

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 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 Saturday, February 2, 2013 the appellant took a taxi to attend a walk-in medical clinic in Community B. The ministry had previously advised the appellant that he should generally use a specified bus service which provides transportation for eligible persons who require medical services (the Medical Bus Service). The appellant provided a "to whom it may concern" letter from a physician, dated January 10, 2013, confirming among other things that because of his underlying medical condition the appellant will need "irregular and unpredictable urgent visits to ER or Walk-in clinics as issues arise, likely once or twice a month." 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 wrote 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 wrote that there is no public bus service in Community A. He reported that he had previously tried alternative modes of transportation suggested by the ministry – such as the Greyhound Bus and ambulance, and had been left stranded in Community B with no help from the ministry to get home. The appellant wrote that once he hitch hiked home and was mugged and robbed along the way.

The appellant provided a written appeal submission. In this submission, the appellant substantially reiterated information that had previously been before the ministry. The appellant stated that the \$264 taxi fare was paid with a credit card by a friend. He emphasized that he did not borrow the taxi fare from his friend – it is a debt owed. The appellant stated that the Medical Bus Service did not run on the day of the subject medical visit, and that it does not provide door-to-door service.

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, usually on Mondays or Wednesdays, and he does not ask the ministry to cover the cost of this. He tries to book 2 or 3 medical appointments on the same day and "multi-tasks" in town. 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. The appellant also stated that at the time of the subject appointment he was suffering from a foot infection secondary to diabetes.

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 visit in Community B. 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 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 \$264 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. 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.

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.

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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 and ministry checklists and procedures do 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. In particular, given the condition of his foot infection and the potential risk it posed for losing his foot, the appellant said that the subject medical visit was urgently and unexpectedly required on the Saturday and that given the nature of a walk-in medical clinic it could not have been booked in advance.

The appellant also 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 too long 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. He argues that if the ministry wants a receipt, it can pay in advance for the taxi.

The ministry's position is that the Medical Bus Service is the least expensive appropriate mode of transportation to the appellant's medical appointments in Community B. The appellant is eligible to use it and there is no medical 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. However, the panel finds it is reasonable for the ministry to consider whether the appellant's medical appointments can be scheduled on days when the 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. He provided no evidence that he made any attempt to schedule the subject medical visit on a day when the Medical Bus Service was available to him, or that the medical office refused to accommodate his request.

The physician's letter of January 10, 2013 confirmed that the appellant would likely require one or two "urgent" unscheduled visits to the hospital emergency room or to a walk-in clinic. However, in the circumstances of this appeal where the appellant had previously been advised by the ministry that the Medical Bus Service was generally the least expensive appropriate mode of transportation, it would be reasonable for the appellant to provide confirmation from the medical clinic that the subject visit could reasonably be perceived as being "urgent". The appellant has not provided sufficient evidence to establish that the subject medical visit 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 visit. Accordingly, the panel finds that the ministry's decision to pay the appellant a medical transportation supplement of \$20 rather than \$264 was a reasonable application of the legislation in the circumstances of the appellant. The ministry's decision is confirmed.