

The Prior Finding Problem

How the Government Is Reversing 79,290 Approved Disability Findings Without New Evidence, Without Explanation, and Without Appeal

Submitted to the Premier of Alberta, the Minister of Assisted Living and Social Services, the Alberta Human Rights Commission, the Canadian Human Rights Commission, all Alberta MLAs, and media.

The Alberta Disability System Breakdown — April 2026 Report Series

Every person currently receiving AISH was assessed and approved by the Government of Alberta's own process, using its own medical criteria, by its own contracted medical professionals. The ADAP transition reverses that finding — for all 79,290 people simultaneously — without new medical evidence, without individual reassessment, without published criteria explaining why the original finding is no longer valid, and without any independent mechanism to challenge the reversal.

In any other administrative or legal context in Canada, this would not be permissible. This document examines why.

SECTION 1: WHAT THE GOVERNMENT FOUND — AND WHEN

AISH is not a program people enroll in by declaring a disability. It is a program people enter through a formal adjudication process. The Government of Alberta assesses each applicant against defined medical, functional, and financial criteria. A finding of eligibility is a formal governmental determination — not an administrative estimate, not a provisional allocation, and not a file that expires automatically.

1.1 What AISH Eligibility Actually Requires

To be approved for AISH, an applicant must satisfy all of the following criteria, as established by the Government of Alberta's own eligibility requirements:

- **Permanent disability:** The applicant's medical condition must be permanent. There must be no available medical treatment, therapy, or training that would meaningfully restore their ability to work. Conditions that are expected to improve, or that can be remediated through intervention, do not qualify.
- **Substantially prevents earning a living:** The disability must substantially prevent the person from earning a living through employment. This is not a test of whether employment is difficult — it is a test of whether it is structurally possible. Part-time or supported employment at minimal levels may still qualify.
- **Medical documentation:** The application requires a physician-completed medical report — the AISH Part B Medical Report — providing clinical documentation of the condition, its permanence, and its

functional impact. The physician attests that the clinical findings support the eligibility criteria.

- **Adjudication:** A trained adjudicator reviews the medical report and determines eligibility. This is a formal administrative decision — not an automatic approval based on self-reporting.

THE FINDING IS FORMAL. *When the Government of Alberta approved each of the 79,290 current AISH recipients, it made a formal administrative determination that: (1) this person has a permanent disability; (2) that disability substantially prevents them from earning a living; (3) the clinical evidence supports this finding. That finding is on record. It has not been rescinded. No new evidence has emerged that contradicts it.*

1.2 How Long These Findings Have Been in Place

AISH is not a short-term program. The average AISH recipient has been on the program for years — often for a decade or more. Each year of continued receipt represents the government’s ongoing recognition that the original finding remains valid. The program does not auto-expire. Continued eligibility is periodically reviewed. Every review that results in continued payment is a renewal of the original finding.

CONTEXT	FIGURE	SOURCE
Total AISH recipients (September 2025)	79,290	Alberta Government AISH Caseload Open Data
Year-over-year caseload increase (2024-25)	2.4% — caseload is growing, not declining	Alberta Government AISH Open Data
Primary qualifying condition: physical disability	41.5% — 32,901 recipients	Alberta Government AISH Open Data
Primary qualifying condition: mental illness	30.2% — 23,940 recipients	Alberta Government AISH Open Data
Primary qualifying condition: cognitive disorder	28.3% — 22,419 recipients	Alberta Government AISH Open Data
Recipients with CPP Disability income	16,161 (20.4%) — already assessed by federal government as unable to work	Alberta Government AISH Open Data
Recipients with any employment income	12,770 (16.1%) — the government’s own data on who is already working	Alberta Government AISH Open Data
Recipients with zero employment income	66,520+ (83.6%) — not because they weren’t trying, but because the structural barriers are documented	Calculated from above

The CPP Disability figure is particularly significant: 16,161 AISH recipients — one in five — have already been assessed by the federal government through a separate, independent process as permanently disabled and unable to work. These recipients carry two formal governmental findings of permanent disability preventing employment — one provincial, one federal — and are being moved to an employment program.

SECTION 2: WHAT THE GOVERNMENT IS NOW CLAIMING — AND THE PROBLEM WITH THAT CLAIM

The ADAP transition rests on an unstated but unavoidable claim: that a significant portion of the 79,290 people who were assessed and approved for AISH can, in fact, work — or will be able to with employment supports.

This claim has never been stated explicitly. The government has not said “*we reviewed the AISH caseload and found that X percent of recipients were incorrectly assessed.*” It has not published any analysis suggesting the original assessments were flawed. It has not identified any change in medical evidence that would warrant revisiting prior findings.

Instead, the government has changed the program structure — creating ADAP and making employment participation a condition of receiving benefits — in a way that effectively reverses the prior finding without explicitly saying so.

THE IMPLICIT CLAIM VS. THE EXPLICIT RECORD:

IMPLICIT CLAIM (*required for ADAP to make sense*): A significant portion of AISH recipients can work if given the right supports.

EXPLICIT RECORD (*what the government formally found*): Each of those recipients has a permanent disability that substantially prevents them from earning a living — as determined by the government’s own adjudication process, using the government’s own medical criteria, documented by the government’s own contracted medical professionals.

These two positions cannot both be true. The government has not explained which one it believes is correct — or why.

2.1 The Reversal of Onus

In administrative law, when a decision-maker has made a formal finding, the burden of proof to reverse that finding lies with the party seeking to reverse it — not with the person the finding protects.

This principle exists for a reason. Formal administrative findings affect fundamental interests. They create reasonable reliance — people structure their lives, their housing, their medical care, and their financial planning around the stability of those findings. Reversing them without reason, without evidence, and without process is not merely procedurally irregular. It causes concrete harm to real people who had every right to rely on the finding that was made.

STANDARD ADMINISTRATIVE PRACTICE	WHAT ADAP DOES INSTEAD
A prior formal finding stands until there is evidence to overturn it	All prior findings treated as provisional — reversed by program restructure with no individual review
The burden of proving a finding is wrong lies with the party seeking reversal	The burden is placed on the recipient — they must reapply to AISH and prove what the government already accepted as proven
New evidence is required to justify revisiting a formal determination	No new medical evidence. No published analysis of prior assessment accuracy. No stated basis for the reversal.
Affected persons are notified individually and given a meaningful opportunity to respond	79,290 people are automatically transitioned on July 1, 2026 — specific criteria for AISH vs. ADAP classification were not published in accessible plain language before the transition
Errors in adjudication can be challenged through an independent appeal process	Bill 12 removed the independent Citizens Appeal Panel. The Medical Review Panel is government-appointed and its decisions are final.

THE ONUS HAS BEEN REVERSED. *The government made a formal finding that 79,290 people have permanent disabilities preventing employment. The government is now requiring those same people to re-prove what was already proven — with no explanation of why the original finding is no longer valid, no new evidence to support the reversal, and no independent mechanism to challenge the result if the re-assessment is wrong.*

SECTION 3: THE FOUR QUESTIONS THE GOVERNMENT HAS NOT ANSWERED

The following questions follow directly and inescapably from the ADAP transition structure. They have not been answered in any government communication, ministerial statement, Bill 12 documentation, ADAP Discussion Guide, or public engagement material. They require answers before July 1, 2026.

Question 1: What Changed?

Every AISH recipient was assessed and approved using the government's own criteria. For the ADAP transition to be justified, something must have changed that makes those prior findings no longer valid.

- Did the medical conditions of 79,290 people simultaneously improve? No. The conditions are documented as permanent.

- Did new medical evidence emerge showing the original assessments were wrong? None has been published.
- Did the labour market change in ways that make employment newly accessible to people with these conditions? The Employment Reality Report demonstrates it did not — unemployment for people with severe disabilities remains 73.6%.
- Did the eligibility criteria change in ways that would exclude current recipients? No — the criteria remain the same. Recipients who cannot work still qualify for AISH.

WHAT CHANGED: *The government's financial interest changed. Budget 2025 cut AISH funding by \$49 million. The ADAP transition is projected to reduce the AISH caseload over time as recipients fail to successfully reapply. The Heritage Fund received \$2.8 billion from surplus. **The prior findings of permanent disability did not change. The political and fiscal calculation did.** This is not a medical determination. It is a financial one dressed in medical language.*

Question 2: If the Original Findings Were Correct, What Is the Legal Basis for the Reversal?

If the Government of Alberta stands by its original assessments — that these 79,290 people have permanent disabilities preventing employment — then there is no legitimate basis for placing them in an employment program and requiring them to re-prove their disability to access the benefit level their finding entitles them to.

The only legally coherent positions available to the government are:

- **Position A:** The original assessments were correct. These people have permanent disabilities preventing employment. In that case, ADAP — an employment program — is the wrong program for them, and the transition violates the administrative principle that formal findings cannot be reversed without cause.
- **Position B:** The original assessments were wrong — some proportion of recipients were incorrectly approved for AISH when they could, in fact, work. In that case, the government has an obligation to say so explicitly, identify which assessments it believes were incorrect, explain the basis for that belief, and provide a fair and independent process to review those specific cases.

The government has taken neither position explicitly. It has instead restructured the program in a way that produces the outcome of Position B — treating recipients as potentially able to work — while avoiding the accountability that Position B would require.

THE GOVERNMENT CANNOT HAVE IT BOTH WAYS. *It cannot maintain that its assessments are valid and reliable — and simultaneously design a program that treats those assessments as if they are not. It cannot claim to respect the documented reality of permanent disability — and simultaneously require people with permanent disabilities to participate in employment programming as a condition of their income.*

Question 3: How Can a Final Decision Be Made Without Independent Review?

Before Bill 12, AISH eligibility decisions could be appealed to the Citizens Appeal Panel — an independent body outside the ministry that controls program funding. This independence was not incidental. It was essential. A decision-maker that benefits financially from reducing the caseload cannot be the final arbiter of who belongs on the caseload.

CITIZENS APPEAL PANEL (BEFORE BILL 12)	MEDICAL REVIEW PANEL (AFTER BILL 12)
Independent of the ministry	Government-appointed
External to the funding decision-maker	Internal to the same ministry that controls the program budget
Could overturn eligibility decisions	Decisions are final — no further appeal
Provided an independent check on administrative error	No independent check exists
Existed for decades as a procedural protection	Eliminated December 9, 2025 by legislation

The structural conflict of interest is direct and documented: the Government of Alberta benefits financially from reducing the number of people on AISH. Budget 2025 projects AISH funding decreases of \$49 million in 2025-26, \$22 million more in 2026-27, and \$6 million more in 2027-28. The government controls the Medical Review Panel. The Medical Review Panel’s decisions are final. There is no independent review.

THE CONFLICT OF INTEREST IS BUILT INTO THE LEGISLATION. *The party that benefits financially from reducing the AISH caseload now controls the panel that decides who stays on AISH — with no independent review and no appeal. This is not a neutral administrative process. It is a system where the decision-maker and the financial beneficiary of a particular outcome are the same entity.*

Question 4: What Happens to the People Who Cannot Reapply?

The ADAP transition requires recipients who want to remain on AISH to submit a new Disability Assistance Medical Report. This requirement assumes the recipient can navigate the reapplication process. For a significant portion of the 79,290 people involved, that assumption is not valid.

- **No family doctor:** 650,000 Albertans have no GP. The medical report requires physician completion. A recipient without a GP cannot complete the form — regardless of how severe or well-documented their disability is.
- **Cognitive and communication barriers:** 28.3% of AISH recipients have cognitive disorders as their primary qualifying condition. For these recipients, navigating a formal reapplication process — coordinating a physician form, submitting documentation, meeting deadlines — may be impossible without supported assistance that is not guaranteed.

- **Mental health crises:** 30.2% of AISH recipients have mental illness as their primary qualifying condition. For people with severe depression, C-PTSD, BPD, or psychotic conditions, the administrative load of reapplication during an already destabilizing transition is a documented risk of non-completion — not a reflection of eligibility.
- **The already-documented 24% DTC completion rate:** The Government of Canada's 2024 Disability Advisory Committee found that only 24% of online DTC applications that are started get completed. The DTC is a prerequisite for the CDB. If only one in four people with disabilities can complete a comparable federal disability form, the assumption that 79,290 people will successfully complete the ADAP-to-AISH reapplication process is not supported by any evidence.

THE PRACTICAL OUTCOME OF NON-COMPLETION: *A recipient who cannot complete the reapplication process — because they have no GP, because their cognitive condition prevents it, because their mental health condition makes it impossible during a period of extreme stress — is automatically confirmed on ADAP. They receive \$200/month less. Indefinitely. **Not because the government found they can work. Not because new evidence emerged. But because the administrative barrier of reapplication proved insurmountable** for a person who was already assessed as having a permanent, severe disability.*

SECTION 4: THE LEGAL FRAMEWORK — WHY THIS MATTERS IN LAW

4.1 Administrative Law: The Duty of Procedural Fairness

Canadian administrative law — applied in every province including Alberta — imposes a duty of procedural fairness on government decision-makers when those decisions affect fundamental interests. The more significant the impact on an individual's life, the higher the procedural requirements.

Income security — the ability to afford shelter, food, medication, and basic needs — is among the most fundamental interests Canadian courts have recognized. Decisions that remove or reduce income security trigger the highest level of procedural protection. The duty of procedural fairness in this context includes:

- **Notice:** Affected individuals must be told, in plain language and with adequate time, what decision is being made about them and why.
- **Disclosure:** The criteria being applied to determine their situation must be published and accessible. The specific medical criteria distinguishing AISH from ADAP eligibility were not published in accessible plain language before the transition.
- **Opportunity to respond:** Individuals must have a meaningful opportunity to present their case before the decision is made. Being automatically transitioned and then told to reapply is not an opportunity to respond — it is a reversal requiring appeal.
- **Impartial decision-maker:** The decision-maker must be independent of the parties with a financial interest in the outcome. The Medical Review Panel is government-appointed and reports to the same ministry that benefits from caseload reduction.

- **Reasons:** When a decision significantly affects someone's fundamental interests, reasons must be provided. The government has not explained — for any individual recipient or as a class — why their prior finding of permanent disability is being treated as insufficient.

4.2 Charter Section 15: Equality Rights

Section 15(1) of the Canadian Charter of Rights and Freedoms guarantees equality before and under the law. A government policy that:

- Reverses formal findings of disability without new evidence
- Imposes a reapplication burden exclusively on people with disabilities
- Removes the independent appeal rights of that group specifically
- Requires compliance with an employment framework from a group already assessed as unable to work
- Does this without any individual assessment of changed circumstances

— is a policy whose burden falls entirely on a group defined by a protected characteristic under Section 15. The Supreme Court of Canada has held that policies which fail to account for the actual circumstances of disadvantaged groups — applying formally equal treatment to substantively unequal situations — can constitute discrimination even when not explicitly discriminatory on their face.

4.3 Charter Section 7: Life, Liberty and Security of the Person

Section 7 protects the right to security of the person and requires that any deprivation of that right comply with the principles of fundamental justice. The security interest engaged here is direct: a \$200/month reduction in income for a person whose rent already exceeds their living allowance, in a province with no rent cap, represents a concrete threat to physical security — shelter, food, medication.

The principles of fundamental justice include procedural fairness, as described above. They also include the principle against arbitrariness: a law or policy that does not rationally further its stated objective, or that causes harm disproportionate to any benefit achieved, may be arbitrary within the meaning of Section 7. A policy that reverses 79,290 prior findings of permanent disability without individual reassessment, without new evidence, and without appeal — while simultaneously claiming to be empowering people with disabilities — engages the arbitrariness analysis directly.

4.4 The UNCRPD: Article 12 — Equal Recognition Before the Law

Canada ratified the UN Convention on the Rights of Persons with Disabilities in 2010. Article 12 requires that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life — and that states take appropriate measures to provide access to the support they may require in exercising their legal capacity.

A person who cannot complete a reapplication form because their qualifying disability makes that process inaccessible — and who therefore loses income protection they were formally determined to need — has

been denied the support required to exercise their legal right to maintain the protection to which they are entitled. This is an Article 12 concern.

4.5 The Natural Justice Argument: *Nemo Judex in Sua Causa*

The Latin principle *nemo judex in sua causa* — “no one should be a judge in their own cause” — is one of the foundational principles of natural justice in the common law tradition. It holds that a decision-maker with a financial or personal interest in the outcome of a decision cannot be a fair adjudicator of that decision.

The Government of Alberta:

- Created the AISH program and defined its eligibility criteria
- Approved 79,290 people for that program through its own process
- Now benefits financially from reducing the number of people on that program — Budget 2025 projects AISH spending reductions of \$77 million over three years
- Controls the Medical Review Panel that will determine who returns to AISH
- Removed the independent body that could correct errors in that determination

This is a textbook conflict of interest. The party with the financial interest in a particular outcome controls the decision — and eliminated the mechanism that existed to check it.

SECTION 5: THE DOCUMENTED HUMAN CONSEQUENCE OF IGNORING PRIOR FINDINGS

The legal and administrative arguments above are not abstract. They have concrete, documented human consequences for 79,290 specific people whose lives are being restructured based on a reversal the government has never explained.

- **People who have structured their lives around an approved finding:** A person who has been on AISH for ten years has made housing decisions, medical decisions, caregiving decisions, and financial planning decisions based on the stability of that approved finding. Reversing it without cause does not merely reduce income. It destabilizes the entire architecture of a life built on the reasonable assumption that a government finding means something.
- **People who already proved it once:** Every current AISH recipient went through the application process — assembled medical documentation, completed physician reports, paid the fees, waited for the adjudication, sometimes appealed. Requiring them to do it again, with no new evidence and no explanation, treats that prior process as if it never happened.
- **People who cannot prove it again:** For recipients who have lost their physician to the GP shortage, whose conditions have worsened and made the administrative process harder, or who simply do not have the capacity to navigate a complex reapplication under the cognitive and emotional load of the transition itself — the practical result of the prior finding being ignored is that they end up on ADAP permanently. Not because they can work. Because the barrier to reapplication was too high.

- **People who will be told their condition needs to get worse:** Minister Nixon’s letter of April 3, 2026 stated: *“If their medical condition progresses to the point that they are unable to work, they can apply for the AISH program.”* For people who were already assessed as unable to work — whose conditions are already at the severity level that qualified them for AISH — this language requires them to deteriorate further before the government will recognize what it already found to be true.

THE MINISTER’S OWN LETTER — APRIL 3, 2026: *“If their medical condition progresses to the point that they are unable to work, they can apply for the AISH program.”* This language was written about people whose conditions were already formally found to prevent them from working. **The government is telling people who were assessed as permanently unable to work that they need to get worse before it will acknowledge what it already found.**

SECTION 6: THE QUESTIONS THAT REQUIRE ANSWERS BEFORE JULY 1, 2026

The following questions are not rhetorical. They have specific, documentable answers that the Government of Alberta has the data and the obligation to provide. They have not been answered in any public communication. They must be answered before 79,290 people are transitioned on July 1, 2026.

QUESTION	WHY IT REQUIRES AN ANSWER BEFORE JULY 1
On what basis has the government determined that its prior findings of permanent disability are no longer sufficient to establish AISH eligibility without reapplication?	Without this answer, the reversal of prior findings has no stated justification — administrative, medical, or legal.
Has the government conducted any review of the accuracy of prior AISH assessments? If so, what did it find?	If prior assessments were accurate, there is no basis for requiring reapplication. If they were not, the government must say so — with evidence.
What are the specific medical criteria that distinguish AISH eligibility from ADAP eligibility under the new framework?	The Minister confirmed in his April 3, 2026 letter that the employment income exemption calculations would be set in a Ministerial Order <i>“later this spring.”</i> Recipients cannot make informed decisions without knowing the criteria that will govern their placement.
How will recipients who cannot complete the reapplication process due to the barriers created by their qualifying disability be protected from permanent ADAP placement?	The 24% DTC completion rate documents that administrative complexity causes non-completion — not ineligibility. The government must account for this.

QUESTION	WHY IT REQUIRES AN ANSWER BEFORE JULY 1
<p>How does the government reconcile requiring employment program participation from people it has already formally found to be permanently unable to work?</p>	<p>This is not a matter of interpretation. The prior findings are on record. The program design contradicts them. An explanation is required.</p>
<p>How is the Medical Review Panel independent from the financial interest of the ministry that funds it, appoints it, and benefits from the outcomes of its decisions?</p>	<p>Independence of adjudication is a fundamental requirement of procedural fairness. The government must demonstrate it exists.</p>

SECTION 7: WHAT WE ARE ASKING

To the Government of Alberta

- Publish the specific basis — medical, administrative, or legal — on which the government is treating prior AISH eligibility findings as insufficient to maintain AISH status without reapplication. If the government believes its original assessments were correct, explain why reapplication is required. If it believes they were incorrect, say so explicitly and identify the evidence.
- Publish the complete medical criteria distinguishing AISH from ADAP eligibility — in plain language — before July 1, 2026. Recipients cannot prepare for a transition whose rules they do not know.
- Establish a supported reapplication pathway for recipients who face documented barriers to completing the process independently — including those without GPs, those with cognitive conditions, and those whose mental health conditions make complex administrative processes inaccessible.
- Restore independent appeal rights. The Citizens Appeal Panel existed to catch errors. The government eliminated it at the same time it made the most consequential change to the program in its 47-year history. These two decisions cannot be separated from each other.
- Commission and publish an independent legal review of whether the ADAP transition — as a reversal of formal prior findings without individual reassessment — is consistent with the duty of procedural fairness, Section 15 of the Charter, and Canada’s obligations under the UNCRPD.

To the Alberta Human Rights Commission

- Examine whether the ADAP transition — which reverses formal findings of permanent disability for 79,290 people without new evidence, without explanation, and without independent appeal — constitutes discrimination in the provision of a government service on the basis of disability under the Alberta Human Rights Act.
- Accept individual and systemic complaints from AISH recipients regarding the reversal of prior findings, and expedite review given the July 1, 2026 transition date.

To the Canadian Human Rights Commission

- Review whether Alberta's treatment of prior AISH eligibility findings — and the removal of independent appeal rights through Bill 12 — is consistent with federal human rights obligations and Canada's commitments under the UNCRPD.
- Formally request that the Government of Alberta provide its legal justification for reversing 79,290 formal disability findings without individual reassessment, as part of any systemic review of the ADAP transition.

To Federal MPs and the Federal Government

- Request that the Standing Committee on Human Resources, Skills and Social Development examine whether Alberta's ADAP transition is consistent with the intent of the Canada Disability Benefit Act and federal disability inclusion commitments.
- Include the reversal of prior AISH disability findings in Canada's next UNCRPD implementation report to the United Nations Committee on the Rights of Persons with Disabilities, as a documented instance of a state party failing to maintain legal capacity protections for persons with disabilities.

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The Alberta Disability System Breakdown — Advocate

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