

### PART C – Decision under Appeal

Under appeal is the May 26, 2014 Ministry of Social Development and Social Innovation reconsideration decision that under the terms of the Employment and Assistance for Persons with Disabilities Regulation Schedule C section 2(1), the appellant does not qualify for a supplement for non-local medical transportation. The ministry found the out-of-town physician is not a specialist, the destination does not qualify under subsections (f)(i) through (f)(iv), and the treatment does not qualify under subsection (f)(v).

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 5  
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule C section 2(1)

## PART E – Summary of Facts

The evidence before the ministry at reconsideration was

- the appellant is designated as a Person with Disabilities, eligible to receive general health supplements under Schedule C, section 2 of the EAPWDR.
- a request for travel assistance form dated March 29, 2013 with the name of a local physician and an out-of-town physician in the referral section, and the appellant's name and signature in the applicant/patient information section.
- a "Find a Physician" listing from the College of Physicians and Surgeons of British Columbia website with the name and address of the out-of-town physician, describing her registration as "FULL General/Family Practice".
- an appointment card and a March 26, 2014 prescription form from the out-of-town physician with the appellant's name and a note "Must come to my office once weekly for the next few weeks until stable."
- an undated letter from the appellant saying: she needed to attend the out-of-town doctor because no local doctor would see her since a local doctor blackened her name; the medication she needs helps with debilitating pain; she gets special transportation because she can't cope with a bus; and the person escorting her charges \$88 for the return trip, the cost of a bus ticket; she requests \$88 for each return trip plus \$20 for food.
- five unsigned March and April 2014 receipts to the appellant for \$50 each
- request for reconsideration form in which the appellant writes she was getting methadone locally until the doctor assaulted her and blackened her name, that she tried everywhere locally and finally out of town, that she has to pay \$50 every two weeks that comes out of her food money, that she is on disability, has life-threatening illnesses, is out of food in the middle of the month, and just wants back the money she paid.

With the appellant's consent, two ministry observers attended the hearing with the ministry representative.

At the hearing the appellant gave evidence that she had been assaulted by her doctor, who then blackened her name with other doctors locally and in nearby communities. The appellant said she called every doctor and clinic where methadone treatments are available locally, but when they called her doctor, they would not see her, and a few said they had a 3-6 month wait list. She has checked back, but was told there was still a wait list and they would not take her name. The closest she could find is the doctor she is now seeing in another town. The appellant explained that three years ago she was in a bad bus accident, and can no longer travel by bus. The methadone treatments result from the bus accident. She made arrangements to be driven to the doctor's office for \$50 per return trip, for a total of \$250. Her appointments are now only every three weeks, but without the treatments she would end up in hospital. The treatment she receives by this doctor and the methadone is paid for by MSP. The appellant provided the Request for Travel Assistance form and the doctor's note required by the ministry. She said she qualifies for the supplement because she is a person with disabilities, has a life-threatening illness, and multiple barriers. She is asking for the money she paid. She now has a driver who will take her for \$20, a payment she can manage.

The ministry representative referred to the reconsideration decision and outlined the eligibility criteria for medical transportation, stating the legislation refers to availability of medical treatments, not to the person's circumstances, and in this case the criteria were not met. She said while another part of the legislation addresses immediate life-threatening situations, methadone treatment is not a life-threatening need and that legislation does not apply here. She commented there was no documentation of the local refusals of treatment, and no evidence on which to make a different decision.

## PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's decision denying the appellant funding for non-local medical transportation.

### Relevant Legislation

#### **EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT (excerpt)**

##### **Disability assistance and supplements**

*5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.*

#### **EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION (excerpt)**

##### **Health supplement for persons facing direct and imminent life threatening health need**

*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).*

*[en. B.C. Reg. 61/2010, s. 4; am. B.C. Reg. 197/2012, Sch. 2, s. 8.]*

#### **SCHEDULE C (excerpts)**

*"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.*

##### **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.*

### **Appellant's Position**

The appellant reported that she was assaulted by her doctor, who then blackened the appellant's name, and she has tried everywhere locally for the methadone treatments necessary for her debilitating pain. She was only able to locate an out-of-town doctor who would treat her, she could not cope with taking a bus, and paid \$250 for transportation to her appointments. She says she had to use her food money to pay her transportation costs. She argues as a person with disabilities, a life-threatening illness, multiple barriers, and the need of methadone to avoid ending up in hospital, she should be reimbursed her transportation expenses.

### **Ministry's Position**

The ministry argues the appellant was not referred to the out-of-town physician by another physician for specialty treatment, as provided in section 2(1)(f) of Schedule C of the EAPWDR, and the out-of-town physician is not a specialist, defined in Schedule C. The ministry acknowledged that methadone treatment is a benefit under the Medicare Protection Act. The ministry says the request does not fit any of the other eligible categories for medical transportation available under the legislation. The ministry further says the appellant's situation is not a life-threatening one as addressed in section 69 of the legislation.

### **Panel's Decision**

The appellant gave evidence that she suffers with a serious condition for which she is prescribed methadone, but as a result of a dispute has been unable to obtain the treatment locally. She cannot travel by bus and incurred expenses to be driven to another town for her treatments.

Schedule C of the EAPWDR lists the criteria for which the ministry may pay a supplement for the cost of transportation. Section 2(1)(f)(i) refers to local transportation. It is undisputed that the office of the appellant's physician is not local, and therefore the appellant does not qualify under this subsection. The ministry's finding on this issue was reasonable.

Section 2(1)(f)(ii) refers to the nearest available specialist. Specialist is defined in the legislation as *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.* As the physician's listing from the College of Physician's and Surgeons shows, the appellant's physician is not recognized as a specialist by the College. The panel finds the physician is not a specialist as defined in the legislation and therefore the appellant does not qualify under this subsection. Sections 2(1)(f)(iii) and (iv) refer to transportation to a hospital and are not applicable in this case as the appellant is not being referred to a hospital. The panel finds that the appellant does not qualify under section 2(f)(i) to (iv) and the ministry's findings on these criteria were reasonable.

The reconsideration decision indicates that the appellant would not qualify under section 2(1)(v) as the service requested was not transportation to enable the appellant to receive a benefit under the Medicare Protection Act. As acknowledged by the ministry at the hearing, and as stated by the appellant in her evidence, her treatment and the methadone is paid for by MSP. As such, the panel finds that the transportation supplement requested was to receive a benefit under the Medicare Protection Act. The ministry's finding on this issue was unreasonable. However, the legislation requires the appellant's request to also fall within section 2(f)(i) to (iv) of Schedule C. As the request of the appellant does not fall within the legislated criteria, she cannot qualify for the cost of transportation in these circumstances.

At the hearing, in response to the appellant's assertion she has a life-threatening illness, the ministry stated that the legislation allows for the provision of supplements to meet a life-threatening need in certain circumstances. The panel notes that section 69 of the EAPWDR (*Health supplement for persons facing direct and imminent life-threatening health need*), as it relates to the provision of a medical transportation supplement, states that the requirements of section 2(1)(f) of Schedule C must be met. In this case, for the reasons above, the panel has found that the ministry reasonably determined that the criteria of section 2(1)(f) were not met. Section 69 was not a basis for denial in the reconsideration decision.

The panel finds the ministry's determination that the appellant does not qualify for payment of medical transportation expenses was a reasonable application of the applicable enactment in the circumstances of the appellant, and confirms the decision.