

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development and Social Innovation (The Ministry) Reconsideration Decision, dated May 22, 2013 in which the Ministry denied the appellant a medical transportation supplement to pay for a trip to attend an appointment with a specialist on April 25, 2013 subject to regulations outlined by Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 5.

The Ministry's decision states that the Appellant did not meet the criteria set out in Schedule C of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 2(1)(f)(ii) to have a referral to a specialist from a local medical practitioner and that the specialist was the nearest available to him. Additionally, the Ministry's decision states that the Appellant did not meet the criteria set out in Schedule C, EAPWDR section 2(1)(f)(vi) in that Appellant did have the resources to meet this need.

**PART D – Relevant Legislation**

**Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 5**  
**Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 62,**  
**Schedule C sections 1 and 2(1)(f)(ii) and (vi)**

## PART E – Summary of Facts

The evidence before the Ministry on Reconsideration included the following:

- Request for Non-Local Medical Transportation Assistance dated April 17, 2013
- Hotel invoice dated April 24, 2013
- Note from Specialist dated April 25, 2013
- Submission from advocate dated May 8, 2013

The Appellant's evidence on appeal was as follows:

- He is on disability assistance.
- He moved to this region last summer to take a job.
- That job did not last and the Appellant found a second job.
- The second job ended in January 2013.
- He is not currently employed and has not been employed since January 2013.
- He advises that he does not have a trust, or access to funds in a trust. His wife has a trust and the Appellant submitted a letter from a law firm attaching a copy of a will showing his wife as the beneficiary of a trust.
- The Appellant suffers from Psoriasis and Psoriatic Arthritis. He is confined to a wheelchair as a result of complications from these conditions. He is also awaiting knee surgery. His hands and arms are covered with scales and patches from the Psoriasis and he advises that this condition currently covers his entire body.
- The Appellant's family doctor in his former hometown referred him to a doctor who specializes in his condition of Psoriasis (the Specialist). That Specialist also works in the Appellant's former hometown. The Appellant has attended the Specialist for 8 – 10 years and since he is under the continuing care of this Specialist he does not require or receive a separate referral from his family doctor each time he sees the Specialist.
- The Appellant can see this Specialist on a few days' notice for treatment.
- The Appellant has recently acquired an additional family doctor in his new hometown but this doctor does not treat or manage his Psoriatic Arthritis or Psoriasis.
- The Appellant currently sees the Specialist approximately every three weeks as he is having a flare-up of his Psoriasis.
- The Appellant advises that the Ministry asked him to get a note from his Specialist to explain why he couldn't see a specialist in his new hometown. The Specialist wrote a note saying that he did not want to disrupt the Appellant's care. That note said "[Appellant] has very severe Psoriasis. I have worked with him in co-operation with his Rheumatologist for years. I suggested for now this care be not interrupted."
- The Appellant advised that due to the current severity of his condition, his specialist does not recommend a transfer of care. As well, a referral to a specialist in his new hometown would take at least 8 months.
- The Appellant advised that for the visit currently under review, he needed to stay at the hotel for three nights because the Specialist was changing his medications and required him to remain nearby in order to monitor his reactions.
- The Appellant advised that in order to keep the costs of his medical visits low, he does his best

to combine appointments to multiple physicians into the same trip and by travelling by car and by bringing his wife with him to assist.

- The Appellant also stated that the Ministry has been covering the cost of his visits to this Specialist and others since his move to his new hometown.
- The Appellant advised that the Visa card used to pay the hotel was his father's and the amount paid is a debt that the Appellant has to repay.

The Appellant submitted the following additional document to which the Ministry did not object:

- The Appellant produced a copy of a letter from a lawyer attaching a copy of a will which gave his wife an interest in a trust for her life, illustrating that the Appellant has no entitlement, nor is he a recipient of these funds.

The panel decided that the additional evidence submitted by the Appellant, his testimony and the will showing his wife and not him as the beneficiary of a trust, were in support of the information and records that were before the Ministry on Reconsideration and were therefore accepted pursuant to section 22(4) of the EAA.

**PART F – Reasons for Panel Decision**

The issue on appeal is whether the Ministry's decision on May 22, 2013 to deny the Appellant's medical transportation supplement was reasonable, on the basis that he did not have a referral to a specialist on April 25, 2013 from a local medical practitioner and that the specialist was not the nearest available pursuant to Schedule C, EAPWDR section 2(1)(f)(ii) and that the Ministry was not satisfied that the Appellant did not have the resources to meet this need pursuant to Schedule C, EAPWDR section 2(1)(f)(vi).

The relevant section of the EAPWDA is as follows:

**Disability assistance and supplements**

- 5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

The relevant sections of the EAPWDR are as follows:

**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.

"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.

The Ministry's position was that the reconsideration decision was correct. The Ministry argued that there was no evidence of a referral by a local physician to the Specialist. The Ministry argued that there was no evidence that the Specialist was the "nearest available" and that there are doctors in this specialty that practice in the Appellant's new hometown. The Ministry also argued that the Appellant had funds to pay for this trip because he did make the trip and paid for it with a Visa.

The purpose of the legislation concerning medical transportation supplements is to support those who need assistance to access necessary medical assistance and to do so in a cost effective manner.

The panel notes that the Regulation does not define "local medical practitioner". In the decision of *Hudson v. British Columbia (EAAT) 2009 BCSC 1461* the Court approved the principle of construction applicable to social welfare legislation, such as the EAPWDR, is that where there is an ambiguity in the meaning of the statute, the ambiguity should be resolved in favour of the applicant seeking benefits under the legislation. The Ministry urges the panel to interpret "local" to mean "the region where the Appellant now lives" for the purpose of finding the Appellant ineligible. The panel does not find this to be a reasonable application of the enactment when "local" could simply mean in the same town at the time the referral was made; or within the same province. Further, the panel accepts that the Appellant was referred to this Specialist 8 – 10 years ago by his family doctor and has been under the Specialist's continuing care since then and that his family doctor does not make new referrals for each visit. The panel finds that it was not reasonable for the Ministry to decide that the Appellant had not been referred to the Specialist by a local medical practitioner.

The panel accepts the evidence that the Specialist has stated that due to the current severity of the Appellant's condition, he does not recommend discontinuation or interruption of care at this time. The panel accepts the Appellant's evidence that the Specialist he sees now treats his specific condition of Severe Psoriasis and the Appellant's evidence is that a referral to a Specialist in his new hometown would take 8 months. The Appellant's evidence is that he is currently seeing his Specialist every three weeks for a flare up of his condition. As well, this Specialist has provided a note indicating that his current treatment not be interrupted at this time. The panel accepts the Appellant's evidence that the note from the Specialist was provided in response to the Ministry's request to have the Specialist explain why the Appellant could not see a similar specialist in his new hometown. The panel finds that this Specialist is currently the only Specialist who can treat the appellant now and this makes him the nearest available. Therefore the panel finds that it is not a reasonable application of the

enactment to require the Appellant to switch to a specialist in his new hometown who would not be available for 8 months.

The panel accepts the Appellant's evidence that he paid for this trip with his father's Visa and that he must repay this loan. Since the funds were only loaned to the Appellant by permitted use of the Visa, then he did not have resources available to pay for this trip. The panel finds that it was not reasonable for the Ministry to decide that the Appellant had funds to pay for this trip to the Specialist.

The panel finds that the Ministry's decision to deny the Appellant's request for a medical transportation supplement to attend an appointment with a specialist on April 25, 2013 was not a reasonable application of the applicable enactment in the circumstances of the Appellant and the Ministry's decision is rescinded.