

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision by the Ministry of Social Development (the Ministry), dated June 13, 2012, which found that the appellant was not eligible for paid accommodation in Vancouver the night prior to his botox treatments. The treatments were approved by the Medical Services Plan to deal with his dystonia, a neurological movement disorder.

The Ministry denied the appellant paid accommodation, stating that it was not medically necessary for his treatment. The Ministry relied on the *Employment and Assistance for Persons with Disabilities Regulation*, Schedule C, section 2(1)(f).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, section 2(1)(f)

PART E – Summary of Facts**Evidence before the Ministry at the time of reconsideration.**

The following evidence was before the Ministry at the time of the reconsideration decision:

- A Ministry Medical Transportation Information Checklist – For Clients, which sets out Ministry policy for reimbursing travel for medical purposes. For non-local, non-emergency medical transportation, clients are required to “explore all options and resources (i.e. family, voluntary agencies)” prior to requesting reimbursement from the Ministry. The policy states: “the most affordable option will be considered.”
- An undated letter from the Ministry of Health to the Vancouver clinic which the appellant attends, indicating that the botox treatment is approved for coverage by the Pharmacare plan.
- A letter dated March 22, 2012 from the Vancouver clinic addressed “To Whom It May Concern,” indicating that the appellant’s botox injections are “a symptomatic treatment only and will need to be repeated for as long as the patient is receiving benefit. The botox injections should be repeated every 3-4 months and will be administered here in the doctor’s office.”
- A Request for Travel Assistance under the Medical Services Plan dated March 1, 2012, completed by the appellant’s physician.
- A hand-written note dated March 12, 2012 from the appellant’s physician referencing the Vancouver botox treatments. He opines “The date of his appt in April 12th in the AM + he does better if he can go to Vancouver on April 11 and not be pressed for time.”
- A Ministry form dated March 5, 2012, completed and signed by the appellant requesting travel assistance for his trip to the Vancouver clinic. In it, the appellant states that he has not considered travel help from “Family/Friends” but has considered “Voluntary Agencies.”
- A letter from the appellant to the Ministry, dated June 4, 2012 setting out why he needs overnight accommodation in Vancouver prior to his botox treatment. He states:
“If I am required to travel from Victoria on the same day as the botox injections are to be administered, my neck and shoulder muscles (where the injections are done) are too tense to for the treatment to be effective. Anything I carry (and any use of my right arm) makes the muscles tenser, and makes it more difficult for the doctor to find the precise place where the injection should go. In addition, as I am taking the least expensive form of transport (i.e. ferry and public transit), it is difficult to make the trip to the appointment and back to [my home] within one day in accordance with the transit schedules.”
- A letter to the appellant from Health Insurance BC, dated June 5, 2012, approving reimbursement of his costs for the ferry and vehicle travel for his “treatment of Botulin Injection for Dystonia administered by a Neurologist” in Vancouver.

Evidence provided after the reconsideration decision.

Subsequent to the reconsideration decision but prior to hearing, the appellant submitted a note from his physician dated June 22, 2012 stating that the appellant "is in a situation in which the Botox injections for his neck problems, being done in Vancouver, are not effective unless he can stay overnight in Vancouver prior to his injections, because maximum relaxation is needed."

Information provided at the hearing.

At the hearing, the appellant informed the Panel about the effect of his dystonia and the requirement for staying overnight prior to his treatment. He stated that his condition makes his muscles tense very easily and quickly. When they do, it is very difficult for the doctor to administer the botox. If he travels from [his home] to Vancouver on the same day, the act of carrying a bag and gripping small items tenses his muscles to the extent that the injections are hindered. If he stays overnight in Vancouver he can take a short bus ride to the clinic without having to grip or tense his muscles.

With respect to staying with family while in Vancouver, the appellant stated that he used to stay with his sister but has since had a falling out with her, therefore her residence is no longer available to him.

Regarding the travel time via public transit from the Vancouver clinic to the ferry, the appellant estimated a 3-4 hour trip.

Under section 22(4)(b) of the Act, the Panel admitted the new evidence as it is in support of information and records which were before the Ministry at the time of its decision. The Ministry did not submit a challenge to the Appellant's introduction nor the content of this evidence.

PART F – Reasons for Panel Decision

The issue to be decided is whether the Ministry was reasonable in denying overnight accommodation for the appellant when he is required to travel to his botox treatments in Vancouver.

The relevant legislation is found in the EADWDR, Schedule C, section 2(1)(f). It states:

2(1) The following are the health supplements that may be paid for by the minister if provided to a family unit that is eligible under section 62 [*general health supplements*]of this regulation:

...

- (f) the least expensive appropriate mode of transportation to or from
- (i) an office, in the local area, of a medical practitioner or nurse practitioner
 - (ii) the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner,
 - (iii) the nearest suitable general hospital or rehabilitation hospital, as those facilities are defined in section 1.1 of the Hospital Insurance Act Regulations, or
 - (iv) the nearest suitable hospital as defined in paragraph (e) of the definition of "hospital" in section 1 of the *Hospital Insurance Act*,
- provided that
- (v) the transportation is to enable the person to receive a benefit under the *Medicare Protection Act* or a general hospital service under the *Hospital Insurance Act*, and
 - (vi) there are no resources available to the person's family unit to cover the cost.

The Ministry relied on its reconsideration decision, apart from noting that the letter from the appellant's physician dated June 22, 2012, which stated the botox treatments were not effective unless the appellant stayed overnight in Vancouver prior to the injections, was not before the reconsideration officer.

The appellant, through his representative, made the following arguments:

- The Ministry's decision to deny him overnight accommodation was unreasonable.
- The Ministry's policy with respect to medical transportation states the accommodation costs "must be considered when determining eligibility for medical transportation."
- The two letters from his physician speak to the benefit and necessity of his staying overnight in Vancouver prior to his treatment.
- The appellant's income is \$906 per month, of which \$729 goes to rent. Therefore he cannot afford the cost of the Vancouver accommodation.
- In accordance with the relevant case law and legislation, the relevant provisions must be interpreted to the benefit of the appellant and ambiguities resolved in his favour.

Section 2(1)(f)(ii) discusses the "least expensive appropriate mode of transportation to or from... the office of the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist in that field by a local medical practitioner or nurse practitioner"

A discussion regarding overnight accommodation is not included specifically in the EAPWDR; rather it is discussed in Ministry policy, which is beyond the purview of this Panel. However, the Panel may examine whether the Ministry's decision to require the appellant to travel to and from Vancouver via

public transit was reasonable in light of the phrase "least expensive appropriate mode of transportation," contained in section 2(1).

The appellant's physician provided two notes with respect to this question. The first stated that the appellant "does better if he can go to Vancouver [the day prior] and not be pressed for time." His second note (admitted as evidence after the reconsideration decision) stated that the treatments "are not effective unless he can stay overnight in Vancouver prior to his injections, because maximum relaxation is needed."

The Panel notes that while stronger language is used in the second note, its thrust is not inconsistent with the first. The Panel is comfortable accepting the physician's views that accommodation on the night prior to the botox injections is necessary to ensure the efficacy of the treatment.

In accepting this evidence, the Panel concludes that it is not reasonable to require the appellant to travel via public transport to and from Vancouver in one day as it does not meet the test of "appropriate mode of transportation." By requiring this of the appellant, the botox treatment is negatively impacted.

Sub-paragraph (vi) of section 2(1)(f) requires that "there are no resources available to the person's family unit to cover the cost."

The appellant gave evidence that he was previously able to stay with his sister in Vancouver but has since had a falling out with her. In the absence of evidence to the contrary, the Panel accepts this and concludes that the test in sub-paragraph (vi) has been met.

Accordingly, the Panel finds that the Ministry was not reasonable in denying the appellant overnight accommodation prior to his botox treatments, and rescinds the decision.