

## PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development dated 09 May 2012 which held that the appellant was not eligible for a medical transportation supplement under section 2(1)(f) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation. The appellant had requested the supplement to reimburse the cost of non-local travel to attend a medical appointment on 08 March 2012. The ministry determined that the legislative criterion under section 2(1)(f)(vi) of Schedule C, that there were no resources available to cover the cost, had not been met. Further, the ministry held that under ministry policy, preapproval is required unless it has been established that the medical appointment was due to a life-threatening emergency situation in accordance with section 69 of the Regulation. As no preapproval had been granted and no life-threatening emergency situation established, the ministry denied the appellant's request on these policy grounds as well on the legislative grounds referred to above.

## PART D – Relevant Legislation

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

## PART E – Summary of Facts

The evidence before the ministry at reconsideration consisted of the following:

- A letter from the Diagnostic Imaging Department of a health authority regional hospital certifying that the appellant attended an appointment that day, 08 March 2012, for the purposes of ultrasound and mammography exams.
- A Request for Non-local Medical Transportation Assistance signed by the appellant on 09 March 2012. The appellant indicates she is able to contribute to the cost of the transportation in the amount of \$2.00 for parking. She indicates she has considered options such as family/friends and voluntary agencies. She indicates her mode of transportation required is by car (\$.20/km) No estimated total cost is given. She indicates she requires ongoing medical treatments – ultrasounds every 6 months for 2 years.
- An undated letter from the ministry to the appellant noting that she has indicated a medical need for an additional benefit and advising her that the ministry requires information from her physician regarding this need, with the physician to complete the form in the space indicated. The form is completed with reason for travel given as diagnostic mammography, no specialist available locally, and the date of travel and appointment as 08 March 2012. There is no date, physician's name or signature in the space provided. The letter was stamped returned to the ministry on 20 March 2012.
- The appellant's Request for Reconsideration, dated 30 April 2012. Under Reasons, the appellant writes:

"I am requesting your reconsideration for my trip to [hospital] on Mar. 03, 2012. I had an appointment originally on Feb. 15 2012. My car caught fire when I got into [city en route]. I called when I got home to say I didn't make it to [hospital]. I was again trying to make the two appointments I had on February 15 to book for the same day. I was not able to do so. My GP told me that the mammography appointment was most important and to go to it first. That was only the day before my appointment. If I had more time I would have called the office to inform of new time and day. My energy levels have been severely compromised from my having been near death pneumonia back in Nov. – Dec. 2011. I've been told it will take a long time to get back to normal. I understand the rules being important. But to cause me more distress on top of what I have been through is not what the rules were designed for. If I had been able to cope with all the attempts to get the appointments made (I kept leaving messages at mammography and respirology) I did not change the mammography appointment, while trying to reach respirology. Just making calls, seeing the doctor, physio, etc. was exhausting."

In her Notice of Appeal, the appellant writes:

"I had informed the ministry that I would have to make another appointment when I was unable to attend the appointment on February 15, 2012. I did not have a date yet. I was not informed that I had available resources. If the ministry is referring to the \$783.04 that I got from ICBC. I submitted a receipt from [her mother] to whom I sent the entire amount to pay to replace my vehicle which was written off by ICBC."

The appellant is in receipt of disability assistance.

At the hearing, the appellant noted an error in the Reconsideration Decision, which shows she has one dependent child. Actually, he is in his mid-twenties and is no longer on her file.

The appellant stated that she did not make it clear in her Request for Reconsideration or her Notice of Appeal that in fact she had sought and obtained preapproval for the 15 February 2012 trip, interrupted by the car fire. She stated that the ministry had told her there would be a cheque waiting for her at the ministry office in the destination city. She phoned the ministry to advise that she had had to cancel the exam appointment, and would be making a new appointment.

The ministry confirmed that the appellant had obtained preapproval for the 15 February trip -- she had made the request on 10 February, was asked to provide verification from her physician, and provided a note from her physician on 14 February. A cheque for \$56 was issued, awaiting pickup at the other office (126 km one-way, x2 round-trip, @\$0.20/km plus parking). The cheque was subsequently cancelled when the appellant reported she had the car fire en-route.

The appellant explained that after her car was destroyed by fire, her mother bought her a replacement car. In return, the appellant immediately signed over the ICBC cheque to her mother. She reported this transaction to the ministry, so as not to have the ICBC amount deducted from the next month's disability assistance. The ministry confirmed that it had a record of this arrangement.

The ministry advised the panel that the appellant also sought preapproval for and received a medical travel supplement to attend the same hospital for similar purposes on 26 March 2012. In answer to a question, the ministry stated that "resources available" were not an issue for the preapproval for the cancelled 15 February or the 26 March 2012 trips.

The panel finds that the new information provided by the appellant in her Notice of Appeal and at the hearing and by the ministry at the hearing is in support of the information and records that were before the ministry at the time of reconsideration. The information concerning the disposition of the ICBC cheque and the preapprovals of the cancelled 15 February and 26 March trips are contained in ministry files referred to at the hearing by the ministry representative. The panel therefore admits the new information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

The panel finds as fact that the 08 March trip was for essentially the same purpose as the cancelled 15 February appointment.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonably determined that appellant was not eligible for a medical transportation supplement under section 2(1)(f) of Schedule C of the EAPWDR to reimburse the cost of non-local travel to attend a medical appointment on 08 March 2012. The ministry determined that the legislative criterion under section 2(1)(f)(vi) of Schedule C, that there were no resources available to cover the cost, had not been met. A further issue is whether the ministry reasonably applied ministry policy that preapproval for such travel is required unless it has been established that the medical appointment was due to a life-threatening emergency situation.

The applicable legislation for this type of supplement is set out in Schedule C of the EAPWDR:

### 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 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 legislative basis for the ministry's preapproval policy is found in the EAPWDR:

### Effective date of eligibility

23 (2) 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.

### Resources available

The position of the ministry, as set out in the Reconsideration Decision, is that "it finds that [the appellant] had available resources to cover the cost of the appointment and therefore the legislative criteria above has not been met. "

The position of the appellant is that "resources available "only became an issue in the Reconsideration Decision: it was not included as a reason for the original denial for the supplement for the 08 March 2012 travel. She holds that, living on disability assistance, she has a tight budget, that when she took the trip on 08 March 2012 she expected to be reimbursed as she had already obtained approval for the cancelled 15 February trip to attend the hospital for the same exams, and

that without reimbursement the cost of gas used on the trip meant that she had to forego other budgeted expenses.

The panel notes that in the ministry in its Reconsideration Decision did not provide any explanation for how it reached its determination that the EAPWDR Schedule C section 2(1)(f)(vi) criterion had not been met. At the hearing the ministry representative stated that she was not sure about the reasoning behind this determination. She stated that it was possibly because of the ICBC cheque or the fact that the appellant was able to make the trip and that demonstrated she had resources available. The panel further notes that the appellant was able to satisfy the ministry that she met this criterion when she sought preapproval for the cancelled 15 February 2012 trip and for the supplement for her 26 March 2012 trip. The panel finds no mention in the record that the appellant's financial circumstances (except for the gift from her mother of a replacement car) changed over the intervening period. For these reasons and bearing in mind that the appellant manages her life on a tight disability assistance budget, the panel finds that the ministry was not reasonable in determining that the appellant did not meet this criterion.

#### Preapproval

The position of the ministry is that "as per ministry policy preapproval is required to ensure all legislative criteria has been satisfied .... The ministry notes that [the appellant] did not obtain prior approval from the ministry before attending your medical appointment..."

The position of the appellant is that the 08 march 2012 trip was for essentially the same purpose as the 15 February 2012 appointment, cancelled due to the car fire en route, and for which she had sought and obtained prior approval.

The panel notes that section 23(2) of the EAPWDR provides that an applicant is not eligible for a supplement before the minister determines that the person is eligible for it. The panel finds that the ministry's policy for preapproval for this type of supplement is consistent with this section of the legislation. The panel notes that the appeal record contains no mention of the preapproval sought and granted for the cancelled 15 February 2012 appointment. The panel finds that, as the 08 March 2012 trip at issue was for essentially the same purpose as the preapproved but cancelled 15 February 2012 trip, the ministry was not reasonable in not considering the earlier preapproval and not reasonable in its determination that the appellant did not meet the requirements of section 23(2) of the EAPWDR.

Accordingly, the panel finds that the ministry determination that the appellant was not eligible for a medical travel supplement for her 08 March 2012 trip to the hospital was not reasonably supported by the evidence. The panel therefore rescinds the ministry's decision in favour of the appellant.