



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “Ministry”) reconsideration decision dated January 15, 2014 which held that the Appellant’s request for transportation assistance was denied as the Appellant did not meet the legislative requirements set out in section 2(1)(f) Schedule “C” of the Employment and Assistance for Persons with Disabilities Regulations (the “Regulation”).

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act, section 5  
Employment and Assistance for Persons with Disabilities Regulation, section 62, Schedule “C”



## PART E – Summary of Facts

The evidence before the Ministry at reconsideration was as follows:

1. Letter dated November 18, 2013 (the “Ministry Letter”) from the Ministry to the Appellant which stated they approved the Appellant’s request for custom paid footwear in the amount of \$1,650.00. The Appellant noted that the Ministry was only covering a portion of the custom made shoes and there was a shortfall of \$325.00.
2. Request for Non-Local Medical Transportation Assistance dated December 3, 2013 completed and signed by the Appellant requesting mileage for his appointment with an orthopedic specialist referred by his general practitioner.
3. Letter dated December 23, 2013 (“GP Letter”) from the Appellant’s general practitioner (“GP”) to “Whom it May Concern” which stated the following:
  - a. that the Appellant has been a patient of the GP for “many years;”
  - b. that the Appellant has cerebral palsy and consequent problems with his feet and gait;
  - c. that the Appellant always travelled out of town to the same orthotics service provider;
  - d. that there is no similar service provider in their community; and
  - e. that the GP asks that the Ministry would allow the Appellant to continue to use the existing service provider’s services.
4. Notice of Appeal dated January 23, 2014 completed and signed by the Appellant advising that the Ministry had not denied coverage for past trips.
5. The Ministry Request for Reconsideration form dated December 11, 2013 completed and signed by the Appellant (the “Reconsideration Form”)

In the Reason for Request for Reconsideration, Section 3, the Appellant advised the following:

- i) that being driven to his out of town appointment is the least expensive way to get to his appointment;
- ii) that the prosthetics and orthotics clinic is equipped to prepare casts and have custom footwear made on site;
- iii) that the preparation has to be done in the clinic; and
- iv) that the hospital does not have the required equipment to prepare the products.

The Appellant submitted the following additional written documentation prior to the hearing:

1. Letter dated December 12, 2013 written by the Clinic (“Letter #1”) stating that the Appellant had an appointment on December 12, 2013 to have his feet cast in order to manufacture his custom shoes; the appointment is medically necessary to initiate the manufacturing of his shoe wear; and that the Appellant was driven to the Clinic as he does not have a driver’s license.
2. Letter dated December 20, 2013 written by the Clinic (“Letter #2”) stating that the Appellant attends the facility for all the Appellant’s orthotic needs; that there is no other orthotic facility in the Appellant’s community; and that all of the Appellant’s treatments are required to take place in the



lab.

At the hearing, the Ministry advised that she was not provided with a copy of the additional documentation prior to hearing. The Panel read the content of Letter #1 and Letter #2 and made arrangements for the letters to be faxed to the Ministry by the Advocate after the hearing.

The Ministry had no objections upon hearing the contents of Letter #1 and Letter #2.

The Panel finds that the additional evidence provided by the Appellant clarified his current situation and was admissible under section 22(4) of the *Employment and Assistance Act* as it was in support of the records before the Ministry at reconsideration.

## PART F – Reasons for Panel Decision

The issue is whether the Ministry's decision to deny the Appellant a health supplement for transportation to attend an appointment is a reasonable application of the law in the circumstances of the Appellant.

Section 62(1)(a) of the EAPWDR states the Ministry may provide any health supplements for an individual as set out in sections 2 (general health) or section 3 (medical equipment and devices) listed in Schedule "C."

Schedule "C," section 2(1)(f)(i-iv) allows the Ministry to pay for the least expensive appropriate mode of transportation to or from the office of a medical or nurse practitioner or the nearest available specialist in a field of medicine or surgery if the person has been referred to a specialist by a medical practitioner or the nearest hospital or rehabilitation hospital provided that the recipient is able to receive under the Medicare Protection Act. The Ministry must additionally be satisfied that there are no resources available to the recipient to cover the cost.

Section 2(1)(f) states as follows:

(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 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.

In determining the Appellant did not qualify for a health supplement for transportation under section 2(1)(f), the Ministry concluded the following:

The ministry had determined your request for a health supplement for transportation does not meet the legislative criteria set out in Schedule C Section 2(1)(f), because you are not required to attend your appointment at the nearest office of a specialist in a field of medicine or surgery or to a hospital. Therefore you are not eligible for a health supplement to cover the costs for transportation to attend your appointment...

The Ministry was not satisfied that the Appellant was required to attend his appointment at the

nearest office of a specialist in a field of medicine or surgery or to a hospital and determined he was not eligible for a health supplement to cover the costs of transportation to attend the appointment.

At the hearing the Ministry clarified their position and stated that the Clinic in question was classified as a "supplier" and not an office of a specialist in the field of medicine or surgery or a hospital for purposes of the section. The Ministry concluded they had no legislative authority to provide transportation assistance to the Appellant as the Clinic did not meet the definition of eligible providers pursuant to section 2(1)(f).

The Appellant argued that he has been at the Clinic on at least 10 occasions and was approved for transportation assistance on every occasion with the exception of this application.

The Ministry noted that the Appellant did have other applications on file for transportation assistance that covered the Appellants travel for out of town appointments but travel to the Clinic was not a claim made in the last two years. The Ministry noted prior approved transportation assistance was for appointments with the Appellant's neurologists.

The Appellant also submitted a letter written by the Clinic stating there was no orthotic facility in his community which was confirmed by the GP in his letter dated December 23, 2013.

The legislation is clear that the Ministry may pay for specific health supplements if the recipient is accessing the least expensive appropriate mode of transportation to or from 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 medical practitioner or the nearest suitable hospital.

The Appellant indicated that the prosthetics and orthotics clinic is equipped to prepare casts and make custom footwear on site so that all the preparation has to be done in the Clinic and that the hospital does not have the required equipment to prepare the products. The panel finds that the prosthetics and orthotics clinic cannot be characterized as a medical office, or an office that specializes in a field of medicine or surgery.

The panel therefore finds the Ministry's determination that the Appellant's request for a health supplement for transportation was denied as the Appellant did not meet the legislative requirements set out in section 2(1)(f) Schedule "C" of EAPDR was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.