

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision dated March 19, 2013 which denied the appellant's request for a supplement to cover the cost of transportation to an office, in the local area, of a medical practitioner. The ministry found that the request for a health supplement does not meet the legislated requirement of Schedule C, Section 2(1)(f)(vi) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) as there are less expensive appropriate modes of transportation and it has not been shown that there are no resources available to the appellant to cover the cost.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 62, and Schedule C, Section 2(1)(f)

PART E – Summary of Facts

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Print out from the ministry website setting out the ministry policy with respect to Medical Transportation;
- 2) Note from a medical practitioner's office indicating an appointment for the appellant on February 4, 2013;
- 3) Print out from a website with physician search results for the medical practitioner with whom the appellant had an appointment, and indicating that the medical practitioner has a general family practice; and,
- 4) Request for Reconsideration- Reasons.

In his Notice of Appeal, the appellant wrote that he disagrees with the ministry's reconsideration decision because the ministry based part of it on the ministry policy and stated that the trip is not seen as essential. Under the ministry's own definition of "essential medical treatment," it means treatment provided under the Medical Services Plan, and this appointment was. He could not have booked the appointment on another day since it is the doctor's office that books the date and time and he does not have the authority to tell them they must see me on what dates. The appellant wrote that he does not have insurance on a vehicle in his name or in running order so paying kilometers for him to drive is not an option for him. This is not an appropriate mode of transportation since he would not have been able to operate a vehicle on that day.

The appellant wrote that the regional bus is not an option since it is for "out of area" clients to use for out-of-town appointments and not for local appointments. The bus runs by his community but his community is not a stop on the route and the bus only goes to major facilities and not to private doctor offices. To use the service, one must have a statement signed by the medical practitioner visited and his doctor knows that the appellant does not qualify for it and would not sign the form if the appellant asked. The appellant wrote that he will not lie or mislead to try to use the bus system. He cannot compel the regional bus to stop in his community or to take him to his doctor's office. He looked fully into the bus as an option to use. The appellant wrote that the ministry fully agrees that the appellant is in the local area of his doctor's office. The appellant wrote that other trips to the doctor have been approved by the ministry with the same circumstances. None of the locals in the city would take the bus or be asked by the ministry to take it.

The appellant wrote that he is a diabetic and has been suffering from a severe toe infection as well as having severe complications to his feet because of diabetes. He is limited on his good days for walking short distances. On the day of his appointment, he was on crutches and it would have been impossible for him to take the bus as the ministry suggested. He cannot walk and jump on different buses trying to connect to the location of his medical appointment. He cannot plan his illnesses or his medical appointments and locations around a bus schedule.

In his Request for Reconsideration, the appellant wrote that his appointment was not at a walk-in clinic, but was at a doctor's office. The confirmation of attending the appointment shows the doctor's office address. The appellant acknowledged that his doctor is not a specialist but is the appellant's medical practitioner. The appellant wrote that the Regulation and the Act must be followed and the ministry policy is not law. The bus was not an option for this appointment. The appellant wrote that Section 2(1)(f) of Schedule C of the EAPWDR does not state that routine or follow-up visits to a general practitioner are not eligible for medical transportation assistance, and the ministry must be referring to its policy. The appellant wrote that he lives more than 50 kilometers from his doctor's office and it costs him 10 times more than the average person within the city to travel to his appointment and this is the nearest office. He does not have extra income and cannot afford the cost for his essential medical appointments out of his income. His neighbour paid for the cost and now he owes the debt back to her. The appellant wrote that he will not give permission to the ministry to speak with his doctor since this is not relevant and this information is protected and private.

At the hearing, the appellant stated that he was surprised that his original Request for the medical transportation supplement was not included with the ministry's materials. The appellant stated that he attached a copy of the regional bus policy for local residents and the ministry's procedures for requesting a

medical transportation supplement to his Request. Part of the ministry procedure is for the client to explore all possible resources and options prior to requesting a supplement from the ministry. The appellant stated that he did explore all of the alternatives and he looked to the ministry as a last resort. The appellant stated that he sometimes catches a lift into the city with one of his friends, neighbours or family members, when he can afford to pay \$20 towards gas money. A ride was not available for him to attend the February 4, 2013 appointment with his medical practitioner. The appellant explained that even though he lives more than 50 kilometers from the nearest city, he is still considered in the local area because he lives within the regional area. The appellant stated that there are less than 200 people in his community and there is no public city bus that travels to their area. The appellant stated that the ministry procedure provides for the cost of a taxi for local transportation. The appellant stated that in his original Request submitted on February 5, 2013 he set out the estimate from the cab company.

The appellant stated that the regional bus is a private bus operated by the ministry of health to transport those in smaller centers in the northern region of the province to the bigger centers for medical appointments, and it is not a service provided for those considered 'local' to a bigger center. The appellant stated that the regional bus runs on Mondays and Wednesdays and does not stop in his community. The appellant stated that he spoke to a representative from the regional bus who told him that there are no exceptions to the policy of only providing service to those who are not considered local to a major center. The procedure is for the medical professional to sign and date a confirmation of the need for the service and this is to be provided to the bus driver. The appellant stated that even if he would be able to talk the regional bus into stopping in his community, his doctor has said he would not sign a confirmation for the appellant since he is local and it would, therefore, involve a misuse of the service. The appellant stated that the regional bus drives by his community approximately 3/4 of a mile from where he lives. It also drops patients off at the hospital and does not take them directly to the medical professionals' office.

The appellant stated that on February 4, 2013, he was not capable of getting himself to a pick-up point for the regional bus, if he could get the bus to stop in his community, and then taking a city bus from the hospital to his doctor's office. The appellant stated that he is diabetic and was using crutches on February 4, 2013 due to an infection in his toe which has not healed to date. The appellant stated that the taxi company requires security to travel the distance to his community, and on February 4, 2013 his neighbour provided her credit card to secure a taxi for him. He took a taxi from his home to his doctor's office and returned and he still owes his neighbour \$268 for the charge as he is not able to pay for this from his regular assistance. The appellant stated that the ministry used to provide an amount for the kilometers that he traveled for medical appointments but this was discontinued in December 2012. In January 2013, the ministry started paying an ongoing transportation supplement. The appellant stated that he usually tries to give the ministry as much notice as possible if he has a need for medical transportation, if he has an appointment booked in advance, but sometimes he requires medical help on an unpredictable basis and he has to put in a request after the fact.

The appellant stated that when he had the Monday, February 4, 2013 appointment, it was a bad week and he ended up having 5 medical trips in a 7-day period. The appellant explained that his feet are numb as a result of the damage to his nerves from diabetes and he had unknowingly hurt his foot and it had become infected. When he called the nurse hotline, and described his symptoms, he was told to get emergency medical attention. On January 31, 2013, he went by ambulance to the hospital. He had to have several tests done and was given some medication, and he was told that he could be facing amputation of part of his foot if it did not improve. On Saturday, February 2, 2013 he went back to a walk-in clinic to see a doctor because the infection was getting worse. The doctor he saw on Saturday told him to come back and see him on Monday. He also had to go for appointments on February 5th and 7th for further lab work, for blood tests, and to get the results.

The ministry relied on its reconsideration decision which included that, as a recipient of disability assistance, the appellant is eligible to receive health supplements. The appellant requested assistance with return

transportation from his community to the nearest city for a medical appointment on February 4, 2013. The appellant provided verification that he met with a medical practitioner on that date. The appellant was provided with assistance for two trips in February 2013. At the hearing, the ministry clarified that on January 22, 2013 the appellant was approved for an ongoing supplement of \$64 to cover the cost of 2 round-trips at \$20 each on the regional bus plus \$12 for incidentals (e.g. meals or taxis in the city) for each trip per month. The ministry stated that this supplement would have been available to the appellant on February 4, 2013 to pay for the regional bus and a city bus or taxi ride from the hospital to his doctor's office. The ministry stated that it is a 2-minute taxi ride from the hospital, which is a stop for the regional bus, to the office for the appellant's doctor. The ministry stated that she spoke to a representative from the regional bus who told her that an exception can be made to the policy and the bus will stop in the appellant's community, if a request is made in advance. The ministry stated that the policy for the regional bus requires that the appointment is to see a medical practitioner and not necessarily a specialist.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's decision, which denied the appellant's request for a supplement to cover the cost of transportation to an office, in the local area, of a medical practitioner as the request for a health supplement does not meet the legislated requirement of Schedule C, Section 2(1)(f)(vi) of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), was a reasonable application of the applicable legislation in the circumstances of the appellant, or was reasonably supported by the evidence.

Under Section 62 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the applicant must be a recipient of disability assistance, be a person with disabilities, or be a dependent of a person with disabilities. If that condition is met, Schedule C of the EAPWDR specifies additional criteria that the person's family unit must meet in order to qualify for specified general health supplements.

In this case, the requirements of Schedule C, Section 2(1)(f), which apply to transportation costs, are at issue, as follows:

(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 appellant's position is that he explored all of the alternatives for transportation to his appointment on February 4, 2013 and that he looked to the ministry as a last resort. The appellant argued that a ride was not available from family or friends, he could not operate a vehicle himself that day, there is no public bus service to his small community which is more than 50 kilometers from the city, and the regional bus is not an option for him. The appellant argued that the regional bus is not an option because he resides within the area of the city, his doctor has said he will not sign the required confirmation for the service, the bus does not stop in his community, and he was not sufficiently mobile on that day to get to the bus route or to take a bus in the city from the regional bus stop. The appellant argued that it costs him 10 times more than the average person residing within the city to travel to his appointment by taxi and he cannot afford the cost for his essential medical appointments out of his income. His neighbour paid for the cost of \$268 for a round-trip taxi ride and he still owes that amount. The appellant also argued that the ministry requirement that the appointment must be for 'essential medical treatment' is included in the ministry policy and is not set out as a criteria in the legislation.

The ministry's position is that the appellant, as a recipient of disability assistance, is eligible to receive health

supplements under Section 62 of the EAPWDR, but Section 2 of Schedule C states that the ministry 'may' provide assistance which allows some discretion in determining how the medical transportation budget is utilized. The ministry argued that the appellant's request for a supplement to cover the cost of transportation in the local area for an appointment with a medical practitioner does not meet the requirement specified in Schedule C, Section 2(1)(f)(vi) of the EAPWDR. In particular, the section requires that there are no resources available to the person's family unit to cover the cost. The ministry argued that the appellant had other resources to travel to the city by using the regional bus. The ministry argued that the regional bus travels through the appellant's community twice a week for \$10 per trip for passengers with confirmed medical appointments, and returns later the same day. The ministry argued that the regional bus will stop in the appellant's community, as an exception to its regular policy, if there is a request made in advance for the service. The ministry argued that if the regional bus does not stop within walking distance of the doctor's office, the appellant could access BC Transit. The ministry argued that mileage is calculated based on \$.20 per kilometer and that the cost for a return trip is \$30. The ministry argued that the February 4, 2013 appointment was not essential and it could have been accommodated by arranging the appointment for a time that coincides with the regional bus trips twice a week.

Although the ministry 'may' pay for the health supplements listed in Section 2(1) of Schedule C of the EAPWDR, the panel finds that when that discretion is exercised in favour of paying for the health supplement of medical transportation in Section 2(1)(f), the ministry must make decisions on individual requests based on the criteria set out in the section and those decisions must be reasonably supported by the evidence or a reasonable application of the applicable enactment in the person's circumstances. Here, the appellant was required to travel more than 50 kilometers from his community to his doctor's office in the nearest city on February 4, 2013, and the appellant requested reimbursement of the resulting \$268 round-trip taxi cost from the ministry. The ministry acknowledged that the transportation was to an office in the local area of a medical practitioner and the medical practitioner confirmed the appointment which was to enable the appellant to receive a benefit under the *Medicare Protection Act*. Although the ministry argued that the appointment was not 'essential medical treatment' according to the ministry policy, the panel finds that this is not a requirement set out in the legislation beyond the requirement in Section 2(1)(f)(v) which the ministry found had been satisfied.

The ministry did not claim that the appellant has the resources to pay the amount requested from his monthly disability assistance or other income, or dispute that the appellant had to borrow the full amount from his neighbour and that he still owes this debt. Rather, the ministry argued that the cost for the transportation should have been lower, in effect that the taxi ride was not the least expensive appropriate mode of transportation. The ministry pointed out that the regional bus was available for the cost of approximately \$20 round trip and the appellant could have driven or found a ride and claimed mileage at \$.20 per kilometer, for a total cost of \$30. However, the appellant's original Request was not available and the ministry did not stipulate the amount that the appellant requested for the cost of transportation as a basis of comparison with any other available options in order to determine which was the 'least expensive.'

As well, the ministry acknowledged that in order to take the regional bus, the appellant would be required to make a request in advance seeking an exception to the usual policy of providing service only to those residing outside the local area, and to arrange for the bus to stop in the appellant's community. The panel finds that while an exception may be possible with an advance request made to regional bus, there was no evidence provided from the regional bus regarding how much notice is required and that an exception would have been made in the appellant's circumstances on February 4, 2013 when the appellant was only advised of the date of the appointment on Saturday, February 2, 2013.

The appellant's mobility was significantly restricted on February 4, 2013 and the panel finds that this limited his options for 'appropriate' transportation on this particular day. The appellant described emergency care of his diabetic foot on January 31, 2013; he was given medications and was walking with crutches and his doctor told

him he was to return on February 4, 2013 for further treatment and testing which continued on February 5th and 7th. The appellant pointed out he could not walk to the regional bus route which is 3/4 of a mile from his residence and he was not capable of driving a vehicle if one were available to him. The appellant stated that he had already canvassed his friends and family for a ride to the city on February 4, 2013 and that was not an available option. The panel finds that the ministry's conclusion, that the appellant's request did not meet the requirements of Section 2(1)(f)(vi) of Schedule C of the EAPWDR as there were less expensive appropriate modes of transportation available and it has not been shown that there are no resources available to the appellant to cover the cost, was not reasonable.

The panel finds that the ministry's decision was not reasonably supported by the evidence and rescinds the decision. Therefore, the appellant is successful on his appeal.