

PART C – Decision under Appeal

Under appeal is the June 9, 2014 Ministry of Social Development and Social Innovation reconsideration decision, which held that the appellant was not eligible for reimbursement of hotel and extra meal expense incurred to travel to a medical appointment. The ministry held that the appellant did not choose the least expensive appropriate mode of transportation, as required by Schedule C section 2(1)(f) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The ministry was not in attendance at the hearing. After confirming the ministry was notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The evidence before the ministry at reconsideration was

- the appellant is a sole recipient with Persons with Disabilities designation.
- the appellant was referred to an out-of-town medical specialist.
- May 1, 2014 notice from the specialist to the referring physician of the appellant's 9:40 a.m. June 4, 2014 appointment.
- May 4, 2014 Request for Travel Assistance.
- May 5, 2014 note from the appellant's physician (a different physician than the referring physician), saying the appellant will require an overnight stay and a travel companion to travel to see the out-of-town specialist, that the appellant does not drive, easily gets disoriented and is at risk of getting lost in the city.
- May 7, 2014 Request for Non-local Medical Transportation Assistance signed by the appellant, requesting hotel accommodation, mileage expense for a car, and taxi expense for her June 4, 2014 appointment.
- Employment and Assistance Request for Reconsideration form, in which the ministry described several contacts by the appellant about her request for non-local medical transportation, and the appellant states she was told all she needed was a letter on a prescription pad stating she would require overnight stay and a travel companion and why, that due to her appointment being early in the morning, the first ferry at 7a.m. would get her too late to her appointment, and that she had provided all the documentation she was asked for.

At the hearing the appellant said she was told by a ministry worker all she needed for approval of an overnight stay was a letter from her doctor saying the overnight stay was required, but the ministry denied the request because the doctor did not say it was medically required. She explained she has an intellectual disability and suffers seizures, in fact she had a seizure on the ferry. She said she had about a six month wait to see the specialist, that her appointment was for 9:40 a.m., but was told to check in by 9:30. She said it takes about 45 minutes to get to the hospital from the ferry terminal and at least an hour in rush hour, and she would not be seen if she was late.

The appellant said it took from May 7 to May 28 for the ministry to respond to her transportation assistance request. When she made the same trip about two years ago for surgery, there had been no problem getting approval for an overnight stay. She travelled on June 3rd to be on time and because she is physically unable to rush. It was also not possible for her mother to accompany her early in the morning on June 4th. There was no concern on the part of the ministry about her needing an escort to travel.

PART F – Reasons for Panel Decision

The issue is the reasonableness of the ministry's decision that the appellant is not eligible for reimbursement of the cost of her hotel stay and extra meals incurred to travel to a medical appointment, because she did not choose to use the least expensive appropriate mode of transportation as set out in the EAPWDR Schedule C section 2(1)(f).

Relevant Legislation

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

SCHEDULE C (excerpt)

) 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 argues if she took the 7 a.m. ferry she would not get to her appointment on time, it takes one hour in rush hour traffic to get to the hospital, and that her medical needs are unstable and required her to stay in a hotel before the appointment. She says she had no problem before getting approval for a hotel for an early morning appointment, a worker told her all she needed was a letter from her doctor on a prescription pad stating she would require an overnight stay and why, and she provided all the documentation requested.

Ministry's Position

The ministry argues that although the appellant's doctor's note stated the appellant required an overnight stay, she did not provide information confirming it was medically necessary. The ministry

was not satisfied there was not enough time for the appellant to take the 7 a.m. ferry and attend her 9:40 a.m. appointment, saying the ferry ride takes one hour and 39 minutes and the taxi service advised it is approximately a 30 minute trip from the ferry terminal to the hospital. The ministry says the appellant's request for reimbursement for the hotel stay and extra meals does not meet the legislative criteria set out in EAPWDR Schedule C section 2(1)(f) because these costs were as a result of the appellant's choice not to use the least expensive appropriate mode of transportation, which was to travel in one day.

Panel's Decision

It is reasonable for the ministry to request information evidencing claimed medical need for an overnight stay, and the onus is on an applicant to provide that information. The appellant did provide a note from a doctor saying the appellant required an overnight stay, although the note did not specify the medical reason. The panel notes the ministry received the appellant's request for approval of her non-local medical transportation expenses on May 7, and as of May 15 advised her they would decide by May 30. Following repeated calls from the appellant, the ministry advised her of their decision on May 28, three weeks after the request, and with little time to permit the appellant to provide clarification regarding the medical necessity.

The appellant says she would not have enough time to take the earliest ferry the day of her medical appointment and arrive on time. The ministry disagrees, saying the ferry ride takes one hour and 39 minutes (arriving an hour before the appointment) and a taxi from the ferry terminal to the hospital takes about 30 minutes. In ideal circumstances, and taking into account time for passengers to disembark, there would be enough time for the appellant to make the appointment. However, the ministry's position does not allow for the possibility the ferry could arrive late, and at that time of the morning – rush hour – the drive from the ferry terminal to the hospital could take much longer than 30 minutes. It puts the appellant at risk of missing a long awaited appointment with a further delay for another appointment. The panel finds by failing to take into consideration the potential for ferry and traffic delays, it was not reasonable for the ministry to find the appellant ineligible for reimbursement of hotel and extra meal expense.

The panel finds the ministry's decision was not a reasonable application of the applicable enactment in the circumstances of the appellant and rescinds the decision.