

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated October 4, 2012 that held that the appellant was not eligible for a medical transportation supplement as all of the criteria of the Employment and Assistance Regulation (EAR), were not met. Specifically, the ministry determined that the criteria of Section 2(f), of Schedule C was not established because the appellant's request to attend autism therapy for her son with psychologists, a behavior consultant, a speech and language pathologist and an occupational therapist does not meet the definition of "specialist" pursuant to the legislation and the appellant's request does not fit the eligible categories for medical transportation; to and from an office, in a local area, of a medical practitioner or nurse practitioner, the nearest suitable general hospital or rehabilitation hospital or the nearest suitable hospital as defined in the Hospital Insurance Act.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR), Section 67 and Sections 1 and 2(f) of Schedule C.

PART E – Summary of Facts

The evidence before the ministry at reconsideration was comprised of:

- (a) a joint letter dated August 20, 2012 from an occupational therapist and a certified speech language pathologist regarding an autism program;
- (b) a medical report for the appellant's child dated May 14, 2012;
- (c) a clinical diagnostic assessment summary for the appellant's child dated May 15, 2012 from a registered psychologist;
- (d) a copy of an autism diagnostic team summary and diagnosis for the appellant's child dated September 26, 2012; and (e) the Request for Reconsideration dated October 2, 2012 which included a 3-page letter from the appellant.

In the joint letter from the occupational therapist and a certified speech language pathologist, it is indicated that the appellant's son will be attending an intensive centre-based program specifically designed for children with Autism Spectrum Disorders (ASD) beginning September 4, 2012. The program offers 3 hour sessions/week of behavioral intervention as well as speech and occupational therapy consultation services. It adds that this program is based on evidence that early intensive behavioral intervention between 2-6 years demonstrates the best outcomes.

In the medical report for the appellant's child, under care required, the pediatrician reports that the appellant's son has ASD which is a chronic condition that will last more than 2 years. The medical practitioner indicates that the appellant's child will need constant care and supervision from his mother and will see an early intervention team at the child and family resource centre which includes speech and language pathology.

In the clinical diagnostic assessment summary for the appellant's child from the registered psychologist; it provides the reason for the referral and presenting concerns, personal background information about the family including developmental and medical history, tests administered, test results, an autism-related developmental profile/symptom review (ADI-R), autism diagnostic observation schedule, summary and impressions, diagnosis of autism and recommendations.

In the copy of an autism diagnostic team (ADT) summary and diagnosis for the appellant's child it indicates a diagnosis of autism and recommendations as follows: contact MCFD Child and Youth with Special Needs, continue with early intervention therapy, contact a pediatrician to review results and contact a behavioral consultant. This document was signed by 2 psychologists and an ADT clinic coordinator.

In the Request for Reconsideration, the appellant reports that her son was diagnosed with Autism in May 2012 and that the family is eligible for the disability tax credit. She states that her son is receiving 9 hours/week of intensive behavior intervention therapy at a local Children's Therapy and Family Resource Centre, 3 times per week for 3 hour sessions. The appellant also provides her son many more hours of therapy at their home. The appellant's son also attends a Strong Start, a school based program, 1 or 2 days per week in a different community. The appellant describes her traveling distance as; 92 km from her home to the Children's Therapy and Family Resource Centre, 184 km daily, 552 km weekly and over 2200km monthly. She indicates that the cost of travel for the much needed therapy for her son will cause financial hardship for her family. The appellant states that this adds financial stress to the daily challenges and medical concerns that the family is already facing and she requests funding to help cover the cost of the extra travel.

The appellant provides the following information regarding the condition of her son:

- due to severe speech delay and physical behaviors, the appellant sought help in March 2011, when her son was placed on a wait list for speech therapy and has since been visited by a speech therapist every few months;
- daycare workers expressed concerns about the appellant's son's behaviors in December 2011, after

- which he began to see an occupational therapist;
- the appellant's pediatrician referred her son to the BC Autism Assessment Network, which performs assessments for ASD in September , 2011;
- as a result, the appellant's son was assessed and diagnosed with Autism by a registered psychologist and a speech and language pathologist in May 2012;
- recommendations were then made by the assessors to continue with early intervention therapy, including speech, occupational and physical therapy by a behavioral consultant;
- the appellant's son started therapy on September 4, 2012.

The appellant states that although her son does not face a life threatening need for medical transportation, not receiving therapy will threaten his possibility of leading a normal life and his ability to function outside the home. The appellant further describes her son as having little communication, few words, no gestures (other than with her), having inappropriate fixations, having no concept of any type of danger (cars, animals, fire, knives, heights), having no understanding of social skills, will put everything in his mouth, is large for his age, requires extensive muscle work to meet his stimulation needs, cannot attend daycare or preschool or be anywhere without one on one supervision and support, is unlikely to be ready for school in 3 years without outside professional help, and will likely need home schooling. The appellant states that if she is the sole caregiver, sole therapist and home school teacher for her son; she will not be able to work and will remain on assistance for an undetermined amount of time.

The appellant argues that numerous specialists in the field of ASD have recommended this therapy for her son and her pediatrician had initiated their course towards autism intervention and is involved in following her son's therapy and progress. The appellant adds that except for the pediatrician, all the people involved in her son's therapy are not medical doctors but are all registered professionals and specialists in their field. The appellant states that her son needs this therapy to live and that the family requires financial support to make it possible.

On appeal, the appellant submits that her son requires this therapy for his physical and mental well being and that autism is not something that can be treated at a hospital and that her son needs the team of professionals at the autism program. She adds that that travel to this therapy is a huge financial burden on their family.

At the hearing, the appellant provided a letter of support from the Executive Director of the Children's Therapy and Family Resource Centre dated October 31, 2012. The letter indicates that it is imperative that the appellant's son receive therapy at this stage in his life as it is proven that intensive behavioral therapy between the ages of 2-6 years demonstrates the best outcomes. The executive director reports that that they have already seen great progress by the appellant's son. The executive director describes the specialized services offered in the program and advises that participation will help build supports for the appellant's family such as preparing the appellant's son for challenges he will face during his school career, equipping his family to help him through those challenges, so that he can be successful in all future aspects in his life. The executive director adds that the alternative to this program is private in-home therapy and because the family resides in a remote location, the service would be difficult to implement and the appellant's son would not receive the additional benefits that group therapy provides.

The appellant testified that all the specialists her son uses for his autism therapy are paid for by the ministry who provides up to \$22,000 annually for these services. Additionally, she states that the ministry may provide funding for special tools and/or equipment that is needed, however; there is no financial compensation available for transportation expenses. The appellant argues that as the ministry pays for the therapy provided by psychologists, a behavior consultant, a speech and language pathologist and occupational therapists; it is unreasonable to accept that they are not recognized as specialists under the ministry's definition.

The panel admitted the appellant's testimony as well as the support letter from the Executive Director of the Children's Therapy and Family Resource Centre dated October 31, 2012, as evidence under section 22(4) of

APPEAL #

the Employment and Assistance Act as they were found to be directly in support of the information and records before the ministry at reconsideration.

The ministry stood by the reconsideration decision.

PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's reconsideration decision which determined that the appellant was not eligible for a for a medical transportation supplement as all of the criteria of the Employment and Assistance Regulation were not met, is reasonably supported by the evidence or whether it is a reasonable application of the applicable enactment in the circumstances of the appellant. Specifically, the ministry determined that the criteria of Section 2(f), of Schedule C was not established because the appellant's request to attend autism therapy for her son with psychologists, a behavior consultant, a speech and language pathologist and an occupational therapist does not meet the definition of "specialist" pursuant to the legislation and that the appellant's request does not fit the eligible categories for medical transportation; to and from an office, in a local area, of a medical practitioner or nurse practitioner, the nearest suitable general hospital or rehabilitation hospital or the nearest suitable hospital as defined in the Hospital Insurance Act.

The relevant legislation, Section 67 and Section 1 and 2 of Schedule C of the EAR provides as follows.

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 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.
- (iii) Repealed. [B.C. Reg. 57/2007, s. 1.]

(b) is a recipient of income assistance under section 8 [*people receiving special care*] of Schedule A,

(c) is a dependant of a person referred to in

- (i) paragraph (b),
- (ii) paragraph (f), if the dependant was a dependant of the person on the day the person reached 65 years of age and remains a dependant of that person,
- (iii) paragraph (g), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of a payment made to the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or
- (iv) paragraph (h), if the dependant was a dependant of the person on the day the person's family unit ceased to be eligible for income assistance as a result of an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act* made to the person or another member of the person's family unit, and

(A) if the dependant is under age 65, the family unit is receiving premium assistance under the *Medicare Protection Act*, or

(B) if the dependant is aged 65 or more, any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement,

(d) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

(e) is a dependent child of a recipient of income assistance or hardship assistance.

General Health Supplements, Schedule C

Definitions

1 In this Schedule

"specialist" means a medical practitioner recognized as a specialist in a field of medicine or surgery in accordance with the bylaws made by the board for the College of Physicians and Surgeons of British Columbia under section 19 (1) (k.3) and (k.4) of the *Health Professions Act*.

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.
- (g) Repealed. [B.C. Reg. 75/2008, s. (a).]

It is the appellant's position that while the ministry pays for the autism therapy which was recommended by the pediatrician for her son and provided by psychologists, a behavior consultant, a speech and language pathologist and occupational therapists; it is unreasonable to accept that these registered professionals in their individual fields are not recognized as specialists under the ministry's definition. The appellant argues that her son's necessary therapy requires her to travel excessively and the cost of travel will cause an extreme financial hardship for her family. Additionally, the appellant argues that not receiving this therapy will definitely threaten her son's life, the possibility of his leading a "normal" life and his ability to function outside their home. The appellant submits that her son needs therapy for his physical and mental health and well being and autism is

not something that can be treated at a hospital.

It is the ministry's position that the appellant was not eligible for medical transportation to attend autism therapy visits with psychologists, a behavior consultant, a speech and language pathologist and occupational therapists as they do not meet the ministry's definition of specialists. "Although these types of professionals may be considered specialists in their practice, they cannot be registered with the College of Physicians and Surgeons of BC as they are not medical practitioners and therefore, are not recognized as specialists in a field of medicine or surgery. These services are also not eligible benefits under the Medicare Protection Act."

Additionally, the ministry concludes that the appellant's request does not fit the eligible categories for medical transportation; to and from an office, in a local area, of a medical practitioner or nurse practitioner, the nearest suitable general hospital or rehabilitation hospital or the nearest suitable hospital as defined in the Hospital Insurance Act.

Regarding a medical transportation supplement, the panel notes that in the Child's Medical Report, the appellant's medical practitioner reports that Autistic Spectrum Disorder is the primary condition of the appellant's son and that speech delay is a secondary condition. Under care required, the medical practitioner indicates that the appellant's son will need constant care and supervision from his mother and will see an early intervention team for speech and language pathology at the Children's Therapy and Family Resource Centre.

The panel finds that while the appellant's son has been referred to a specialist in speech and language pathology by a local medical practitioner and that the office of the nearest available specialist for speech and language pathology is at the Children's Therapy and Family Resource Centre; the specialists to include; psychologists, a behavior consultant, a speech and language pathologist and occupational therapists that the appellant's son sees for therapy cannot be registered with the College of Physicians and Surgeons of BC as they are not medical practitioners and therefore, are not recognized as specialists in a field of medicine or surgery. Therefore, the panel finds that the ministry reasonably determined that the definition of "specialist" under Section 1, of Schedule C was not established.

The panel also notes that a medical transportation supplement may be given for the least expensive mode of transportation to and from: an office, in a local area of a medical practitioner or nurse practitioner; 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 area of a medical practitioner or nurse practitioner; the nearest suitable general hospital or rehabilitation hospital as defined in the Hospital Insurance Act or; the nearest suitable hospital as defined in the Hospital Insurance Act, provided that the transportation is to enable the person to receive a benefit under the Medicare protection Act or a general service under the in the Hospital Insurance Act. In view of the above, the panel finds that the appellant's request for a medical transportation supplement pertains to the cost of travel to provide the appellant's son with the autism therapy he requires and not for the purposes for which a medical transportation supplement may be given and therefore, the panel finds that the ministry reasonably determined that the legislated criteria as per Section 2(f), of Schedule C of the EAR were not established.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and confirms the decision.