

1999 BILL 32

Third Session, 24th Legislature, 48 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 32

ASSURED INCOME FOR THE SEVERELY
HANDICAPPED AMENDMENT ACT, 1999

THE MINISTER OF FAMILY AND SOCIAL SERVICES

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 32

1999

ASSURED INCOME FOR THE SEVERELY HANDICAPPED AMENDMENT ACT, 1999

(Assented to _____, 1999)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Amends RSA
1980 cA-48

1 The Assured Income for the Severely Handicapped Act is amended by this Act.

2 The following preamble is added before the enacting clause:

Preamble

WHEREAS persons who receive handicap benefits under this Act want to be full participants in society;

WHEREAS individuals, families, communities, business, labour and government share responsibility for taking action to eliminate barriers to full participation by and to maximize the independence of persons who receive handicap benefits;

WHEREAS the Government of Alberta is committed to providing access to employment training programs and services to persons who receive handicap benefits who wish to enhance their ability to become employed;

WHEREAS the Government of Alberta is committed to providing financial assistance to persons with severe handicaps whose resources are insufficient to meet basic needs; and

WHEREAS the Government of Alberta is committed to balancing the needs of persons who receive handicap benefits with accountability to the taxpayers of Alberta:

Explanatory Notes

- 1** Amends chapter A-48 of the Revised Statutes of Alberta 1980.
- 2** Adds a preamble to the Act.

3 The enacting clause is amended by adding “THEREFORE” before “HER MAJESTY”.

4 Section 1 is amended

(a) by adding the following after clause (a):

(a.1) “dependent child” means a dependent child as defined in the regulations for the purposes of this Act;

(b) in clause (c)(iv) by striking out “licensed under the *Social Care Facilities Licensing Act*”;

(c) by repealing clause (g) and substituting the following:

(g) “severe handicap” means a severe handicap as defined in the regulations for the purposes of this Act;

(h) “spouse” means a spouse as defined in the regulations for the purposes of this Act.

5 Section 4 is amended

(a) by adding the following after subsection (1):

(1.1) A handicap benefit includes the provision of health benefits in accordance with the regulations to or for the benefit of a person who is eligible under subsection (2), the person’s spouse who resides with the person and the person’s dependent children who reside with the person.

(b) by adding the following after subsection (1.1):

(1.2) The Director may vary the amount of a handicap benefit in accordance with the regulations to take into account whether the person who receives or is eligible to receive the handicap benefit has a spouse or dependent children, or both.

(c) by repealing subsections (2) and (3) and substituting the following:

(2) A person is eligible to receive a handicap benefit if the person satisfies the Director that

3 Consequential to addition of preamble.

4 Section 1 presently reads in part:

1 In this Act,

(c) *“facility” means*

(i) *a nursing home operated by a district board as defined in the Nursing Homes Act,*

(ii) *a nursing home as defined in the Nursing Homes Act,*

(iii) *an approved hospital or auxiliary hospital as defined in the Hospitals Act, and*

(iv) *a facility licensed under the Social Care Facilities Licensing Act that is designated under the regulations as a facility for the purposes of this Act;*

(g) *“severe handicap” means a severe handicap as defined in the regulations.*

5 Section 4 presently reads in part:

(2) *A person is eligible to receive a handicap benefit if he satisfies the Director that*

(a) *he is a Canadian citizen or permanent resident within the meaning of the Immigration Act (Canada), is ordinarily resident in Alberta and is 18 years of age or more,*

(b) *he suffers from a severe handicap, and*

(c) *the portion of his and his spouse’s income that is not exempt under the regulations is less than the maximum amount of the handicap benefit prescribed in the regulations.*

(3) *Notwithstanding subsection (2), a person is not eligible to receive a handicap benefit under this Act if he receives or is qualified to receive a monthly pension under the Old Age Security Act (Canada).*

(5) *The Director shall not provide a handicap benefit to or for the benefit of a severely handicapped person who resides in an institution.*

- (a) the person is a Canadian citizen or permanent resident within the meaning of the *Immigration Act* (Canada), is ordinarily resident in Alberta and is 18 years of age or older,
- (b) the person suffers from a severe handicap,
- (c) the portion of the income of the person and the person's spouse that is not exempt under the regulations is less than the maximum amount of the handicap benefit prescribed in the regulations, and
- (d) the value of all assets owned by the person and the person's spouse that are not exempt under section 5.3 and the regulations is \$100 000 or less.

(3) Notwithstanding subsection (2), a person is not eligible to receive a handicap benefit under this Act if the person receives or is qualified to receive a monthly old age pension under Part I of the *Old Age Security Act* (Canada).

(d) by adding the following after subsection (5):

(5.1) Notwithstanding anything in this Act, the Director may pay all or part of a person's handicap benefit to a third party if payment to the third party is necessary, in the opinion of the Director, to protect the financial interests of the person who is eligible to receive the handicap benefit.

6 The following is added after section 5:

Employment
training
programs and
services

5.1 At the request of a person who receives a handicap benefit, the Director may refer the person to any employment training program and services that are designed to enhance the person's ability to become employed.

Asset testing
of recipients

5.2(1) In this section, "recipient" means a person who is entitled to receive or receives a handicap benefit when this section comes into force.

(2) A recipient continues to be eligible for a handicap benefit only if the value of all assets owned by the recipient and the recipient's spouse that are not exempt under section 5.3 and the regulations is \$100 000 or less.

(3) The Director may require a recipient and the recipient's spouse to provide any information respecting assets owned by the recipient and the recipient's spouse that the Director considers necessary for the purpose of determining whether

6 Adds new sections to the Act providing for voluntary access to employment training programs and services and asset testing of recipients and empowering the Director to deem ownership of assets and income from trusts to prevent avoidance of the asset-testing requirements.

the recipient continues to be eligible to receive a handicap benefit.

(4) If a recipient or a recipient's spouse refuses or neglects to submit any evidence required by the Director to establish continuing eligibility for a handicap benefit, the Director may discontinue or reduce the handicap benefit as the Director considers appropriate.

Exempt assets

5.3 The following assets are exempt assets and the Director must not include their value in calculations under section 4 or 5.2:

- (a) a principal residence, within the meaning of the regulations;
- (b) subject to the regulations, one vehicle that is adapted to accommodate the handicap of the person who applies for or receives a handicap benefit;
- (c) one car or one truck of any value, in addition to the vehicle referred to in clause (b);
- (d) any asset that is specified by and meets the requirements of the regulations.

Deemed assets and income from assets

5.4(1) Where the Director, in calculating under section 4 or 5.2 the value of the assets of a person and the person's spouse, determines that, in the opinion of the Director, an asset has been given, transferred or otherwise disposed of to another person for less than its fair market value for the purpose of establishing or maintaining a person's eligibility for a handicap benefit, the Director shall deem the asset to be owned by the person or the person's spouse, as the case may be, and include its value in the calculation.

(2) The Director may, in determining a person's eligibility for a handicap benefit and calculating the amount of a handicap benefit, deem that the person is entitled to receive all or part of the principal and any income that may be produced by any trust of which the person, the person's spouse or any of the person's dependent children is a beneficiary.

7 Section 6 is amended

- (a) by repealing subsection (1) and substituting the following:

7 Section 6(1) and (2) presently read:

6(1) A person who receives a handicap benefit shall notify the Director forthwith of any material change in his handicap and in his or his spouse's income.

Changes in
circumstances

6(1) A person who receives a handicap benefit shall notify the Director forthwith of any material change in any of the following:

- (a) the handicap of the person;
- (b) the income of the person or of the person's spouse;
- (c) the value of any assets owned by the person or the person's spouse.

(b) in subsection (1) by adding the following after clause (c):

- (d) the number of the person's dependants for the purposes of section 4(1.2).

(c) in subsection (2) by adding the following after clause (c):

- (c.1) has refused or neglected to claim, collect or use the benefit of any asset to which the person is entitled,

(d) by adding the following after subsection (2):

(2.1) If the spouse of an applicant for a handicap benefit or of a person who receives a handicap benefit has, in the opinion of the Director, refused or neglected

- (a) to collect income to which the spouse is entitled, or
- (b) to claim, collect or use the benefit of any asset to which the spouse is entitled,

the Director is under no obligation to provide or continue to provide a handicap benefit to the applicant or person who receives the handicap benefit and may discontinue, suspend or vary the handicap benefit provided.

(2.2) If

- (a) an applicant for a handicap benefit or a person who receives a handicap benefit is an immigrant party under a sponsorship agreement pursuant to the *Immigration Act* (Canada),
- (b) the sponsor and co-signer under the sponsorship agreement fail or neglect to provide financial support to the immigrant party in accordance with that agreement, and

(2) If an applicant for a handicap benefit or a person who receives a handicap benefit, in the opinion of the Director,

- (a) has refused to seek or to accept reasonable employment for reasonable wages,*
- (b) has terminated employment that he might reasonably have held,*
- (c) has refused or neglected to collect income to which he is entitled,*
- (d) has refused or neglected to avail himself of appropriate training or rehabilitative measures,*
- (e) has refused to provide complete information or has provided false information required to determine his eligibility for a handicap benefit, or*
- (f) has left Alberta,*

the Director is under no obligation to provide or continue to provide a handicap benefit to that person and may discontinue, suspend or vary the handicap benefit provided.

- (c) the sponsor or co-signer, or both, are capable, in the opinion of the Director, of providing financial support in accordance with the sponsorship agreement,

the Director is under no obligation to provide or continue to provide a handicap benefit to the immigrant party and may discontinue, suspend or vary the handicap benefit provided.

8 Section 8 is amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding the following after clause (b):

- (c) if the Director is satisfied that the value of the assets owned by the person who receives a handicap benefit and the person’s spouse that are not exempt under section 5.3 and the regulations has changed and is greater than \$100 000, discontinue the handicap benefit.

9 The following is added after section 9:

Subrogation
and powers of
Director re
maintenance

9.1(1) Where a handicap benefit is paid to or for the benefit of a person who has a right under an Act, order of a court or agreement to maintenance or alimony, the Director may on behalf of that person

- (a) initiate or participate in any court proceeding to obtain an order for such maintenance or alimony, and
- (b) initiate, participate in or oppose any court proceeding to enforce, vary or terminate any order or agreement for such maintenance or alimony, including any proceeding concerning arrears of maintenance or alimony to which the Government is subrogated or otherwise, whether the order or agreement that is the subject of the proceedings was granted or entered into, as the case may be, before or after the person who is a party to it began to receive a handicap benefit.

(2) Where the Director acts under subsection (1) on behalf of a person who receives a handicap benefit, the Director

- (a) may act in the court proceeding in the Director’s own name or in the name of the person,

8 Section 8 presently reads:

8 The Director may

(a) if he is satisfied that the income of the person who receives a handicap benefit or of his spouse has changed, increase, reduce or discontinue the handicap benefit as he considers appropriate, or

(b) if he is satisfied that the person who receives a handicap benefit is no longer severely handicapped, discontinue the handicap benefit.

9 Adds a new section to the Act to provide for subrogation of the Government to maintenance rights and empowering the Director to legally enforce those rights.

(b) may apply for an amount of maintenance or alimony that exceeds the amount of the person's handicap benefit, and

(c) may continue after the person no longer receives a handicap benefit to participate in any court proceeding that was commenced while the person received a handicap benefit.

(3) Where the Director acts under subsection (1) on behalf of a person who receives a handicap benefit, any resulting order concerning maintenance or alimony does not terminate or become unenforceable by reason only that the person discontinues receiving a handicap benefit.

(4) Where the spouse of a person who is eligible to receive or receives a handicap benefit has a right to maintenance or alimony under an Act, order of a court or agreement, the Director may, at the request of the spouse, act on behalf of the spouse in any way referred to in subsection (1).

(5) Where a dependent child of a person who is eligible to receive or receives a handicap benefit has a right to maintenance under an Act, order of a court or agreement, the Director may, at the request of the person who is eligible to receive or receives a handicap benefit or that person's spouse, act on behalf of the dependent child in any way referred to in subsection (1).

(6) Where a handicap benefit is paid to or for the benefit of a person who has a right under an Act, order of a court or agreement to maintenance or alimony, the Government is subrogated to all of the rights to maintenance or alimony of that person under the Act, order or agreement.

(7) The subrogation under this section applies to a right to maintenance or alimony payable in a period during which a handicap benefit is paid whether the period occurs before or after the coming into force of this section.

(8) Notwithstanding subsection (6), if any amount is paid as maintenance or alimony to the person entitled to receive it under the Act, order or agreement within the time specified by the Act, order or agreement, the Government is not subrogated to the right to receive payment of that amount.

10 Section 10 is amended

(a) in subsection (1) by striking out "trustee to ensure that the handicap benefit" and substituting "financial

10 Section 10 presently reads:

10(1) If a person who is eligible to receive a handicap benefit is unable to conduct his own affairs, the Director may appoint a trustee

administrator to administer all or part of that person's handicap benefit for the purpose of ensuring that it";

(b) in subsections (2) and (3) by striking out "trustee" wherever it occurs and substituting "financial administrator".

11 Section 13 is repealed and the following is substituted:

Regulations

13(1) The Lieutenant Governor in Council may make regulations

- (a) respecting the income of a person and the person's spouse that may be partially exempt, wholly exempt or not exempt for the purpose of determining the amount of a handicap benefit payable to that person;
- (b) respecting the assets of a person and the person's spouse that may be exempt or not exempt for the purpose of determining the person's eligibility for a handicap benefit;
- (c) respecting the types and categories of real property and personal property that constitute assets for the purposes of this Act;
- (d) respecting the valuation of assets and the income generated by assets;
- (e) respecting the requirements and procedures for conversion of an asset that is not exempt to an asset that is exempt;
- (f) respecting the power of the Director to deem income from or ownership of a trust;
- (g) respecting the nature, categories and amounts of handicap benefits and modified amounts of handicap benefits that may be provided under this Act;

to ensure that the handicap benefit is expended for the benefit of that person.

(2) A trustee appointed under subsection (1) shall, when required by the Director, make returns showing the amount of any handicap benefit received, the amount that has been expended for the benefit of the person who is entitled to receive the handicap benefit and the balance remaining with the trustee, and shall, if necessary, remit any balance to the Director.

(3) If the trustee appointed under subsection (1) is an officer or employee of a facility or other place of care in which a person who receives or is entitled to receive a modified amount of handicap benefit or a handicap benefit is maintained, the trustee shall pay to that facility or other place of care that proportion of the modified amount of handicap benefit or handicap benefit received that is considered by the Director to be a reasonable sum for the maintenance of that person, but the Director shall require the trustee to make available to the person entitled to receive the modified amount of handicap benefit or handicap benefit the amount that has been provided for his personal use.

11 Section 13 presently reads:

13 The Lieutenant Governor in Council may make regulations

- (a) specifying the income of any person and of his spouse that may be exempt for the purpose of determining the amount of a handicap benefit payable to that person;*
- (b) prescribing the nature, categories, amounts of handicap benefits and modified amounts of handicap benefits that may be provided under this Act;*
- (c) designating facilities licensed under the Social Care Facilities Licensing Act as facilities for the purposes of this Act;*
- (d) designating institutions as institutions for the purposes of this Act;*
- (e) prescribing the fees to be paid to physicians for the performance of examinations and the preparation of reports in relation to an application or a review of eligibility for a handicap benefit under this Act;*
- (f) defining "severe handicap" for the purposes of this Act.*

- (h) respecting the reinstatement of eligibility of persons who received a handicap benefit but became ineligible;
- (i) defining for the purposes of this Act “dependent child”, “principal residence”, “severe handicap” and “spouse” and any other word or phrase used in this Act but not defined in this Act.

(2) The Minister may make regulations

- (a) designating facilities or categories of facilities as facilities for the purposes of this Act;
- (b) designating institutions or categories of institutions as institutions for the purposes of this Act;
- (c) respecting the provision of health benefits as part of a handicap benefit.

12 Section 13(1) is amended by adding the following after clause (h):

- (h.1) respecting variations in the amount of handicap benefit to take into account whether the person who receives or is eligible to receive a handicap benefit has a spouse or dependent children, or both;

13 The following is added after section 14:

Review

15(1) The Director must begin a review of this Act within 5 years after the coming into force of this section and must submit to the Minister, within one year after beginning the review, a report that includes any recommendations for amendments made by the Director.

(2) The Minister must, within 30 days of receiving a report under subsection (1), lay it before the Legislative Assembly if it is then sitting, and if it is not then sitting, within 15 days of the commencement of the next sitting.

14 The *Maintenance Enforcement Act* is amended in sections 6(1), 7(3) and 9(2) by adding “or *Assured Income for the Severely Handicapped Act*” after “*Social Development Act*”.

15 This Act comes into force on Proclamation.

12 Adds a new regulatory power to be exercised by the Lieutenant Governor in Council.

13 Adds a new section providing for a review of the Act within 5 years.

14 Consequential amendments to SA 1985 cM-0.5.

15 Coming into force.