

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated 3 July 2014 which determined that the appellant was not eligible for assistance with the medical transportation health supplement because she did not meet the criteria set out in Schedule C, section 2(1)(f) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because the doctor she was referred to was not in her local area and was not a specialist as defined under Schedule C, section 1 of the EAPWDR and required by s. 2(1)(f)(ii) of Schedule C of the EAPWDR.

PART D – Relevant Legislation

EAPWDR, section 62 and Schedule C, section 2(1)(f).

PART E – Summary of Facts

The following evidence was before the ministry at the time of reconsideration:

- The appellant is designated as a Person with Disabilities (PWD) and provided assistance as a sole recipient.
- On 3 June 2014, the appellant completed and signed a Request for Non-Local Medical Transportation Assistance form to travel to a major city for an appointment with a doctor of podiatric medicine (the podiatrist) that was scheduled for 9 June 2014.
- A letter dated 3 June 2014 by the appellant advising the ministry that she had upcoming medical transportation needs and that the first one was to attend an appointment to see the podiatrist the appellant had seen the previous month. He was to perform minor surgery on her toe. Her accommodations were taken care of but she needed the costs of transportation and meals for 3 days.
- A fax cover from the podiatrist's office dated 30 May 2014 confirming the appellant's appointment of 9 June 2014 at 10:30.
- A letter dated 6 June 2014 from the ministry to the appellant stating she was not eligible for non-local medical transportation because podiatrists are not considered a specialist recognized by the College of Physicians and Surgeons of BC.
- In her request for reconsideration dated 19 June 2014, the appellant requested an oral hearing as she had enough with the ministry's issues and that she had a number of witnesses to present. She added that she was diabetic and living far below the poverty line and that she had spoken with a ministry Employment and Assistance Worker (EAW) when booking that appointment and was assured that the podiatrist was a specialist and the medical transportation would be approved. She stated that she was only told at the last minute that the assistance would not be approved but it was too late to cancel as most of the arrangements had already been paid for. She would not have booked that appointment had she known she would not receive transportation assistance from the ministry. She mentioned that she was told the podiatrist was a doctor and a specialist. She ended up being in debt and was concerned she would run out of funds for food that month and the next. Attached to her request for reconsideration were the following documents:
 - A letter dated 14 May 2014 by a physician from the major centre thanking an unnamed third party for seeing the appellant with regards to foot care and podiatry services.
 - A fax from the podiatrist's office dated 6 June 2014 indicating that he is indeed a doctor of podiatric medicine and a foot specialist.

In her Notice of Appeal dated 10 July 2014, the appellant stated it was the ministry's error that caused her hardship and debt.

At the hearing, the appellant testified that she double checked 3 times with the ministry worker who was usually dealing with her file that transportation assistance would be approved before booking her travel and appointment with the podiatrist and she was only advised on the eve of her trip around 4 or 5 pm that it would not be covered, too late to change her plans as most of the expenses had been already paid. She testified that the ministry worker who gave her that information apologized later for her mistake. She explained that she had suffered injury and was treated at a clinic where the attending physician realized there were urgent medical issues with her feet that needed to be addressed by a specialist and he referred her to a podiatrist in that city. She stated the physician

knew she did not reside in that city and would have to travel for her appointments. She also knew that podiatrist from past experience and that he could do minor surgery in his office but given that she realized the ministry would not pay for travel assistance, she decided against going ahead with surgery on the day that she had that appointment on 9 June 2014. She testified other appointments have been set later this year for surgery on both feet with a different doctor.

The ministry testified that the worker the appellant mentioned was asked what had happened and she stated that she did not recall having made those statements on 3 occasions but rather that she said to the appellant her travel would be approved if the doctor was a specialist according to the College of Physicians and Surgeons of BC. The ministry witness was not there when the worker made the comments to the appellant.

The panel determined the additional oral evidence was admissible under s. 22(4) of the Employment and Assistance Act (EAA) as it was in support of the records before the minister at reconsideration, providing more information on the circumstances of the issues.

The panel notes that there is an inconsistency between the appellant's testimony to the effect that she was induced to book her appointment and trip by a EAW who told her that her travel expenses would be covered and later apologized while the ministry testified that the worker had only stated the legislation (a specialist recognized by the BC College of Physicians and Surgeons). The panel finds the evidence shows podiatrists are not recognized as specialists by the College of Physicians and Surgeons of BC.

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision that the appellant was not eligible for assistance with the medical transportation health supplement because the doctor she was referred to was not in her local area and because he was not a specialist under s. 2 of Schedule C of the EAPWDR was a reasonable application of the legislation or reasonably supported by the evidence.

The applicable legislation can be found at Schedule C of the EAPWDR that first define who qualifies as a specialist:

1 In this Schedule:...

"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*.

And section 2 (*General Health Supplements*) indicates at paragraph 1 (f) who is eligible for medical transportation assistance:

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 ministry argued that the appellant was not eligible for medical transportation supplement because the specialist she was referred to in a city other than the appellant's local area was not a recognized specialist by the College of Physicians and Surgeons of BC and even if he had been, because there was no evidence he was the closest podiatrist to the appellant's community.

The appellant argued she was misled by the ministry in that an EAW made her believe that her travel would be paid for before she made the appointment with the podiatrist and her travel arrangements and that the ministry should be held responsible for that mistake. She argued that the EAW apologized for having made that error and that the EAW's statement is untrue and she should make a written sworn statement as to what happened. She also stated that surgery on her feet is required because of her medical condition and that a podiatrist is a specialist that can perform such surgery and the ministry should acknowledge the doctor she saw is a specialist.

The panel's decision must be guided by legislation and its jurisdiction is set by s. 24 (1) of the EAA as

to whether the reconsideration decision is reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant. In this case it is obvious that the appellant was under the impression she had been given the right information and that her medical travel would be covered by the ministry.

However, the ministry's discretion in terms of medical travel is very limited as provided by s. 2 (1)(f), Schedule C of the EAPWDR and, as in the circumstances of the appellant, when medical travel must take place outside the local area of the patient, the ministry may only provide medical transportation supplement for travel to the office of the nearest available specialist in the field of medicine or surgery. In this case, the panel finds the doctor in question was a podiatrist and that he was not a specialist as defined by s. 1, Schedule C of the EAPWDR.

Regardless of the alleged error by the EAW, the reconsideration officer had no discretion in applying the legislation and the panel finds the ministry reasonably determined the podiatrist was not a "specialist" under the legislation and thus, reasonably determined it had no authority to provide medical transportation supplement to the appellant.

The panel did not consider the ministry's argument that in any event the podiatrist was not the nearest available specialist as there was no evidence whether he was or he was not the closest available specialist and as the issue was not considered at reconsideration. Further, this is a moot point since the panel found the podiatrist in question was not a specialist under the applicable legislation.

Therefore, the panel finds the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.