibility for Medical Services Only**

A person is eligible for Medical Services Only, if they are a "main continued person" under section 61.1 of the Regulation. In the Appellant's circumstances, a "main continued person" is

someone with PWD designation who turns 65 and ceases to be eligible for disability assistance because they started to receive a federal benefit under the Canada Pension Plan.

A main continued person has access to Medical Services Only, when the conditions set out in section 61.1 of the Regulation are met. Under the legislation that is currently in force, the legal test for eligibility under section 61.1(3) requires the family unit to be in receipt of disability assistance so that the Ministry can determine that they ceased to be eligible when they turned 65 and began receiving Canada Pension benefits. Reaching age 65 and receiving a Canada Pension do not, on their own, establish eligibility for Medical Services Only.

Under the legislation that was in force in 2013 when the Appellant turned 65, the requirement to be “in receipt of disability assistance” is not stated. The older Regulation in section 61.1 and 61.1(b) states that a person “may be eligible for Medical Services Only” on the date they turned 65, if their family unit “ceased to be eligible for disability assistance.” Under both the current and older versions of the Regulation, the Ministry needs to determine whether the person ceased to be eligible for assistance.

### **Panel’s Decision - Eligibility for Medical Services Only**

The Panel finds that the Ministry reasonably determined that section 61.1 of the Regulation does not apply in the Appellant’s circumstances. The Appellant turned 65 in July 2013, but the Ministry could not determine that she ceased to be eligible for disability assistance as required by the legislation in force at that time, because she did not provide information about her inheritance and finances as requested. Without that information, the Ministry was not able to assess the Appellant’s eligibility for disability assistance or transfer her to Medical Services Only.

While the Advocate argues that the Ministry’s “strict, technical application of the Regulation” did not adequately reflect the Appellant’s circumstances and that a “compassionate and contextual interpretation” was needed, section 61.1 of the Regulation does not allow for any interpretation other than what the Ministry determined. The Ministry had no discretion to not assess whether the Appellant ceased to be eligible for disability assistance, and as stated above, they could not make that assessment without the Appellant’s financial information.

In 2024, the disability assistance payments had stopped more than ten years ago. The Panel finds that the Ministry’s decision to deny Medical Services Only coverage for medications and other expenses in 2024 was a reasonable application of the legislation because the current version of the Regulation says that the person must cease to be eligible for disability assistance at the time they are receiving Ministry assistance cheques.

The Appellant was not receiving assistance cheques from the Ministry in 2024, when she contacted the Ministry to seek coverage and reimbursement for medical expenses after speaking with her CPAP provider. Although the Ministry reopened the file, it was not “acknowledging that the Appellant remained continuously eligible for Medical Services Only coverage” as suggested by the Advocate. The file was reopened but then reviewed by two Ministry managers who concluded the Appellant was not eligible for Medical Services Only. The Ministry confirmed at the hearing that the file was opened in July 2024 in error.

### *Summary*

The panel finds that the Ministry’s decision to deny Medical Services Only in both 2013 and 2024 was a reasonable application of the legislation in the circumstances of the Appellant because the Ministry did not determine that the Appellant ceased to be eligible for disability assistance as required by section 61.1 of both the current Regulation and the previous version.

The Panel acknowledges that the purpose of the Regulation, as stated by the Advocate, “is to ensure continuity of support for persons with disabilities whose needs remain unchanged when transitioning to federal pension benefits at age 65.” This is also reflected in the Ministry’s policy which says the purpose of the Medical Services Only category is to assist some recipients with certain health care expenses when they transition to another other income support program.

The legislation makes it clear that not all recipients who reach 65 years old are entitled to Medical Services Only coverage. There are specific requirements that must be met including the Ministry determining that a person with PWD status ceased to be eligible for disability assistance.

### *Ministry communication*

While the Panel’s authority is to decide whether the Reconsideration Decision was reasonably supported by the evidence or a reasonable application of the legislation, the Panel acknowledges the Appellant’s concerns about Ministry communications and processes but does not take the view that Ministry instructions were not clear enough.

While the Appellant said she received no written communication, did not know her file was closed, had a history of confusing interactions with the Ministry, and was unable to provide the requested documents because of her circumstances, the Panel notes that she was able to make follow-up calls to the Ministry in November and December 2013. The Appellant called the Ministry to state her immediate need for medication coverage and discuss her options. Although the Appellant said she was unsure of her ability to gather all the documents, the Ministry noted

that she understood what documents were required and she stated her intention to submit the information.

The Appellant was given several opportunities during phone conversations to provide information that could have assisted the Ministry to determine whether she ceased to be eligible for disability assistance. There is no indication that the Appellant gave the Ministry even partial information such as stating the amount of the inheritance verbally. Instead, the Appellant cut off all contact with the Ministry until 2024.

The Appellant said that the Ministry did not offer support or follow up, but it is unclear why they would do so when the Appellant said she no longer needed assistance and did not provide the documents that she understood were required. The Appellant did not contact the Ministry again until July 2024, despite amassing health care expenses over the ten-year period (total over \$100,000) which would have added to her stress, and which show she was still dealing with serious medical concerns.

### **Analysis – Eligibility for reimbursement of medical expenses**

Regarding the Appellant's request for the Ministry to cover her medical expenses from 2014 to 2024, section 23 of the Regulation sets the effective date of eligibility for disability assistance and supplements. Section 23(1.2) covers support and shelter allowances as of the disability assistance application date and section 23(2) says a family unit is not eligible for a supplement prior to the date that the Ministry determined they were eligible for it. Furthermore, section 23(4) of the Regulation, cited by the Advocate, only applied to disability assistance.

Under section 23(3.01), the Ministry can backdate a supplement to the date of the Reconsideration Decision, but only where the Reconsideration Decision (or subsequent appeal to the Tribunal) were favourable to the Appellant. Section 23(4) of the Regulation allows the backdating of disability assistance for up to 12 months from the date the family unit became eligible for it but did not receive the allowance. Section 23(5) says that a family unit is not eligible for any assistance for costs incurred before the calendar month in which they requested assistance.

### **Panel's Decision - Eligibility for reimbursement of medical expenses**

The Panel finds that the Ministry was reasonable to find that the Appellant is not entitled to reimbursement of any of the costs she incurred for medications, dental services, physiotherapy, and other medical expenses over the ten-year period for which she requested coverage in 2024. The Ministry is not authorized to backdate a supplement under section 23(3.01) of the Regulation unless the person is successful upon reconsideration or appeal. The Ministry denied

the Appellant's Request for Reconsideration and the Panel has found that the Reconsideration Decision was reasonable.

Also, section 23(5) of the Regulation does not allow backdating for costs incurred before the person requests assistance. The Appellant did not request assistance with her long list of medical expenses until November 2024. Therefore, even if she had been found eligible for Medical Services Only, she would have only received coverage from November 20, 2024. Also, as explained at the hearing, the Ministry is bound by limits on expenses, set out in schedules and other sections of the legislation and payments are often made directly to providers, not the client.

While the Advocate said that the minimum reimbursement that should be awarded is \$11,374.19, for medically necessary expenses incurred from January 2024 to May 31, 2025, the legislation does not authorize the Ministry to cover that cost because, as explained above, the Appellant was not eligible for Medical Services Only during that period. Also, while the Advocate said that section 23(4) of the Regulation permits backdated payments up to twelve months where eligibility existed, but payment was not made, that section applies to disability assistance, not health supplements, and the Appellant was not found eligible for disability assistance at any time since her file was closed in 2013.

While the Advocate refers to the "financial hardship" the Appellant experienced, the Appellant's financial statements suggest otherwise as indicated by the "investment value: of over \$600,000 referred to previously. Further, in signing the PWD review form, the Appellant agreed, as one her "Responsibilities" that she "would make every effort to pursue income or assets from other sources...before receiving assistance from the BC government."

#### *Procedural fairness and duty to accommodate*

The Advocate submits that the Tribunal has the jurisdiction and responsibility to provide a remedy to the Appellant under principles of equity and the duty to accommodate persons with disabilities. The Advocate says that decision makers are required by law to be responsive to the individual's circumstances and the significance of the benefit at stake, but under section 24(2) of the *Employment and Assistance Act*, the Panel's jurisdiction is limited to confirming or rescinding the outcome of a request to reconsider the Ministry's decision. The Panel has no authority to decide issues of discrimination.

The Panel's jurisdiction is further limited to matters set out in section 19.1 of the *Employment and Assistance Act* which states that s. 46.3 of the *Administrative Tribunals Act* applies to the Employment and Assistance Appeal Tribunal. Section 46.3(1) of that Act says that the tribunal does not have jurisdiction to apply the *Human Rights Code*. While responsiveness to an



individual's circumstances is important, in the Appellant's circumstances, both the Ministry and the Panel are bound by the eligibility requirements set out in the Employment and Assistance for Persons with Disabilities Regulation.

### **Conclusion**

The Panel finds that the Ministry was reasonable to say that the Appellant was not eligible for Medical Services Only or for reimbursement of her medical expenses from 2013 to 2025 because the Ministry did not determine that she ceased to be eligible or disability assistance as required by section 61.1 of the Regulation.

The Panel confirms the Reconsideration Decision. The Appellant is not successful with her appeal.

### **Schedule – Relevant Legislation**

#### **Employment and Assistance for Persons with Disabilities Regulation**

*Current version: in force since 2024-09-18*

#### **Effective date of eligibility**

**23** (1) Except as provided in subsections (1.1), (3.11) and (3.2), the family unit of an applicant for designation as a person with disabilities or for both that designation and disability assistance

(a) is not eligible for disability assistance until the first day of the month after the month in which the minister designates the applicant as a person with disabilities, and

(b) on that date, the family unit becomes eligible under section 4 and 5 of Schedule A for that portion of that month's shelter costs that remains unpaid on that date.

(1.1) The family unit of an applicant who applies for disability assistance while the applicant is 17 years of age and who the minister has determined will be designated as a person with disabilities on the applicant's 18th birthday

(a) is eligible for disability assistance on that 18th birthday, and

(b) on that date, is eligible under section 4 and 5 of Schedule A for that portion of the month's shelter costs that remains unpaid on that date.

(1.2) A family unit of an applicant for disability assistance who has been designated as a person with disabilities becomes eligible for

(a) a support allowance under sections 2 and 3 of Schedule A on the disability assistance application date,

(b) for a shelter allowance under sections 4 and 5 of Schedule A on the first day of the calendar month that includes the disability assistance application date, but only for that portion of that month's shelter costs that remains unpaid on the date of that submission, and

(c) for disability assistance under sections 6, 7 and 8 (2) (b) of Schedule A on the disability assistance application date.

(2) Subject to subsections (3.01) and (3.1), a family unit is not eligible for a supplement in respect of a period before the minister determines the family unit is eligible for it.

(3) Repealed. [B.C. Reg. 340/2008, s. 2.]

(3.01) If the minister decides, on a request made under section 16

(1) *[reconsideration and appeal rights]* of the Act, to provide a supplement, the family unit is eligible for the supplement from the earlier of

(a) the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b) the applicable of the dates referred to in section 72 (1) of this regulation.

(3.1) If the tribunal rescinds a decision of the minister refusing a supplement, the family unit is eligible for the supplement on the earlier of the dates referred to in subsection (3.01).

(3.11) If the minister decides, on a request made under section 16 (1) of the Act, to designate a person as a person with disabilities, the person's family unit becomes eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of

(a)the date the minister makes the decision on the request made under section 16 (1) of the Act, and

(b)the applicable of the dates referred to in section 72 (1) of this regulation.

(3.2)If the tribunal rescinds a decision of the minister determining that a person does not qualify as a person with disabilities, the person's family unit is eligible to receive disability assistance at the rate specified under Schedule A for a family unit that matches that family unit on the first day of the month after the month containing the earlier of the dates referred to in subsection (3.11).

(4)If a family unit that includes an applicant who has been designated as a person with disabilities does not receive disability assistance from the date the family unit became eligible for it, the minister may backdate payment but only to whichever of the following results in the shorter payment period:

(a)the date the family unit became eligible for disability assistance;

(b)12 calendar months before the date of payment.

(5)Subject to subsection (6), a family unit is not eligible for any assistance in respect of a service provided or a cost incurred before the calendar month in which the assistance is requested.

(6)Subsection (5) does not apply to assistance in respect of moving costs as defined in [section 55](#).

## Division 4 — Health Supplements

### Definitions

**61.01**In this Division:

**"continuation date",**

(a)in relation to a person who is a main continued person under section 61.1 (1) *[access to medical services only]* as a result of having been part of a family unit on the date the family unit ceased to be eligible for disability assistance, means that date, and

(b)in relation to a dependent continued person under section 61.1 (2) of a main continued person, means the continuation date of the main continued person;

**"continued person" means**

(a)a main continued person under section 61.1 (1), or

(b)a dependent continued person under section 61.1 (2);

### Access to medical services only

**61.1** (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 disability assistance, and
    - (ii)a person with disabilities on that date,
  - (b)the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and
  - (c)in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.
- (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 is currently a dependant of the main continued person, or
  - (b)the person is a dependant of 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) (b), (c), (d), (e), (f) or (g).
- (3)A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance
- (a)on a date the family unit includes 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](#),
  - (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,
  - (d)as a result of a person in the family unit receiving employment income,
  - (e)as a result of a person in the family unit receiving a pension or other payment under the [Canada Pension Plan](#) (Canada),
  - (f)as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or
  - (g)as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the [Child, Family and Community Service Act](#).
- (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 described in subsection (3) (c) or (g).

(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) 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)

(a), (b), (d) or (f) meets the income test for a calendar month if,

(i) 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

(ii) 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](#), and

(b) 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)

(e) meets the income test for a calendar month if,

(i) 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

(ii) 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 main continued person or another person in the family unit receives a pension or other payment under the [Canada Pension Plan](#) (Canada).

(7.1) For the purposes of subsection (7) (a) (ii),

- (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 a calendar month in which the main continued person's continuation date occurs.

## **Employment and Assistance for Persons with Disabilities Regulation**

*Past version: in force between 2013-07-07 and 2013-12-12*

### **Division 4 — Health Supplements**

#### **Eligibility for medical services only**

**61.1** For the purposes of this Division, a person may be eligible for medical services only if

- (a) the person is a person with disabilities who is under age 65 and the person's family unit ceased to be eligible for disability assistance as a result of

- (i) employment income earned by the person or the person's spouse,
  - (ii) money received by the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
  - (iii) any person in the family unit receiving a pension or other payment under the [Canada Pension Plan](#),

- (b) the person's family unit ceased to be eligible for disability assistance on the day the person became 65 years of age,

(c) the person is a person with disabilities and the person's family unit ceased to be eligible for disability assistance because of

(i) financial assistance provided through an agreement under [section 12.3](#) of the [Child, Family and Community Service Act](#) or

(ii) an award of compensation under the [Criminal Injury Compensation Act](#) or an award of benefits under the [Crime Victim Assistance Act](#) made to the person or the person's spouse,

(d) the person is a dependant of a person referred to in paragraph (a) or (c), or

(e) the person is a dependant of a person referred to in paragraph (b), if the dependant was a dependant of the person referred to in paragraph (b) on the day that person became 65 years of age and remains a dependant of that person.

**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

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2025/07/07

Print Name

Mimi Chang

Signature of Member

Date (Year/Month/Day)

2025/07/07

Print Name

Carla Tibbo

Signature of Member

Date (Year/Month/Day)

2025/07/07