

PART C – Decision under Appeal

In a reconsideration decision dated October 29, 2013 the Ministry of Social Development and Social Innovation (the Ministry) denied the Appellant 's request for assistance with transportation to attend a clinic study in an alternate city because it found the request did not meet the legislated criteria as a benefit covered under the Medical Protection Act (MPA) or the Hospital Insurance Act (HIA) as set out in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, Section 2(1)(f)(v). The Ministry also found the request did not meet the eligibility criteria as a life threatening health supplement as set out in the EAPWDR, Section 69.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 62 and 69  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C

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## PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision included:

- A letter dated October 17, 2013 from the Appellant's Medical Doctor confirming her referral to a clinic in the secondary city for treatment of her chronic active hepatitis C because she requires a higher level of care and the clinical study is a new and novel treatment regimen that is not available elsewhere.
- A three page hand written attachment to the Request for Reconsideration from the Appellant detailing her reasons why the transportation to the clinic is necessary to improve her health.
- 5 pages containing copies of proof of payment and receipts for bus and taxi transportation.
- A letter dated September 17, 2013 from the clinic confirming the Appellant's appointment.
- A request for non-local medical transportation assistance from the Appellant dated September 17, 2013.
- An informed consent form from the clinic's study doctor completed by the Appellant.

In her attachment, the Appellant states she has started treatments at the clinic and that her disability supplements helped her with her first screening appointment. She understands the study is not covered under the MPA, but states it is a clinical setting. She continues that she has been ill with hepatitis C symptoms for approximately 17 years and the treatment that is approved by the government under the current standard of care is horrible with unbearable side effects that her body cannot tolerate. She asks for assistance with transportation costs on compassionate grounds because she has been paying for the transportation out of her daughter's savings. She details her symptoms and states she wants her health and life back. She concludes by relating that each trip costs approximately \$200. She has paid for some and has more coming up, the last being in January 2014.

In the Reconsideration Decision, the Ministry acknowledged that the Appellant's doctor had referred her to an alternate city to participate in the clinical study and the study is not covered by the MPA or the HIA. The Ministry confirms the Appellant is a recipient of disability assistance and therefore eligible to receive the health supplements provided for in Section 62 and Schedule C of the EAPWDR. The Ministry also confirms the Appellant was referred to the nearest available specialist (in the alternate city) by her local doctor.

At the hearing the Advocate conceded the Appellant's situation, weighed against the current legislation, is weak but that it is reasonable for the Ministry to approve the request because the Appellant is receiving proactive help through the experimental treatment she is receiving from the clinic. The Appellant stated the current standard of care by the MPA for hepatitis C is terrible. She stated that she would have to show more severe symptoms of hepatitis C to qualify for the treatment funded under the MPA and furthermore the treatment covered under MPA has harsh side effects. She stated she has extensively researched alternate treatments for hepatitis C and encouraged her doctor to refer her to the clinic based on this research. She confirmed that the clinical test is currently her only treatment and concluded that this lack of funding will be an ongoing problem for others as well, because of the many new alternate treatments available for hepatitis C.

At the hearing the Ministry confirmed the Appellant is a recipient of disability assistance and therefore is eligible for health supplements, that the Appellant's medical practitioner referred her to the nearest available specialist, and that the health supplement is necessary to meet a direct and imminent life-



threatening need.

## PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the Ministry's decision to deny the Appellant's request for assistance with transportation to attend a clinic study in an alternate city because it found the request did not meet the legislated criteria as a benefit covered under the MPA or the HIA as set out in the EAPWDR, Schedule C. The Ministry also found the request did not meet the eligibility criteria as a life threatening health supplement as set out in the EAPWDR, Section 69. The criteria for health supplements is set out in the EAPWDR, Section 62, 69 and Schedule C (relevant parts) as follows:

**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,*

**69** *The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [general health supplements] and 3 [medical equipment and devices] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that*

*(a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,*

*(b) the health supplement is necessary to meet that need,*

*(c) the person's family unit is receiving premium assistance under the Medicare Protection Act, and*

*(d) the requirements specified in the following provisions of Schedule C, as applicable, are met:*

*(i) paragraph (a) or (f) of section (2) (1);*

*(ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).*

**"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.

### **Schedule C**

**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.*

The Appellant and her Advocate argue the clinical treatment is necessary to improve the Appellant's health, that she is having to use her daughter's savings to cover the transportation costs and the Ministry should consider funding the transportation costs under compassionate grounds.

The Ministry argues the clinical study is not covered under MPA or the HIA, therefore does not meet the eligibility criteria for medical transportation under the EAPWDR, Schedule C, Section 2(1)(f). The Ministry also notes that supplements may be provided for transportation required for a life-threatening health condition, however, the request must still meet the eligibility criteria identified in Schedule C, Section 2(1)(f). In this case, the Ministry argues the request does not meet the eligibility criteria. The Ministry concludes the legislation provides no discretion to approve the request under compassionate grounds.

The Panel finds the facts confirm the Appellant as a recipient of disability assistance and is eligible for health supplements as set out in the EAPWDR, Section 62. The legislation allows medical transportation in order to meet a direct and imminent life threatening need and there are no alternate resources available to meet that need as set out in the EAPWDR, Section 69.

Both EAPWDR, Section 62 and 69 refer that the requirements specified in Schedule C, specifically Section 2(1)(f) in this case must also be met.

The Panel finds that the facts confirm the Appellant was referred to the nearest available specialist by her local medical practitioner as specified in EAPWDR, Schedule C, Section 2(1)(f)(ii).

The Panel finds that EAPWDR, Schedule C, Section (v) and (vi) refer to the sections (i) through (iv) equally, not specifically to (iv) as suggested by the Advocate because they are not specific to (iv) but in addition to (i) through (iv).

Lastly, the Panel finds the facts confirm the treatments received by the Appellant at the clinic are not covered under the MPA or the HIA and therefore the Appellant's request does not meet the criteria as specified in EAPWDR, Schedule C, Section 2(1)(f)(v).

The Panel therefore finds the Ministry decision was a reasonable application of the applicable enactment in the circumstances of the Appellant and confirms the decision.