

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated May 30, 2013 that held that the appellant was not eligible for a medical transportation supplement as all of the criteria of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C, section 2(1)(f) were not met. Specifically, the ministry determined that the following criteria was not established as follows:

- 1) The appellant's request is not for transportation to attend an office, in the local area, of a medical practitioner or nurse practitioner;
- 2) The appellant has not established that she requires the supplement to attend the office of the nearest available specialist in a field of medicine or surgery because she has been referred to a specialist in that field by a local medical practitioner or nurse practitioner;
- 3) The appellant is not required to attend the nearest suitable hospital to receive a benefit under the Medicare Protection Act or a general hospital service under the Hospital Insurance Act; and
- 4) The appellant has not provided information to establish that she does not have the resources available to her to cover the cost of her transportation to the chiropractor's office.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 62 and Schedule C, section 2

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consisted of:

1) The appellant's Request for Reconsideration (RFR) dated May 11, 2013 in which the appellant states that she owns a remote grid acreage, 2 hours away from the city where she attends for medical help. The appellant reports that the chiropractor is working miracles and alleviating pain that she has put up with for almost one year, when conventional medicine was unable to deal with her injury adequately. The appellant states that she does not want to take pain killers when her spine is out of alignment and can be rectified by a chiropractor. The appellant also states that she does not have funds to travel to and from the chiropractor's location as she is usually out of money a few days after cheque day. She also states that her spine cannot stand the bouncing on the bus.

At the request of the appellant, and with the consent of both parties, the appeal proceeded by way of a written hearing.

New Information

In her Notice of Appeal the appellant provided additional information regarding her injury and her residential circumstances. The appellant states that she sustained her back injury while riding horseback, resulting in back trauma with excruciating back pain. She reports that initially her tail bone was injured but as time passed, the pain progressed through her back and she could not sit, stand or get out of bed without pain. She reports that she is 63 years old, lives on a forest service road 15 kilometers from neighbors and two hours each way from the city she attends for medical treatment. She also states that the weekly bus to the city goes on a day when her chiropractor is closed and there is no chiropractor in the town closest to her. The appellant states that the doctors have told her that there is nothing they can do to help her except give her pain killers so the chiropractor was necessary. The appellant reports that she drove to the chiropractor's office twice and hitch hiked there another time as she had no money for fuel. The appellant reports that hitch hiking is not safe and if she had received the \$56.80 that she used to get for medical transport she would not have had to risk it. The appellant reports that her CareCard covers most of the costs so the treatment is obviously a medical visit. She had paid \$66 for treatment and it has stopped her being essentially crippled.

With her Notice of Appeal the appellant provided an invoice from the chiropractor dated May 2, 2013 for the cost of her treatment which was \$15. The invoice indicates that the appellant has a balance owing of \$2.

Following her Notice of Appeal the appellant provided a written submission dated June 24, 2013 (the "Submission") providing more detail regarding her circumstances. The appellant states that she has osteoarthritis and osteoporosis, has been a lifelong horseback rider and has sustained a variety of injuries. She reports that since her injury a year ago, her condition worsened over the winter. She lives an isolated existence and driving to and from the city is something she rarely does as it is increasingly expensive for fuel. She reports that she keeps a few horses in case of emergency, like no vehicular transport and that it is a 3 hour ride to the mail, one way, in winter. The appellant reports that she receives \$946.42 disability assistance per month but as she lives so far out, much of her support goes to fuel and vehicular costs.

The panel has admitted the written testimony contained in the Notice of Appeal, the chiropractor invoice, and the Submission into evidence as it is in support of information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the *Employment and Assistance Act*. In particular, the new information relates to the appellant's back injury, residential circumstances, and availability of treatment options.

PART F – Reasons for Panel Decision

The issue on the appeal is whether the ministry's reconsideration decision denying the appellant a supplement for medical transportation on the basis that she did not meet the legislated criteria of EAPWDR Schedule C, section 2(1)(f) was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant. In particular, was the ministry reasonable in determining that:

- 1) The appellant's request is not for transportation to attend an office, in the local area, of a medical practitioner or nurse practitioner;
- 2) The appellant has not established that she requires the supplement to attend the office of the nearest available specialist in a field of medicine or surgery because she has been referred to a specialist in that field by a local medical practitioner or nurse practitioner;
- 3) The appellant is not required to attend the nearest suitable hospital to receive a benefit under the Medicare Protection Act or a general hospital service under the Hospital Insurance Act; and
- 4) The appellant has not provided information to establish that she does not have the resources available to her to cover the cost of her transportation to the chiropractor's office?

The relevant legislation, EAPWDR Schedule C, section 2(1)(f) states as follows:

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,

(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.

EAPWDR Schedule C, section 2(1)(f)(i) - transportation to attend an office, in the local area, of a medical practitioner or nurse practitioner

The ministry's position is that the appellant has not provided information to establish that she requires the supplement for medical transportation to attend an office, in the local area, of a medical or nurse practitioner. In particular the ministry states that the appellant resides in city K but has requested the supplement to attend the office of a chiropractor in city N so her request does not meet the required criteria of EAPWDR Schedule C, section 2(1)(f)(i).

The appellant's position is that although she resides closest to city K, there is no chiropractor there and the closest local chiropractor is in city N so she has to go there for treatment. The appellant states that the chiropractor is working miracles and alleviating pain that she has put up with for over a year, when conventional medicines was unable to deal with her injuries adequately. The appellant states that conventional medicine is covered so her chiropractic treatment and the cost to travel to obtain that treatment should be covered too, as it works for her. The appellant states that the ministry ought to recognize the chiropractic treatment as a necessary procedure and as there are no chiropractors in the city closest to which she lives it should be approved.

The panel finds that as city N is 2 hours away (one way) and as there is no chiropractor in city K which is the closest city to where the appellant resides, the chiropractor's office, which is located in city N, would be considered to be the closest office in the local area, of a medical practitioner. Accordingly, the panel finds that the ministry's determination that city N is not in the local area was not reasonable.

EAPWDR Schedule C, section 2(1)(f)(ii) - supplement required to attend a specialist

The ministry's position is that as a chiropractor is not a specialist in a field of medicine or surgery, the appellant has not provided information to establish that she requires the supplement to attend the office of the nearest available specialist in a field of medicine or surgery because she has been referred to a specialist in that field by a local medical practitioner or nurse practitioner as required by EAPWDR Schedule C, section 2(1)(f)(ii).

The appellant's position is the ministry ought to recognize the chiropractic treatment as a necessary procedure and as there are no chiropractors in the city closest to which she lives it should be approved.

As the chiropractor is not a specialist in a field of medicine or surgery, the panel finds that the ministry's determination that the appellant had not provided information to establish that she requires the supplement to attend the office of the nearest available specialist in a field of medicine or surgery as required by EAPWDR Schedule C, section 2(1)(f)(ii) was reasonable.

EAPWDR Schedule C, section 2(1)(f)(iii -v) - supplement required to attend hospital

The ministry's position is that the appellant has not provided information to establish that she requires the supplement to attend the nearest suitable general hospital or rehabilitation hospital or the nearest hospital to receive a benefit under the Medicare Protection Act or a general hospital service under the Hospital Insurance Act. In particular, the ministry states that as the requested supplement is to attend a chiropractor's office, it is not a hospital and does not meet the legislated criteria.

The appellant does not take the position that she requires the supplement to attend a hospital.

The panel finds that as the appellant has requested a supplement for medical transportation to attend a chiropractor's office, which is not a hospital or rehabilitation hospital, the ministry's determination that she did not meet the legislated criteria of EAPWDR Schedule C, section 2(1)(f)(iii-v) was reasonable.

EAPWDR Schedule C, section 2(1)(f)(vi) Available resources

The ministry's position is that the appellant has not provided information to establish that she has no resources available to her to cover the cost of her transportation to the chiropractor's office. The ministry notes that the appellant stated that she does not have funds to travel to city N often, but she did not indicate that she did not have resources to attend her appointment on May 2, 2013.

In the RFR the appellant states that she does not have funds to travel to city N often and her spine cannot stand the bouncing on the bus. The appellant's position is that she is usually out of money a few days after cheque day so travel expenses are much appreciated. In her Notice of Appeal, the appellant states that the weekly bus to city N only goes on a day when the chiropractor's office is closed so that is not an option for her and does not have the resources to pay to travel to and from city N. The appellant also states that there is no alternative transport available and she does not have any neighbors that can help her. In her Notice of Appeal the appellant states that she drove to her first two appointments but hitchhiked to her third appointment. The appellant also states that she is not in a city where alternative transport is available, and she does not have neighbors who can help out.

In the Submission, the appellant states that driving in and out of the city is something she really budgets for since gas is increasingly expensive and she seldom travels to city N unless there is a medical issue. The appellant states that she receives \$946.42 per month on disability assistance but as she lives so far out, much of her "support" goes to fuel and vehicular care and as she is 63 years old, she cannot perform her own mechanics. The appellant states that she does not buy new clothes. She also states that she considered moving to a closer location but does not believe she could find an alternative home for \$375.

The appellant states that she used her food money to pay for gas to travel to the chiropractor. The appellant states that the chiropractor charged \$32 for the first visit above what her CareCard covered. For the second and third visits he charged \$17 over and above what her CareCard covered, for a total of \$66.

The panel accepts the appellant's evidence that she does not have resources available to her to cover the cost of her transportation to the chiropractor's office. In particular, the panel accepts the appellant's evidence that she is usually out of money a few days after cheque day and that she cannot afford the increasing cost of fuel to travel two hours each way to the chiropractor's office. While the ministry states that the appellant did not indicate that she did not have the resources to attend her appointment on May 2, 2013 the appellant, in her Notice of Appeal, indicates that she hitchhiked to the chiropractor's appointment for her third appointment because she did not have money for fuel.

Accordingly, the panel finds that the ministry's determination that the appellant had not provided information to establish that she has no resources to cover the cost of her transportation to the chiropractor's office was not reasonable.

Conclusion

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision which determined that the appellant was not eligible for a supplement for medical transportation was not reasonably supported by the evidence and a reasonable application of the applicable legislation in the circumstances of the appellant. In particular, the panel finds that the ministry's reconsideration decision which found that the appellant did not meet EAPWDR Schedule C, section 2(1)(f)(i) and (vi) was not reasonable. Therefore, the panel rescinds the ministry's reconsideration decision.