

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry)'s Reconsideration Decision, dated April 9, 2014 in which the ministry denied the appellant's request for a medical transportation subsidy for her vehicle repairs, as the request does not meet the criteria set out in Schedule C, section 2(1)(f) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule C, section 2(1)(f).

Employment and Assistance for Persons with Disabilities Act (EAPWDA), section 31(1)

PART E – Summary of Facts

The appellant is designated as a person with disabilities, and is a sole recipient of disability assistance with no dependants. On February 26, 2014 the appellant was advised by the ministry that her request for a medical transportation supplement had been denied because the request did not meet the eligibility criteria for this supplement. The appellant requested reconsideration of that decision on March 26, 2014.

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

- A letter from the appellant's Naturopathic Physician, dated July 31, 2012, stating that the appellant had an appointment in his office on August 2, 2012.
- A Service Request from a transmission/vehicle repair shop, dated October, 2002 addressed to the ministry, providing a detailed list of the repairs and maintenance needed for the appellant's vehicle, totaling \$1062.88.
- A Service Request from the same transmission/vehicle repair shop, dated June 14, 2012, addressed to the ministry, and indicating "As won under Tribunal Decision" providing a detailed list of the repairs and maintenance needed for the appellant's vehicle, totaling \$1467.96.
- An Employment and Assistance Appeal Tribunal Decision dated October 11, 2002, which rescinded the ministry's decision to deny the appellant's request to pay for vehicle repairs.
- A letter from the appellant's physician, dated October 26, 1994, which describes the appellant's diagnosis of Multiple Chemical Sensitivities and supports her application for GAIN status.
- A letter from the appellant's Physician(1), dated January 7, 1995, which outlines the reasons what public transportation is hazardous to the appellant's health. The physician adds that the appellant's condition is long-standing and he believes it will be permanent.
- A letter from the appellant's Physician(1), dated June 5, 1995, which describes her medical diagnosis and supports the appellant's requirement for a vehicle of her own.
- A letter from the appellant's Physician(2), dated July 19, 2000, describes the appellant's condition and her need for access to 'clean' transportation.
- A letter from the appellant's Physician(2), dated March 5, 2014, stating that the appellant is unable to use public transport due to her widespread hypersensitivity to environmental chemicals.
- A letter from the appellant's Physician(1), dated March 6, 2014, stating that her condition is chronic and no treatments are available, adding that keeping her personal vehicle operational is a 'critical issue'.
- The appellant's Request for Reconsideration (RFR) dated March 25, 2014 and signed by the appellant. To Section 3 of the RFR the appellant attaches copies of the previous Tribunal decision, physician letters (noted above) and an 11 page, handwritten letter, stating why she feels that her decision should be reconsidered and payment made for the repairs and maintenance to her vehicle, which she requires for transportation to medical appointments.

As set out in the reconsideration decision, dated April 9, 2014, the ministry states that the previous appeal decision (2002) no longer applies to the appellant's current situation. The ministry finds that the appellant has not provided specific evidence regarding her need to attend an appointment with a

medical practitioner, which would include a specific office location or frequency of medical care required. Without having the specific requirements for medical transportation, the ministry is unable to establish if repairs to the appellant's vehicle is the least expensive, appropriate mode of transportation. The ministry adds that the repairs required appear to include regular maintenance items which should be incorporated into normal expenses, as well, when using discretion in determining if a supplement can be issued, ministry policy states that "under no circumstances is the medical transportation to be issued to purchase, maintain repair or insure a vehicle."

The appellant submitted a signed Notice of Appeal on April 29, 2014, in which she states that she disagrees with the ministry decision because the decision ignores her testimony and physician letters which support the need for medical transportation as it pertains to her specific disability and the impact that her lack of transportation has on her ability to access medical care. She adds that the ministry falsely asserts that she is not receiving assistance with vehicle insurance. She concludes that "No effort has been made to understand the client's complex and challenging medical issues and disability, and the downward spiral of her health and functioning initiated by the arbitrary and discriminating decisions, inflexibility applied to which she has been subjected for the past years since 2010."

The appellant's evidence at the hearing included the following information:

- The appellant stated that her medical condition, Multiple Chemical Sensitivity, is the most severe case that she is aware of. It negatively impacts all facets of her daily life and has left her feeling desperately isolated and impoverished. She identified some of the numerous costs associated with her condition, including: organic foods, air filters, water filters, natural supplements and remedies.
- The appellant stated that her vehicle had been specially modified to seal it from the outside air, in order to prevent her from coming into contact with toxicities and pollutants when she travels. The vehicle does not provide heat as this many allow outside air to enter the vehicle. She added that because of her rural location and the severity of her condition to toxicity exposure, there are no alternative options for medical transportation that could even be considered.
- The appellant stated that as a result of the previous Tribunal decision in 2002, which awarded her the costs of repairs and maintenance to her modified vehicle, that she felt that she was entitled to receive continued support for this purpose, as it was more cost effective to the ministry than arranging any other type of medical transportation, of which there are none that are appropriate.
- The appellant described her condition in great detail and the difficulties she experiences on a daily basis because she cannot even go out to pick up her mail or drop off her rent without encountering people or environmental toxins that she is unable to tolerate in her sensitive and volatile condition.
- The appellant indicated that she is frustrated with how, over the years that she has been receiving assistance, her supports keep being taken away and things have gotten so bad for her that her health is in even further decline and she fears she will become a "statistic of the ministry".
- The appellant stated that she is unable to comply with the ministry requests to pre-approve

arranged medical appointments because she often does not know in advance when she needs to seek medical attention due to the severity and unpredictability of her condition. She added that because there are no family physicians accepting patients in the nearest community, she must attend a Walk-In clinic where appointments are not available. The appellant was unable to speculate on the frequency of medical appointments that she may have over an upcoming time period.

- The appellant explained that in order to keep the costs of her medical transportation low, in the past she would try to combine multiple appointments (physician, laboratory, naturopath) into a single trip, and because of this, she felt that the ministry only recognized that she did not require medical transportation as often as she had in the past, and penalized her efforts by taking away supports.
- The appellant stated that she is currently in great need of medical care, dental care and laboratory testing but has been unable to have any of her health issues addressed due to a lack of transportation, specifically the repairs to her modified vehicle.

The ministry relied primarily on its reconsideration decision and confirmed that as the appellant is now 65 years or older, she is receiving CPP benefits and support for Medical Services Only. The ministry stated that the appellant's situation had changed since the 2002 Tribunal Decision, which was made when the appellant and her son required medical transportation to attend weekly appointments. The ministry explained that the funds to repair the appellant's vehicle in 2012 were issued under a Tribunal decision which was then "set for review by policy analyst, as dictated by EAPWD Act section 31(1)," which states that an adjustment or alteration in benefits (increase, decrease or discontinuation) may be applicable if there is a change in assistance or if the initial and continuing conditions of eligibility are no longer satisfied.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision to deny the appellant's request for a medical transportation supplement for her vehicle repairs, as the request does not meet the criteria set out in Schedule C, section 2(1)(f) of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the applicable legislation in the circumstances of the appellant.

The relevant legislation is:

Section 2(1)(f) of Schedule C of the EAPWDR:

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.

Section 31 of EAPWD Act

Recipients under former Act deemed recipients under this Act

31. (1) On the date this section comes into force, a person with disabilities who is receiving income assistance, a disability allowance or a benefit under a former Act
- (a) is deemed to have applied for and be in receipt of disability assistance or supplements under this Act, and
 - (b) in order to continue receiving disability assistance or the supplement, must satisfy the initial and continuing conditions of eligibility established under this Act that apply in respect of the disability assistance or supplement.
- (2) On the date this section comes into force, a person with disabilities who is receiving hardship assistance under the BC Benefits (Income Assistance) Act
- (a) is deemed to have applied for and received hardship assistance under this Act, and
 - (b) in order to receive further hardship assistance, must satisfy the conditions of eligibility established under this Act for hardship assistance.
- (3) Despite a final decision of a tribunal, or the BC Benefits Appeal Board, under the BC Benefits (Appeals) Act, the minister may
- (a) adjust an amount of disability allowance, income assistance, hardship assistance or a benefit,
 - (b) alter a category of disability allowance, income assistance, hardship assistance or a benefit provided to or for a recipient referred to in subsections (1) and (2) and his or her dependants, and
 - (c) alter the category of person of the recipient or his or her dependants to equal the amounts or categories of disability assistance, hardship assistance or supplements the recipient and his or her dependants are eligible for under this Act.
- (4) An adjustment or alteration referred to in subsection (3) (a) or (b) may be, as applicable,
- (a) an increase, a decrease or a discontinuance of an amount, or
 - (b) a change in, or a discontinuance or an addition of, a category of disability assistance, hardship assistance or supplements.

Whether a previous tribunal decision entitles a person to receive continued and similar benefits.

The appellant argues that she was awarded the cost of her vehicle repairs in a Tribunal decision in 2002, and because of this, she should be entitled to receive ongoing similar benefits for repairs to the same vehicle.

The ministry's position is that since the appellant's 2002 Tribunal decision, both the legislation and the appellant's situation have changed, and as stated by EAPWD Act section 31(1), an adjustment or alteration in benefits (increase, decrease or discontinuation) may be applicable if there is a change in assistance or if the initial and continuing conditions of eligibility are no longer satisfied.

The panel notes that eligibility is not based on previous Tribunal decisions and the panel is not bound by these previous decisions, and therefore, as stated in EAPWD Act section 31(1), the appellant must still satisfy the current eligibility criteria as set out in Schedule C, section 2 (1)(f) of the EAPWDR.

Whether the supplement requested was to cover the least expensive, appropriate mode of transportation available to or from an appointment with a medical practitioner.

The appellant argues that her modified vehicle is the only form of transportation that can be used, due to her rural location and severe and volatile medical condition. She adds that the unpredictability of her condition and necessity to use Walk-in clinics because of a lack of local family physicians does not allow for booking or pre-planning of appointments.

The ministry's position, as set out in the reconsideration decision, is that there is no evidence of the appellant's need for medical transportation, including specific information regarding the location or frequency of medical care required, therefore the minister is unable to establish that repair of the vehicle is the least expensive appropriate mode of transportation, as set out in Schedule C, section 2 (1)(f) of the EAPWDR.

The panels accept that the appellant's medical condition is severe and that her physician stated in his letter that it is imperative that she have access to 'clean' transportation, however, evidence has not been provided that establishes the frequency or location of medical appointments required by the appellant, as set out in Schedule C, section 2 (1)(f) of the EAPWDR and therefore, the panels find that the ministry's decision was reasonable.

Whether the supplement requested was for transportation to enable the person to receive benefit under the Medicare Protection Act or general hospital service.

The appellant argues that her health is in decline and she urgently needs the repairs to her vehicle. If she had access to her vehicle she would make appointments to see her medical doctor, a dentist, the laboratory and her naturopath for urgent attention for new and ongoing issues.

The ministry's position, as set out in the reconsideration decision, is that there is no evidence of the

appellant's need for medical transportation to attend a medical or nurse practitioner's office or hospital to obtain benefit under Medicare Protection Act or general hospital service, as required by Schedule C, section 2 (1)(f) of the EAPWDR.

The panels acknowledges the appellant's desire to attend appointments with her medical doctor, a dentist, the laboratory and her naturopath in order to improve her health, however, evidence has not been provided which establishes her requirement to do so, as required by Schedule C, section 2 (1)(f) of the EAPWDR, therefore, the panels finds that the ministry's decision was reasonable.

Whether there are resources available to the person to cover the least expensive, appropriate mode of transportation available.

The appellant argues that she has no money to cover the cost of repairs to her vehicle and all her available funds go toward the other items (organic food, air filters, water filters, natural supplements) in order to try to manage her severe medical condition.

The ministry did not dispute whether information has been provided to establish that the appellant has no resources available to her to cover the cost of the vehicle repairs.

The panel finds that because the ministry did not deny the appellant's request based on this criteria, the panel will not make any findings on whether or not the appellant had resources available to her.

Conclusion

In conclusion, the panel finds that the ministry's decision to deny the appellant's request for a medical transportation supplement in order to have repairs made to her vehicle was reasonably supported by the evidence and a reasonable application of the legislation in the circumstances of the appellant. The panel thus confirms the ministry's decision.