APPEAL #

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of June 4, 2013, which found that the appellant was entitled to a general health supplement for medical transportation in an amount less than that claimed by the appellant. In particular, the ministry found that the transportation used by the appellant was not the least expensive appropriate mode of transportation as required by s. 2(1)(f) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), s. 62
EAPWDR, Schedule C, s. 2(1)(f)

PART E – Summary of Facts

This appeal is one of 4 heard by the panel under the provisions for consolidation of appeals set out in s. 86(e) of the Employment and Assistance Regulation. Separate reasons for decision have been issued for each appeal.

The information before the ministry at the time of reconsideration included the appellant's written submission dated April 29, 2013, including various attachments, some of which relate to a bus service that provides transportation for eligible persons requiring medical services (the Medical Bus Service).

The appellant is designated as a person with disabilities (PWD) and is a recipient of disability assistance. He lives in a rural area (Community A) located 76 km from the nearest large community (Community B) where medical services appropriate for his medical condition are available.

On Thursday, February 14, 2013 the appellant took a taxi to attend a medical appointment in Community B for a foot infection secondary to diabetes. He did not take the Medical Bus Service which the ministry had previously advised him was the least expensive appropriate mode of transportation. The appellant said that the $268 cost of the taxi was paid for with a credit card by his friend and neighbour, and that he owes this debt to her. He said that the roads were icy, he was on crutches, and he could not walk the distance ("close to a mile") between his residence and the store where the ministry says the Medical Bus Service stops in his community. The Medical Bus Service does not provide door-to-door service.

According to the appellant, he is not eligible for the Medical Bus Service in any event. In support of this assertion, the appellant pointed out that the web-site for the Medical Bus Service indicates it is for "out-of-town" medical appointments. The appellant stated that Community B is within his "local" area, since he lives in a rural area in the vicinity of Community B, which is the nearest centre for all services and is the nearest "home" community. The appellant also stated that there is no public bus service in Community A.

The appellant provided a written appeal submission dated July 4, 2013. In this submission, the appellant substantially reiterated information that had previously been before the ministry. The appellant also emphasized that he did not borrow the taxi fare from the neighbour – it is a debt owed. The appellant stated that the Medical Bus Service runs on Mondays and Wednesdays, so it did not run on the day of the subject medical appointment.

In his oral testimony the appellant said that his normal process for getting to medical appointments in Community B is to hitch a ride with a neighbour who works part-time in Community B and he does not ask the ministry to pay the cost. He tries to book 2 or 3 medical appointments on the same day and "multi-tasks" in town. In response to a question the appellant said that he has spoken with the medical clinic and other medical service providers and they won't sign forms to confirm that his appointments were medically essential. He also said that he had spoken to staff of the Medical Bus Service and that he had been told he was not eligible to use its service. In response to a question, the appellant said that if he were to use the Medical Bus Service he would have to be away from home for 10 hours, which is unreasonable compared to someone with his own vehicle who could be home within 2 or 3 hours. He said that the 10 hour trip time would put his health at risk since he is diabetic and must time his meals. Also in response to a question, the appellant confirmed that he

does not have a receipt for the taxi fare, as it was paid for by a neighbour. He said that the neighbour has the receipt.

The appellant's written appeal submission and his oral evidence provide additional detail with respect to the information previously provided by the appellant. Accordingly, the panel accepts this new information as being 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 stated that the basic issue is whether a taxi is the most appropriate mode of transportation to the appellant's medical appointment in Community B at $250 to $300 per round trip while the Medical Bus Service is $20 per round trip. The ministry said that it had confirmed with staff of the Medical Bus Service that it leaves Community C (east of Community A) at 8:00 am Mondays and Wednesdays, and departs Community B (west of Community A) at 4:30 pm. The ministry said that it had confirmed that the Medical Bus Service will stop in Community A as long as it is advised of the need for a stop there ahead of time, and that persons living in Community A are eligible to ride the Medical Bus Service to Community B for medical services that are not available in Community A, and then ride back to Community A. The ministry also stated that the appellant's home is about 4 blocks, or 0.6 km, from the store that is used as a stop by the Medical Bus Service in Community A. The round trip fare for the Medical Bus Service is $20, which is the amount of medical transportation supplement the ministry provided to the appellant rather than the $268 he had requested.

According to the ministry, it has now recently received written confirmation - in the form of a letter from the Medical Bus Service - of the appellant's eligibility to use the Medical Bus Service for his medical appointments in Community B. The appellant objected to the admissibility of the contents of this letter, stating that it had not been before the ministry at the time of reconsideration. While the letter was not tendered in evidence, the panel has accepted the ministry's statements as to the contents of this letter in accordance with s. 22(4) of the *Employment and Assistance Act*, finding that it is information in support of the previous oral confirmation referenced by the ministry in the reconsideration decision.

There is conflicting evidence as to whether the appellant is eligible to use the Medical Bus Service. It would have been preferable for the ministry to have provided the panel with the letter from the Medical Bus Service. However, the panel finds that the ministry's detailed information about the availability of the Medical Bus Service and how the appellant can access it to be more persuasive than the appellant's evidence that he was not eligible for it. Accordingly, the panel finds that the appellant could have used the Medical Bus Service for his medical appointments in Community B on Mondays and Wednesdays.

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PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding that the appellant was entitled to a general health supplement for medical transportation in an amount less than that claimed by the appellant. In particular, was the ministry reasonable in finding that the transportation used by the appellant was not the least expensive appropriate mode of transportation as required by s. 2(1)(f) of Schedule C of the Employment and Assistance for Persons with Disabilities Regulation?

The relevant legislation is as follows:

EAPWDR

General health supplements

62 (1) Subject to subsections (1.1) and (1.2), 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 is

(a) a recipient of disability assistance, ...

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 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.

* * *

Positions of the Parties

The appellant's position is that the Medical Bus Service is not an appropriate mode of transportation for him. In support of his position the appellant argues that he is not eligible for the Medical Bus Service as it is for "out-of-town" trips, not for "local" trips, such as his trips to Community B.

The appellant also argues that the legislation does not require him to schedule his medical appointments around the Medical Bus Service's Monday and Wednesday schedules. His appointments are scheduled based on his medical needs. He has no control over when the medical offices book his appointments, and when his appointments are booked on days other than Mondays or Wednesdays the Medical Bus Service cannot be called an appropriate mode of transportation.

The appellant argues that since s. 2(1)(f) of Schedule C refers to a singular "mode" of transportation which takes a person "to or from" a medical office or hospital, and since the Medical Bus Service does not provide door-to-door service, it cannot be an appropriate mode of transportation. The appellant says that if he were to take the Medical Bus Service, he would have to walk from his home to the bus stop – walking being one "mode" of transport – before catching the bus – being a second "mode" of transport - and depending on the location of his appointment in Community B he may require a third "mode" of transport to get from the Community B bus stop to his appointment.

The appellant also says that the Medical Bus Service is inappropriate because it takes so long that he can't time his meals appropriately and also because he was not capable of walking the distance from his home to the bus stop on icy roads while using crutches.

Finally, the appellant maintains that it is unreasonable for the ministry to require him to provide a receipt for the taxi fare since he did not pay for the taxi and the legislation and ministry procedures do not expressly state that he must provide a receipt.

The ministry's position is that the Medical Bus Service is the least expensive appropriate mode of transportation to the appellant's scheduled medical appointments in Community B. The appellant is eligible to use it and there is no evidence that it is inappropriate for him.

Panel Decision

The use of the word "may" in s. 62(1) of the EAPWDR and s. 2 of Schedule C provides the ministry with the discretion to decide whether to provide an applicant with a general health supplement such as medical transportation. Of course that discretion must be exercised reasonably.

In challenging the ministry's discretion to refuse to pay the taxi fare, the onus is on the appellant to show on the balance of probabilities that it was "the least expensive appropriate mode of transportation" to and from his medical appointment. Given the panel's finding of fact that the appellant is eligible to use the Medical Bus Service, a taxi was not the least expensive appropriate mode of transportation.

The appellant says that because the legislation doesn't expressly require an applicant to schedule his medical appointments around the Medical Bus Service schedule, it is unreasonable for the ministry to

do so. In the panel's view, in assessing whether the Medical Bus Service is the least expensive appropriate mode it is reasonable for the ministry to consider whether the appellant's medical appointments can be scheduled on days when that service is available in the appellant's community. The appellant acknowledged that he can exercise control over the scheduling of his medical appointments as he can schedule several on one day. However, the appellant has provided no evidence that he made any attempt to schedule the subject medical appointment on a day when the Medical Bus Service was available to him, or that the medical office refused to accommodate his request. The appellant has not provided any evidence that the subject medical appointment could not be scheduled in advance.

The appellant interprets s. 2(1)(f) as requiring door-to-door service. Both the section itself and the legislative scheme as a whole demonstrate that the legislative intent is to minimize public payment of the costs of transportation to the greatest reasonable extent. "Mode of transportation" does not require a single mode for the entire trip; it contemplates that a trip may consist of various segments, each of which must be conducted in an appropriate least cost manner. There may well be circumstances in which, considering case-specific facts about an applicant's medical condition, door-to-door service is the only appropriate option. However, the appellant has not proved that the time a round trip on the Medical Bus Service takes or the difficulty of walking to the bus stop make this mode of transportation inappropriate for him.

Regarding the provision of a receipt for the taxi fare, it is entirely reasonable for the ministry to request supporting evidence to be satisfied that the appellant actually did incur the cost of the taxi in this case and to verify the amount. The appellant has provided no such supporting evidence.

For these reasons, the panel finds that the ministry reasonably concluded that the Medical Bus Service was the least expensive appropriate mode of transportation to the subject medical appointment. Accordingly, the panel finds that the ministry's decision to pay the appellant a medical transportation supplement of $20 rather than $268 was a reasonable application of the legislation in the circumstances of the appellant. The ministry's decision is confirmed.