

PART C – Decision under Appeal

The decision under appeal is the June 19, 2012 Ministry of Social Development (the ministry) reconsideration decision wherein the ministry decided that the appellant is not eligible for a medical transportation supplement. Specifically, the ministry found that the appellant did not meet the legislative criteria in s. 67(1)(a) of the Employment and Assistance Regulation (EAR) since neither he nor anyone in his family unit is a person with persistent multiple barriers to employment (PPMB). The ministry also found that the appellant did not meet the criteria in s. 76 of the EAR since the ministry was not satisfied that the appellant faced a direct and imminent life threatening need.

PART D – Relevant Legislation

EAR ss. 2 [*persons who have persistent multiple barriers to employment*], 59 [*crisis supplement*], 67 [*general health supplements*], and 76 [*health supplement for persons facing direct and imminent life threatening health need*]; Schedule C s. 2(1)(f) [*medical transportation*]

PART E – Summary of Facts

The appellant did not attend the hearing, but was represented by an advocate. Having confirmed that the appellant was notified of the hearing, the panel proceeded with the hearing in accordance with s. 86(b) of the Employment and Assistance Regulation.

The information before the ministry at the time of reconsideration included the following:

- A Medical Report – Employability form signed by the appellant's physician on April 27, 2012. The form identifies the appellant's primary medical condition as a frozen right shoulder and bilateral narrowing of the renal foramina due to [illegible]. Restrictions are listed as no use of right arm, no overhead work, and no pushing/carrying/lifting.
- Letters or notes from the appellant to the ministry dated April 19, April 30 and May 2, 2012. The gist of these letters or notes is that in order to qualify for the income assistance for which the appellant was approved on February 23, 2012, the appellant was required by the ministry to have the Medical Report – Employability form completed by a physician. The appellant had recently moved and physicians local to his new residence were reluctant to complete the form without having medical history records. Accordingly, the appellant had to incur travel costs for multiple return trips to his previous community to see his previous physician, attend medical tests arranged by this physician, and to attend a medical specialist referred by the physician. The appellant reported that he had been advised by ministry staff that these transportation costs would be compensated by the ministry. The appellant submitted travel receipts to the ministry as they were incurred but got no response from the ministry with respect to payment until he was advised on May 24, 2012 that his request did not satisfy the legislative criteria.
- Copies of the transportation receipts.

In his Request for Reconsideration received by the ministry on June 11, 2012 the appellant wrote that his physician would not complete the Medical Report – Employability until preliminary MRI, CAT scans, x-rays and other tests were done. The appellant had not been advised by the ministry until after the travel costs had been incurred that authorization for medical transportation costs requires preapproval on a form obtained from a physician's office. The appellant said that loss of the use of one arm was an urgent medical matter.

In its reconsideration decision the ministry denied the appellant's request on the grounds outlined above. In its reasons for decision the ministry acknowledged its error in misinforming the appellant, writing that "It is regrettable that you did not receive adequate information on your eligibility for medical transportation."

Prior to the appeal hearing, the appellant submitted supporting documentation including a list of the several medical appointments and medical tests that the appellant had attended in the period December 25, 2011 to April 17, 2012. The appellant's new physician in a nearby community has referred the appellant to a neurosurgeon in another community who will see the appellant on August 20, 2012. Also included in the appellant's pre-hearing submission were select pages from an application form that the appellant is having prepared with respect to designation as a person with disabilities so that he can be assessed for eligibility for disability assistance. This information confirms diagnoses of degenerative disk disease and arthritis – frozen right shoulder, and provides

detail about how the appellant's daily living activities are restricted by his impairment.

At the appeal hearing the appellant, through his advocate, largely reiterated the previous evidence that had been before the ministry but did provide more detail. The appellant had tried several physicians both in his new community and in nearby communities, but none of them would complete the Medical Report – Employability without access to the appellant's medical history records. The appellant was advised by the ministry to see his former physician in his former community, and that the transportation costs would be covered by the ministry. On questioning by the panel, the appellant's advocate said that the total transportation cost in question is approximately \$350.00, but reiterated that the appellant's income assistance is only \$610 monthly and he doesn't have funds for the travel or for medications. The advocate had advanced the travel funds to the appellant. On questioning by the ministry, the advocate said that when the appellant had seen his previous physician, he had advised the physician that he was living part-time in his former community and part-time in his new community. If he had told the physician that he was no longer resident in his former community the physician would not have agreed to see him. The ministry suggested that the appellant could have his prescription costs covered by Pharmacare. The advocate responded that the appellant is in the process of seeking coverage from Pharmacare, but he first has to try three different generic drugs before he can be covered for the costs of the proprietary drug which was prescribed for him. His trials on the generic drugs have not gone well.

The panel is of the view that the new information provided by the appellant both before the appeal hearing and during the appeal hearing provides more detail of the medical conditions that cause the appellant to be eligible for income assistance, and provides more detail about the medical transportation costs that are at issue. The panel admits this information as written and oral testimony in support of the information and records that were before the ministry at the time of reconsideration, in accordance with s. 22(4) of the *Employment and Assistance Act*.

The ministry generally relied on its reconsideration decision. The ministry told the panel and the appellant that if the appellant had advised his former doctor that he no longer lived locally, the appellant would have been eligible for the Travel Assistance Program – or TAPS - which is provided for BC residents by the Ministry of Health. On notice of the appellant's circumstances the physician would have provided the authorization form. This benefit, however, requires pre-approval by the government as there is no reimbursement for travel already taken.

On questioning by the appellant as to whether transportation costs can be covered on an emergency basis, the ministry replied that crisis supplements are available under the EAR but that one criterion that must be met is that the expense is "unexpected". The ministry said that medical appointments are not "unexpected" and so travel costs for them don't qualify for a crisis supplement.

The panel views the ministry's information on TAPS as providing more detail on the appellant's eligibility for medical travel assistance and accepts it as oral testimony in accordance with s. 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue on appeal is the reasonableness of the ministry's reconsideration decision wherein it decided that the appellant is not eligible for a medical transportation supplement. Specifically, the ministry found that the appellant did not meet the legislative criteria in s. 67(1)(a) of the EAR since neither he nor anyone in his family unit is a PPMB. The ministry also found that the appellant did not meet the criteria in s. 76 of the EAR since the ministry was not satisfied that the appellant faced a direct and imminent life threatening need.

The relevant legislation is as follows:

EAR

Persons who have persistent multiple barriers to employment

- 2 (1) To qualify as a person who has persistent multiple barriers to employment, a person must meet the requirements set out in
- (a) subsection (2), and
 - (b) subsection (3) or (4).
- (2) The person has been a recipient for at least 12 of the immediately preceding 15 calendar months of one or more of the following:
- (a) income assistance or hardship assistance under the Act;
 - (b) income assistance, hardship assistance or a youth allowance under a former Act;
 - (c) a disability allowance under the *Disability Benefits Program Act*;
 - (d) disability assistance or hardship assistance under the *Employment and Assistance for Persons with Disabilities Act*...

Crisis supplement

- 59 (1) The minister may provide a crisis supplement to or for a family unit that is eligible for income assistance or hardship assistance if
- (a) the family unit or a person in the family unit requires the supplement to meet an unexpected expense or obtain an item unexpectedly needed and is unable to meet the expense or obtain the item because there are no resources available to the family unit, and
 - (b) the minister considers that failure to meet the expense or obtain the item will result in
 - (i) imminent danger to the physical health of any person in the family unit, or
 - (ii) removal of a child under the *Child, Family and Community Service Act*.
- (2) A crisis supplement may be provided only for the calendar month in which the application or request for the supplement is made.
- (3) A crisis supplement may not be provided for the purpose of obtaining
- (a) a supplement described in Schedule C, or

(b) any other health care goods or services.

General health supplements

67 (1) Subject to subsection (1.1), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who

(a) is a recipient of income assistance under section 2 [*monthly support allowance*], 4 [*monthly shelter allowance*], 6 [*people receiving room and board*] or 9 [*people in emergency shelters and transition houses*] of Schedule A if

(i) any person in the family unit is a person who has persistent multiple barriers to employment, and

(ii) the recipient does not receive a federal spouse's allowance or guaranteed income supplement benefits.

Health supplement for persons facing direct and imminent life threatening health need

76 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

(a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,

(b) the health supplement is necessary to meet that need,

(c) the person's family unit is receiving premium assistance under the *Medicare Protection Act*, and

(d) the requirements specified in the following provisions of Schedule C, as applicable, are met:

(i) paragraph (a) or (f) of section (2) (1);

(ii) sections 3 to 3.11, other than paragraph (a) of section 3 (1).

Schedule C

General health supplements

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 67 [*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 appellant's position is that the ministry has put the appellant in a "Catch 22" situation. The ministry required the Medical Report – Employability form to be completed by a physician, but the appellant had to incur travel costs to find a physician who would complete the form. A ministry worker gave misleading and inadequate information about reimbursement of travel expenses, and has left the appellant feeling victimized by the system. The appellant has no other resources to pay for the travel costs and his frozen shoulder is an urgent medical matter.

The ministry's position is that the appellant does not satisfy the legislative criteria for reimbursement under the EAR. The appellant might be covered by TAPS funds for future travel as long as preauthorization is obtained, but it is not possible to be reimbursed for travel costs already incurred.

The panel has assessed the legislation in the context of the evidence. To be eligible for a general health supplement under s. 67 of the EAR, one must fit within one of the categories of eligible persons. The appellant is a recipient of income assistance as a monthly support allowance. To qualify for medical transportation costs as a general health supplement in accordance with s.67 and s. 2(1)(f) of Schedule C, the appellant or someone in his family unit must be designated as a PPMB under s. 2 of the EAR. There is no evidence before the panel to suggest that the appellant is designated as a PPMB or that he has anyone else in his family unit that is a PPMB. The panel concludes that the ministry reasonably determined that the appellant did not satisfy the requisite legislative criteria.

In order to be eligible under s. 76 of the EAR, the ministry must be satisfied that the appellant incurred the costs in response to an imminent, life threatening need. While the panel acknowledges that the appellant's medical conditions are serious, there is no evidence before the panel to suggest that these medical conditions directly and imminently threaten or threatened his life. The panel concludes that the ministry reasonably determined that the appellant did not satisfy the legislative criteria under s. 76.

At the hearing, the issue was raised as to whether the appellant's travel costs would qualify for a crisis supplement under EAR s. 59. However, s. 59(3) is clear that a crisis supplement may not be provided for a supplement described in Schedule C (which includes medical transportation costs, in s. 2(1)(f)) or for any other health care goods or services.

The panel is sympathetic to the circumstances of the appellant. The ministry provided the appellant with misleading information about his eligibility for reimbursement under the EAR, and failed to

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provide him with information that may have allowed him to qualify for some reimbursement under the TAPS program. Unfortunately, implementation of the TAPS program rests with the Ministry of Health and is not within the jurisdiction of the panel. With respect to medical travel cost reimbursement under the EAR, the appellant does not meet the legislative criteria. The panel is bound to apply the legislation and finds that the ministry's reconsideration decision was a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms the ministry's decision.