

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's ("ministry"), reconsideration decision dated July 15, 2013 wherein the ministry determined that the appellant was not eligible for non-local medical transportation assistance ("assistance"), as her request did not meet the legislative criteria prescribed under section 67 and schedule C, section 2 (1) (f) of the Employment and Assistance Regulation (EAR). In particular, the ministry determined that the appellant was not eligible for assistance as it was not for her to receive medical assistance but for her to visit her spouse in a hospital.

### PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) – section 67 and Schedule C section 2 (1) (f) (v)

## PART E – Summary of Facts

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

1. Appellant's application dated May 17, 2013 for Non-local Medical Transportation Assistance;
2. An undated note of the appellant in which the appellant submitted that: (a) her spouse was at a hospital for the past three months on life support and fighting for his life; (b) that the situation was extremely emotional as well as financially devastating; and (c) the appellant was a recipient of assistance and that her spouse and her child were also recipients of assistance as a family unit;
3. An additional note from the appellant dated June 28, 2013 in which the appellant further submitted that: (a) she has requested "medical transportation" as she is experiencing and going through financial hardship; (b) her spouse is her partner and the father of her young infant; and (c) the appellant had submitted her request based upon the advice received from a ministry staff person;
4. Reasons of Appeal submitted by the appellant in her Notice of appeal dated July 25, 2013 in which she stated that: (a) the appellant, her spouse and her child are recipients of assistance as a family unit; (b) the appellant has to drive back and forth from the hospital at least twice a week; and (c) due to her spouse's medical condition, the costs of such a commute are coming out of her assisted living allowance.

A representative assisted the appellant at the time of the teleconference appeal hearing and the panel noted that the relevant Release of Information form was duly completed and submitted by the appellant on August 3, 2012, which was received by the Tribunal on August 7, 2013.

The ministry representative did not participate in the teleconference hearing. After confirming that the ministry was notified of the date and time of the teleconference hearing, the hearing proceeded under section 86 (b) of the EAR.

At the hearing the appellant and her representative jointly submitted that the appellant, her spouse and their infant child were collective recipients of income assistance as a family unit, and that her spouse was in no condition to fill in any forms for assistance. The appellant was advised by a representative of the ministry to apply for medical transportation assistance to enable her to visit her spouse who was undergoing intensive medical treatment at a hospital at a distance away from her place of residence. The ministry had not advised the appellant as to how to fill out the assistance request form nor was she given any information about the eligibility criteria for medical transportation assistance.

The appellant's representative drew the panel's attention to a letter dated July 23, 2013 from a social worker at the hospital and several photographs of the appellant's spouse depicting his medical condition at the hospital. The said letter, inter alia, states that: (a) the appellant's spouse was a patient at the hospital, and the duration and outcome of his treatment was uncertain; (b) the prolonged hospital stay had resulted in diminished quality of life for the appellant's spouse and, as a result, he has developed depression; (c) the spouses' mood improves when he is visited by the

appellant, and frequent visits of the appellant and her child to the hospital would best support the spouse during this critical period. The said letter is also referred to in the Reasons for Appeal submitted by the appellant in her Notice of appeal dated July 25, 2013, which state that: (a) the appellant, her spouse and her child are recipients of assistance as a family unit; (b) the appellant has to drive back and forth from the hospital at least twice a week; and (c) due to her spouse's medical condition, the costs of such a commute are coming out of her assisted living allowance.

The panel regards the reasons for appeal set out in the Notice of Appeal dated July 25, 2013, the contents of the said letter dated July 23, 2013 and the four (4) photographs as new evidence submitted after the date of the reconsideration and the panel admitted them into evidence as being in support of information and records that were before the minister at the time of reconsideration.

In answer to several questions raised by the panel, the appellant and her representative confirmed that: (a) the application for medical transportation dated May 17, 2013 was made by the appellant as a single recipient of assistance and not as a family unit. It was her first application of its kind; and (b) the appellant was receiving a crisis supplement of \$60.00 per month during the time that the appellant's spouse was in hospital between April 2013 and August 2013 when he unfortunately passed away.

The appellant and her representative also submitted that the appellant, her spouse and their child were recipients of "*income assistance*" and not "*disability assistance*", as indicated by the ministry in its reconsideration decision dated July 15, 2013. The panel notes the ministry's reference to EAPWDR is an apparent error on the part of the ministry and, therefore, the panel has considered this appeal under EAR instead of EAPWDR, as more particularly set out in Part D of this decision. The panel also notes that the relevant provisions of EAPWDR i.e. section 62 and Schedule C section 2 (1) (f), which apply to recipients of "*disability assistance*", are identical to section 67 and Schedule C section 2 (1) (f) of the Employment Assistance Regulation (EAR), which apply to recipients of "*income assistance*".

Based on the foregoing the panel makes the following findings of fact:

- The appellant is a recipient of income assistance and therefore eligible for medical transportation assistance provided the relevant legislative criteria are satisfied;
- The appellant signed the medical transportation assistance application dated May 17, 2013 in her individual capacity and it does not seek assistance for any medical consultation or treatment required by the appellant.

## PART F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the ministry's reconsideration decision dated July 15, 2013 wherein the ministry determined that the appellant was not eligible for non-local medical transportation assistance ("assistance"), as her request did not meet the legislative criteria prescribed under section 67 and schedule C, section 2 (1) (f) of the EAR. In particular, the ministry determined that the appellant was not eligible for assistance as it was not for her to receive medical assistance but for her to visit her spouse in a hospital.

The relevant legislation provides as follows:

### EAR Section 67 EAR

#### 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 Schedule C to or for a family unit if the health supplement is provided to or for a person in the family unit who (B.C. Reg. 89/2005) (B.C. Reg. 67/2010)

(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)

(b) is a recipient of income assistance under section 8 [*people receiving special care*] of Schedule A, (B.C. Reg. 89/2005)

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

(i) paragraph (b), (B.C. Reg. 89/2005)

(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, (B.C. Reg. 89/2005)

(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,

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(d) Repealed (B.C. Reg.62/2010),

(e) is a dependent child of a recipient of income assistance or hardship assistance, (B.C. Reg. 89/2005)

(f) was on the day the person reached 65 years of age

(i) a recipient of income assistance under section 2 [monthly support allowance], 4 [monthly shelter allowance], 6 [people receiving room and board], 8 [people receiving special care] or 9 [people in emergency shelters and transition houses] of Schedule A, and (ii) eligible for health supplements under section 2 [general health supplements] or 3 [medical equipment and devices] of Schedule C, (B.C. Reg. 89/2005)

(g) meets the following requirements:

(i) has not reached 65 years of age;

(ii) is a part of a family unit that 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;

(iii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance. (B.C. Reg. 89/2005)

(h) meets all of the following requirements:

(i) is part of a family unit that 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;

(ii) was eligible for health supplements under section 2 or 3 of Schedule C on the day the person's family unit ceased to be eligible for income assistance. (B.C. Reg. 170/2008) (B.C. Reg. 67/2010)

(iii) either

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

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

(B.C. Reg. 89//2005) (B.C. Reg. 57/2007) (B.C. Reg. 170/2008) (B.C. Reg. 48/2010) (B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(1.1) A person eligible to receive a health supplement under subsection (1) (c) (ii) or (f) may receive the supplement

(a) while any person in the family unit is receiving the federal spouse's allowance or the federal guaranteed income supplement, and

(b) for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only.

(B.C. Reg. 67/2010) (B.C. Reg. 114/2010)

(1.2) A person who was eligible to receive a health supplement under subsection (1) (c) (iv) or (h) but ceases to be eligible for medical services only may continue to receive the supplement for a maximum of one year from the date on which the family unit ceased to be eligible for medical services only. (B.C. Reg. 114/2010)

(2) Subject to subsection (3), 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 recipient in the family unit who

(a) has received income assistance under the BC Benefits (Income Assistance) Act or the Act continuously from March 31, 1997 and on March 30, 1997, was eligible under section 37 (1) (a) of the BC Benefits (Income Assistance) Regulations, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or

(b) is a dependant of a recipient referred to in paragraph (a).

(3) Subsection (2) applies only until the earlier of the following dates:

(a) the date the recipient ceases to receive income assistance;

(b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of accepting employment.

(4) A person referred to in subsection (1) (c) (ii), (iii) or (iv), (B.C. Reg. 67/2010) (f), (g) or (h) ceases to be eligible for any supplement under this division if the person's family unit takes up residence outside British Columbia. (B.C. Reg. 89/2005) (B.C. Reg. 170/2008) (B.C. Reg. 67/2010)

EAR – 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 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, (B.C. Reg. 317/2008)

- (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, (B.C. Reg. 317/2008)
- (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 case is that the appellant was advised by a representative of the ministry to apply for medical transportation assistance to enable her to visit her spouse who was undergoing intensive medical treatment at a distant hospital. Such hospital visits were important and necessary for her and were recommended by a social worker from the hospital in view of the nature of the medical condition of the appellant's spouse. The appellant and her representative acknowledged that the medical transportation assistance was not required for any medical consultation or medical treatment required by the appellant.

The panel is sympathetic to the circumstances of the appellant. It is, however, bound by the provisions of section 67 of EAR and Schedule 2 section 2 (1) (f), which clearly express that medical transportation assistance is meant for and available to only applicants seeking medical consultation or treatment for themselves and not for any third parties. The appellant is seeking medical transportation to visit her spouse who is in hospital and not for any medical condition or treatment required by her. In the circumstances, the panel finds that the ministry's decision that the appellant was not eligible for non-local medical transportation assistance, as her request did not meet the legislative criteria prescribed under section 67 and schedule C, section 2 (1) (f) of the EAR, is reasonably supported by evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel therefore confirms the decision of the minister