

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated June 3, 2014 which denied the appellant's request for a medical transportation supplement because, in regards to:

- Accommodations: the least expensive and appropriate accommodations were not were used;
- Meals: the appellant is not eligible for the \$4 meal allowance for meals that were included in the cost of the accommodations or that should have been consumed at the appellant's home prior to and after her trip and that her \$40 per month dietary supplement allowance should cover the additional cost of meeting her dietary needs;
- Transportation: the ministry was not provided with a detailed description of the kilometers the appellant claims which vary immensely from the ministry's own calculation of the same trip.

## PART D – Relevant Legislation

*Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Section 62.*

*Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Schedule C, Sections 2(f).*

## PART E – Summary of Facts

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

- 1) A 4-page letter describing the rates and amenities of the hotel the appellant utilized for her medical trip;
- 2) A letter from a doctor indicating the appellant's appointment location, date and time (December 16 at 8:30am), and instructions for the procedure she underwent;
- 3) A Request for Non-Local Medical Transportation Assistance form or Service Request 1 completed by the appellant signed and dated November 27, 2013;
- 4) Appointment confirmation for Thursday December 17 at 3:00pm;
- 5) 2 cheque stubs showing payments of \$182.50 and \$792.58 that were dated December 11, 2013.
- 6) A 2-page letter dated February 5, 2014 and signed by the appellant's sister (who is also her advocate) stating that the appellant suffers from Myotonic Muscular Dystrophy (MMD), is developmentally challenged, and needs specialized care that is only available in another city. The advocate also outlines the procedures the appellant underwent during her visits to the hospital, and explains that a lift-equipped mini-bus was used for traveling to accommodate the appellant's power-chair for mobility. The itemized list for expenses is as follows: Hotel = \$704.28, Meals (5 days x 3 people x \$12/day) = \$180, Transportation (960km @ \$0.30/km) = \$288.00, Parking (3 days @ \$20) = \$60, and Bridge Tolls (\$8.50 for large vehicle/non-registered x 2 crossings) = \$17.00 for a total of \$1249.28. The payment of \$975.08 has been received from the ministry thus far. The appellant is requesting the difference of \$274.20.
- 7) A bill from the hotel for a total of \$704.28
- 8) A letter from a local physician signed and dated November 19, 2013 that states that due to the appellant's medical conditions and developmental delays that a second (in addition to her sister) attendant be made available for the out of town medical appointment;
- 9) A 4-page letter dated May, 6, 2014 and signed by the hotel's general manager, provides a description of the hotel rooms and amenities, and explains that originally the appellant was to be charged the medical rate for her room which would have been \$160 plus tax per night. However, the hotel yielded her rate to the senior's rate which was \$153.10 plus tax per night.
- 10) A (undated) letter from the appellant's out of town cardiologist's office stating that the appellant had an appointment on December 17, 2013 and a return visit on December 18, 2013.

In the Request for Reconsideration the appellant's advocate (signed but not dated) summarized the costs that were included in the letter dated February 5, 2014. It also stated that the appellant accepts that the ministry cannot pay the fee for an unregistered vehicle, \$60 for 3 days of parking is reasonable, there was no break-down of what was paid for transportation and that if all but 4km was paid she would accept the transportation amount. The appellant states that there is no break-down of the meal allowance either and that due to the appellant's dietary needs the breakfast provided at the hotel was insufficient. Therefore there was an additional cost for breakfast. As for the hotel costs the advocate states that there was no break-down provided for the hotel reimbursement. The hotel cost of \$704.28 was submitted prior to the trip (without question), and the hotel receipt was submitted with the original request for additional payments. The receipt shows that the medical rate was applied not the senior's rate. The appellant has used this hotel in the past as it can accommodate the over-sized vehicle required for her power-chair.

In the Notice of Appeal, the appellant states that she provided a Service Request 1 form with all the information required, including the hotel rate before departure. It was only after she returned that the ministry disputed the hotel rate.

### **Admissibility of New Information**

At the hearing the appellant provided new evidence, 5 copied photographs. The copies provided additional information regarding the hotel accommodations. The ministry did not object to the admissibility of the new evidence. Two pictures show the parking accommodations at the hotel relevant to this case, another shows parking accommodations at another hotel in the same city previously approved by the ministry, the third is a picture of the shuttle used to transport the appellant and her necessary equipment, and a fourth picture is of a male care-aid sleeping on the floor of a hotel room. This information provides additional detail with respect to issues addressed in the original application for a health supplement. Accordingly, the panel has admitted this new information as being in support of the information and records that were before the ministry at the time of reconsideration, in accordance with section 22(4) of the Employment and Assistance Act.

At the hearing the appellant's sister, who is also her advocate, pointed out that she makes all of the arrangements for the appellant to attend her out of town medical appointments on a voluntary basis. She is not paid to manage the affairs or care of her sister. She also stated the following regarding the ministry's reconsideration decision:

- The appellant must see a specialist for her MMD and other medical needs, and the specialist does not work locally;
- She completes the necessary request SR1 10-14 days prior to any trip. For this trip, the form was submitted on November 27, 2013 for travel on December 15, 2013, and the hotel costs were included in this form at \$704.28;
- The ministry did not contact her or the appellant regarding a review of the SR1 form submitted November 27, 2013 and therefore was never advised that the hotel cost was not acceptable prior to the trip;
- When booking a room, she must accept any room that is available at the time that can also accommodate the appellant's equipment. Since it was close to Christmas room availability was a factor;
- Due to the appellant's noisy equipment, she must have a room separate from the others assisting her on the trip. Therefore, a room with a separate bedroom is necessary;
- Two of the available escorts that assist the appellant on medical trips are male care-aid workers. The ministry cannot expect the appellant's sister/advocate to share a bed with these male care-aid workers and therefore it was necessary to book the room that had the 2 pull out beds;
- On previous trips for medical appointments she (the appellant's sister) and the care-aid worker have taken turns sleeping on the hotel floor while the other sleeps in the only other bed available.;
- The ministry has never advised her that hotel costs are capped or provided her with a breakdown of its cost/pay-out structure;
- When choosing a hotel, she must also ensure that the hotel can provide parking for the shuttle bus used to transport the appellant and her equipment otherwise additional money would be

spent for parking;

- The hotel did not charge the medical rate but rather the senior's rate which was the least expensive rate;
- The advocate points out that she has used this hotel for the last two years for medical appointments and the ministry has never questioned the room rates;
- In terms of meals, the appellant has a specialized high protein diet and therefore avoids carbohydrates. The care-aid worker and the advocate also avoid high carbohydrate foods for dietary and or medical reasons. This is why they did not partake of the complimentary continental breakfast provided by the hotel;
- Neither the appellant nor the advocate has been advised that there is only a \$4 per meal allowance;
- In response to a question, the advocate stated that she was not certain what the complimentary continental breakfast consisted of but she believed it was muffins, bagels and cold cereal;
- The advocates points out that the ministry wants confirmation of the appellant's special dietary needs, however, the ministry issues her a supplement of \$40 every month for her special dietary needs;
- In regards to the ministry's statement that the appellant is expected to eat breakfast at home before she leaves for her trip, the advocate states that the appellant cannot always eat first thing in the morning, especially when a road trip begins early in the morning. Therefore, at times breakfast must be eaten on the road;
- In regards to the transportation cost, the advocate points out that there are two highways available for travel from the appellant's home town to the major centre where the doctor works. One takes less time but more kilometres are traveled, while the other takes more time and less kilometres are traveled. The highway that is used depends on road conditions, or whether or not on that day the appellant can handle a long stretch of driving without stops;
- In response to a questions, the advocate could not remember which highway was used for travel on December 15, 2013 or December 19, 2013;
- The advocate points out that the ministry's mileage calculation is incorrect as it states that from the appellant's home to the hotel it is a 394 km drive and from the hotel to the hospital is 4km. It then states that from the hospital to the appellant home the drive is 417km;
- The advocate accepts the ministry decisions regarding the bridge toll and parking; and
- The advocate points out that she and the appellant have already paid for the cost of the trip, even though they cannot afford too. The appellant is now looking for re-imburement for her expenses.

At the hearing the ministry relied on its reconsideration decision and added:

- Once service request are completed, there is a thorough review of the application by a specialized group of ministry workers who hand all service requests. Follow-up with the applicant is done to ensure all of the information is accurate.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which denied the appellant's request for a medical transportation supplement because (1) the least expensive and appropriate accommodations were not used, (2) the appellant is not eligible for the \$4 meal allowance for meals that were included in the cost of the accommodations or that should have been consumed at the appellant's home prior to and after her trip and that her \$40 per month dietary supplement allowance should cover the additional cost of meeting her dietary needs, and (3) the ministry has no detailed description of the kilometers that the appellant has claimed which vary immensely from the ministry's own calculation of the same trip, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

The relevant legislation requires the following:

Schedule C, section 2(f) of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) stipulates the eligibility requirements as:

### 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.

***The Appellant's Position:***

The appellant's position is that ministry had ample time to advise her that the hotel costs were unacceptable as the SR1 was submitted on November 27, 2014 for travel on December 15, 2013. She has used this same hotel in the past without being questioned about the room rates. The ministry cannot expect a female, who is escorting the appellant on medical trips, to share a bed with an unknown or unrelated male care-aid worker, nor can it expect either person to sleep on the floor of the hotel room. The ministry never advised her that meal allowances are capped at \$4 per meal and that it should already be aware that she has special dietary needs because it provides her with additional funding to support these needs. The breakfast at the hotel did not meet the needs of the appellant and therefore she had breakfast elsewhere. Also, she cannot eat breakfast first thing in the morning at times and therefore did not eat breakfast at home prior to her medical trip. The appellant also argues that the ministry's calculation of the mileage for this medical trip does not compute and that it did not take into consideration that road conditions and her health at the time determine which route can be taken.

***The Ministry's Position:***

The ministry's position is that the appellant did not use the least expensive accommodations for her medical trip. Rather than the standard large one bedroom suite, the appellant could have used the standard one bedroom suite, which cost less. The ministry also argues that the hotel provides a free breakfast and the ministry provides her with a supplement for her high protein diet. If she cannot have partaken of the food available at the hotel due to dietary needs, she has the funds available to her to meet those needs from her regular support and diet supplement. Finally, the ministry argues that the appellant has not provided a detailed description of the kilometre she has claimed for travel. The route calculation provided by the appellant immensely varies from those found on public resources. For these reasons, the ministry has denied the appellant a health supplement claim of \$274.20.

***The Panel Decision:***

The ministry has based its denial on the legislative criteria found in Schedule C, section 2(f) of the EAPWDR. This legislation requires that, provided the criteria in Section 62 of the EAPWDR have been met, eligibility for a health supplement then must be the least appropriate form of transportation. The ministry has taken the step of itemizing its decision.

In regards to accommodations, the ministry has stated that the appellant did not use the least expensive accommodations which would have been the standard one bedroom suite that cost \$100 per night. The ministry also states that the rate charged for the room was the senior's rate and not the medical rate. The appellant argues that the standard large one bedroom was not chosen for its plush amenities but to accommodate all 3 individuals (the appellant, the advocate and the care-aid) comfortably and that it is unreasonable for the ministry to expect the appellant's advocate and care-aid worker to share a bed. She also argues that the senior's rate was less expensive than the medical rate and therefore it was the least expensive accommodations. The panel finds that the description of the hotel rooms provided by the hotel manager confirms that the standard one bedroom suite has one pull out bed while the standard large one bedroom suite has two pull out beds. Since two individuals, (in this case the appellant's sister and a care-aid worker) are accompanying the appellant, then it is reasonable that they each be provided with a bed or pull out bed. The panel also finds that the hotel manager's May 6, 2014 letter confirms that the rate charged to the appellant, the

senior's rate, was lower than the medical rate by \$6.90 per night. The panel finds that, based on the evidence, the ministry's decision that the hotel accommodations were not the least expensive appropriate accommodations was not reasonable in the case of the appellant.

In regards to meals, the ministry argues that the appellant's hotel provided breakfast in the cost of the room and she had the opportunity to eat breakfast prior to her trip. Therefore it is unreasonable for the appellant to expect the ministry to cover the cost of meals that were already paid for. The ministry adds that if the appellant has a dietary need which prevented her from eating the breakfast provided at the hotel, this information must be confirmed by her physician. Finally the ministry argues that if breakfast at the hotel did not meet her dietary needs, the ministry does provide a dietary supplement to the appellant every month. Therefore the appellant had the resources available to her to cover the additional expense of her meals. The appellant argues that the breakfast the hotel served consisted of high carbohydrate foods which do not meet the needs of her high protein diet. However, the appellant or her advocate were not able to confirm what the breakfast consisted, nor was any information regarding the contents of the hotel's continental breakfast available in the documentation provided by the hotel manager. The appellant also argues that the advocate and care-aid also avoid high carbohydrate foods for health reasons and they too could not eat the hotel breakfast. Finally, the appellant argues that she cannot eat breakfast first thing in the morning when she travels early. Therefore, she did not consume breakfast at home prior to her trip. The panel acknowledges that the ministry erred in its conclusion that the appellant did not have a dietary need as it does supply the appellant with a nutritional supplement of \$40 per month to meet the needs of her special diet. The panel also accepts that the appellant cannot eat first thing in the morning on travel days. However, the panel finds that the appellant is provided with additional funds to meet her dietary needs, that there is no confirmation from the appellant or the hotel manager as to what the hotel's complimentary continental breakfast consisted of and that it is unreasonable to expect the ministry to accommodate the dietary choices of the appellant's assistants. Therefore the panel finds that based on the evidence, the ministry reasonably determined that it is not responsible for breakfast costs for the appellant and her 2 assistants.

In regards to the transportation costs, the ministry argues that without a detailed description of the kilometres traveled by the appellant, it cannot be determined that the least expensive appropriate route was taken. The ministry also argues that according its own calculations of the trip's total kilometres, based on MapQuest and Google, differ immensely from the appellant's claim. The appellant argues that there are 2 different routes one could take from home to the hospital where the specialist works. Each has different travel times and total kilometres traveled. Which route is used depends on the weather and/or road conditions that day and/or the current state of the appellant's health. Finally, the appellant states that the ministry's calculation of the same trip, does not compute. The ministry states that the trip from the appellant's home to the hotel is 394km and from the hotel to the hospital is 4km, which would mean that it is either 398km or 390km from the appellant's home to the hospital. Yet the ministry determined that the trip from the hospital, to the appellant's home, is 417km. The panel finds that the ministry erred in its calculation of the kilometres traveled for this medical trip and therefore it cannot be determined, by the evidence provided, which calculation, that of the ministry or of the appellant, is accurate. The panel finds that based on the evidence, the ministry did not reasonably determine that the least expensive appropriate route was not used for travel for the appellant's medical trip.

### **Conclusion:**

Having reviewed and considered all of the evidence and the relevant legislation, the panel finds that

the ministry's reconsideration decision is not reasonably supported by the evidence in regards to the accommodation and travel allowances and was reasonably supported by the evidence in regards to the meal allowance. The panel therefore rescinds the ministry's decision and refers the decision back to the ministry to determine the amount of the allowance the appellant is entitled to.